

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ) AT CHENNAI

O.A. No.262/2024

Mr. Teja Balantrapu,
S/o Mr. Hemachandra Balantrapu,
No.202, Grace des res heights,
SBI Colony,
Bhagamperpet,
Hyderabad – 500 013.

... Applicant

-Vs.

The National Highways Authority of India,
Represented by its Project Director,
PIU, Hyderabad,
Mr. P. Nageshwara Rao,
S/o Late Mr. P. Chowdary,
No.25A & 28 A,
ASCI College Park Campus,
Hyderabad,
Telengana.

... Respondent

COMPILATION OF JUDGEMENTS RELIED BY THE RESPONDENT

S. No.	CITATION	RELEVANT PARAGRAPHS	Ratio of Judgement	P. No
1	Citizens for Green Doon - Vs. Union of India.	29 of the Judgement.	Right to development intrinsically connected to the preservance of a dignified life. Its not limited to the idea of infrastructural development, rather it entails human development. – The jurisprudence in environmental matters must acknowledge that there is immense inter-dependence between right to development and Right to environment.	1-48
2.	N.D. Jayal - Vs. Union of India & Others (2004(9) SCC 362.	20 and 21 of the Judgement. 24 of the Judgement.	Courts cannot sit in judgement over the cutting edge of scientific analysis to the safety of any project. When the government or the authorities concerned after due consideration and	49-107

			after full application of mind took a decision. Then it is not appropriate for the court to interfere in such matters – It should be left to the mature wisdom of the government or implementing agency.	
3.	Narmada Bachao Andolan -Vs. Union of India & others (2000 (10) SCC 664).	229, 234 and 240 of the Judgement.	Courts in the exercise of their jurisdiction shall not transgress in to the field of Policy decision. – Whether to have an infrastructural project or not and to what type of project to be undertaken and how is to be executed are part of policy matter process. Courts should not become an approval authority in respect of projects and policies – Such decisions are taken by government after due care and considerations – Courts not to sit over appeal in policy decision. In case of projects of national importance, where it involves large section of the society -Courts not to interfere with execution of the project.	108-230

It is certified that the above-mentioned documents are the true copies of their respective originals.

DATED AT CHENNAI ON THIS THE 12th DECEMBER 2024



Counsel for the Respondent

**BEFORE THE HON'BLE NATIONAL
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**COMPILATION OF JUDGEMENTS
RELIED BY THE RESPONDENT**

M/s. SU. SRINIVASAN (475/1993)

COUNSEL FOR NHAI

Mob: 8870867841

Citizens For Green Doon vs Union Of India on 14 December, 2021

Author: D.Y. Chandrachud

Bench: Vikram Nath, Surya Kant, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Miscellaneous Application No 1925 of 2020
In

Civil Appeal No 10930 of 2018

Citizens for Green Doon & Ors.

...Appellants

Versus

Union of India & Ors.

...Respondents

With Miscellaneous Application No 2180 of 2020 In Civil Appeal No 10930 of 2018 JUDGMENT Dr Dhananjaya Y Chandrachud, J This judgment has been divided into sections to facilitate analysis. They are:

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Project 1 The present case has a history fraught with litigation, with multiple		
proceedings before the National Green Tribunal 1 and this Court. Before going into		
the history of the litigation, it is important to provide context for the public project in		
question in the case.		

2 The Chardham Mahamarg Vikas Pariyojna 2 is a program of the Ministry of Road Transport and Highways 3, which was announced on 23 December 2016.

The Project aims to widen the roads of approximately 900 kms of national highways, in order to ensure safer, smoother and faster traffic movement. As the name suggests, these highways connect the holy shrines which have been labelled as the “Chote Char Dham” in the State of Uttarakhand – Yamunotri (NH- 94/134 up to Janki Chatti), Gangotri (NH-108), Kedarnath (NH-109, up to Sonprayag), Badrinath (NH-58) and the Tanakpur-Pithoragarh stretch of the Kailash Mansarovar Yatra route (NH-125).

3 These shrines represent different traditions of the Hindu religion – with Yamunotri and Gangotri being Shakti or goddess shrines, Kedarnath being a Shaiva temple, and Badrinath a Vaishnava site. They are located in an area called Kedarkhand (largely today’s Garhwal) in the Skanda Purana. The locations of these shrines were earlier considered to be occupied by glaciers (named Champasar, Gangotri, Chorabari and Satopanth) in their entirety, which have “NGT” “Project” “MoRTH” PART A since started melting. Even today, they are stated to be located in paraglacial zones, which are considered to be ecologically sensitive. 4 Till the 1950s, access to these shrines was limited and they could only be accessed on foot. Hence, worshippers often undertook long and arduous journeys to reach the shrines. However, since the 1960s, road connectivity to the shrines has improved, where vehicles now ply up to the Badrinath and Gangotri temples while Yamunotri and Kedarnath are 6 to 14 kms away from the nearest motorable road. The improved connectivity has resulted in a greater influx of worshippers. The four shrines typically open for worship in and around late April or early May, and close in and around late October to early November. 5 The Project was conceptualized with the aim of improving accessibility to these shrines by widening the existing roads, making travel safer, smoother and faster. The Project seeks to widen the existing highways into a double lane with paved shoulder configuration 4 with 16 bypasses, realignments and tunnels, 15 flyovers, 101 small bridges and 3516 culverts. The MoRTH has divided the Project into 53 individual projects, the length of each project being less than 100 kms, traversing the following national highways:

(i) NH-58 - Rishikesh to Rudraprayag - 141 kms;

(ii) NH-58 - Rudraprayag to Mana Village (Badrinath) - 140 kms;

- (iii) NH-94 - Rishikesh to Dharasu - 120 kms;
- (iv) NH-94 - Dharasu to Yamunotri - 75 kms;
- (v) NH-108 - Dharasu to Gangotri - 110 kms;

“DL-PS”

PART B

- (vi) NH-109 - Rudraprayag to Gaurikund (Kedarnath) - 77 kms; and

- (vii) NH-125 - Tanakpur to Pithoragarh - 161 kms.

A pictorial representation of the connecting routes of the Project is provided below, as taken from the report of the High Powered Committee 5 dated 13 July 2020 6:

B Proceedings before the National Green Tribunal

6 An Original Application 7 was filed before the Principal Bench of the NGT on 27 February 2018 in public interest, challenging the construction under the Project on the ground that the development activity has a negative impact on the Himalayan ecosystem. The applicants argued that the Project will lead to deforestation, excavation of hills and dumping of muck, which will lead to further “HPC” “HPC Report” PART B landslides and soil erosion, in an already sensitive environment. It was also alleged that an Environment Impact Assessment 8 under the Environment Impact Assessment Notification 2006 9 had not been conducted and that to obviate the requirement of conducting an EIA, the Project had been divided into smaller stretches. The application alleged violations of the EIA Notification, Forest (Conservation) Act 1980, Wildlife Protection Act 1972, Environment (Protection) Act 1986 and Articles 14, 21 and 48A of the Constitution. Another Original Application 10 was filed seeking directions to take precautions for muck disposal and for ensuring the stability of slopes.

7 In its order dated 26 September 2018, the NGT observed that the bypasses and realignments to be made to the national highways, which cumulatively fall under the Project, have been considered as stand-alone projects. The length of each of these projects is less than 100 kms and thus, the NGT held that the projects did not require an EIA approval or Environment Clearance 11 under the EIA Notification. However, given the fragile ecosystem within which the Project was to be developed, the NGT directed the constitution of an ‘Oversight Committee’ to monitor the environmental safeguards for the execution of the Project.

8 The Oversight Committee was to be headed by a former Judge of the Uttarakhand High Court, and had representatives from the Wadia Institute of Himalayan Geology; National Institute of Disaster

Management; Central Soil “EIA” “EIA Notification” “EC” PART B Conservation Research Institute; GB Pant Institute of Himalayan Environment; Forest Research Institute; the Secretary to the Forest Department, Uttarakhand; and District Magistrates, who were to act as co-ordinators. The task of the Oversight Committee, inter alia, was to oversee the implementation of the Environment Management Plan to be prepared by an agency of the Ministry of Environment, Forests and Climate Change¹². The relevant portion of the order of the NGT is produced below:

“54. Accordingly, we direct constitution of the following Oversight Committee:—

1. Justice U.C. Dhyani, Former Judge, Uttarakhand High Court, Chairman Public Service Tribunal, Dehradun.
2. Representative of Wadia Institute of Himalayan and Geology.
3. Representative of National Institute of Disaster Management.
4. Representative of Central Soil Conservation Research Institute with expertise in Natural disasters, landslides, etc.
5. Representative of G.B. Pant Institute of Himalayan Environment.
6. Representative of Forest Research Institute, Dehradun.
7. Secretary of Environment and Forest Department, Uttarakhand, Dehradun to be Member Secretary/convener/coordinator of the Committee.
8. Concerned District Magistrates of the Districts concerned will act as co-coordinator and for arranging visits and meetings at local level.” “MoEF&CC” PART C C Proceedings before the Supreme Court 9 An appeal 13 was filed to challenge the NGT’s order dated 26 September 2018 before this Court. By an order dated 8 August 2019, a two-judge Bench, comprising of Justice Rohinton F Nariman and Justice Surya Kant, modified the order of the NGT and instead constituted an HPC to be chaired by Professor Ravi Chopra, who would replace Justice UC Dhyani, and also added representatives from various other bodies. The HPC was directed to make its decisions on the basis of majority vote. The relevant portion of the order of this Court is as follows:

“We constitute a High Powered Committee (HPC) consisting of the persons who are mentioned in para 54 of the said order. However, the Committee is to be headed by Prof. Ravi Chopra, who will replace Justice U.C. Dhyani, and will be the Chairman of the Committee. In addition to this, we add a representative of the Physical Research Laboratory, Department of Space, Government of India, Ahmedabad; a representative of the Wildlife Institute of India, Dehradun; a representative of MoEF&CC, Regional Office, Dehradun; and a representative of the Ministry of

Defence dealing with Border roads, not below the rank of Director. We direct MoEF&CC to constitute the High Powered Committee within two weeks from the date of this order. The HPC may co-opt member(s) for effective discharge of its functions. The MoEF&CC shall provide venue and secretarial assistance to the HPC, who will make decisions by majority voting.” (emphasis supplied) The terms of reference of the HPC were also revised in the following terms:

“I. The Committee shall consider the cumulative and independent impact of the Chardham [P]roject on the entire Himalayan valleys and for that purpose, the HPC will give directions to conduct EIA/rapid EIA by the Project Proponent/MoRTH.

CA No 10930/2018, CA Nos 8518-8520/2018 and MA No 2678-2680/2018 PART C II. The HPC, with the help of the technical body and engineers of implementation agency (MoRTH) should consider whether revision of the full Chardham [P]roject (about 900 Kms) should at all take place with a view to minimize the adverse impact of the project on environment and social life.

III. The HPC shall identify the sites in which work (i.e. hill- cutting) has started and the stretches in which the work has not yet started. As far as the sites in which work has started, the High Powered Committee should recommend the measures which are required for stabilizing the area where hill-cutting has taken place, among others, the environmentally safe disposal of muck which has been generated so that it does not adversely affect the flora and fauna of the catchment area of the river.

IV. As regards the stretches where work has not started, the HPC will review the proposed project and recommend measures which will minimize the adverse impact on environment, social life and bring the project in conformity with the steep valley terrain, carrying capacity, thus avoiding any triggering of new landslides and ensuring conservation and protection of sensitive Himalayan valleys.

V. The HPC will assess the environmental degradation in terms of loss of forest land, trees, green cover, water resources, dumping of muck and impacts on the wildlife and will direct the mitigation measures. Specific attention will be laid on protecting wildlife corridors, and rare and endangered flora and fauna.

VI. The HPC will assess and quantify the impact on social infrastructure/public-life due to triggering of fresh landslides, air pollution, frequent road blocks etc. and will suggest necessary measures for its redressal, including preparation of disaster management plans prior to the monsoon season.

VII. In Bhagirathi Eco Sensitive Zone (Gangotri to Uttarkashi), the HPC will make special provisions in its report keeping in mind the guidelines given under the Notification of the Bhagirathi Eco Sensitive Zone so as to avoid violations and any environmental damage.

VIII. The HPC will also suggest the areas in which afforestation measures should be taken. It will also suggest the kind of saplings which have to be planted in different terrains of Himalayas. A separate Committee be constituted by the Forest Department of Uttarakhand to continuously monitor and report on the website that the saplings which have been planted have survived and grown. In case of non-survival of any sapling, further plantation should be done.

PART C Compensatory afforestation should be ten times the number of trees which have been cut. The HPC shall prepare an effective afforestation plan ensuring its proper implementation.

IX. The HPC will invite experts from different fields and consult local people or hold public meeting in the local areas to take recommendations and suggestions, as it deems fit.

X. The HPC shall consider giving specific directions to the concerned agencies to put in the public domain the landslide- prone areas, and their treatment by the Project Proponent, the total muck generated, and the places where it has been disposed of in an environmentally sound manner.” (emphasis supplied) The HPC was directed to submit its report of recommendations in four months.

Following the submission of the report, the Court directed MoRTH to implement its recommendations. For this purpose, the Court observed:

“The reports prepared by the HPC with its recommendations shall be given to the project Proponent i.e. MoRTH for implementation. The HPC shall hold quarterly meetings thereafter to ensure timely and proper compliance of its recommendations. The HPC may suggest any further measure which may be required, in the interest protection and conservation of environment, after each quarterly review meeting.” 10 Pursuant to the order of this Court, a report dated 13 July 2020 was submitted by the HPC to this Court. By an order dated 8 September 2020, a three-judge Bench of this Court comprising of Justice Rohinton F Nariman, Justice Navin Sinha and Justice Indira Banerjee took cognizance of the Report, and noted that the conclusions in the HPC Report were unanimous, except for the issue relating to the width of the road. A majority comprising thirteen members of the HPC was in favour of applying a Circular dated 5 October 2012 PART C issued by MoRTH 14, which stipulates that in all new projects of widening/bypass/realignment, the width of the carriageway will be at least two-

lane with paved shoulder (DL-PS), irrespective of the traffic. According to the 2012 MoRTH Circular, the road-way width would be 12m comprising of 7m for the double-lane carriageway, a 1.5m paved shoulder on either side of the highway, and a 1m earthen shoulder on either side of the highway. A minority comprising of 5 members, including the Chairperson, was of the view that a subsequent Circular dated 23 March 2018 issued by the MoRTH 15 should govern the Project. The

2018 MoRTH Circular provides that in hills and mountainous terrains, where the traffic volumes range from 3,000 to 8,000 Passenger Car Units 16 a day, the carriageway width should be of intermediate lane configurations (Intermediate Width¹⁷ standard), i.e., of 5.5m width with two-lane structures. The order of the Court accepted the view of the minority and observed:

“We have perused the conclusions and recommendations of the report, in particular, from pages 90-93 in Part I. We are of the view that it is correct that the 2018 MoRTH circular should apply for the reasons given at page 93 of the report. Consequently, the 2018 circular alone will apply. The other directions that were issued by us on 08.08.2019 must be strictly complied with, including the holding of quarterly meetings to ensure timely and proper compliance of the recommendations.” (emphasis supplied) “2012 MoRTH Circular” - No. NH-14019/6/2012-P&M “2018 MoRTH Circular” - No. NH-15017/ 28/ 2018 - P&M “PCU” “IW” PART C 11 Following the above order, a letter dated 5 October 2020 was received by the Registry of this Court from the Chairperson of the HPC. Professor Chopra highlighted the steps he had taken to notify MoRTH of the order of this Court. He stated that he had requested MoRTH to submit a plan to bring the Project in conformity with the 2018 MoRTH Circular and suspend all fresh hill-cutting activities. The letter also highlighted that Professor Chopra had received reports of tree-felling and fresh hill-cutting on various stretches on NH-58, NH-94, et al, which was being carried out on the basis of the old road-width standard, i.e., DL-

PS with a 10m tarred road. The Chairperson stated that on 27 September 2020, he had read a news report indicating that MoRTH had informed the Government of Uttarakhand that the 2018 MoRTH Circular would be applicable only to the proposed 13 projects where work had not yet begun. Through this letter, Professor Chopra urged that the directions in the order of this Court dated 8 September 2020 should be strictly followed. The letter dated 5 October 2020 was converted into MA No 1925 of 2020, which is the subject-matter of this judgment. Further, another letter dated 2 November 2020 was received from Professor Chopra, where he highlighted the non-compliance of the order of this Court and raised issues regarding the functioning of the HPC. 12 An affidavit was filed by the seventh appellant (Swami Samvidanand) seeking, inter alia, directions to MoRTH to:

- (i) stop hill-cutting, tree-felling and activities in violation of the 2018 MoRTH Circular;
- (ii) compensate for hill-cutting beyond the IW standard with tree plantations and footpath; and PART C
- (iii) render full secretarial assistance to the HPC.

13 An interlocutory application, IA No 6097 of 2021, was later filed by the sixth appellant (Deepak Chand Ramola) seeking the following directions:

(i) that the amendment to the 2018 MoRTH Circular through the Circular dated 15 December 2020 18, should be revoked;

(ii) that the IW standard be adhered to for the entire Project, both prospectively and retrospectively, as mentioned in this Court's order dated 8 September 2020;

(iii) that the Bhagirathi Eco Sensitive Zone 19 be given special protection;

(iv) that the HPC be strengthened to ensure proper implementation of its functions; and

(v) on the basis of the findings of the HPC, a committee be set up to direct an inquiry against the persons responsible for wilful violations of the laws in force.

14 Another miscellaneous application, MA No 2180 of 2020, was then filed by the Union of India 20, through the Ministry of Defence 21, seeking modification of this Court's order dated 8 September 2020, which is also the subject matter of this judgment. This application seeks permission for the widening of the national highways from Rishikesh to Mana, Rishikesh to Gangotri, and Tanakpur to Pithoragarh to a two-lane, DL-PS configuration. The application avers that a minority of the members of the HPC, whose view was adopted by this Court in its "2020 MoRTH Circular" – No. NH-15017/28/2018-P&M "BESZ" "UOI" "MoD" PART C order dated 8 September 2020, relied on a statement of the then Chief of Army Staff which confirmed that the requirements of the Indian Army are fulfilled by the existing roads. However, according to the Union Government, there has been a material change in circumstances, necessitating an improvement of roads to enable movement of troops and equipment to Army stations on the Indo-China border. Thus, the application has urged that a double lane road having a carriageway width of 7m (or 7.5m) is necessary to meet the Army's requirement. The relief which has been sought in the application, is extracted below:

"Modify the Order dated 08.09.2020 and direct that the national highways from Rishikesh to Mana, from Rishikesh to Gangotri and from Tanakpur to Pithoragarh may be developed to 2 lane configuration in the interest of the security of the nation and for the defence of its borders".

(emphasis supplied)

15 By an order dated 2 December 2020, a three-judge Bench comprising of Justice Rohinton F Nariman, Justice Navin Sinha and Justice KM Joseph directed the HPC to consider the issues raised by its Chairperson in his letters and applications, including the application by the MoD, and to submit a detailed report. Pursuant to the order of this Court, the 11th meeting of the HPC was held on 15 and 16 December 2020. The report²² of the deliberations and submissions of the HPC was received by the Registry from the Secretary, Forest Department, State of Uttarakhand through a letter dated 31 December 2020.

“HPC Report II” PART D 16 This is where the matter stands presently. We shall consider the submissions urged by the parties.

D Submissions

17 Mr Colin Gonsalves, Senior Counsel appearing on behalf of the appellants, urged the following submissions:

(i) Issues concerning the functioning of the HPC: The HPC was not allowed to function independently and was given inadequate assistance by the UOI:

(a) The HPC consisted of 8 District Magistrates, 5 State Government officials, 2 Union Government officials and 5 representatives from institutions funded by the State and Union Governments. The members of the HPC linked to the government voted en bloc and toed the ‘official line’, rather than basing their judgment on a scientific basis; and

(b) The Chairperson of the HPC faced opposition from the UOI, as they were unwilling to cooperate with the work of the HPC. The Chairperson had repeatedly written to MoRTH, regarding the plan of action for slope stabilisation, muck disposal and restoration of damaged slopes; to the State, pointing out that the original order of the NGT did not stipulate District Magistrates to be members of the HPC and that their role was limited to coordination with the local population; to the UOI, to provide inventory of vulnerable slopes and muck; and to the MoEF&CC, regarding the continuing hill-cutting PART D activities. However, no concrete action was taken by any of the parties;

(ii) Violations committed by MoRTH: MoRTH has been constructing roads and widening the highways in violation of the 2018 MoRTH Circular and the order of this Court dated 8 September 2020:

(a) MoRTH started widening the highways according to the DL-PS standard, in violation of the 2018 MoRTH Circular which provided for adherence to the IW standard;

(b) During the deliberations of the HPC, massive hill-cutting and deforestation activities were undertaken, which have caused irreversible damage to the Himalayan environment;

(c) After the order of this Court dated 8 September 2020, MoRTH has continued to undertake hill-cutting, tree-felling, tarring and unrelated activities;

(d) Despite the order of this Court, MoRTH has taken a stand that the order will only be implemented for the 13 projects where the work has not yet started. However, the order of 8 September 2020 stated that the 2018 MoRTH Circular alone has to be followed and will apply retrospectively, i.e., it will be applicable to the entire Project, even where the work had already been initiated;

(e) MoRTH, in a recent notification dated 10 September 2020 which was advertised in the newspapers, proposed the acquisition of land for a toll booth. The toll is only applicable on roads of DL-PS standard;

PART D

(iii) Road-width: The minority view, adopted by this Court in its order dated 8 September 2020, to construct the highways with an IW standard must be upheld as:

(a) According to the Manual of Specifications and Standards for Two Laning of Highways with Paved Shoulder 23 published by the Indian Roads Congress 24 in June 2015, the vehicle size in India cannot exceed a width of more than 2.4m. Thus, an intermediate lane of 5.5m on a linear profile and 7m on curves, is sufficient for two large vehicles to cross each other;

(b) The fragile environment of the Himalayas will be severely damaged if the DL-PS standard is adopted. As opposed to this, the IW standard will ensure reduction of green cover loss, reduce landslides, land loss, and tree loss by 80-90 per cent;

(c) The 2012 MoRTH Circular is inappropriate for mountain roads as it can cause massive instability and environmental damage. As opposed to this, the 2018 MoRTH Circular is specific to hilly and mountainous areas, and should be adopted instead; and

(d) The amendments made by the 2020 MoRTH Circular are arbitrary as they reinstate the 2012 MoRTH Circular without engaging with the rationale of having an IW standard for mountainous areas;

(iv) Security concerns: The national security concerns regarding the widening of the strategic roads are also met as:

“2015 IRC Guidelines” “IRC” PART D

(a) The arguments raised by the MoD were considered by the HPC Report. It was after consideration of these views that the Court had passed the order dated 8 September 2020;

(b) To meet the defence requirements, it is essential that disaster-

resilient roads be built, instead of disaster-prone roads;

(c) The Project was not an initiative of the MoD, and was a project to increase the tourist inflow to over 9,000 vehicles per day. The HPC Report has noted that this projection is an exaggeration as Badrinath, which has the maximum tourist inflow, has only 1000 vehicles per day and has already reached its carrying capacity; and

(d) The Chief of Army Staff in an interview had commented on the all-

weather road project and stated that the needs of the Army are being met by the existing infrastructure.

18 In opposition to this, Mr KK Venugopal, Attorney General for India, made submissions in support of the application filed by the UOI and the MoD. The application seeks a modification of the order dated 8 September 2020 to allow the national highways from Rishikesh to Mana, Rishikesh to Gangotri, and Tanakpur to Pithoragarh to be developed with a DL-PS standard. The following submissions were urged:

(i) Requirement of DL-PS standard for strategic border roads:

(a) The national highways from Rishikesh to Mana, Rishikesh to Gangotri, and Tanakpur to Pithoragarh act as feeder roads to the Indo-China border and have strategic importance;

PART D

(b) The minority opinion in the HPC Report relied on the statement of the Chief of the Army Staff, according to which the present infrastructure was adequate for the needs of the Army. However, there has been a change in the circumstances since, and it is necessary that personnel and equipment move swiftly to Army stations at the Indo-China border points. The movement requires that vehicles returning from the border are able to cross vehicles going in the opposite direction without causing road-blocks or coming to a dead halt. Thus, a carriageway with a width of 7m is necessary to meet the security concerns of the country;

(c) These road-posts have been in use since the war with China in 1962. With the increase in defence capability; the nature of weapons, tanks and machinery; and the conditions at the border, wider roads with a DL-PS standard are required;

(d) Neither the 2012 MoRTH Circular nor the 2018 MoRTH Circular deal with the security needs of the country. The 2018 MoRTH Circular, which is general in nature, is based on PCU traffic and is applicable to all the hilly areas. However, it did not consider the strategic requirement for movement of military vehicles in the Himalayan regions, closer to the border areas;

(e) The Armed Forces have sufficient human-power, machinery and equipment to deal with landslides on any of these roads and can clear the way for movement of Army vehicles, machinery, tanks and artillery;

PART D

(f) Prior to 2017, the development of these roads was under the Border Roads Organization 25. However, in 2017, to develop these roads in a timebound manner, a portion was handed over to the Public Works Department²⁶ and the National Highways and Infrastructure Development Corporation 27. Before the commencement of the Project, the road from Rishikesh-Mana already had a 7m wide carriageway, except in some stretches where the width was 3.75- 5.5m;

(g) The Guidelines for the Alignment Survey and Geometric Design of Hill Roads 28 adopted by the IRC in 2019 also recommend a two lane uniform design for strategic border roads; and

(h) This need is further highlighted, given that across the border in China, Tibet, Nepal and in the China-Pakistan corridor, strategic roads are built with the DL-PS standard;

(ii) The BESZ was notified by the Union Government through a notification dated 18 December 2012. However, in 2018, the notification was amended to state that work related to national security infrastructure can be implemented without due study of environmental impacts;

(iii) All-weather roads are also necessary for connectivity of persons living in remote border areas;

“BRO” “PWD” “NHIDCL” “2019 IRC Guidelines” PART D

(iv) Mitigation measures: The following mitigation steps have been undertaken to ensure that least environmental and ecological damage is caused by the Project:

(a) The Geological Survey of India 29 and MoRTH have signed a Memorandum of Undertaking to conduct geological studies of strategic roads near the Indo-China border;

(b) Tehri Hydroelectric Development Corporation 30 is being engaged for project management consultancy services for restoration of slopes;

(c) The Defence Geo-Informatics Research Establishment 31 is providing sustainable mitigation measures for snow avalanches and other natural calamities; and

(d) Slope stabilisation works and protection measures and landslide protection measures using soil nailing, ‘shotcreting’, secured drapery, et al, are being undertaken;

(v) Compliance with the directions of this Court: No hill-cutting activities for road-widening have been carried out by the executing agencies. In fact, MoRTH took the following steps to comply with the order of this Court:

(a) Directions were issued to all executing agencies, such as BRO and NHIDCL, to implement the order of this Court;

(b) A Draft Rapid EIA Report was submitted to the HPC on 16 September 2020;

“GSI” “THDC” “DGIRE” PART D

(c) Details of vulnerable slopes and muck disposal sites were submitted to the HPC on 25 September 2020;

(d) A committee has been formulated to develop a permanent landslide mitigation strategy;

(e) 12,75,813 plants have been planted in 797.28 hectares as compensatory afforestation, and 5,45,268 plants are to be planted in future;

(f) Secretarial assistance was provided to the HPC by the State of Uttarakhand under an order dated 7 October 2020; and

(g) Out of the 40 sanctioned projects within the Project, 12m formation cutting has already been carried out in 537 kms out of the total sanctioned length of 662 kms, prior to the order of this Court dated 8 September 2020. In such a situation, where hill-cutting has already been carried out for 12m formation and 10m tarred road has been laid down, a substantial reduction of the width to 5.5m will result in non-uniform carriageway in short stretches.

19 Having addressed the rival submissions, we shall now analyse them.

E Framework of Analysis

20 Before we analyse the specific issues raised in the context of the Project, it

is important to consider the framework within which this Court must consider them. It is important for us to take note of the relevant judicial pronouncements on the subject, as well as understand the requirements of the circulars and guidelines which have been issued in regard to these issues.

However, given the specific setting of the Project in the heart of the Himalayas, our framework has to take into account the unique ecology of the Himalayas. The appellants have provided this Court with examples from the past and the recent history of the Himalayas, which demonstrate that a lack of foresight in development has led to significant environmental harm.

21 Speaking about the Himalayas, the obvious place to begin is their majesty. The Himalayas are considered to be India's border in the north, just as the vast Indian ocean is in its south. In laypersons' geographical terms, it is difficult to imagine that these majestic mountains are nothing more than the debris created during the collision of the Indian and Eurasian tectonic plates several million years ago. While the debris has solidified into rock in many places, it continues to be soil and rubble in others. In comparison to many others, the Himalayas are actually very young (when the point of reference is a comparison of ages in the millions). This lends to them a comparative fragility 32. The HPC Report notes that "the still evolving Himalayan ranges consist of thrust, jointed or sheared, fissured or twisted rock material interspersed with soil. Shorn of Michael P Searle and Peter J Treloar, "Introduction to Himalayan tectonics: a modern synthesis" in Peter J Treloar and Michael P Searle (eds), Himalayan tectonics: A Modern Synthesis (The Geological Society, 2019) PART E green cover, their slopes [are] even more fragile. When exposed to the monsoon rains, weakened slopes often collapse" 33.

22 The Himalayan range is in itself diverse and cannot be characterized through one common idea or pattern. Broadly speaking, it is divided into three categories: the Higher Himalayas (called "Himadri"), which contain some of the highest mountain peaks, are often snowbound through the year and are sparsely populated; the Lower Himalayas (called "Himachal"), which contains medium-sized mountains and highly populated regions; and the Sub-Himalayas (called "Shivalik"), which are the southernmost ranges of the Himalayas. Each of these have their own ecology, rainfall and snowfall distribution, flora and fauna. The concerns associated with each of them are different and have to be accounted for while adjudicating upon environmental issues raised with development projects. 23 In a 2018 report published by the NITI Aayog, these concerns were noted with pointed reference to the effects of the tourism industry. The report noted 34:

"Current forms of tourism in the [Indian Himalayan Region] are unsustainable. They replace traditional and aesthetic architecture with inappropriate, non-aesthetic and often dangerous constructions, and compound other challenges such as poorly designed roads and associated infrastructure, inadequate solid waste management, air pollution, degradation of watersheds and water sources, loss of natural resources, biodiversity, and ecosystem services." Similarly, relying upon the NITI Aayog's conclusions, the HPC Report also notes 35:

HPC Report, page 34 "Contributing to Sustainable Development in the Indian Himalayan Region" (August 2018, NITI Aayog) available at <http://164.100.94.191/niti/writereaddata/files/document_publication/doc6.pdf> accessed on 6 December 2021 PART E "...the Himalaya call for a new development paradigm in which development must be fully embedded in the environmental, socio-cultural and sacred tenets of the IHR. It has been observed that the present

demand-driven, uncontrolled economic growth has led to haphazard urbanization, environmental degradation and increased risks and vulnerabilities, seriously compromising the unique values of Himalayan ecosystems.” It is In the backdrop of these observations that we must consider the principles applicable to the judicial review which this Court must undertake in the present case.

E.1 Principles of Sustainable Development and Environmental Rule of Law

24 Sustainable development is a common benchmark through which all development projects are judged. Arguably finding its origin in global policy from the Bruntland Report in 1987, it is often defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” 36. Adopted globally as the standard for development by nations, it is the bedrock upon which the Sustainable Development Goals³⁷ have been laid out. Their latest iteration, consisting of 17 SDGs, was adopted by all United Nations member States in 2015. Titled as the “2030 Agenda for Sustainable Development” 38, these SDGs are broad, with their focus being on overall development of society in a manner which comports with environmental HPC Report, page 43 “Report of the World Commission on Environment and Development: Our Common Future” (1987) available at <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>> accessed on 6 December 2021 “SDGs” Available at <<https://sdgs.un.org/2030agenda>> accessed on 7 December 2021 PART E preservation now and in trust for the future. SDG13 specifically focuses on “Climate Action”, which is to be balanced with the other SDGs (such as SDG9, which encourages “Industry, Innovation and Infrastructure”). 25 The principle of sustainable development has found consistent application in matters of environmental law. Sustainable development has a multi-dimensional approach, with a focus on the development of the economy, protection of individual rights and environmental concerns, while ensuring both inter and intra-generational equity. This allows the principle of sustainable development to look beyond creating policy goals (which necessarily seek specific outcomes) towards creating policy approaches (which rather seek to provide better frameworks) 39. The principle of sustainable development has been explicitly recognized in multiple judgments of this Court. 26 In Indian Council for Enviro-Legal Action v. Union of India 40, a three- judge Bench of this Court described the principle of sustainable development in the following terms:

“31...While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary J B Ruhl, ‘Sustainable Development: A Five-Dimensional Algorithm for Environmental Law’ (1999) 18 Stanford Environmental Law Journal 31 (1996) 5 SCC 281 PART E environmental degradation

does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated.”

27 In *Essar Oil Ltd. v. Halar Utkarsh Samiti* 41, a two-judge Bench of this Court referred to the Stockholm Declaration while elucidating on the principle of sustainable development. It noted that while socio-economic needs could be fulfilled through development, environmental concerns will always remain. However, these concerns should not be seen as a deadlock between development and the environment but as an opportunity to harmonize both, through the principle of sustainable development. Speaking through Justice Ruma Pal, this Court observed:

“27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other...”

28 In *N.D. Jayal & Anr v. Union of India & Ors* 42, a three-judge Bench held that a balance between developmental activities and environmental protection could only be maintained through the principle of sustainable development. Doing (2004) 2 SCC 392 (2004) 9 SCC 362 PART E this was held to be necessary, without which the future generations could be in jeopardy. Justice S Rajendra Babu (speaking for himself and Justice Mathur) held:

“22. Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In *Vellore Citizen Welfare Forum v. Union of India* [(1996) 5 SCC 647] and in *M.C. Mehta v. Union of India* [(2002) 4 SCC 356] it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of “sustainable development”. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy.” Justice Babu also noted that while the right to a clean environment is guaranteed as an intrinsic part of the fundamental right to life and personal liberty, the right to development can also be declared as a component of Article 21:

“24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The “development” is not related only to the growth of GNP. In the classic work, *Development As Freedom*, the Nobel prize winner Amartya Sen pointed out that “the issue of development cannot be separated from the conceptual framework of human right”. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of people’s well-being and realization of their full potential. It is PART E an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.”

29 More recently, in *Rajeev Suri v. Delhi* 43, a three judge Bench of this Court had to decide on the permissibility of the Central Vista Project. In considering the use of the principle of sustainable development, Justice A M Khanwilkar observed that the principle of sustainable development necessarily incorporates within it the principle of development – development which is sustainable and not environmentally degrading. He holds thus:

“507. The principle of sustainable development and precautionary principle need to be understood in a proper context. The expression “sustainable development” incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development-- it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is sustainable; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society. By Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:

“1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” 2021 SCC OnLine SC 7 PART E

508. The right to development, thus, is intrinsically connected to the preservice of a dignified life. It is not limited to the idea of infrastructural development, rather, it

entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense inter-dependence between right to development and right to natural environment. In International Law and Sustainable Development, Arjun Sengupta in the chapter “Implementing the Right to Development [International Law and Sustainable Development-- Principles and Practice, Edn. 2004, pg. 354]” notes thus:

“... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other...” (emphasis supplied)

30 Similarly, in *Municipal Corporation of Greater Mumbai v. Ankita Sinha* 44, another three judge Bench of this Court ruled on the powers of the NGT under the National Green Tribunal Act 2010. This Court noted the significance of environmental justice and environmental equity, and highlighted how environmental harms cause disproportionate implications for the economically or socially marginalized groups. Thus, it was considered important to ensure that environmental equity was achieved, through the use of principles such as sustainable development. In this regard, speaking through Justice Hrishikesh Roy, the Court held:

“XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NG's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large.

The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as 2021 SCC OnLine SC 897 PART E recognition.[Schlosberg D, Defining Environmental Justice :

Theories, Movements, and Nature (Oxford University Press 2009)] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

83. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their Reflections on the Role of the Courts in Environmental Law, wrote the following evocative passage on the concept of environmental justice, “Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots

movement that combines civil rights issues with environmental issues, with a goal of achieving “environmental justice” or “environmental equity”, which is understood to mean the fair distribution of environmental risks and protection from environmental harms.”[Schiffer, L. J., & Dowling, T. J. (1997). *Reflections On The Role Of The Courts In Environmental Law*. *Environmental Law*, 27(2), 327-342]” (emphasis supplied) 31 The principle of sustainable development is deep-rooted in the jurisprudence of Indian environmental law. It has emerged as a multi-faceted principle, which does not prohibit development, but structures it around what is sustainable. Sustainable development incorporates two related ideas – development which not only ensures equity between the present and the future generations but also development which ensures equity between different sections of society at present. However, while the principle has deep roots, there PART E is a lack of consensus on how to ascertain whether a particular developmental project abides by the principle of sustainable development. Without a common benchmark or standard being applied by the Court in its analysis of the impact of development projects, the principle of sustainable development may create differing and arbitrary metrics (depending on the nature of individual projects). This not only creates uncertainty within the law, but makes the application of the principle of sustainable development selective, taking away from its potential to drive sustained change.

32 A cogent remedy to this problem is to adopt the standard of the ‘environmental rule of law’ to test governance decisions under which developmental projects are approved. In its 2015 Issue Brief titled “Environmental Rule of Law: Critical to Sustainable Development”, the United Nations Environment Programme 45 has recommended the adoption of such an approach in the following terms 46:

“Environmental rule of law integrates the critical environmental needs with the essential elements of the rule of law, and provides the basis for reforming environmental governance. It prioritizes environmental sustainability by connecting it with fundamental rights and obligations. It implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable.” “UNEP” Available at <<https://wedocs.unep.org/bitstream/handle/20.500.11822/10664/issue-brief-erol.pdf?sequence=1&isAllowed=>> accessed on 7 December 2021 PART E

33 UNEP has further reiterated the importance of the ‘environmental rule of law’ in its 2019 report titled “Environmental Rule of Law: First Global Report”, where it notes:

“Environmental rule of law is key to achieving the Sustainable Development Goals. Indeed, it lies at the core of Sustainable Development Goal 16, which commits to advancing “rule of law at the national and international levels” in order to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” [...] Environmental law and institutions have grown dramatically in the last few decades,

but they are still maturing. Environmental laws have taken root around the globe as countries increasingly understand the vital linkages between environment, economic growth, public health, social cohesion, and security. Countries have adopted many implementing regulations and have started to enforce the laws. Too often, though, there remains an implementation gap.

Environmental rule of law seeks to address this gap and align actual practice with the environmental goals and laws on the books. To ensure that environmental law is effective in providing an enabling environment for sustainable development, environmental rule of law needs to be nurtured in a manner that builds strong institutions that engage the public, ensures access to information and justice, protects human rights, and advances true accountability for all environmental actors and decision makers...”

34 Within the Indian context, environmental rule of law was first applied by this Court in *Hanuman Laxman Aroskar v. Union of India* 47. In that case, the Government of Goa had mooted a new international airport at Mopa in Goa in 1997. While the MoEF&CC gave it an EC, it ultimately came to be challenged before this Court. In its decision, a two-judge Bench of this Court found a lack of (2019) 15 SCC 401 PART E information transparency in the disclosures filed by project proponents, and directed a fresh exercise for a rapid EC to be carried out. In emphasizing on environmental governance within a rule of law paradigm, Justice DY Chandrachud observed:

“J. Environmental Rule of Law [...]

144. The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace [United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>]. It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance [United Nations Environment Programme, First Environmental Rule of Law Report.

Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>]. The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health, contributes to peace and security by avoiding and defusing conflict,

and protects human and constitutional rights [United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>] . Similarly, the rule of law in environmental matters is indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs), the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights [“UN Environment, Environmental Rule of Law”. Available at <<https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-o>>] .”

PART E

145. [...] Thus, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar — or more — freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

(emphasis supplied) Thus, the Court acknowledged that consistent decision-making on its behalf was a crucial factor in upholding the environmental rule of law. 35 In *Bengaluru Development Authority v. Sudhakar Hegde* 48, a two-judge Bench of this Court observed that there was no winner in environmental litigation, since both – development and protection of environment – are necessary. The Court clarified that a framework created by environmental rule of law has to balance both these considerations by creating transparent and accountable institutions, while allowing for participatory democracy. Justice DY Chandrachud, speaking for the Court, held:

“94. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth.

95. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, (2020) 15 SCC 63 PART E inclusive, participatory and representative decision-

making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision-making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the

environment, but ensuring that such failures do not take place.” (emphasis supplied) 36 In *H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee* 49, a three-judge Bench held that environmental rule of law was no panacea which allowed for a clear set of solutions in every case, since every case was unique and with differing levels of actual evidence. However, it did provide a framework within which any case could be adjudicated in a predictable manner, keeping in mind the principles of sustainable development at its core. Justice DY Chandrachud, speaking for the Court, held:

“52. The need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognised principles that could inform environmental adjudication in a manner that was stable, certain and predictable.

53. However, even while using the framework of an environmental rule of law, the difficulty we face is this — when adjudicating bodies are called on to adjudicate on (2021) 4 SCC 309 PART E environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often times difficult to come by in individual situations.

54...the environmental rule of law calls on us, as Judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding.” (emphasis supplied) 37 Having now established the framework of judicial principles necessary for this Court to adjudicate the present matter, it is important to consider the specific set of circulars and guidelines which are applicable.

E.2 Circulars and Guidelines

38 A combined reading of Article 246 along with Entry 23 50 of List I of

Schedule VII of the Constitution of India indicates that national highways fall entirely within the ambit of the Parliamentary domain. The executive power of the Union is co-extensive with the

power of Parliament. In accordance with Section 2(2) of the National Highways Act 1956, the Union Government is empowered to “23. Highways declared by or under law made by Parliament to be national highways.” PART E declare any road as a national highway and issue directions for its development and maintenance 51. Within the Union Government, the specific responsibility lies with MoRTH. Hence, we must first begin by analyzing the relevant circulars which have been issued by MoRTH.

39 The first of these is the 2012 MoRTH Circular, which was titled “Capacity building and lane width of National Highways”. It stated:

“I am directed to inform that Ministry intends to take up development of such National Highways having carriageway width less than the two lane width. These roads are to be developed to a minimum level.

2. Generally, the carriageway width is dictated by the expected traffic. National Highways which are the primary route have higher expectation from the consideration of level of service as well as from safety consideration. This aspect was deliberated in the Ministry, and observed that the NHs are serving the mixed traffic. Besides, India has the dubious distinction in terms of fatalities on roads and there is need to segregate slow moving traffic from fast moving traffic. .

3. In the above back ground to ensure safe and smooth traffic on NHs, it has been decided that efforts be made to convert all the NHs to a minimum level of two lane with paved shoulders. Towards implementation of this, henceforth whenever new projects of widening/bypass/realignment are taken up, the width of the carriageway shall be at least two lane with paved shoulders irrespective of the traffic thereon.” (emphasis supplied) The 2012 MoRTH Circular provides that every national highway, if it was presently less than of a two-lane width (i.e., less than 7m) or if it was under

development, had to henceforth meet the requirement of the DL-PS standard in Project Implementation Unit v. P.V. Krishnamoorthy, (2021) 3 SCC 572 PART E order to ensure safety and the smooth flow of traffic. Accompanying this circular, was the following pictorial representation of the new national highway width:

As we can note from the above depiction, the highway would be of a two-lane width (i.e., 7m) with each of its sides being flanked by 1.5m of paved shoulders, which would be followed by 1m of earth/granular shoulders.

40 Following the 2012 MoRTH Circular, the IRC (an apex body of engineers in relation to road development) issued its 2015 IRC Guidelines in relation to the standards to be followed while developing highways with the DL-PS specification. Section 13 of the Guidelines dealt with the special requirements for hilly roads. While it is not necessary for us to explain the specific requirements, the 2015 IRC Guidelines highlight that highways with the DL-PS standard could be constructed for hilly roads.

41 The 2012 MoRTH Circular was modified by the 2018 MoRTH Circular, which was titled “Standards for Lane width of National Highways and roads developed under Central Sector Schemes in Hilly and Mountainous terrains”. As the name suggests, the 2018 MoRTH Circular modified the 2012 MoRTH Circular to the extent that it applied to national highways in hilly and mountainous terrains. The relevant portions of the Circular read as follows:

“On the subject of “Capacity building and lane width of National Highways”, it has been stipulated vide this Ministry’s letter No. NH-14019/6/2012-P&M dated 05.10.2012 [2012 MoRTH Circular] that width of carriageway shall be at least PART E two lane with paved shoulders irrespective of the traffic thereon in new projects undertaken for widening of carriageway/ bypasses/realignments.

2. However, challenges have come to the fore in adhering to these standards in the context of National Highways and roads in hilly and mountainous terrains. These challenges arise on account of destabilization of hill slopes and progressive damaging effects on road alignments and structures in higher contours on hills due to excavation works, requirement for large-scale felling of precious trees, associated environmental damages. Resultantly, there arises need to provide largescale protection works, acquisition of additional land for Right of Way (ROW), etc. [...]

4. The provisions of Ministry’s letter No. NH-14019/6/2012-

P&M dated 05.10.2012 [2012 MoRTH Circular], have, accordingly, been reviewed and it has been decided with the approval of the Competent Authority that the following provisions shall be applicable henceforth for National Highways and roads under Central Sector Schemes in hilly and mountainous terrains until further orders:

[...] 4.4 Following specific provisions shall be made for traffic volumes ranging from 3,000 PCUs/day to about 8,000/day:-

(i) The carriageway width shall be of intermediate lane configurations, i.e. of 5.5 m width (18 ft), with two-lane structures (23 ft.).

(ii) The passing places may have widths of 2.5 m and 12 m length and these may be provided on alternate sides of the road. The length of the tapered section may be 6 m on either side of their approaches. Accordingly, the length of the passing places may be 24 m inclusive of the tapered length.

[...]

(vii) The Roadway width for Hilly and Mountainous Terrain as per IRC: SP-2015 (Manual of Specifications and Standards for Two laning of Highways with paved shoulder) [2015 IRC Guidelines] would stand amended accordingly.

4.5 For traffic volume of more than 10,000 PCUs/day or the existing traffic volumes likely to witness a fast growth to reach this level within a period of 3 to 5 years, the PART E carriageway width shall be of two lane NH configurations, i.e. of 7 m width. The carriageway widths shall be of two lane NH configurations with paved shoulders only in cases where the traffic is likely to increase at about more than 10 % per annum.

5. The provisions of Ministry's letter No. NH-14019/6/2012- P&M dated 05.10.2012 [2012 MoRTH Circular] shall continue to be applicable in all other cases." (emphasis supplied) The 2018 MoRTH Circular modifies its precursor of 2012 for hilly and mountainous terrains in the following ways: (i) for areas where the PCUs are in the range of 4,000-8,000 PCUs per day, the carriageway width cannot be of DL- PS configuration but has to be of IW standard (i.e., 5m); (ii) along with this, adequate passing places with 2.5m width have to be included; (iii) the 2015 IRC Guidelines stood amended; (iv) for areas where the PCUs are more than 10,000 per day (or expected to reach that level within 3 to 5 years), the carriage way width could be of double lane configuration (i.e., 7m); and (v) where the traffic is likely to increase by more than 10 per cent per annum, the width could be of DL- PS configuration.

42 Subsequently, the IRC issued its 2019 IRC Guidelines in relation to hilly roads. Of particular importance is Clause 6.2.2, which reads as follows:

"6.2.2 Width of carriageway, shoulders and roadway for various categories of roads are given in Table 6.2. Table 6.2 Widths of Carriageway, Shoulder and Roadway [...] PART E In Mountainous and Steep Terrain (in Hilly Area) Highway Type of Section Shoulder Width (m) Roadway Width Classification Paved Earthen Total Total (Carriageway

(m) (m) width of width of + Shoulders) shoulders shoulders excluding on one on both extra width on side (m) sides (m) horizontal curves, side parapet and drain & median (m) National Open Hill 1.5 m - 1.5 m 4.00 m 11.00 Highways and country with Side State isolated Highways built up Valley 1.5 m 1.00 m 2.50 m MDRs/ODRs area Side i. Double Built up Hill 0.25 m + - 1.75 m 3.5 m 10.50 Lane (7.00 m) area and Side 1.5 m approaches (Raised) to grade separated Valley 0.25 m + - 1.75 m structures Side 1.5 m bridges (Raised) Notes:

[...]

6. On roads subject to heavy snow fall, where snow clearance is done over long periods, roadway width may be increased by 1.5 m. However, the requirement of such widening may be examined with reference to ground conditions in each case considering terrain traffic and other influencing conditions and factors.

[...]

8. Strategic and border roads for military/paramilitary/security forces operations/movements shall be constructed for not less than two lane carriageway alongwith paved shoulder on hill side + paved and earthen shoulder on valley side on same lines of national highway.” PART E Clause (8) of the Notes attached to Clause 6.2.2 provides that if a road is a strategic or a border road and is going to be used for “military/paramilitary/security forces operations/movements”, then it must be of DL-PS configuration (along with earthen shoulders), “on the same lines” as other national highways.

43 Finally, the 2020 MoRTH Circular modifies the 2018 MoRTH Circular, in view of the suggestions received from the MoD. The circular, titled “Standards for Lane width of National Highways and roads developed under Central Sector Schemes in Hilly and Mountainous terrains”, provides as follows, in so far as is material:

“MoRTH had issued circular on “Standards for Lane width of National Highways and roads developed under Central Sector Schemes in Hilly and Mountainous terrains” vide this Ministry’s letter of even number dated 23rd March, 2018 [2018 MoRTH Circular]. The standards prescribed therein have been further reviewed in the Ministry in light of the issues raised by Ministry of Defence. A committee of Chief Engineers considered the suggestions received in this regard and have recommended modifications to the standards prescribed in the circular referred above.

2. It is observed that the standards prescribed in the circular referred above does not address the issues concerning strategic roads as stipulated in clause 6.2.2 of IRC: 52-2019 (Guidelines for the Alignment Survey & Geometric Design of Hill Roads) [2019 IRC Guidelines].

3. Accordingly, in partial modification of the circular cited above, the following additional guidelines are notified with immediate effect.

“For roads in hilly and mountainous terrain which act as feeder roads to the Indo-China border or are of strategic importance for national security, the carriageway width should be 7m with 1.5m paved shoulder on either side.”” (emphasis supplied) PART E The 2020 MoRTH Circular amends the earlier circular of 2018 since its directions were incompatible with the recommendations under Clause (8) of the Notes attached to Clause 6.2.2 of the 2019 IRC Guidelines, according to which every strategic and border road has to be of DL-PS configuration along with earthen shoulders. Hence, the 2020 MoRTH Circular provides that roads which may be located in hilly and mountainous regions but serve as feeder roads to the Indo- China border or are of strategic importance for national security should also be of DL-PS configuration.

44 On a combined reading of the 2012, 2018 and 2020 MoRTH Circulars and 2015 and 2019 IRC Guidelines, it emerges that a road shall be of a DL-PS configuration in the following circumstances: (i) if it is a national highway, other than in hilly or mountainous terrain; (ii) in hilly or mountainous terrain, a national highway can be double-laned if there are more than 10,000 PCUs per day or that level will be reached in 3 to 5 years; (iii) in hilly or mountainous terrain, a national highway can be of DL-PS configuration if the traffic is likely to increase more than about 10 per cent per annum; and

(iv) in hilly or mountainous terrain, any road (including a national highway) can be of DL-PS configuration if it is strategic or a border road serving as a feeder road to the Indo-China border or if it is of strategic importance to national security.

PART F

F Issues and Analysis

F.1 Road-Width Issue

45 The issue that arises for consideration is regarding the road-width to be

adopted for the three strategic border roads, as indicated in MA No 2180 of 2020 filed by the MoD, namely: Rishikesh to Gangotri (NH-94 and NH-108), Rishikesh to Mana (NH-58), and Tanakpur to Pithoragarh (NH-125). Broadly speaking, the appellants have argued that the present road infrastructure is sufficient to meet the needs of the Indian Army. Any further development, it has been urged, must be balanced keeping in mind the fragility of the Himalayas, the excessive damage caused to the environment and the need to ensure disaster-resilient roads. On the other hand, the UOI has stressed on the necessity of developing these feeder roads, for the security of the nation. Given the proximity of the roads to the Indo- China border, and the necessity of free movement for transport of trucks, machines, equipment and personnel of the Indian Army, double lane configuration must be allowed, according to the UOI. To analyse the issue, we shall first advert to the findings of the HPC.

F.1.1 HPC Report dated 13 July 2020 46 The HPC report was finalized by its members functioning under Professor Ravi Chopra as its Chairperson. For the preparation of the HPC Report, the members conducted site-visits, held meetings, interacted with the officers of MoRTH, district officials and the local communities. The Report is divided into PART F twelve chapters, each of which touches upon various aspects of the Project such as road-widening; hill cutting; bypasses; muck dumping; environment quality; loss of forests and green cover; impact on wildlife; managing water courses; disaster management and socio-cultural perspectives. For the purpose of the issue for consideration, i.e., the width of roads on the national highways, Chapter II is of utmost relevance. The remaining chapters have been briefly summarized in Section F.2.1 of this judgment.

47 Chapter II of the HPC Report titled 'Road Widening' deals with the construction of highways and the width of roads. For determining the width of the road, the HPC highlighted the following factors are to be borne in mind:

ecological concerns, social concerns, traffic surveys, capacity of roads, geometric design, terrain classification, design speed, sight distance or visibility, right of way and setback distance at horizontal curves.

48 According to the Indian Roads Congress Hill Roads Manual 1998 52, the following type of roads have been indicated, based on traffic volumes:

Sl. Type of Road Design service volume in PCU/day No. Carriageway For low curvature (0- For high curvature Width (CW) 200 degrees per km) (above 200 degrees per km) 1 Single lane 3.75 m 1,600 1,400 2 Intermediate 5.5 m 5,200 4,500 lane 3 Two lane 7m 7,000 5,000 4 Two lanes with 7m 9,000 -

paved shoulder (NHDL with PS) “IRC Manual” PART F 49 The 2012 MoRTH Circular, however, provided that for new projects of widening/bypass/realignment, the width of the carriageway will be at least two lane with paved shoulders, irrespective of the traffic. 50 During the field visit, the HPC observed that though the routes for the Project are designed for the DL-PS standard, in certain stretches the formation width varies from 12m to 20m depending on the geometric requirements. Further, many of the existing stretches, which were already developed to an IW standard, are being widened. Due to the uniform standard, in some areas large hill-cutting has been undertaken resulting in vertical slopes without adequate slope protection measures. This has led to landslides and reflects inadequate assessment of slope vulnerability.

51 The discussion of the HPC revolved around the road-width that should be adopted for the highways comprising of the Project. Factors such as the road geometrics, traffic volume, ecological considerations (such as steep terrain, loss of forest cover, et al) guided the discussion of the HPC. At present, the project requirement envisages a DL-PS standard as given below:

Type of Carriageway Paved Shoulder Earthen Shoulder Roadway Section (m) Hill Side Valley Hill Side Valley Side Width (m)

(m) Side (m) (m) (m) Open 7.0 1.5 1.5-1.9 1.0 (drain 0.6-1.0 12.0 Locations + utility (including duct) parapets) Built-up Area 7.0-10.0 (with 1.0-- 1.75 1.0-- - - 9.0-12.0 paved (foot path 1.75 shoulder) cum drain (foot raised) path cum drain raised) PART F Thus, all the highways were to be widened to reflect a width between 9 – 12m.

52 A majority consisting of thirteen members of the HPC was of the opinion that the DL-PS standard must be applied uniformly throughout the Project for the following reasons:

(i) The IRC Manual recommends a uniform application of design standards and any adjustments that need to be made to factor in the variability in slopes, must be intended for short distances;

(ii) The roads of the hills require protective works such as retaining walls, breast walls, catch drains, et al, which form a substantial part of the construction cost. Once

the roads have been constructed, the widening of roads in the future is expensive, and at times impossible. Thus, the highways must be widened bearing in mind the traffic volumes for the next 20-25 years;

(iii) Some of the highways of the Project are important feeder roads leading towards border areas. The BRO has highlighted that the terrain in border areas is in a snow bound region and feeder routes such as Helong-Mana and Barethi-Gangotri must be double-laned. Further, the roads beyond Joshimath and Uttarkashi are operationally sensitive and fall within 100 kms of the Line of Actual Control. Single-lane roads are closed during the winter season due to accumulation of snow and hinder the movement of logistics and medical aid to the Indian Army;

(iv) The 2019 IRC Guidelines also suggest that strategic border roads for military and paramilitary forces be not less than two lanes with paved shoulders; and PART F

(v) Suitable adjustments can be made to the standard design after considering vulnerability of slopes, identification of stretches vulnerable to floods, mapping wildlife corridors and providing adequate safeguards.

53 A minority consisting of five members of the HPC, including the Chairperson, was in favour of adopting the IW standard for the Project. Their opinion was based on the following reasons:

(i) The type of road must be determined based on traffic surveys, capacity of roads, and ecological considerations. The 2012 MoRTH Circular, however, recommended only an operational standard;

(ii) The detailed project reports for the Project have based the choice of road-

width on traffic survey data. However, the data is insufficient as the traffic volume count of only April-May, which is a non-peak period, was taken into account. Additionally, no traffic surveys were conducted for the Higher Himalayas, which suggest that the DL-PS standard is extremely wide;

(iii) The current standard ignores the overall environmental considerations such as geological fragility, slope de-stabilization and recurring landslides, climate change and soil organic carbon loss. MoRTH has not conducted an EIA for the Project which would suggest site-specific mitigation measures;

(iv) Although border security concerns are a relevant factor, not all routes lead to the international borders. To ensure that national security concerns are addressed, more disaster-resilient highways are needed which would not be achieved by cutting fragile slopes. Further, the Chief of Army Staff on PART F 20 September 2019 had made a statement that the current roads adequately fulfilled the needs of the Army; and

(v) The 2018 MoRTH Circular acknowledges that the DL-PS standard has led to issues in the mountainous terrains and recommended that road design be based on traffic volume. The 2018 MoRTH Circular was not brought to the notice of the members of the HPC during the discussion and was received later, after the voting had taken place. It was circulated by the Chairperson, after which two voting members and the Chairperson recommended the adoption of the IW standard in all stretches where widening remains to be done.

54 Since the 2018 MoRTH Circular, which was central to the discussion on road-width, was inadequately considered by the HPC, it was suggested by the Chairperson that a final decision on this issue must be taken by the Supreme Court. Apart from the issue of road-width, the majority of members also recommended that:

- (i) To avoid the possibility of slope failures, valley side filling must be given importance;
- (ii) A footpath for walking along the highways of the Project must be made for the pilgrims; and
- (iii) In built-up areas where road side facilities and establishments exist, the width of the roads should be kept at 10.5m (7m carriageway and 1.75m paved shoulder on either side).

PART F 55 With regard to the BESZ, the HPC noted that the Project has five unsanctioned projects which run through it. MoRTH plans to upgrade 100.5 kms from Uttarkashi to Gangotri to conform to the DL-PS standard. The following recommendations were made:

- (i) BRO, which is the implementing agency, must obtain all requisite clearances under the relevant notifications of the MoEF&CC;
- (ii) Road widening activities should only be undertaken after detailed EIAs and mitigation measures;
- (iii) The felling of deodar trees should be avoided;
- (iv) Feasibility studies should be conducted in the short tunnels proposed within the highways, and
- (v) Vulnerability evaluations and terrain assessments must be conducted.

F.1.2 HPC Report dated 31 December 2020 56 Following the filing of MA No 1925 of 2020 and MA No 2180 of 2020, this Court by an order dated 2 December 2020 directed the HPC to consider the issues raised by Professor Ravi Chopra and the MoD, and submit a detailed report. The HPC Report-II was thereafter submitted. In relation to MA No 2180 of 2020 filed by the MoD, a majority of 21 members recommended that further work to be undertaken by the MoRTH should be

according to the 2020 MoRTH Circular, as it is necessary for the security of the nation. A minority of three members was not persuaded that the order of this Court dated 8 September 2020 should be modified. One member recommended that the work on the national PART F highways from Rishikesh to Gangotri, Rishikesh to Mana, and Tanakpur to Pithoragarh may be carried out according to the 2020 MoRTH Circular. However, a flexible approach should be adopted where necessary, to minimize damage to the forests and wildlife habitats. On the letters filed by the Chairperson, a majority of members recommended that the letters be withdrawn. 57 The majority report indicates that:

- (i) The concerns raised by the MoD had been deliberated by the HPC and the majority view in the HPC Report indicated the adoption of the DL-PS standard. However, the majority report was overridden by the views of 4 members;
- (ii) The HPC Report discussed the strategic importance of the three national highways: NH-34 (previously NH-94 +NH-108), NH-07 (previously NH-58) and NH-125;
- (iii) The District Magistrates of Uttarkashi, Chamoli and Champawat District expressed concern that the local people wanted an all-weather reliable road along with the requirement of the MoD; and
- (iv) The Rapid EIA reports of the Rishikesh-Rudraprayag stretch indicated that the impact of the Project is 32.25 per cent, which falls in the medium impact category. Thus, from an EIA perspective, the widening of the highways should be permitted.

PART F 58 The minority of members stated in their report that:

- (i) On the three feeder highways mentioned by the MoD in their application, 161 landslides/vulnerable zones were created. Due to the new landslides, the entire project would be counter-productive for defence-preparedness;
- (ii) The requirement of the MoD for the feeder roads should be considered in the context of the need for disaster resilient roads, capacity of roads to ensure swift movement of Army vehicles, minimizing environmental and social impact and long-term feasibility of the roads; and
- (iii) The difference between the recommendation of the minority and the MA filed by the MoD is in regard to the reduction of carriageway by 1.5m, with due regard to the requirement of a footpath of 1.5m for the local population and pilgrims.

F.1.3 Analysis on the width of road 59 Pursuant to the order of this Court of 8 September 2020, the issue of the width of the national highways that are a part of the Project has been raised in MA No 2180 of 2020 filed by the MoD, which seeks modification of the order itself. The grounds listed in the MA indicate that the national highways from Rishikesh to Mana, Rishikesh to Gangotri and Tanakpur to Pithoragarh are feeder roads to border areas and are vital from the perspective of

national security. Thus, it has been urged that development of these highways should be according to the two-lane configuration.

PART F 60 The details of these roads and their proximity to the international border has been provided in the MA by the MoD, and is reproduced below:

“Table A Feeder Road Distance from the Details of Connecting Border Road (Not Chinese border part of Char Dham Project) Rishikesh to • Bhaironghati (close to (i) Bhaironghati to Nilapani (enroute Gangotri (NH-94 Gangotri) to Muling to Muling La Pass on Chinese and NH-108) La Pass is 54 kms Border) 42 kms:

231 kms Bhaironghati to Naga- 32 kms (Being developed to double lan[e] specifications. Tarring is yet to be completed for 11 kms and only hill cutting has been completed in 1 km) Naga to Nilapani- 10 kms (Already developed to double lane specifications) Nilapani to Muling La Pass – 54pprox.x. 34 kms (no road at present, only a track) • Bhaironghati (close to (ii) Bhaironghati to Sumla (enroute to Gangotri) to Thagla Thangla Pass on Chinese Border) Pass is 78 kms 64 Kms: [Under construction] Bhaironghati to Sonam- 44 kms (Being developed to double lane specifications- 32 kms tarring done, 11 kms formation cutting completed, 1 km under progress) Sonam to Sumla- 23 kms (Single lane completed) Sumla to Thangla Pass- 11 kms (foot track) Rishikesh to Mana • Distance from Mana (i) Mana to Mana Pass:

(NH-58) to Mana Pass is 54
kms.
281 kms

Mana-Ghastoli: 21 Kms (Already Double Laned)
Ghastoli – Rattakona: 18 Kms
(Existing Single Lane, planned for double laning under Bharatmala)

Rattakona-Mana Pass: 16 Kms (Hill

Cutting completed for 12m wide formation for double laning, t yet to be done)

• Distance from
Joshimath to Niti
Pass is 82 kms.

(ii) Joshimath to Niti Pass:

Joshimath-Malari: 62 Kms (Alrea Double Laned)

Malari-Niti Pass: 56 Kms (Exi single lane is being upgraded Double Lane upto Niti village 20 kms. Ahead of Niti village lane road under development u Geldung).

• Distance from

(iii) Joshimath to Tunjun La Pass:

Joshimath to Tunjun La Pass is 103 kms.		Joshimath-Malari: 62 kms (Already double [laned])	
		Malari-Girthidobala: 19 Kms (First 19 kms is already double laned; and 19 Km thereafter is a single lane)	
		Girthidobala – Rimkhim: 22 Kms (Existing single lane road)	
		Rimkim-Tunjun La Pass 55 approx. x. 209 kms (no road)	
Tanakpur to Pithoragarh (NH-125)		(i) Pithoragarh to Lipulekh Pass:	
162 kms		Pithoragarh to Tawaghat- 108 Kms (Under development to double lane specifications, of which 51 Kms completed)	
		Tawaghat to Ghatiabgarh- 20 Km (Under development to double lane specifications)	
		Ghatiabgarh to Lipulekh- 79 Km (Formation cutting to 10 to 12 width is under progress)	

61 Based on the above description, it is evident that the national highways

provide vital connections to the establishments of the Armed Forces along the Nelong Axis, Mana Pass, Rimkhim Pass, Niti Pass and Lipulekh Pass. The PART F importance of the requirement of double-laned highways has been emphasized as it is necessary for the movement of trucks, equipment and personnel of the Armed Forces.

62 The above table also indicates that the MoD does not seek to widen only the three national highways which act as feeder roads. Instead, the roads connecting the national highways from Gangotri, Mana and Pithoragarh to the Army establishments across the border are also in various stages of development and attempts have been made to ensure double-laned highways as far as possible. The MoD has also highlighted that these feeder roads from Rishikesh to Gangotri and Joshimath to Mana were initially included in the Long-Term Roll on Works Plan 2018-19 to 2022-23 of the BRO. This plan seeks to upgrade the national highways to double lane specifications to meet the operational requirements of the Indian Army. Prior to 2016, these roads were under the purview of the BRO, which is an arm of the MoD. It is only after 2017 that portions of these roads were handed over to PWD and NHIDCL for speedier development, given the expansive works to be

undertaken for the Project. 63 At the outset, therefore, we find that there are no mala fides in MA No 2180 of 2020 filed by the MoD. The allegation that the application filed by the MoD seeks to re-litigate the matter or subvert the previous order of this Court are unfounded inasmuch as MoD, as the specialized body of the Government of India, is entitled to decide on the operational requirements of the Armed Forces. These requirements include infrastructural support needed for facilitating the movement of troops, equipment and machines. The bona fides of the MoD are also evident from the fact that the issue of security concerns was raised during PART F the discussions of the HPC and finds mention in the HPC Report. Thus, the MoD has maintained the need for double-laned roads to meet border security concerns.

64 The appellants have referred to a statement made by the Chief of the Army Staff in 2019 in a media interview regarding the adequacy of infrastructure for troop movement. We do not find it necessary to place reliance on a statement made to the media, given the consistent stand of the MoD during the deliberations of the HPC and before this Court. The security concerns as assessed by the MoD may change over time. The recent past has thrown up serious challenges to national security. The Armed Forces cannot be held down to a statement made during a media interaction in 2019 as if it were a decree writ in stone. Similarly, the appellants have also raised a challenge to the 2020 MoRTH Circular and have sought a direction that this circular be revoked, on the ground that it recommends the DL-PS standard without application of mind. 65 This Court, in its exercise of judicial review, cannot second-guess the infrastructural needs of the Armed Forces. The appellants would have this Court hold that the need of the Army will be subserved better by disaster resistant roads of a smaller dimension. The submission of the appellants requires the Court to override the modalities decided upon by the Army and the MoD to safeguard the security of the nation's borders (it is important to remember that the MoRTH issued the 2020 MoRTH Circular based upon the recommendations received from the MoD). The submission of the appellants requires the Court to interrogate the policy choice of the establishment which is entrusted by law with the defence of the nation. This is impermissible.

PART F 66 We shall now advert to the position of law regarding the construction of double-laned roads. The 2012 MoRTH Circular stipulated that all national highways were to have a carriageway width of two lanes. While this circular acknowledged that, generally, the carriageway width is dictated by the traffic volume, but in an attempt to ensure smooth flow of traffic, all highways were henceforth to be converted to two lanes with paved shoulders. Thus, according to the 2012 MoRTH Circular, all highways were to conform to the DL-PS standard. 67 The 2018 MoRTH Circular modified the 2012 version. The Circular of 2018 stipulated that:

- (i) In hills and mountainous terrains, for areas where the PCUs are in the range of 4,000-8,000 PCUs per day, the carriageway width cannot be of double lane configuration but has to be of intermediate configuration (i.e., 5m); along with this, adequate passing places with 2.5m width have to be included;
- (ii) For areas where the PCUs are more than 10,000 per day (or expected to reach that level within 3 to 5 years), the carriageway width could be of double lane configuration (i.e., 7m); and

(iii) Where the traffic is likely to increase “at about more than” 10 per cent per annum, the width could be of DL-PS configuration.

Thus, the 2018 MoRTH Circular did not entirely bar the construction of double- laned highways in hilly and mountainous terrains. It only made the DL-PS standard contingent on the current and projected traffic volume for the road. PART F 68 The 2019 IRC Guidelines, in relation to the width of carriageway for national highways, provided that that DL-PS standard should be adopted. More specifically, the 2019 IRC Guidelines dealt with national highways in hills and mountainous terrain that serve as strategic roads and border roads for military and paramilitary operations. It provided that such roads should be constructed with not less than a two lane carriageway with a paved shoulder on the hill side and an earthen shoulder on the valley side. The relevant clause is reproduced below:

“6.2.2 Width of carriageway, shoulders and roadway for various categories of roads are given in Table 6.2. Table 6.2 Widths of Carriageway, Shoulder and Roadway [...] Notes:

[...]

6. On roads subject to heavy snow fall, where snow clearance is done over long periods, roadway width may be increased by 1.5 m. However, the requirement of such widening may be examined with reference to ground conditions in each case considering terrain traffic and other influencing conditions and factors.

[...]

8. Strategic and border roads for military/paramilitary/security forces operations/movements shall be constructed for not less than two lane carriageway alongwith paved shoulder on hill side + paved and earthen shoulder on valley side on same lines of national highway.” (emphasis supplied) 69 Given the lack of clarity on this issue in the MoRTH circulars, the 2020 MoRTH Circular was brought in. The Circular of 2020 reiterates the 2019 IRC PART F Guidelines and states that roads in hilly and mountainous terrain, which act as feeder roads to the Indo-China border should be of DL-PS standard, with a 7m carriageway and 1.5m paved shoulder.

70 Neither the 2012 nor the 2018 MoRTH Circulars specifically addressed the issue of strategic border roads. The considerations for development of national highways in plains and in hilly and mountainous regions are not identical. Similarly, the considerations governing the construction of highways that are strategic roads from a defence perspective, and may be used by the Armed Forces of the nation, cannot be the same as those for other roads in hilly and mountainous regions. We must therefore arrive at a delicate balance of environmental considerations such that they do not impede infrastructural development, specifically in areas of strategic importance crucial to the security of the nation.

71 Based on the above analysis, we find that the need for the development of national highways of a DL-PS standard is proportionate to the object of fulfilling the security concerns of the nation as assessed by the MoD. This is reinforced by the fact that the roads beyond the highways in the Project, beyond Gangotri, Mana and Pithoragarh are being developed by the MoD as double laned highways.

72 Additionally, the current status of works for the three highways in question is as follows:

PART F Road Distance of Road Hill Cutting for 12m formation Double Laning/ black completed topping completed Rishikesh to 231 kms 119 kms (51.50%) 75 kms (32%) Gangotri (NH-94 & NH-

108)

Rishikesh to	281 kms	215 kms (76.50%)	151 kms (54%)
Mana			

(NH-58)

Tanakpur to	162 kms	127 kms (78%)	123 kms (76%)
Pithoragarh			

(NH-125)

From the above tabulated statement which has been provided by the MoD, it appears that more than 50 per cent of the hill cutting has already been completed in each of these national highways, and over 50 per cent of double-laning has been completed on NH-58 and NH-125. In view of this, partial development of the highway compliant with the IW standard and the remaining in conformity with the DL-PS standard would not be suitable for the needs of the Armed Forces and will, in fact, prolong the movement of troops and equipment.

73 We shall now turn to the findings and recommendations of the HPC regarding the issue of road-width. As reflected by this Court's order dated 8 August 2019, the HPC comprised of representatives from governmental bodies, including the MoD who could highlight the requirements of border roads. The broad terms of reference of the HPC were as follows:

(i) To consider the cumulative and independent impact of the Project on the entire Himalayan valleys;

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(ii) To consider whether revision of the full Project (about 900 kms) should at all take place with a view to minimize the adverse impact of the Project on the environment and social life;

(iii) To identify the sites in which work (i.e., hill-cutting) has started and the stretches in which the work has not yet started. As far as the sites in which work has started, the HPC was to recommend the measures which are required for stabilizing the area where hill-cutting has taken place, including the environmentally safe disposal of muck which has been generated so that it does not adversely affect the flora and fauna of the catchment area of the river;

(iv) As regards the stretches where work has not started, the HPC was to review the proposed project and recommend measures which would minimize the adverse impact on the environment and social life; bring the project in conformity with the steep valley terrain and carrying capacity and avoid triggering new landslides; and ensuring conservation and protection of sensitive Himalayan valleys;

(v) To assess environmental degradation in terms of loss of forest land, trees, green cover, water resources, dumping of muck and impacts on the wildlife and direct mitigation measures; and

(vi) To assess and quantify the impact on social infrastructure/public-life due to triggering of fresh landslides, air pollution, frequent road blocks, et al, and suggest measures for redressal, including preparation of disaster management plans prior to the onset of the monsoon. PART F 74 While the HPC was empowered to assess the environmental and social impact of the Project, it was not competent to address, assess or review the security needs of the nation. The work of the HPC was limited to giving recommendations to improve the Project in terms of its environmental impact and to suggest mitigation strategies to implement the Project. The competing interests that the HPC had to evaluate were environmental concerns as against infrastructural development, the primary reason of which in this Project was focused on increasing tourism, providing an impetus to the economy, and ease of transportation for undertaking the Char Dham pilgrimage. Balancing the interests of defence as against environmental considerations was outside the ambit of the HPC.

75 Be that as it may, the HPC Report does highlight that certain highways (NH-94, 108, 58 and 125) form the feeder roads to border locations in the districts of Uttarkashi, Chamoli and Pithoragarh. An extract of the relevant portion of the HPC Report is reproduced below 53:

“Roads beyond Joshimath and Uttarkashi are operationally very sensitive as they fall within 100 Km of the LAC. The border terrain lies in high altitude, snow bound regions. Indian Army and ITBP units maintain continuous vigil on the borders and important passes. To ensure better national security, the Government of India has given impetus for the development of double lane roads towards the border. Roads beyond Bhaironghati and Mana are already double-laned but the important feeder roads Helong-Mana and Barethi-Gangotri are generally single lane (except some intermittent stretches which are improved to two lane) with steep gradients, sharp curves, narrow hairpin bends, avalanche prone locations and weak bridges which pose major challenges to vehicle movements in these areas. The single lane roads get closed due to snow accumulation and hinder the movement of HPC Report, pages 82-83 PART F soldiers even by foot for provisions of logistic and medical aid.” Bearing the above observations in mind, a majority of the members of the HPC recommended the adoption of the DL-PS standard as road-width for the Project. This

opinion was reiterated in HPC Report II, which considered the MA No 2180 of 2020 filed by the MoD.

76 We find ourselves to be in agreement with this finding of the HPC. Based on the above reasons, we modify the order of this Court dated 8 September 2020 to the extent that the national highways from Rishikesh to Mana, Rishikesh to Gangotri, and Tanakpur to Pithoragarh be developed according to the double-lane carriageway width with paved shoulder standard as provided in the 2020 MoRTH Circular.

77 An ancillary issue regarding the width of the roads of the Project, apart from the above highways which are strategic feeder roads to border areas, is regarding the interpretation of the order dated 8 September 2020. This Court in its order held that:

“We have perused the conclusion and recommendations of the report, in particular, from pages 90-93 in Part I. We are of the view that it is correct that the 2018 MORTH circular should apply for the reasons given at page 93 of the report. Consequently, the 2018 circular alone will apply. The other directions that were issued by us on 08.08.2019 must be strictly complied with, including the holding of quarterly meetings to ensure timely and proper compliance of the recommendations.

Shri Tushar Mehta, learned Solicitor General, persisted with his arguments that the 2018 circular is only prospective in nature. We are well aware of the distinction between something which is retrospective in the sense that it applies for the first time to projects which are already completed as PART F opposed to ongoing projects, where it is necessary to take stock of the current situation and then move forward. Having taken stock of the current situation and of the fragility generally of the eco system in mountain terrain, we are of the view that this argument has no legs to stand on.” (emphasis supplied)

78 One of the arguments raised by the appellants in their MA 1925 of 2020 is that pursuant to this order, MoRTH has stated that the order will only be implemented for the 13 projects which have not been sanctioned and where work has not been initiated. In its affidavit dated 15 February 2021, MoRTH has stated:

“3. [...] showing the status of road construction work in the Chardham Pariyojna which would show that in almost every sanctioned project of the Chardham Pariyojna, hill cutting has been carried out at various stretches as the old formation width of 12 mts, leaving unfinished stretches in between. It is submitted that in a particular sanctioned project, due to operational difficulties, hill cutting and laying down of a tarred road is often not carried out simultaneously and/or in linear form. Thus, reducing the width of the road to 5.5 mts in the those unfinished stretches at this stage would cause a serious road safety hazard. The details of the same is also reproduced hereinbelow:

SN0 . PARTICULARS

LENGTH

Citizens For Green Doon vs Union Of India on 14 December, 2021

1.	Total Length of The Chardham Pariyojna	825 KMS
2.	Total Sanctioned Length	662 KMS
3.	Hill Cutting (Keeping 12 Mts in Mind) Completed As On 08.09.2020	537 KMS
4.	Tarred Road With 10 Mtr. Width Completed As On 09.09.2020	365 KMS
5.	The Length For Which Hill Is Already Cut Prior to 08.09.2020 But Tarred Road With 10 Mts Width is Yet To Be Laid	172 KMS
6.	The Length For Which Hill Cutting Is Yet Be Commenced (Which Stopped On 08.09.2020)	125 KMS

PART

4. It is further stated that out of the total length of 825 kms of the Chardham pariyojna, only 151 Kms consist of non-

strategic roads, whereas the rest of the pariyojna having a length of 674 Kms have immense strategic importance being feeder roads to the Indo-china border roads under the control of Ministry of [D]efence. The details of the same are also reproduced hereinbelow:

1. Total Length of The Chardham 825 Kms Pariyojna
2. Total Length Of Roads With Strategic 674 Kms Importance/Defence Roads
3. Total Length Of Non-Defence Roads 151 Kms Dharasu To 75 Kms 36 Kms Janaki Chatti (Hill Cutting Done) Rudraprayag 76 Kms 53 Kms To Gauri (Hill Kund Cutting Done)

79 The order of this Court dated 8 September 2020 clarified that the 2018 MoRTH Circular will hold the field, regardless of whether works on a highway had been completed or were ongoing. By allowing the MA filed by the MoD for modification of this order, we have permitted the widening of the national highways from Rishikesh to Mana, Rishikesh to Gangotri, and Tanakpur to Pithoragarh, which are strategic feeder roads to border areas. To this extent, the order dated 8 September 2020 will stand modified. However, we grant liberty to the respondents to pursue appropriate legal proceedings and seek reliefs in the event that it is necessary to implement the DL-PS standard for the entire Project. PART F F.2 Environmental Issues 80 While we have permitted the UOI and MoD to apply a DL-PS configuration to the highways mentioned in MA No 2180 of 2020, it is not the end of this matter. There may have been a disagreement between the members of the HPC in relation to the road-width issue but they unanimously agreed on other

environmental issues in the manner in which the Project was being implemented by MoRTH. Some of these issues have also been pointed out by the appellants in MA No 1925 of 2020 and their affidavits thereafter, often based upon news reports in relation to the Project. We shall first note these issues as flagged by the HPC, consider their recommendations and based on that, we will issue directions to MoRTH and MoD.

F.2.1 HPC Report dated 13 July 2020 81 The environmental and social concerns arising from the Project have been dealt with in Chapter III-XI of the HPC Report, along with the recommendations and conclusions in Chapter XII. Apart from Chapter II on the issue of road-width as provided in Section F.1.1 above, the findings of the HPC on all other issues have been unanimous.

82 Chapter III of the HPC Report deals with hill cutting and highlights that slope instability is one of the most frequent disasters in mountains. Hill cutting in the Himalayas is also a major reason for landslides and rockfalls. During field visits, the HPC observed that there were large stretches of hill-cutting with steep PART F slopes and no protection measures, no slope drainage measures had been taken, the debris was falling downhill, further destabilizing the slope. The HPC recommended the following measures which could be adopted to mitigate the damage and prevent landslides:

(i) In many locations, hill-cutting can be avoided by filling material on the valley side to widen the road;

(ii) Sufficient vulnerability analysis must be conducted before further hill-

cutting and plans for maintenance of slopes must be made;

(iii) Roadside drainage measures and protection against toe-erosion must be undertaken;

(iv) In case of near vertical to vertical cutting, a breast wall may be erected to avoid landslides; and

(v) Damaged gabion structures must be repaired through back-filling, et al. 83 Chapter IV of the HPC Report concerns the 20 bypasses, realignments and tunnel projects that have been proposed for some segments of the national highways as they are geologically unstable or in congested passages. The HPC observed that geological infirmities and the felling of deodar and oak trees are a critical issue in these bypasses. It recommended that feasibility studies may be conducted for some of the bypasses, along with their impact on local area residents.

84 Chapter V of the HPC Reports concerns a critical area of the Project – muck dumping. Muck-dumping or muck management requires safe disposal of the muck generated due to the material excavated, tunneled, and dislodged. PART F Within the Project, 435 muck-dumping sites have been identified for the 53 projects. However, the following issues were identified by the HPC in relation to muck-disposal:

(i) Most of these projects do not have adequate muck dumping capacity. In 5 out of the 7 packages, the authorized muck dumping capacity is below the muck volumes

anticipated. In one-third of the projects, the expected generation of muck is more than the carrying capacity of the sites;

(ii) Most of the muck dumping sites are located in gorges or natural drains, along the concave sections of rivers, in or adjacent to forests, near agricultural fields or habitations which may not have been authorized;

(iii) There are many large and tall sites, with high slope angles but attempts to stabilize them have not been made; and

(iv) There is no financial provision for environmentally safe disposal of muck and no guidelines have been provided by MoRTH to the EPC Contractors regarding its proper management, leading to variations in selection of sites and adoption of environmentally safe disposal practices by contractors, who also dump it on private land on request.

85 For adequate disposal of muck, the HPC recommended the following measures to be taken:

(i) Muck dumping should generally be located downwind of habitation;

(ii) Topsoil should be kept separately in a proper manner for later use in rehabilitating muck disposal;

PART F

(iii) A large quantity of boulders (locally available) should be checked for their mechanical properties and used appropriately;

(iv) Before muck is dumped at identified locations and construction of protection measures, it should be ensured that the substratum has enough shear strength to sustain the load without creating a slip hazard. The gabion/protection walls should preferably be constructed along the contours for better stability and above the highest flood level at a safe distance;

(v) Muck dumping sites should not be located on the concave side of river meanders. Gorges and natural drainage also need to be avoided;

(vi) Plantation of locally available plant species should be preferred for rehabilitation of dump sites along with help from local people and forest department;

(vii) MoRTH and the implementing agencies must immediately coordinate with district authorities to acquire additional muck dumping sites and necessary clearances to ensure that muck generation equals carrying capacities of muck dumping sites;

(viii) Capacities of sites fully utilized must be stabilized at the earliest, preferably before the onset of the rainy season;

(ix) Muck which has fallen on roads after landslides must not be pushed down slope; and

(x) All natural drains/streams blocked with dumped muck should be cleared before the monsoons.

PART F 86 Chapter VI of the HPC Report deals with the environment quality of the Project, which can be divided into short-term and long-term impacts. Short-term impacts occur due to road construction activities like land clearing, ground excavation and cut and fill operations, and are visible in the vicinity of the construction activity. Meanwhile, long-term impacts include climate warming due to soil organic carbon loss as a result of road construction and traffic problems. During their field visits, the HPC were unable to assess the impact of the project on the environmental quality due to stoppage of work prior to the visit. However, it observed dust pollution where debris had not been cleared from the road. The HPC also identified long-term impacts such as vehicular pollution, black soot emission, soil erosion from hill-cutting and muck-dumping and soil organic carbon loss, due to the Project.

87 On the basis of its observations, the HPC made the following recommendations:

(i) Reliable data should be obtained to formulate strategies to control pollution during the construction phase effectively;

(ii) Continuous air quality monitoring stations must be placed at each of the Char Dham locations;

(iii) A reduction in diesel and petrol vehicles is warranted in view of the ecological sensitivity of the Higher Himalayas; and

(iv) Robust stabilization measures are needed in the Lesser Himalayas and the Shivaliks to conserve their vast forests and SOC, as they are major carbon sinks.

PART F 88 Chapter VII of the HPC Report deals with the loss of forests, trees and green cover. Cutting of mountain slopes to widen roads leads to a reduction in the green cover in the State. A total area of 689.23 hectares has been diverted from forest land for the Project. This loss of green cover leads to a loss of riverine vegetation, top soil, wildlife habitats, ecosystem services, et al. To redress the loss of forest cover, the Uttarakhand Forest Department raised a plantation as part of the Compensatory Afforestation program. In addition to this, a Draft Action Plan focusing on afforestation on degraded waste land and forest land along the national highways, restoration of muck disposal, soil conservation works, rejuvenation of existing water resources, and landscaping has also been proposed. The HPC has also recommended the following measures to be taken:

(i) Felling of deodar trees should be avoided;

- (ii) Road-width in dense forest patches may be reduced;
- (iii) In stretches that are yet to be widened, the top soil must be separately stored from the remaining muck to facilitate regeneration;
- (iv) Regeneration of riverine vegetation should be included in the Draft Action Plan; and
- (v) The Net Present Value rates of forests needs to be revised.

89 Chapter VIII of the HPC Report discusses the impact of the Project on wildlife habitats. The Project lies close to the wildlife protected areas of Gangotri National Park, Kedarnath Wildlife Sanctuary, Govind National Park and Wildlife Sanctuary and Rajaji National Park. These protected areas have four highly endangered species – snow leopard, Tibetan Argali, Eurasian lynx, Himalayan brown bear and Western Tragopan. Other threatened species include the Asiatic PART F black bear, Tibetan wolf, Himalayan musk deer, pheasant and Cheer pheasant. The Alaknanda and Bhagirathi river basins also host a wide range of habitats. 90 During the field visits, the HPC observed that improper muck management resulted in destruction of vegetation cover, which has threatened aquatic habitats. Accordingly, it recommended the following measures:

- (i) Safe wildlife passage should be maintained and included in road building;
- (ii) Gentle slopes shoulders on either side of the road, particularly around sharp bends/blind curves should be avoided. Box-type pre-fabricated culverts could be used by wildlife;
- (iii) A comprehensive study of the carrying capacities of the uppermost stretches of the Project and the wildlife movement should be conducted;
- (iv) Opening of Char Dham locations in the winter season should be considered only after a thorough wildlife impact study;
- (v) Road widening work on NH-109, NH-94, NH-94/134 and NH-07/58, which are located in the eco-sensitive zones, should be conducted after due approvals; and
- (vi) Deterrent action must be taken against unauthorized muck dumps and compensatory afforestation should be carried out.

91 Chapter IX of the HPC Report, titled 'Managing Mountain Water Courses' pertains to the management of springs, streams and surface drainage. The HPC observed that there was poor management of subsurface flows at many locations due to improper structures. In places where perennial flow of water is there, toe drains had not been constructed. Further, due to the huge quantity of muck PART F generated because of the cut and dump method and disposal into water courses, the water has been deemed unfit for human consumption. Accordingly, the HPC

recommended that:

- (i) Culvert design should be based on hydrological investigation in order to avoid under designing or over designing of the structure;
- (ii) Immediate action be taken to clear all natural drains/streams blocked with muck dumping;
- (iii) The perennial streams should be managed properly by constructing adequate structures;
- (iv) A diversion drain should be provided above the head of the hill cut area to safely drain out the water away from the unstable or landslide prone areas;
- (v) Toe drains or catch-drains must be provided on the uphill side of a road and connected to a culvert or a main drain to dispose of the water into a natural valley. Additionally, a breast wall or a toe wall should be provided to prevent blockage of toe drains by accumulation of fallen over burden soil/boulders from the uphill slope; and
- (vi) There must be safe disposal of heavy runoff and debris through discharge channels/gullies.

92 Chapter X of the HPC Report concerns the disaster management measures that must be taken to prevent any disasters owing to the infrastructure activity from the Project. These disasters include natural hazards such as slope failures, flash floods, avalanches, forest fires; engineering hazards when poor quality protection measures are taken; and mass tourist hazards. The significant disaster in the Project has been due to the vulnerability of slopes. One of the PART F main reasons for this occurrence is muck-dumping which results in landslides, toe-erosions and other consequences. Further, no effort has been made to stabilize the slopes already cut. Additionally, in a number of locations, such as at Badrinath, the carrying capacity (that is the number of biological species that can survive in a particular environment) has been reached. In view of this, the HPC recommended the following measures:

- (i) A comprehensive study regarding the carrying capacity at various locations in the Project must be conducted;
- (ii) Given the large number of tourists, Char Dham Early Warning System Network, connecting all villages, should be developed such that timely action can be taken in case of a disaster;
- (iii) A survey of vulnerable muck dumping sites must be undertaken, natural streams must be cleared, slope protection measures should be taken;
- (iv) Climate vulnerability risk assessment must be conducted; and

(v) Protective measures such as well-constructed breast walls, retaining walls, soil nailing, geotextiles sheathing, negative slopes and half-tunnels in hard rock areas should be observed.

93 Chapter XI of the HPC Report focusses on socio-cultural perspectives. During the field visits, the HPC members observed that there was broad support for the Project as it would economically benefit the people of the State. However, some of the issues that have not been addressed are the lack of footpaths for the traditional padyatra or pilgrimage, impact on traditional forest conservation methods, loss of livelihoods due to hill-cutting without adequate safeguards, PART F increase in threat to lives and agriculture in case of heavy rainfall or cloud burst, and damage to schools and infrastructure due to slope failures. 94 Based on these concerns, the HPC, inter alia, recommended the following:

- (i) Project authorities should initiate formal mechanisms to facilitate dialogue and receive feedback and grievances from the local community;
- (ii) A comfortable pathway for the pilgrims must be constructed; and
- (iii) Conservation of traditions should be encouraged.

95 In Chapter XII of the HPC Report, the HPC summarized the conclusions and recommendations made in each of the preceding chapters. F.2.2 Analysis of the Environmental Issues 96 The analysis conducted by the HPC in the unanimous segment of its report is not only comprehensive, but it is based upon empirical and scientific data. The HPC took time to visit all project sites, and individually identified a variety of issues with them. While these have been divided into chapters in the HPC Report (as noted in Section F.2.1), the underlying themes of all them are evident:

- (i) In many instances, MoRTH has gone ahead with the Project based on its assertions that the Project is compatible with environmental guidelines or that its developmental benefits are proportionate to the harm. However, to reality-test these assertions, the HPC has recommended that the State carry out relevant studies to ascertain the true reality (such as for creation PART F of bypasses, maintenance of environmental quality, protection of wildlife habitats and disaster management preparedness);
- (ii) The HPC Report also notes that best-practices are not being followed in some areas of concern (such as hill cutting or muck dumping). It has thus recommended best practices for the MoRTH to implement;
- (iii) In other areas of concern, the HPC has noted the harms which have already been caused due to the Project, has recommended remedial measures (such as protection of wildlife habitats (especially in context of ecologically-sensitive zones) and maintenance of water resources) and has also suggested future action to reduce its effects (such as for hill cutting, muck dumping and protection of forest cover);

(iv) For some areas, the HPC has highlighted that constant monitoring by the MoRTH would be required and necessary systems should be set up (such as for maintenance of environmental quality and for disaster management preparedness); and

(v) The HPC has also noted the Project's effect on socio-cultural communities, and has mandated MoRTH to create avenues for dialogue through which concerns can be understood and resolved.

97 The verdict of the HPC in its report indicates that the Project is riddled with environmental issues, which need to be resolved in order to make it environmentally sustainable. Unfortunately, due to the ongoing litigation in relation to the road-width issue, these concerns seem to have taken a back seat. However, that cannot be the case, going forward.

PART F 98 The Attorney General has informed the Court that MoRTH and MoD are presently undertaking measures to address the concerns raised by the HPC, which have been noted in paragraphs 18(iv) and (v) of our judgment. While we appreciate the measures which have been initiated, they are limited in scope and have been late in coming. In comparison to the issues which have been raised by the HPC in its Report, the measures adopted have only begun to scratch the surface. Indeed, they do not address crucial issues such as muck disposal, which not only affects the environment directly but also causes issues for wildlife and availability of water resources. Even the remedial measures in relation to hill-cutting and landslides have been tardy and limited and, from the submissions, seem to have been limited only to the roads which are the subject matter of the MoD's MA No 2180 of 2020, which only concerns the roads which are of strategic importance to India's national security. However, it is important to remember that the Project consists of 53 individual projects, not all of which are such roads. However, that does not mean that the environmental effect on these roads and their surroundings will be any less important and does not need to be remedied. The State has tried to justify the efficacy of its current measures solely by noting their benefits directly to the Armed Forces. Indeed, while that is a crucial factor (as this judgment acknowledges in Section F.1.3), it is not the only thing at stake in a Project of this scale, which was conceived to provide a more efficient route for those undertaking the Char Dham pilgrimage. What is at stake in this Project is also the health of the environment, and its effects on all individuals who inhabit the area.

PART F 99 It is thus important that there must be a significant alteration in the approach to this Project by adopting sustainable measures. Piecemeal implementation of some mitigation measures for protection of the environment, without any concrete strategy in place, cannot pass muster. While we have granted our approval to the DL-PS configuration for the roads mentioned in MoD's MA No 2180 of 2020, it is made conditional upon MoRTH and MoD implementing the recommendations made by the HPC, which have been outlined by this Court in Section F.2.1. These recommendations are unanimous. A majority of the members of the HPC comprised of government officials and experts. In line with the HPC's recommendations, there has to be an assessment of the nature of the problem by obtaining actual data through relevant studies for all individual projects. Specific mitigation measures then should be implemented for all projects, keeping in mind their unique

concerns. In doing so, the general recommendations issued by the HPC should form the baseline, i.e., they should be implemented at the very least, along with anything over and above that is deemed necessary based on the studies so conducted. 100 More than anything else, this requires a concerned shift in the approach which has been adopted till date. Making the Project environmentally compliant should not be seen as a “checkbox” to be obtained on the path to development, but rather as the path to sustained development itself. Thus, the measures adopted have to be well thought out and should actually address the specific concerns associated with the Project. Understandably, this may make the Project costlier, but that cannot be a valid justification to not operate within the framework of the environmental rule of law and sustainable development. In its bid to make the PART G project more environmentally conscious, it is also imperative that the MoRTH and MoD be transparent in the measures they adopt, in order for them to be held publicly accountable by spirited citizens. Thus, we direct that the MoRTH and MoD can proceed with the Project subject to the condition that it addresses all the concerns which have been raised by the HPC and enumerated by this Court in Section F.2.1 of this judgment, through the recommendations mentioned accompanying these concerns (in paragraphs 82, 83, 85, 87, 88, 90, 91, 92 and 94 of this judgment).

G Conclusion 101 We thus allow MoD’s MA No 2180 of 2020 by permitting the DL-PS configuration for the three strategic highways in respect of which relief has been claimed. At the same time, we have also taken note of the environmental concerns which have been raised by the HPC for the entirety of the Project. We have noted the HPC’s unanimous recommendations for taking remedial measures and direct that they have to be implemented by the MoRTH and MoD, going forward. These specific recommendations have been mentioned in Section F.2.1 and are not being repeated here for the sake of brevity. 102 Further, in order to ensure implementation of these recommendations, we also set up an ‘Oversight Committee’, which shall report directly to this Court. This Committee shall be chaired by Shri Justice Arjan Kumar Sikri, former Judge PART G of this Court. In order to enable the Chairperson to receive technical assistance, he shall be aided by:

- (i) A representative of the National Environmental Engineering Research Institute (‘NEERI’) to be nominated by the Director; and
- (ii) A representative of the Forest Research Institute, Deemed to be University, Dehradun to be nominated by its Director General.

The Oversight Committee shall receive all logistical and administrative assistance from the UOI, the Government of Uttarakhand, MoRTH, MoD and MoEF&CC. The Secretary of the Environment and Forest Department, Uttarakhand shall ensure that logistical assistance is provided to the Committee. MoRTH, MoD and MoEF&CC shall also nominate nodal officers for rendering assistance to the Committee, providing information and co-operating with the work of the Committee. The District Magistrates for the Districts forming a part of the Project shall also provide facilitation and assistance to the Committee. 103 The objective of this Oversight Committee is not to undertake an environmental analysis of the Project afresh but to assess the implementation of the recommendations already provided by the HPC (which we have noted in Section F.2.1). A formal notification in terms of these directions shall be issued by the UOI within two weeks. Within four

weeks thereafter, MoRTH and MoD shall place before the Committee the steps taken by them to adhere to the HPC's recommendations, along with a projected timeline for complying with the PART G remaining recommendations. Monthly reports of this nature shall be placed before the Oversight Committee by MoRTH and MoD. The Oversight Committee shall then report on the progress undertaken to this Court every four months. In case of any issues with the implementation of the recommendations, the Chairperson of the Committee shall be at liberty to approach this Court. The honorarium for the Chairperson and members of the Oversight Committee shall be determined by the Chairperson and the payment shall be disbursed by MoRTH.

104 We further note that by the order dated 8 August 2019 of this Court, the HPC was tasked with overseeing the implementation of its recommendations and to suggest any further measures which may be required. To avoid any overlap between the scope of work of the HPC and the Oversight Committee formed above in paragraph 102 and 103, we clarify that the HPC shall continue with its work on overseeing the implementation of its recommendations for the Project, except for the national highways from Rishikesh to Mana, Rishikesh to Gangotri, and Tanakpur to Pithoragarh, which shall now fall under the purview of the Oversight Committee.

105 With these directions, we allow MoD's MA No 2180 of 2020, conditional upon the fulfillment of the conditions outlined above in our judgment and accordingly, MA No 1925 of 2020 is disposed of.

PART G 106 Pending application(s), if any, shall stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
J. [Surya Kant] J.
 [Vikram Nath] New Delhi;

December 14, 2021

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(2004) 9 SCC

(2004) 9 Supreme Court Cases 362

(BEFORE S. RAJENDRA BABU, D.M. DHARMADHIKARI
AND G.P. MATHUR, JJ.)

N.D. JAYAL AND ANOTHER

.. Appellants;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

Writ Petition No. 295 of 1992[†] with TCs (C) Nos. 50-53 of 1996,
decided on September 1, 2003

A. Constitution of India — Art. 21 — Ecology — Sustainable development — Principle of, restated — Right to clean environment and right to development are integral parts of human right covered by Art. 21 — Sustainable development is a means to achieve the object and purpose of Environment (Protection) Act as well as protection of “life” envisaged under Art. 21 — Construction of dam (Tehri Dam) is a component of development and strict compliance with the Act necessary — Environment (Protection) Act, 1986, S. 3 — Environment (Protection) Rules, 1986, R. 5

B. Constitution of India — Arts. 21 & 32 — Ecology — Environment protection — Sustainable development — Tehri Dam Project — Conditional clearance granted by Ministry of Environment and Forests, specifically stipulating that “completion of studies, formulation of action plans and their implementation will be scheduled in such a way that their execution is *pari passu*, ... failing which the engineering works would be brought to a halt” — Conditions inter alia related to catchment area treatment, command area development, rehabilitation, disaster management, flora and fauna, water quality maintenance and Bhagirathi Basin Management Authority — How to implement disaster management and rehabilitation explained — Held, per majority, these conditions aimed at maintaining ecological balance and protecting human rights and are elements of sustainable development — Conditions must be strictly complied with — To ensure compliance with the conditions and proper monitoring, matter must be transferred to High Court of Uttaranchal — Per Dharmadhikari, J., directions to be issued keeping in view the *pari passu* condition on which “environmental clearance” granted by MoEF — Ministry of Environment and Forests having failed to discharge its duty of monitoring the work of the project to ensure fulfilment of those conditions an independent monitoring mechanism through a forum of interdepartmental authorities and experts is required to be set up to ensure compliance of those conditions — Environment (Protection) Act, 1986, S. 3 — Environment (Protection) Rules, 1986, R. 5 — Words and phrases — “*pari passu*”

C. Constitution of India — Art. 21 — Ecology — Environment protection — Tehri Dam Project — Disaster management — Meaning — Should be integrated with development activities — Yokohama Strategy of the United Nations International Decade of Natural Disaster Reduction

D. Constitution of India — Art. 21 — Ecology — Environment protection — Tehri Dam Project — Rehabilitation — Per majority, those ousted or displaced from the area have a right under Art. 21 to lead a decent

[†] Under Article 32 of the Constitution of India

life and earn livelihood in rehabilitated locations — Rehabilitation should take place six months before submergence of the area — Per Dharmadhikari, J., oustees should be adequately compensated by minimum possible disturbance to their life source and lifestyle — When such river projects are undertaken, social conflict arises between poor and less-advantaged class and affluent and less-needy class and in such situation the former should be given prior attention by the welfare State — National policy, packages and guidelines for resettlement and rehabilitation

E. Constitution of India — Arts. 21 & 32 — Ecology — Tehri Dam Project — Rehabilitation measures — Govt. decision on consideration of HRC's recommendations — Court's interference with such matters not called for

F. Constitution of India — Art. 21 — Right to health falls under

G. Constitution of India — Art. 32 — Transfer of the matter to High Court — Held, can be directed by Supreme Court in appropriate cases in proceedings under Art. 32 — High Court however, empowered only to deal with matters of compliance of various conditions, but not allowed to re-examine and decide other questions such as the safety of the dam

Held :

Per majority

The balance between environmental protection and developmental activities could only be maintained by strictly following the principle of “sustainable development”. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. Strict observance of sustainable development means a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy. (Para 22)

M.C. Mehta v. Union of India, (2002) 4 SCC 356; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, *relied on*

Right to clean environment is a guaranteed fundamental right. Maybe, in a different context, the right to development is also declared as a component of Article 21. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The “development” is not related only to the growth of GNP. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development. (Paras 23 and 24)

Samatha v. State of A.P., (1997) 8 SCC 191; *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125, *relied on*

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The adherence to sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to “sustainable development” cannot be singled out. Therefore, the concept of “sustainable development” is to be treated as an integral part of “life” under Article 21. The weighty concepts like intergenerational equity, public trust doctrine and precautionary principle which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

(Para 25)

State of H.P. v. Ganesh Wood Products, (1995) 6 SCC 363; *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, referred to

To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 and this is quite necessary to guarantee the “right to life” under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, *sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of “life” under Article 21*. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act. The object and purpose of the Act: “to provide for the protection and improvement of environment” could only be achieved by ensuring strict compliance with its directions. The authorities concerned by exercising their powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfilment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act.

(Para 26)

The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment has to be viewed from the above perspective. These conditions had, *inter alia*, enumerated certain studies which were to be carried out and based on their findings, action plans had to be drawn up for execution *pari passu* with the construction of the project. The lexical meaning of the Latin word *pari passu* is — at an equal rate or pace, with simultaneous progress, proportionately etc. This term is generally used in the context of creditors who, in marshalling assets, are entitled to receive out of the same fund without any precedence over each other. Anyway, the required application of its meaning in the background of the present case is clear. The works, which are fixed up as conditions attached to the clearance, will have to be carried out simultaneously with the engineering works. So by the time the engineering works finish, the conditions should also have been fulfilled.

(Paras 26, 37 and 39)

The five conditions laid down by the Ministry of Environment and Forests (viz. catchment area treatment, command area development, flora and fauna, water quality maintenance and Bhagirathi Basin Management Authority) aimed

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- a at maintaining the ecological balance and protecting human rights, which are integral elements of sustainable development. Rupture to the Himalayan environment, if any, due to the dam construction could only be compensated by strictly complying with these conditions attached to the clearance. These aspects are vital for life and sustainable development of the area. If these aspects are not complied with, human life and whole Himalayan environment will be the casualty. Only its strict compliance could maintain the ecological balance. Right to health is a fundamental right under Article 21. Protection of this is inextricably linked with clean environment. Clean and healthy environment itself is a fundamental right. Therefore the impact of the project on human health cannot be given a go-by. It has to be seriously scrutinized. (Paras 55 and 54)

M.C. Mehta v. Union of India, (2001) 3 SCC 756, *relied on*

- c The sixth condition viz. “disaster management” means all aspects of planning, coordinating and implementing all measures which are necessary or desirable to prevent, minimize, overcome or to stop the spread of a disaster upon the people or any property and includes all stages of rescue and immediate relief. It is a proven fact that a lot of human suffering and misery from a large number of disasters can be mitigated by taking timely action, planning and preventive measures. It is possible only through well-functioning disaster-management framework. This will enable minimization, control and limit the effects of disasters and will streamline the disaster-management exercises. The present relief-centred reactive approach after the striking of disaster needs to be changed into preparedness-oriented proactive attitude. This is the aim of predisaster preparations. Disaster-management plans have to play an integral role in this exercise. They are blueprints for the management of disasters. The disaster-management plans should contain the aspects of disaster prevention and of ways for its management in the untoward occurrence of a disaster. A proper plan will place the disaster-management exercise on a more firm foundation. Disaster-management activities should be integrated with the developmental activities. Incidentally, this is also the resolve of the Yokohama Strategy of the United Nations International Decade of Natural Disaster Reduction, to which India is a party. There is an affirmative obligation on the part of the State to preserve and protect human life and property. This obligation is an integral element in fulfilling developmental endeavours. Therefore, disaster management cannot be separated from sustainable development. (Paras 56 and 57)

- f The last condition is rehabilitation which is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. The overarching projected benefits from the dam should not be counted as an *alibi* to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence. Such a time-limit was fixed by the Supreme Court in *B.D. Sharma v. Union of India*, 1992 Supp (3) SCC 93 and this was reiterated in *Narmada*, (2000) 10 SCC 664. This prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment. The rehabilitation package is prepared. It is also made clear that the rehabilitation conditions in this case are also applicable to the oustees of

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the Koteswar Dam as well as those living on the rim of the reservoir and to all those who are likely to be affected by the project. The authorities concerned will have to take proper steps to rehabilitate all those who are entitled to rehabilitation before six months of the impoundment. Without the completion of rehabilitation there shall not be any impoundment. (Paras 60 and 61)

M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, *relied on*

Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664; *B.D. Sharma v. Union of India*, 1992 Supp (3) SCC 93, *referred to*

The extent of land i.e. 2 acres to each displaced family recommended by the Hanumantha Rao Committee cannot be said to be inadequate or insufficient. Such recommendation has been made by the Hanumantha Rao Committee after due deliberation in the matter on the availability of the land in the region, the lifestyle of the persons affected, their needs and other relevant factors in this regard. Above all, the project is being carried out in a hilly area where land is very scarce. In such circumstances, no comparison can be drawn between the Sardar Sarovar Project and Tehri Project. (Para 64)

The next recommendation in respect of which objection is raised is that the Government of India has chosen to treat as separate families sons and unmarried daughters who have attained the age of 21 years on the prescribed date. It is urged that 18 years should have been taken as the age for such classification and not 21 years. These matters are in the realm of decision of the recommendatory body and the Government. If the Government had chosen any other age, the Court could not have held it to be irrational. The contention that voting rights to citizens had been given even at the age of 18 years has no relevance to the facts under consideration. Therefore, this contention also does not deserve the Court's intervention. (Para 64)

It is also not possible to accept the objection in regard to major sons and unmarried daughters not being given land but only cash resulting in discrimination particularly once they have been recognised as separate families and the contention that all major married sons should be given 2 hectares of land as a minimum and all the other benefits due to them as a displaced family under the package with the option of taking cash, equivalent to the value of 2 hectares of land in lieu of the land, if they so desire. On account of scarcity of land it may not be feasible to provide land to every family and even such families as have been treated for purposes of giving larger benefit major sons and unmarried daughters are treated as a separate family and not for any other purposes. Similarly, the other contention that the unmarried sons and daughters should be treated as half a family unit and should be given half hectare of land or cash in lieu thereof, cannot be accepted. (Para 64)

In regard to the cases where families have already been shifted and where rehabilitation has already been done, and where families have not been shifted or given rehabilitation benefits for newly recognised additional families, after considering the recommendations of the Hanumantha Rao Committee, the Govt. took decision. These are matters of policy and when the Government takes such a decision bearing in mind several aspects, the Court should not interfere with the same. (Paras 65 and 66)

After accepting the recommendation of the Hanumantha Rao Committee as regards categorisation of fully and partially affected families, if the Govt. imposed a condition that during the low-reservoir-level periods, land should be

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given for temporary cultivation, not otherwise, it cannot be said that such a condition is unreasonable. (Para 67)

- a The next objection raised by the petitioners is in regard to the house-construction assistance to each married son and major unmarried sons and major unmarried daughters @ Rs 60,000 and payment of this amount is linked with the progress of construction and shifting. The Government did not accept the same and ordered that the additional members of urban-entitled houseowner families of Tehri town as on the cut-off date of 6-6-1985 would also be eligible to draw ex gratia of Rs 33,000, which, it is stated, has been subsequently enhanced.
- b For similar reasons stated earlier, objections raised on behalf of the petitioners stand rejected. (Para 68)

As regards the rehabilitation programme, the status is that socio-economic study concerning the living standard of resettled families was got done through Administrative Staff College of India, Hyderabad, which revealed that the quality of life of the resettled families is far above and better than what the situation was before rehabilitation. (Para 69)

- c It is no doubt true that in regard to certain aspects such as catchment area treatment, conditions imposed are not fully implemented and it is not very clear from various affidavits filed whether in regard to flora and fauna also the conditions have been fulfilled or not. When *pari passu* conditions have been imposed, it is necessary that the conditions are fulfilled along with the construction of the engineering works. The categorical statement made by the respondents should assure the petitioners that no impoundment would be allowed until all the conditions in the Environmental Clearance Certificate of the Tehri Dam dated 19-7-1990 are complied with and stand fulfilled. (Paras 77 and 79)
- d The petitioners have disputed that the respondents have complied with the conditions of clearance. But a careful analysis of their pleadings will indicate that the dispute is to the extent of compliance only and not that there is no compliance at all. On behalf of the Union of India a status report supported by an affidavit is filed which indicates that there is substantial compliance with all the conditions. The petitioners have not established nor is there any material to conclude that the project work is being carried on without complying with the conditions of clearance. Though there were certain lapses at certain stages, they were taken care of by monitoring agencies. (Paras 80 and 81)

- e To ensure that all the conditions for environmental clearance are fulfilled and for proper monitoring, all these cases are transferred to the High Court of Uttaranchal to be dealt with by a Division Bench. The High Court shall deal with these matters as if filed before it and shall be at liberty to pass any orders. However, it is made clear that it shall not be open to re-examine the matters such as safety of the dam and other aspects relating to implementation of conditions contained in the government orders which have been decided in this case. (Para 82)
- f

Proceedings arising under Article 32 need not always be dealt with by the Supreme Court alone and in appropriate cases suitable directions, including transfer of the matter, can be issued to High Courts or other authorities (like National Human Rights Commission) to deal with such matters. Thus it is legal and expedient to transfer these cases to the High Court of Uttaranchal. (Para 83)

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Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281; *M.L. Sud v. Union of India*, 1992 Supp (2) SCC 123; *Mohan Chand v. Union of India*, 1995 Supp (3) SCC 425, *relied on*

Per Dharmadhikari, J.

The problem before the country with more and more dam projects being undertaken is how to make use of natural resources for improving human health, welfare and comfort without depleting or damaging them over a foreseeable period of time. A strategy for conserving or resource-effective use of non-renewable resources is the imperative demand of modern times. Whereas, minimum sustainable development must not endanger the natural system that supports life on earth, constant technological efforts are demanded for resource-effective production, so that sacrifice of one ecosystem is counterbalanced or compensated by recreating another system. (Para 103)

Chander Pal: *Environmental Solution and Development* at pp.198-201 and 236-37, *referred to*

Where the requirements of law as contained in the Act, the Rules and the notification issued thereunder contemplate imposition of conditions for clearance to a project to minimise its adverse impact on environment, the authorities granting such clearance possess the power coupled with duty and obligation to ensure fulfilment of the conditions on the basis of which the environmental clearance is granted. Granting a conditional clearance is not a mere formality. The power to grant clearance, even though with conditions, was accompanied by duty on the part of the Ministry to have effective check on the progress of the project and ensure fulfilment of the conditions in accordance with the *pari passu* clause. In the face of so many conflicting expert opinions on the project undertaken in a highly earthquake-prone region the conditional environmental clearance was granted without monitoring the work of the project to ensure fulfilment of those conditions. Meticulous care and precaution, therefore, is required to be taken for a dam which is being constructed on a high-altitude area posing threat to the downstream population. If the safety aspects are not fully taken care of and the command area treatment is not done to the desired level or standard, the consequence may be catastrophic and beyond repair. Since the Ministry of Environment and Forests has failed to discharge its duty of exercising proper check on the fulfilment of *pari passu* clause of conditional clearance, it is necessary to provide an independent mechanism through a forum of interdepartmental authorities and experts so that the project presently undertaken by the Corporation with the aid, assistance and finances provided by the States, the Central Government and the World Bank is allowed to progress and be completed strictly on fulfilment of the conditions on which environmental clearance was granted. (Paras 131, 120 and 132)

When river projects for dams are undertaken to generate electricity and improve irrigation facilities, conflicts arise between *people living upstream* who have to necessarily lose their source of living and habitat and those *living downstream* who need water and electricity for their homes, industries and agricultural fields. When such social conflicts arise between the poor and more needy on one side *and* rich or affluent or less needy on the other, prior attention has to be paid to the former group which is both financially and politically weak. Such less-advantaged group is expected to be given prior attention by a welfare State like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the preamble, fundamental rights, fundamental

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- duties and directive principles, to take care of such deprived sections of people who are likely to lose their home and source of livelihood. The Court should not leave those living by the side of river from generations to suffering by displacement to a far-off place which would deprive them of their life and lifestyle. In the march of progress, the humblest and the weakest should not be left behind. The man living in the hills or valleys is dependent for survival on natural resources. All efforts are, therefore, required to be made that the displaced or oustees, who were hitherto getting benefits from the river for their survival, are adequately compensated by minimum-possible disturbance to their life sources and style of life. Before the reservoir is full to its optimum capacity to generate electricity and provide irrigation, the work of rehabilitation to the optimum satisfaction of the oustees must be completed. In this direction, the affidavit filed by the Ministry of Environment does not vouchsafe that the work of rehabilitation has been completed to the satisfaction of not only the officials of the Rehabilitation Department but the oustees themselves speaking individually or collectively. (Paras 137 and 112)
- a*
- c* *Karjan Jalasay Yojana Assargrasth Sahkar Ane Sangarsh Samiti v. State of Gujarat*, 1986 Supp SCC 350 : AIR 1987 SC 532, referred to
- Mistakes in resettlement and rehabilitation of people ousted by other similar projects committed in the past have to be avoided. The construction of dam cannot be allowed to proceed and be completed leaving the oustees high and dry. The oustees of the Tehri Dam Project who are used to valley life in the Himalayas are proposed to be resettled and rehabilitated in the newly built Tehri town and those depending on forest and agriculture are proposed to be given cash compensation or land downstream near Dehradun city. (Paras 138 and 139)
- d*
- The present status of the dam project, keeping in view the *pari passu* condition on which “*environmental clearance*” has been granted by MoEF, calls for issuing the following directions to the respondents who represent various Ministries and Departments of the Central and State Governments as also the Corporation to which the project has been entrusted for implementation:
- e*
- (1) The Central Government in terms of the recommendations of *Expert Committee for Environmental-Impact Assessment* as contained in Schedule III of the notification dated 27-1-1994 issued in exercise of powers under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with clause (f) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 shall constitute a Committee of experts and representatives of NGOs (if not already constituted) for the purpose of investigating, ascertaining and reporting whether the *pari passu conditions* laid down in the environmental clearance of the project have been fulfilled or not by the authorities of the project. The aforesaid Committee will inspect and report on the status of the work to the Central Government every three months and in case the conditions, as laid down in the clearance, are not fulfilled, recommend remedial or corrective measures/actions.
- f*
- g*
- (2) To take care of the safety aspect, until 3-D non-linear analysis and dam-break analysis are completed as recommended by the Committee on Safety and the result assessed by the aforesaid Expert Committee is submitted to the Central Government, diversion tunnels T-1/T-2 for impoundment of the reservoir shall not be closed.
- h*
- (3) The Expert Committee for Environmental-Impact Assessment constituted under Schedule III of the notification dated 27-1-1994 will also

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look into and submit status report on the progress of resettlement and rehabilitation measures. There will be no impoundment of the reservoir until resettlement and rehabilitation work is fully completed in all respects.

(4) An effective grievance redressal cell headed by an independent expert in the field of Social Science shall be set up by the State Government with the help of the Central Government for solving rehabilitation and resettlement problems of the oustees of the project. The grievance redressal cell shall submit its status report every three months to the Expert Committee constituted under Schedule III of the notification (*supra*).

(Para 141)

H. Administrative Law — Judicial review of administrative action — Judicial review of decision-making process of Govt. affecting human rights — Tehri Dam Project — Seismic stability of the dam — Number of expert groups giving clearance — However, one of the groups by way of abundant caution suggesting two more tests to be conducted — Govt. after due application of mind taking a well-informed decision not to conduct such additional tests — Held, per majority, Court cannot direct the group to go into such tests, unless mala fides, arbitrariness or irrationality is attributed to that decision — Per Dharmadhikari, J., on the basis of precautionary principle contained in Rio Declaration on Environment and Development taken in UN Conference held in January 1992 to which India is a party, the additional tests must be undertaken when the dam is in a highly earthquake-prone zone — Constitution of India — Arts. 32 & 21

I. Environment Protection and Pollution Control — Precautionary principle — Per Dharmadhikari, J., since India is a signatory to international agreements and understandings in the field of environment it has become part of domestic law i.e. Environment (Protection) Act — Constitution of India — Art. 51

Facts :

After one of the groups of experts unanimously concluding that the “present design of the dam is expected to be structurally safe to withstand the maximum-credible earthquake during the economic performance life of the dam-reservoir system” as a matter of abundant caution, four experts suggested: (i) 3-D non-linear analysis of the dam to evaluate its performance against the maximum-credible earthquake, and (ii) a simulated dam-break analysis to ensure that in the unlikely event of an uncontrolled release of water, the consequences are minimum, be conducted. There was difference of opinion between the four experts and the fifth expert only on the need to undertake these two additional studies as a matter of abundant caution. The Government of India, after receipt of the report of the group of experts, examined the further recommendation of the four out of five experts in consultation with the Central Water Commission, which is a technical body of the Government and nodal agency in the country for planning and designing of river valley projects, who in turn referred the report of the Expert Group together with the need for carrying out the work recommended by way of abundant caution to the National Committee on Seismic Design Parameters which is a standing technical committee and it furnished its views. In addition, a plethora of material has been placed by way of various textbooks and studies carried out by other agencies. The Government of India, after considering the views thereof, finally decided that there was no necessity to undertake the

work recommended further by the four experts by way of abundant caution and clearance to the project was given.

a *Held :*

Per majority

The necessity or effectiveness of conducting 3-D non-linear test or dam-break analysis was taken into account by the Government and if the Government decided not to conduct such tests upon the opinion of the expert bodies concerned, then the Court cannot advise the Government to go for such tests unless mala fides, arbitrariness or irrationality is attributed to that decision. The

- b decision of the Government is not based on any financial constraints or uncertainty as to technical opinion. It was clearly of the view that the last Committee was unanimous that the Tehri Dam to be constructed is safe but the advice based on abundant caution was not accepted. The Supreme Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project. Experts in science may themselves differ in their opinions while
- c taking decisions on matters related to safety and allied aspects. The opposing viewpoints of the experts will also have to be given due consideration after full application of mind. When the Government or the authorities concerned after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate for the court to interfere. Such matters must be left to the mature wisdom of the Government or the implementing agency. It is their forte. In such cases, if the situation demands, the courts should take only a detached
- d decision based on the pattern of the well-settled principles of administrative law. If any such decision is based on irrelevant consideration or non-consideration of material or is thoroughly arbitrary, then the court will get in the way. Here the only point to consider is whether the decision-making agency took a well-informed decision or not. If the answer is “yes”, then there is no need to interfere. The consideration in such cases is in the process of decision and not in its merits. (Paras 19 and 20)

- e *BALCO Employees' Union (Regd.) v. Union of India*, (2002) 2 SCC 333, *relied on*
A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 SCC 718; *Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P.*, 1992 Supp (1) SCC 44, *distinguished*
Per Dharmadhikari, J. (dissenting)

On the safety aspect of the dam, particularly, when the location of the dam is in a highly earthquake-prone zone in the valley of the Himalayas, all additional

f safeguards are required to be undertaken on the “precautionary principle” as contained in “the Rio Declaration on Environment and Development” taken in the United Nations Conference held in January 1992 to which India is a party. The precautionary principle accepted by India being a party and signatory to international agreements and understandings in the field of environment has become part of domestic law i.e. the Environment (Protection) Act. The governmental authorities in India cannot be permitted to set up the plea of

g scientific uncertainty of 3-D non-linear analysis of the dam. On the safety aspect pleas like *res judicata* based on earlier decisions of the Supreme Court cannot be allowed to be raised when further developments and events in the course of the project require further precautions to be taken before filling the dam to the optimum capacity. It is not the case of the respondents that 3-D non-linear analysis of the dam cannot be undertaken with the assistance of foreign experts

h on the subject. To take care of all eventualities of damage to the dam by an earthquake, 3-D non-linear analysis of the dam suggested by four experts as a matter of abundant caution must be undertaken. It is only after 3-D non-linear

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analysis of the dam is completed and the opinion of the experts on the safety aspects is again sought that further impoundment of the dam should be allowed.

(Paras 127 and 128)

M.L. Sud v. Union of India, 1992 Supp (2) SCC 123, *relied on*

M.C. Mehta v. Union of India, (1997) 2 SCC 353, *referred to*

J. Administrative Law — Judicial review — Policy decision — Infrastructural project (Tehri Dam Project) proposed to be undertaken by Govt. — Conception or planning, decision to undertake the project and execution thereof are part of policy-making process of the Govt. with which Court is ill-equipped to interfere in absence of arbitrariness — But Court has to see that no law and fundamental rights of the affected people are violated — While Govt. cannot be faulted for deciding to construct Tehri Dam in view of its benefits, Court has to examine its impact with reference to the submerged and surrounding areas and displacement of people residing there — Therefore, a properly drafted plan in this respect is essential — When Govt., being conscious of this aspect, had taken steps therefor, at the penultimate stage of the proceedings, it would be too late to consider as to why the decision was taken to construct the dam or to continue the project (per majority)

(Paras 10 to 12)

Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664; *BALCO Employees' Union (Regd.) v. Union of India*, (2002) 2 SCC 333, *relied on*

Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P., 1992 Supp (1) SCC 44, *referred to*

K. Constitution of India — Art. 32 — PIL — Ecology — Tehri Dam Project — Protest of ecologists should not be considered as obstructionist or anti-progress

Per Dharmadhikari, J.

The protest of ecologists, as is brought before the Supreme Court in this public interest litigation, is not to be seen as obstructionist and anti-progress because the petitioners are actuated by the desire to obstruct ecological destruction and to halt the process that results in progress for a few and hardships for many.

(Para 109)

R-M/ATZ/28901/S

Advocates who appeared in this case :

K.N. Raval, Solicitor General, R.N. Trivedi and Altaf Ahmed, Additional Solicitors General, Ms Indra Jaising and Dr Rajeev Dhavan, Senior Advocates (Sanjay Parikh, Ms Vandana Sudan, Abinash K. Misra, A.N. Singh, S. Santhanam Swaminathan, S. Wasim A. Qadri, R.N. Poddar, B.V. Balaram Das, Ms Anil Katiyar, B. Krishna Prasad, Ashok K. Srivastava, Sundarlal Bahuguna in person, Gopal Singh, Anil Shrivastav, Ms Jyoti Dutt, Ms Binu Tamta, Ajay K. Agarwal, K.L. Janjani, Pankaj Kr. Singh, Avathar Singh Rawal, Additional Advocate General for the State, Ms D. Bharati Reddy, N.L. Ganapathi, Satya Mitra Garg and Dr Nafis A. Siddiqui, Advocates, with them) for the appearing parties.

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1. (2002) 4 SCC 356, *M.C. Mehta v. Union of India* 381g
2. (2002) 2 SCC 333, *BALCO Employees' Union (Regd.) v. Union of India* 375f-g
3. (2001) 3 SCC 756, *M.C. Mehta v. Union of India* 393a
4. (2000) 10 SCC 664, *Narmada Bachao Andolan v. Union of India* 375b-c, 381a, 394e, 394f, 395d
5. (1999) 2 SCC 718, *A.P. Pollution Control Board v. Prof. M.V. Nayudu* 380e, 380g-h, 381f-g

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6. (1997) 8 SCC 191, *Samatha v. State of A.P.* 382b-c
7. (1997) 2 SCC 353, *M.C. Mehta v. Union of India* 415a-b
- a 8. (1997) 1 SCC 388, *M.C. Mehta v. Kamal Nath* 382f-g
9. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum v. Union of India* 381g, 382f-g
10. (1996) 5 SCC 281, *Indian Council for Enviro-Legal Action v. Union of India* 403c, 403g-h
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12. (1995) 6 SCC 363, *State of H.P. v. Ganesh Wood Products* 382f-g
- b 13. 1995 Supp (3) SCC 425, *Mohan Chand v. Union of India* 403c
14. 1992 Supp (3) SCC 93, *B.D. Sharma v. Union of India* 394f
15. 1992 Supp (2) SCC 123, *M.L. Sud v. Union of India* 403c
16. 1992 Supp (1) SCC 44, *Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P.* 379b, 379f-g, 405d-e, 414a-b
17. 1986 Supp SCC 350 : AIR 1987 SC 532, *Karjan Jalasay Yojana Assargrasth Sahkar Ane Sangarsh Samiti v. State of Gujarat* 417e-f, 418a

c The Judgments of the Court were delivered by

RAJENDRA BABU, J. (*for himself and Mathur, J.*)—

Writ Petition No. 295 of 1992

- d 1. The present petition under Article 32 of the Constitution of India is the second round of legal action connected to the safety and environmental aspects of the Tehri Dam before this Court.
- e 2. The petitioners herein, firstly, urge us to issue necessary directions to conduct further safety tests so as to ensure the safety of the dam. Secondly, they allege that the authorities concerned have not correspondingly complied with the conditions attached to the environmental clearance dated 19-7-1990 and want us to halt the project till the same is complied with. Lastly, they want us to look into the rehabilitation aspects. Subsequent to the filing of this petition a few others joined as interveners. A string of affidavits, counter-affidavits and other documents disclosing the minutest details have been presented. Oral submissions on both sides have been addressed at length.
- f 3. Before adverting to the contentions of safety, environmental clearance and rehabilitation, it is necessary to draw a demarcating line between the realm of policy and the permissible areas for judicial interference in the context of the present case. For this, a brief factual survey is warranted. This is also necessary to appreciate the broader issues advanced before us.
- g 4. Investigation for the purpose of construction of a dam at Tehri for hydel power generation was commenced as early as in 1961. In the year 1972, the Planning Commission envisaged a cost of Rs 197.92 crores and in 1976, administrative clearance to the project was given by the Government of U.P. In March 1980, a direction was issued by the then Prime Minister for an in-depth review of the whole project. Consequently, an Expert Group was constituted by the Ministry of Science and Technology. The Prime Minister's note on the file reads as follows:
- h "There are several proposals which were agreed to earlier but would need to be looked into again. Amongst them are Silent Valley, the dam in

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Tehri Garhwal and the dam in Lalpur, Gujarat. It seems that larger areas of very fertile land are being submerged without any commensurate gains. There may be other such cases also. It is true that these decisions have been taken over a period of time but there is great local distress and a feeling that contractors and other such groups will be the main gainers. Hence, it is necessary to have another look in depth.” a

5. In May 1980, an interim report was submitted by the Expert Group and the final report was submitted in August 1986. Even though an expenditure of Rs 206 crores had been incurred, the Expert Committee recommended to abandon the project. The Ministry of Environment and Forests (MoEF) accepted the report in October 1986 and endorsed the view of the Expert Committee. In November 1986, the erstwhile USSR offered administrative, technical and financial assistance on a turnkey basis and the Tehri Project was revived as recipient of such aid. In November 1986, a protocol was signed with USSR for providing technical and financial assistance for this project to the tune of 1000 m roubles. Thus the need to obtain environmental clearances even in the absence of environmental action plans became urgent so as to quickly complete all administrative and technical formalities. In January 1987, the Government announced in the press that it had cleared the project after a thorough assessment of the impact of the project on environment and after satisfying themselves that the adverse impact on environment can be remedied. A general agreement was signed in Moscow and it was decided that the dam construction would be carried out jointly by the Soviet and Indian engineers. Thereafter, the project which was initially executed by the Irrigation Department of the Government of U.P. has been taken over by the joint venture company of the Government of India and the Government of U.P. The company was called Tehri Hydro Development Corporation Ltd. (THDC). In July 1989, MoEF revised cost estimates and released further funds, conditional to its prior environmental clearance. Accordingly, THDC formulated environment action plans for consideration and assessment by MoEF. In February 1990, the Environmental Appraisal Committee, MoEF concluded that the Tehri Dam Project, as proposed, should not be taken up as it does not merit environmental clearance. Subsequently, on 19-7-1990, conditional clearance to the project was given by MoEF. It was specifically provided that completion of status, formulation of action plans and their implementation will be scheduled in such a manner that their execution is *pari passu* with the construction, failing which the engineering works would be brought to a halt and this condition will be enforced among others under the provisions of the Environment (Protection) Act, 1986. b
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6. The petitioners raised the question before us that when a decision had been taken in 1990 to abandon the project, how could clearance be given on 19-7-1990? Again they pointed out that on 21-10-1994 serious consequences of the implementation lagging behind were taken note of but the project was allowed to continue. h

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7. From the narration of various events set out earlier, it is clear that even by August 1986 an expenditure of Rs 206 crores had been incurred for the construction of the dam. It is after the THDC action plans for consideration and assessment by MoEF have been submitted. These were considered on two occasions: firstly, in February 1990 and again on 19-7-1990 and it is thereafter the conditional clearance was given. It is contended that the environmental clearance which was granted on 19-7-1990 is without proper application of mind and, therefore, the dam construction should not be allowed to proceed. The law on this aspect has been clearly set out in the decision of this Court in *Narmada Bachao Andolan v. Union of India*¹. As in the present case, in the case of *Sardar Sarovar Project* also, four identical conditions were imposed and they are as under: (SCC p. 690, para 29)

- “(i) The Narmada Control Authority (NCA) will ensure that environmental safeguard measures are planned and implemented *pari passu* with progress of work on project.

- “(ii) The detailed surveys/studies assured will be carried out as per the schedule proposed and details made available to the Department for assessment.

- “(iii) The catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling.

- “(iv) The Department should be kept informed of progress on various works periodically.”

8. The effect of grant of clearance subject to *pari passu* conditions has also been examined by this Court in *Sardar Sarovar Project case*. It has been noticed therein that there are three stages with regard to the undertaking of an infrastructural project — the first of which is the conception or planning, second is the decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project has to be regarded as a policy decision.

9. In *Sardar Sarovar Project case* it was also held that when two or more options are possible and the Government takes a policy decision it is then not a function of the court to re-examine the matter by way of appeal. Necessary analogy could also be drawn from *BALCO Employees' Union (Regd.) v. Union of India*².

10. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of the project and such a system cannot be said to be arbitrary, then the only role which the court has to play is to ensure that the system works in the manner it was envisaged. It is made clear in that decision that the questions whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process

¹ (2000) 10 SCC 664
² (2002) 2 SCC 333

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and the courts are ill-equipped to adjudicate on a policy decision so undertaken. However, a note of caution was struck that the courts have a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights as guaranteed under the Constitution are not transgressed upon except to the extent permissible under the Constitution. When a law has been enacted in relation to the protection of environment and such law is being given effect to and there is no challenge to such law, the duty of the courts would be to see that the Government and other respondents act in accordance with law and there is no other obligation for the court to examine further in the matter. We respectfully agree with the view expressed in *Sardar Sarovar Project case* and apply the same to the facts arising in this case. a
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11. Further, it was noticed in the aforesaid decision that in cases where a project is taken up of the present nature, the court will certainly bear in mind that environmental concern should be examined not only with reference to the submerged areas but also its surrounding areas. The impact has to be examined on the project as a whole and at the same time it should also be noticed that the construction of a dam would result in multifold improvement in the environment of the areas where the canal waters would reach. The benefits which have been reaped by the people all over India with the construction of the dams are too well known and, therefore, the Government cannot be faulted for deciding to construct the high dam on River Tehri with a view to provide water and electricity in the area as was the decision in *Sardar Sarovar Project case* also. In such situations, displacement of people residing in the proposed project sites and the areas to be submerged is an important issue. Therefore, a properly drafted relief and rehabilitation plan is absolutely required and the Government was also conscious of this particular fact. It, therefore, not only examined this matter on several occasions but also constituted an Expert Committee on 17-7-1996 to examine the environmental and rehabilitation aspects. Several times the matter was examined by the Government at different stages and follow-up action plans also were actively considered by the Government. The report given by the Hanumantha Rao Committee (HRC) was accepted by the Government subject to certain conditions and the project is being implemented in terms thereof. c
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12. Therefore, at this penultimate stage of the proceedings, it is too late in the day to think as to why the decision was taken to construct the project or decisions have been taken to continue the project though at one stage it was thought it would not be appropriate to continue the same.

13. With these clarifications, we will now proceed to the specific aspects of safety and conditional clearance. g

Safety aspects

14. Tehri Dam is being constructed at the confluence of Bhagirathi and Bhilangana rivers in the neighbourhood of Garhwal town in the State of Uttaranchal. According to the petitioners the structure of the dam itself is not safe and it is also alleged that its existence increases the seismic vulnerability of the entire Himalayan region. By way of abundant caution they want the h

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a authorities concerned to conduct three-dimensional (3-D) non-linear test to evaluate the earthquake susceptibility of the dam against the maximum-credible earthquake. They also insist upon the computer-simulated dam-break analysis to estimate the magnitude of damage in the unexpected eventuality of any dam failure. The respondents submitted that they explored the possibility of such tests and arrived at a conclusion that such tests are neither practical nor necessary in the present case.

b **15.** The respondents added that the studies related to site-specific assessment of seismicity, testing of fill materials for determining dynamic properties and detailed dynamic analysis, were carried out independently by two agencies; that they are the Department of Earthquake Engineering, University of Roorkee and Hydro Project Institute (HPI), Moscow; that the result of their studies indicated that earth-and-rockfill-type dams as chosen for Tehri are the safest man-made structures in earthquake-prone zones due to their large inertia, high damping and high flexibility; that the dam fill material is being compacted to concrete-like density, which provides high strength while retaining the flexibility; that relatively flat slopes have been adopted for upstream and downstream of the dam, which are flatter than the slopes provided in some recent high dams built/planned in regions of similar high seismicity; that, therefore, the Tehri Dam is a fail-safe structure and the design has been found safe against the worst earthquake scenario of the area, even when very conservative and severe seismic parameters were assumed for these tests. A High-Level Committee under the Chairmanship of Director General, Geological Survey of India, which consists of members from Central Water Commission; Director, National Geophysical Research Institute; Head of Department of Earthquake Engineering, University of Roorkee and Dr V.K. Gaur, the then Secretary, Department of Ocean Development was also constituted to examine issues concerning safety of the dam. The Committee in its report established that even in the worst scenario of possible occurrence of a large-magnitude earthquake of 8+ on the Richter scale with the probable location at a depth of 15 km below the dam site, the same would be safe. They concluded that the dam design is safe and added that all danger arising out of the seismicity has been taken note of and taken care of in the planning of the Tehri Dam Project.

g **16.** From the documents before us, it could be gathered that the Government also referred the matter to Seismic Expert Prof. Jai Krishna who was the former President of International Academy of Earthquake Engineering and also the Vice-Chancellor of the University of Roorkee. He examined the matter and opined that “*the proposed dam section for the Tehri Project is safe from the point of view of seismicity of the region*” and “*since conservatism has entered at almost every step of decision-making, the overall factor of safety of the dam is high enough to eliminate any risk from earthquake of the future*”. The next Expert Group that consisted of the Director General, Geological Survey of India, made a report on 25-7-1991 and recommended that the reports of the High-Level Committee and the review given by Prof. Jai Krishna should be accepted. The seismic stability of

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the dam was further tested through the Hydro Project Institute, Moscow, against actual accelerogram of the Gazli earthquake for the maximum vertical acceleration of 1.36 g and horizontal acceleration of 0.72 g both acting simultaneously and the dam design was again found to be safe. Even though the design of the dam had been earlier independently checked by two separate agencies, it was again examined and it was found that the project appears to be safe. Subsequently, during the pendency of this petition, in order to allay fears expressed in certain quarters, the Government of India in June 1996 appointed a group of five experts to examine the relevant scientific and technical reports and other information relating to safety of the Tehri Dam and make its recommendations to the Government for consideration. In the selection of the experts Shri Sundarlal Bahuguna, who has been spearheading the movement against the construction of the Tehri Dam, was also associated and he recommended the inclusion of two engineers apart from the three Seismologists. Thus the names of all the five experts were suggested by Shri Bahuguna. The group of five experts, after a detailed discussion on the various issues related to the seismic safety of the Tehri Dam, concluded that a comprehensive appraisal of the seismic safety of the dam required completion of two key exercises by employing recent advances in conceptual and computational capabilities and they are: (i) quantitative estimation of seismic hazard at all the Tehri Dam sites, and (ii) evaluation of the performance of the Tehri Dam as currently designed, if it was exposed to the estimated seismic hazard at the site. Accordingly, the group of experts got conducted the necessary exercises at their own decided parameters and methods. The group also considered the International Commission on Large Dams Guidelines on Earthquake Analysis Procedure for Dams and Seismicity and Dam Design. Based on these materials the group of experts finally submitted the report on 18-2-1998. They concluded that the “*present design of the dam is expected to be structurally safe to withstand the maximum-credible earthquake during the economic performance life of the dam reservoir system*”. The group of experts was unanimous in its recommendation as stated above. However, as a matter of *abundant caution*, four experts suggested: (i) 3-D non-linear analysis of the dam to evaluate its performance against the maximum-credible earthquake, and (ii) a simulated dam-break analysis to ensure that in the unlikely event of an uncontrolled release of water, the consequences are minimum, be conducted. There was difference of opinion between the four experts and the fifth expert only on the need to undertake these two additional studies as a matter of abundant caution. The Government of India, after receipt of the report of the group of experts, examined the further recommendation of the four out of five experts in consultation with the Central Water Commission, which is a technical body of the Government and nodal agency in the country for planning and designing of river valley projects, who in turn referred the report of the Expert Group together with the need for carrying out the work recommended by way of abundant caution to the National Committee on Seismic Design Parameters which is a standing technical committee and it furnished its

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views. In addition, a plethora of material has been placed by way of various textbooks and studies carried out by other agencies. We think that it is neither feasible nor proper for us to delve into these details. The Government of India, after considering the views thereof, finally decided that there was no necessity to undertake the work recommended further by the four experts by way of abundant caution and clearance to the project was given.

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17. In *Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P.*³ the grant of clearance on 19-7-1990 was called in question before this Court in a writ petition and this Court examined the safety aspects which were brought to the notice of the Court and it was held that the clearance given was not as a result of non-application of mind by the Government on safety and environmental aspects and it was particularly examined with reference to the fact that site of the project is within the earthquake-prone zone and this Court, after specific examination of the record observed that the project was considered by the Environmental Appraisal Committee of MoEF, Committee of Secretaries, High-Level Committee comprising experts of scientific and specialised organisations and also by a renowned expert of international repute and, therefore, the Government considered the question of safety of the project from various aspects more than once and on being satisfied with the reports of the experts gave clearance to the project. In those circumstances, this Court thought fit not to interfere with the same.

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18. This Court dealt with the safety concerns and held that: (SCC p. 50, para 14)

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“In our opinion the Court can only investigate and adjudicate the question as to whether the Government was conscious to the inherent danger as pointed out by the petitioners and applied its mind to the safety of the dam. We have already given facts in detail which show that the Government has considered the question on several occasions in the light of the opinions expressed by the experts. The Government was satisfied with the report of the experts and only thereafter clearance has been given to the project.”

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19. In the present case the Government, even after the decision of this Court which did not interfere with the decision of the Government on safety aspects in *Tehri Bandh Virodhi Sangarsh Samiti case*³ again seriously examined safety aspects as a matter of precaution. The office memorandum dated 1-2-1999 of the Ministry of Power, Government of India, before us testifies this position. Green signal for further works was given by the Government after satisfying itself with the safety of the dam. A mere revisit to the earlier decision cannot be counted as a sign of doubt regarding the dam safety. If the Government so desires it could have abandoned the project. The necessity or effectiveness of conducting 3-D non-linear test or dam-break analysis was taken into account by the Government and if the Government decided not to conduct such tests upon the opinion of the expert bodies

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³ 1992 Supp (1) SCC 44

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concerned, then the Court cannot advise the Government to go for such tests unless mala fides, arbitrariness or irrationality is attributed to that decision. The decision of the Government is not based on any financial constraints or uncertainty as to technical opinion. It was clearly of the view that the last Committee was unanimous that the Tehri Dam to be constructed is safe but the advice based on abundant caution was not accepted. As a result, we need not re-examine the safety aspects of the dam.

20. This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project. Experts in science may themselves differ in their opinions while taking decisions on matters related to safety and allied aspects. The opposing viewpoints of the experts will also have to be given due consideration after full application of mind. When the Government or the authorities concerned after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate for the court to interfere. Such matters must be left to the mature wisdom of the Government or the implementing agency. It is their forte. In such cases, if the situation demands, the courts should take only a detached decision based on the pattern of the well-settled principles of administrative law. If any such decision is based on irrelevant consideration or non-consideration of material or is thoroughly arbitrary, then the court will get in the way. Here the only point to consider is whether the decision-making agency took a well-informed decision or not. If the answer is “yes”, then there is no need to interfere. The consideration in such cases is in the process of decision and not in its merits.

21. In this context, reliance is sought to be placed on the decision of this Court in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*⁴. In that decision, this Court viewed that in scientific matters of complex nature resulting in uncertainty, reference has to be made to a specialised technical/expert body and not merely decide the matter on well-known principles of administrative law of court not re-examining the matter if all relevant considerations have been taken note of. In the present case when once a decision had been given by this Court on safety aspects on an earlier occasion and thereafter the matter was again examined by the Government through different agencies and had taken a decision as to the necessity of further test by way of abundant caution should be relevant or not, we do not think, we can sit in judgment over such decision, particularly when there is no difference of opinion among the experts as to the safety of the dam. It is only by way of abundant caution such studies were suggested by four out of five experts. Thus the usefulness or necessity thereof itself being in doubt, as expressed in various reports and textbooks relied on by either side, the principle stated in *A.P. Pollution Control Board case*⁴ cannot be applied. In that decision it was noticed that inadequacies of science had led to the precautionary principle leading to the principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed

⁴ (1999) 2 SCC 718

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on those who want to change the present state of affairs. After detailed consideration of this decision, it is held in *Narmada Bachao Andolan case*¹:

a (SCC pp. 727-28, paras 123-24)

“123. It appears to us that the ‘precautionary principle’ and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known.

b When there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to be caused then, in order to maintain the ecological balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution. On the other hand where the effect on

c ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what mitigative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be an ecological disaster. It is when the effect of the project is known that the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance.

d Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

124. In the present case we are not concerned with the polluting industry which is being established. What is being constructed is a large dam. The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in a change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in an ecological disaster. India has an experience of over 40 years in the construction of dams. The experience does not show that construction of a large dam is not cost-effective or leads to ecological or environmental degradation. On the contrary there has been ecological upgradation with the construction of large dams. What is the impact on environment with the construction of a dam is well known in India and, therefore, the decision in *A.P. Pollution Control Board case*⁴ will have no application in the present case.”

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ASPECTS RELATED TO CONDITIONAL CLEARANCE

22. Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In *Vellore Citizens' Welfare Forum v. Union of India*⁵ and in *M.C. Mehta v. Union of India*⁶ it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of “sustainable development”. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming

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⁵ (1996) 5 SCC 647

⁶ (2002) 4 SCC 356

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generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy.

23. In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. Maybe, in a different context, the right to development is also declared as a component of Article 21 in cases like *Samatha v. State of A.P.*⁷ and in *Madhu Kishwar v. State of Bihar*⁸.

24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The “development” is not related only to the growth of GNP. In the classic work, *Development As Freedom*, the Nobel prize winner Amartya Sen pointed out that “the issue of development cannot be separated from the conceptual framework of human right”. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples’ well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.

25. Therefore, the adherence to sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to “sustainable development” cannot be singled out. Therefore, the concept of “sustainable development” is to be treated as an integral part of “life” under Article 21. Weighty concepts like intergenerational equity (*State of H.P. v. Ganesh Wood Products*⁹), public trust doctrine (*M.C. Mehta v. Kamal Nath*¹⁰) and precautionary principle (*Vellore Citizens*⁵), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

26. To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 (for short “the Act”) and this is quite necessary to guarantee the “right to life” under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a

7 (1997) 8 SCC 191

8 (1996) 5 SCC 125

9 (1995) 6 SCC 363

10 (1997) 1 SCC 388

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- barren shell. In other words, *sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of "life" under Article 21*. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act. The object and purpose of the Act: "to provide for the protection and improvement of environment" could only be achieved by ensuring strict compliance with its directions. The authorities concerned by
- a* exercising their powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfilment of conditions or direction under the Act. Without strict compliance, right to environment
- b* under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act. The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment vide its order dated 19-7-1990 has to be viewed from this perspective.
- c* **27.** The relevant portion of the environmental clearance certificate of the Tehri Dam dated 19-7-1990 is verbatim extracted hereunder:
- d* "Tehri Dam Project was initiated in 1972 for an installed capacity of 600 MW, now revised to 2400 MW to be taken up in three stages. The collection of data and preparation of environmental action plans is yet to be finally completed. Meanwhile, an amount of Rs 440 crores has been
- e* spent on various project-related works. The Department of Power and the Government of Uttar Pradesh have assured to furnish all the detailed action plans according to a prescribed time schedule and to implement the action plan *pari passu* with the implementation of the engineering works.
- After taking into account all the factors, the *Tehri Dam Project is accorded environmental clearance subject to the following conditions:*
- f* (A) The project authorities must get the safety aspects and the design of the dam approved by the High-Level Expert Committee constituted for the purpose.
- (B) Comprehensive environmental management plans must be formulated to the satisfaction of, and got approved from, the Ministry
- g* of Environment and Forests in a time-bound manner as outlined below:
- 3.1. *Catchment area treatment*
- Obligations of Tehri Hydro Development Corporation (THDC)*
- (a) THDC will, as per the recommendations of the Remote
- h* Sensing Applications Centre, U.P., identify the critically degraded areas conforming to the 'very high' and

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'high erodability' classification and prepare action plans by 31-12-1990 for the treatment of these areas in consultation with the Government of Uttar Pradesh. a

(b) The action plans prepared will ensure that the catchment area treatment is completed before 31-12-1995 on the basis of detailed annual action plans.

(c) THDC will put at the disposal of the Government of Uttar Pradesh all the requisite resources annually to implement the action plans. b

Obligations of the Government of U.P.

The Government of U.P. will cooperate in the preparation of comprehensive action plans for catchment area treatment by 31-12-1990 and to implement these action plans by 31-12-1995 with the resources provided by THDC. c

3.2. Rehabilitation

THDC will, through a reputed institution, undertake a socio-economic study of the measures needed to ensure that the standard of living of the oustees is not affected due to the project. The study will be completed by 30-6-1991. THDC will implement such recommendations as may be made by the Ministry of Environment and Forests for rehabilitation after consideration of the study report by MoEF. The rehabilitation package covering population affecting Koteshwar Dam as well as those living on the rim of the reservoir and likely to be affected will be prepared before 31-3-1991. d

3.3. Command area development e

The Government of U.P. will prepare a plan for command area development for the areas to be irrigated from the Tehri Project by 31-3-1991 and will implement this package by 31-3-1995.

3.4. Flora and fauna f

THDC will commission a study of the flora and fauna going under submergence as well as those affected by related works in the region so that reclamation plans can be worked out along with setting up of botanical gardens. The study of flora and fauna must be completed by May 1991 and action plan prepared thereafter to be executed before impoundment commences. g

3.5. Water quality maintenance

(a) THDC will set up water quality monitoring stations to monitor the quality of reservoir water.

(b) THDC will initiate a water quality modelling study to formulate the measures needed to preserve the water quality and prepare an action plan to implement the measures recommended by such a study. h

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3.6. *Disaster management*

- a* A disaster management plan will be worked out by THDC by 31-3-1991 in consultation with the likely affected population and the area authorities.

3.7. *Bhagirathi Basin Management Authority*

- b* The Department of Power will ensure the setting up of the Bhagirathi Basin Management Authority on a statutory basis through legislative action before 31-3-1991.

- c* (C) The completion of studies, formulation of action plans and their implementation will be scheduled in such a way that their execution is *pari passu* with the engineering works failing which the engineering works would be brought to a halt without any extraneous considerations. These conditions will be enforced, among others, under the provisions of the Environment (Protection) Act, 1986.”

28. In a letter sent on 21-10-1994 by the Additional Director, MoEF, it is noticed that even though the Tehri Dam Project was accorded environmental clearance in July 1990, the status of implementation of various safeguard measures is lagging far behind.

- d* **29.** A communication had been sent as early as in February 1990 containing the report of the Environmental Appraisal Committee, Ministry of Environment and Forests, Government of India wherein it is stated as under:

“... after a careful examination of the information and data available, the Committee has come to the unanimous conclusion that the Tehri Dam Project, as proposed, should not be taken up as it does not merit environmental clearance”.

- e* **30.** It was also mentioned in another letter dated 19-7-1990 that “conditional clearance to the project was given by the Ministry of Environment and Forests. It was specifically provided that completion of studies, formulation of action plans and their implementation will be scheduled in such a way that their execution is *pari passu* failing which the engineering work would be brought to a halt. This condition will be enforced among others under the provisions of the Environment (Protection) Act, 1986.”

- f* On 12-4-1991 another letter was sent again noticing the failure of Tehri Hydro Development Corporation (THDC) to comply with the conditional environment clearance and pointed out total dissatisfaction on the compliance contained in the conditional clearance. It was stated that THDC should submit comprehensive environmental plans as a component of the overall environment management plans and that the plan should be effectively implemented failing which action under the Act would be initiated. On 5-9-1991 a notice under Section 19(b) of the Act was issued for stopping the work on Tehri Hydroelectric Project on the ground that the non-fulfilment of conditions provided in the environmental clearance within the stipulated time frame has resulted in the lapse of the said clearance and, therefore, the work
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of the project should be stopped immediately. It is on the basis of these communications it is contended why the decision to continue the project was taken on 21-10-1994 even though the consequence was disastrous as the implementation was lagging behind. a

31. Thereafter, it was noticed that on various aspects follow-up is required as mentioned hereunder:

<i>Environmental issue</i>		<i>Target date</i>	<i>Status</i>	
1.	Catchment area treatment	31-12-1990	Only basic data has been received but the status of implementation and the bar chart is still awaited.	b
2.	Rehabilitation	Socio-economic studies by 30-6-1991 and from actual implementation 31-3-1993	The status report does not clearly indicate the task completed so far and the proposed completion programme. In fact it was agreed by Department of Power that a meeting would be arranged with the officials of Administrative Staff College of India who have undertaken the socio-economic survey of the project-impact area. This meeting is yet to take place.	c d
3.	Command area development	31-3-1993	Group has yet to submit the command area development plan.	e
4.	Flora and fauna studies	May 1991	The report of flora and fauna surveys has been received which has been forwarded to BSI and ZSI for their observations by us. Comprehensive action plans are still to be formulated.	f
5.	Disaster management plan (DMP)	31-3-1991	The final version of DMP has not been received in the Ministry.	g
6.	Bhagirathi Basic Management Authority	31-3-1993	The Group has issued a government order on 30-3-1991 regarding setting up of the authority. Legislation, however, is yet to be brought out.	h

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32. The main conditions that the Ministry of Environment fixes at the time of granting clearance to the Tehri Dam Project is to comply with the conditions attached to the following aspects:

- a
1. Catchment area treatment
2. Command area development
3. Flora and fauna
4. Water quality maintenance
- b
5. Bhagirathi Basin Management Authority
6. Disaster management
7. Rehabilitation

33. On 17-9-1996, the Government of India, on demand for further examination of certain rehabilitation and environmental issues relating to the Tehri Project, appointed a Committee headed by Prof. C.H. Hanumantha Rao. This Committee basically looked into the rehabilitation policy, its implementation and the implementation of various conditions for environmental clearance. Later, the Hanumantha Rao Committee submitted its report (hereinafter, HRC Report) in October 1997. The Government of India accepted certain vital suggestions in the HRC Report. The petitioners allege that even the HRC Report, as accepted by the Government, was not complied with. They argued, based on the clearance certificate that the conditions have to be carried out *pari passu* with the engineering works and prayed that the impoundment shall not be allowed till its compliance.

34. The respondents deny this contention and submit that the environmental plans connected with the project are to be implemented *pari passu* with the implementation of engineering works and submit that various actions have already been initiated in this regard.

35. On the question of catchment area treatment, it is contended that the Remote Sensing Application Centre, U.P. made a report identifying the critically degraded areas conforming to the very high and high erodability classification which has been received and submitted to MoEF. Adequate financial provisions have been made as per requirements depending on the availability of the funds with THDC for the proposed treatment and at the time of filing of the first of the counter-affidavits as late as in July 1992, 17,700 hectares have already been treated.

36. Rehabilitation programme has also been taken up in consultation with the local representatives of the affected population and Administrative Staff College of India, Hyderabad. Similar rehabilitation package as that for Tehri is proposed for families affected by the Koteshwar Dam as well as for those living on the rim of the reservoir. The Government of U.P. had indicated to the MoEF that implementation of plans is going on and considerable work has already been completed in this area. Studies had been conducted by the Botanical Survey of India and Zoological Survey of India regarding flora and fauna and action plans were under preparation. Water quality maintenance was being modelled on a report to be made by

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Roorkee University and it was assured that water quality monitoring station at appropriate time during the construction will be set up. A disaster management plan has been submitted by THDC to the Government of India. On 23-3-1990, by issuance of a notification, the Government of U.P. has set up the Bhagirathi River Valley Authority. Therefore, it is contended that formulations of environmental action plans and their implementation is being carried out *pari passu* with the construction of engineering works. While 10% of the expenditure over the estimated cost had been incurred on the project works, the corresponding expenditure incurred on rehabilitation works and the environmental measures was 41% and 52% of the estimated cost respectively as in March 1992. It is, therefore, contended that the conditional clearance given to the respondents has not lapsed. Even the Government proceeded on the basis that the project was still a going project and, therefore, appointed two Expert Committees even as late as in 1996 to examine — one on the safety aspect and the other on environment and rehabilitation aspects.

37. As late as on 14-3-2002 an affidavit had been filed on behalf of the Government of India. It is pointed out therein that the MoEF while according environmental clearance to the project had laid down certain conditions in its letter dated 19-7-1990. These conditions had, *inter alia*, enumerated certain studies which were to be carried out and based on their findings, action plans had to be drawn up for execution *pari passu* with the construction of the project. It is also pointed out that all the required studies had been completed and their reports submitted to the MoEF and these studies indicated that no environmental damage would be caused by the construction of the project which cannot be remedied by adoption of appropriate measures and for this purpose, action plans wherever called for have been and are being formulated for environmental upgradation. It is further pointed out that implementation of the project and the action being taken in regard to environmental concerns at the cost of the project would lead to improvement in the existing environment/ecology of this region. HRC was constituted to examine the implementation of various conditions of environmental clearance except that relating to safety aspects and design of the Tehri Dam and suggest additional or improved environmental safeguards, if any, based on data and information now available. HRC, after examining various documents and discussions with experts, officials and local people, and visiting the project site, submergence area and catchment areas submitted its recommendations to the Government. After detailed deliberation, the Government of India conveyed its decisions on the implementation of recommendations of HRC on environment and rehabilitation aspects of the project on 9-12-1998.

38. In this context it is necessary to go into the details of the compliance with each condition. The abovementioned first five conditions are directly connected with the protection of environment vis-à-vis sustainable development. The last two conditions (disaster management and rehabilitation) are due to slightly different reasons. We will deal with them separately.

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- 39.** The main controversy in this case is regarding the *pari passu* compliance with the conditions in the clearance certificate. Before going into
- a any detailed evaluation of these aspects the term “*pari passu*” needs to be explained. The lexical meaning of the Latin word *pari passu* is — at an equal rate or pace, with simultaneous progress, proportionately etc. This term is generally used in the context of creditors who, in marshalling assets, are entitled to receive out of the same fund without any precedence over each other. Anyway, the required application of its meaning in the background of
 - b the present case is clear. The works, which are fixed up as conditions attached to the clearance, will have to be carried out simultaneously with the engineering works. So by the time the engineering works finish, the conditions should also have been fulfilled.

ENVIRONMENTAL CONDITIONS

Catchment area treatment

- c **40.** Catchment area is that area from which water directly or indirectly flows into the river, stream etc. Total catchment area of the Tehri Project is 6921.25 sq km. This area is divided into 16 sub-watersheds and 149 micro-watersheds, of which, 3557.99 sq km is estimated to be snowbound, rocky, precipitous, alpine banks or within the submergence area. Main
- d purposes of catchment area treatment are to regulate the flow of water, prevention of soil erosion, to minimize the negative impact of the project itself on the catchment and to protect and regenerate vegetation in the catchment area and the water resources.

- e **41.** Upon the acceptance of the HRC Report, the Union Government entrusts the responsibility of treatment of degraded areas of “high” and “very high” erodability to THDC. At the same time the State Government has to formulate separate plans for the treatment of “medium” and “low” categories of erosion. On principle, the Union accepts to treat the entire degraded catchment of all categories. The treatment of the entire catchment of high and very high erodability classification has to be completed *pari passu* with the construction of the project. It is submitted on behalf of the respondents that
- f an area of 37,589 ha has been treated till December 2001 and soil-conservation measures are being implemented as part of the treatment programme for upgrading the environment of the entire region. The treatment of the remaining area i.e. 3670.60 ha is proposed to be completed by September 2003.

- g **42.** On the question of catchment area treatment, it is stated that treating degraded areas in the Bhagirathi catchment started even as early as in 1970. The area coverage under CAT since the inception of the project was 22,000 hectares which does not include the areas covered under CAT prior to inception of the project. As per the order of the Government accepting the recommendations of HRC, the project authorities should strive to complete as far as possible the treatment of the entire catchment of high and very high erodability classification *pari passu* with the construction of the project so as
- h to be completed before commissioning of the project and it would be ensured that all direct-draining areas of high and very high erodability must be

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completed before the ensuing monsoons and the present status of the coverage under this category is as follows:

Identified high and very high erodability area	52,204 ha	a
Completion of CAT carried out till date	40,486.4 ha	
Balance area to be treated under CAT	11,717.6 ha	
Balance area in direct draining (under forest)	3670.6 ha	

43. The target for the area remaining to be treated as per CAT in high and very high erodability area will be achieved by September 2003 and with the completion of the remaining area treatment of the catchment under direct draining will be completed. As regards low and medium erodability category actions have been initiated by the Government of U.P. and an action plan has been formulated for treating such areas out of 10,000 hectares of forest area and 3500 hectares of non-forest area. This would be in addition to 52,204 hectares as per the 1998 CAT plan. The project authorities have completed compensatory afforestation on 4516 hectares of non-forest land in the districts of Jhansi and Lalitpur and the Government of Uttaranchal has proposed to treat the said areas by taking up the catchment areas under densification, fuel wood plantation and restoration of degraded forests. b c

44. The present status in this regard is that the catchment area treatment was under implementation by the State Forest Department in the catchment of high and very high erodability classification based on the earlier CAT plan formulated by the State Forest Department under which an area of 22,746 hectares was treated up to March 1994. Subsequently, it was decided to treat only the direct-draining catchment of high and very high erosion class based on the satellite images. Accordingly, a CAT plan, 1994 was formulated and submitted to MoEF for treatment of an additional catchment area of 13,500 hectares in addition to the area earlier treated i.e. a total area of (22,746+13,500) equivalent to 36,246 hectares. MoEF, however, directed in July 1998 that 52,204 hectares of high and very high erosion classification, in the entire catchment, was to be treated at the cost of the Tehri Project. This requirement was incorporated by the Government in its decisions on the HRC recommendations. As decided by the Government, the project is now doing CAT in the entire degraded catchment in area of high and very high erosion class after excluding the areas already treated. An area of 37,591.4 hectares had already been treated till December 2001. The soil-conservation measures are being implemented as part of the CAT programme for upgrading the environment of the region. The remaining area is proposed to be treated by 2002-03. The CAT programme is presently being implemented by the Government of Uttaranchal. d e f g

Command area development

45. Command area development primarily aims to avert the problems of waterlogging and emergence of salinity. This is very important in maintaining the environmental balance. The Union Government fixes the responsibility on the State of U.P. to finalize the command area plan and to furnish the same to the Union Ministry of Power for onward submission of h

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the same to the Ministry of Environment and Forests. Quoting the affidavit filed by the State of Uttaranchal that

a “... the Government of U.P. submitted the command area development plan (CADP) which was formulated by the Ministry of Power and was forwarded to MoEF in July 1998. The MoEF desired CADP be revised by GOUP incorporating information on cropping pattern and groundwater. The revised CADP, is in process by the Government of U.P. ...”

b 46. The command area development plan was submitted by the Government of U.P. to MoEF in July 1998 and the modification of the plan as suggested by MoEF is under process. It is submitted that the existing canal networks will be utilised to irrigate extended cultivable command area of 2.7 lakh hectares and stabilize existing irrigation in 6.04 lakh hectares.

Flora and fauna

c 47. The HRC Report points out the scantiness in the studies carried out by the Botanical Survey of India (BSI) and Zoological Survey of India (ZSI) on the impact of the Tehri Project on flora, fauna and biodiversity. Based on the HRC Report, the Government of India has decided to conduct further studies on the flora and fauna of the project region extending to two annual cycles. It also decides to carry out appropriate remedial measures based on the outcome of the studies. Another decision was regarding the carrying out of action plan to protect *Mahaseer* fish. It is resolved by the Government to carry out other pre-impoundment studies and to take consequential supplementary measures. Finally, they agreed to conduct another study on the impact of impoundment on the flora and fauna in the post-impoundment period.

e 48. In regard to flora and fauna, the study conducted by various agencies has brought out that no rare species come under submergence of the reservoir and that there is no adverse impact on the fauna of the dam except in case of *Mahaseer* fish. Study reports by BSI and ZSI were submitted to the MoEF along with plans for protection/propagation of *Mahaseer* fish recommended by ZSI and BSI had also recommended certain species to be planted which is being done by the State Forest Department as a part of the CAT programme. Action plan for preservation of *Mahaseer* has been entrusted by THDC for implementation to the National Research Centre on Cold Water Fisheries, Bhimtal. A botanical garden in an area of 14.28 hectares is also under implementation by the Uttaranchal State Forest Department near the reservoir and about 50% of its work is completed. It is also submitted that the site development work is completed and induced artificial breeding work will be completed by March 2004.

Water quality maintenance

h 49. At the threshold itself HRC observed that it is not in a position to go into the correctness of the scientific conclusions of various bodies on the maintenance of water quality. Nevertheless, it expressed certain opinion regarding the general maintenance of water quality. The Central Government decides to follow the advice of the Central Water Commission pertaining to

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the effect of water quality due to impoundment. They also submitted that THDC is asked to formulate an action plan to set up water quality monitoring stations and to study the impact on the quality of water downstream, aspects of mineral contamination etc. and to take appropriate steps.

50. As regards the water quality monitoring, a report was submitted by University of Roorkee and its report established that water quality of the reservoir shall not be harmful for aquatic life or other downstream water uses. Proposal for setting up of water quality monitoring stations as initiated by THDC with the Central Water Commission under the Ministry of Water Resources was made. CWC has made a revised proposal based on certain parameters recommended by the Central Pollution Control Board. Based on this, THDC in association with CWC would be setting up monitoring stations, the work on which shall be completed before the impoundment of the reservoir.

Bhagirathi Basin Management Authority

51. MoEF decides to link the clearance of the Tehri Project with development of Bhagirathi basin. This is aimed in the larger interest of protecting the environment of the entire region. Development of Bhagirathi basin, therefore, is very important in the context of this case.

52. The Government of U.P. had constituted the authority initially by an executive order, Bhagirathi River Valley Authority. Subsequently, Bhagirathi Basin Management Authority had been constituted on a statutory basis by a notification issued on 24-3-1999. Plan for greenbelt development along the rim of the reservoir to prevent soil erosion and flow of silt has been prepared. For monitoring the implementation of these aspects, an institutional mechanism has been created. The regional office of MoEF is set up in the States of U.P. and Uttaranchal and the same is monitoring all developmental projects including the projects at Tehri. The status of compliance with forest clearance issued in 1987 and 1997 has been monitored and the status of compliance with environment conditions was monitored in 2001 and 2003. Points of non-compliance as and when noticed have been taken up for necessary corrective action.

Impact on human health

53. Large quantities of static water provide fertile breeding ground for disease-carrying vectors. River valley projects have been cited as a cause for the spread of many epidemics. Considering the fact that the reservoir of the Tehri Project is below 1000 m altitude, the chances of vector-breeding are very high. Earlier the Bhumbla Committee raised this issue pertaining to the Tehri Dam in 1990. But this has not figured in the clearance given to the project by the MoEF. The HRC Report pointed out this aspect and made the recommendation to undertake a comprehensive study of the potential health impacts of the Tehri Dam reservoir, reservoir of the downstream dam and the irrigation canals and mandated to get the plan approved by the Ministry of Health, Government of India. It also recommended its quick implementation. The Government accepted this reference in the HRC Report. Apart from this acceptance, the petitioners allege that no works have been carried out.

54. Right to health is a fundamental right under Article 21. Protection of this is inextricably linked with clean environment. Clean and healthy environment itself is a fundamental right. This position was reiterated by this Court in *M.C. Mehta v. Union of India*¹¹. Therefore the impact of the project on human health cannot be given a go-by. It has to be seriously scrutinized.

55. All the above-discussed aspects aimed at maintaining the ecological balance and protecting human rights are integral elements of sustainable development. Rupture to the Himalayan environment, if any, due to the dam construction could only be compensated by strictly complying with these conditions attached to the clearance. These aspects are vital for life and sustainable development of the area. If these aspects are not complied with, human life and whole Himalayan environment will be the casualty. Only its strict compliance could maintain the ecological balance.

Disaster management

56. Disaster management means all aspects of planning, coordinating and implementing all measures which are necessary or desirable to prevent, minimize, overcome or to stop the spread of a disaster upon the people or any property and includes all stages of rescue and immediate relief. It is a proven fact that a lot of human suffering and misery from a large number of disasters can be mitigated by taking timely action, planning and preventive measures. It is possible only through well-functioning disaster-management framework. This will enable us to minimize, control and limit the effects of disasters and will streamline the disaster-management exercises. Our present relief-centred reactive approach after the striking of disaster needs to be changed into preparedness-oriented proactive attitude. This is the aim of predisaster preparations. Disaster-management plans have to play an integral role in this exercise. They are blueprints for the management of disasters. The disaster-management plans should contain the aspects of disaster prevention and of ways for its management in the untoward occurrence of a disaster. A proper plan will place the disaster-management exercise on a more firm foundation.

57. It is a welcome gesture that the clearance to this project contains a condition for chalking out disaster-management plan. Disaster-management activities should be integrated with the developmental activities. Incidentally, this is also the resolve of the Yokohama Strategy of the United Nations International Decade of Natural Disaster Reduction, to which India is a party. There is an affirmative obligation on the part of the State to preserve and protect human life and property. This obligation is an integral element in fulfilling developmental endeavours. Therefore, disaster management cannot be separated from sustainable development.

58. The respondents submit that the Ministry of Agriculture has approved the disaster-management plan prepared by THDC and added that they are going to dovetail disaster-management plan of the State Government at the district level into the plan prepared by THDC. As regards the disaster management, the nodal agency is the Ministry of Agriculture and

¹¹ (2001) 3 SCC 756

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disaster-management plan was approved by the said Ministry in 1992 and a Steering Group has been constituted by the Government in every district under the Chairmanship of the District Magistrate for flood-fighting and related activities and the Steering Group will implement the disaster-management plan in case of any eventuality from the dam. The Government of Uttaranchal has also constituted a Steering Group under the Chairmanship of the Principal Secretary (Irrigation and Energy), to meet any emergency situation due to the dam. But effectiveness of all these exercises is in the proper carrying out of management activities.

Rehabilitation

59. The construction of the Tehri and Koteshwar Dams will result in the formation of two lakes having a spread of 42 sq km and 2.65 sq km respectively at full reservoir levels. The Tehri Dam will submerge Tehri town and 22 villages. Another 74 villages will be partially affected. A major portion will get affected in the first phase with the construction of the cofferdam and the remaining by final impoundment. In addition, 2 villages fully and 14 villages partially will be affected by the Koteshwar Dam. By the construction of New Tehri Town, project works and colony construction will affect another 13 villages. In total, the Tehri Power Project will affect 37 villages fully, 88 villages partially and Tehri town. Rehabilitation of these much-affected people is the main issue before us.

60. Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. Thus observed this Court in *Narmada Bachao Andolan case*¹. The overarching projected benefits from the dam should not be counted as an *alibi* to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence. Such a time-limit was fixed by this Court in *B.D. Sharma v. Union of India*¹² and this was reiterated in *Narmada*¹. This prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment.

61. The rehabilitation package is prepared. It is also made clear that the rehabilitation conditions in this case are also applicable to the oustees of the Koteshwar Dam as well as those living on the rim of the reservoir and to all those who are likely to be affected by the project. The authorities concerned will have to take proper steps to rehabilitate all those who are entitled to rehabilitation before six months of the impoundment. Without the completion of rehabilitation there shall not be any impoundment.

62. According to the affidavit filed by M.L. Sharma, Under-Secretary, Ministry of Power, on behalf of the Union of India, reported on the status of

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a the follow-up action on the recommendations of the two Expert Committees constituted by the Government of India on environment and rehabilitation aspects of the project and the recommendations made by HRC were considered by the Central Government in consultation with the Government of U.P. it was decided to implement those recommendations as per the decisions indicated against each of the recommendations annexed to the office memorandum dated 9-12-1998. It is also made clear that the expenditure shall be shared by the Government of India and the Government of U.P. in the ratio of 60:40 and it was also decided that the Government of U.P. shall take over the direct responsibility for the entire rehabilitation task to be handled directly by its officers under the overall supervision and control of the Commissioner, Garhwal Division for which the State Government shall issue appropriate orders accordingly. Recommendations of HRC, as accepted by the Government, have been produced before us.

c **63.** It is contended on behalf of the Government that though developmental programmes are intended to benefit the citizens of the country but when displacement is on a large scale it is the moral duty of the State to ensure that those who are being displaced are properly looked after. This Court in *Narmada Bachao Andolan case*¹ noticed that displacement of people living on the proposed project sites and the areas to be submerged is an important issue and a properly drafted relief and rehabilitation plan would improve the living standards of displaced persons after displacement. When clearances are given, conditions regarding preservation, conservation and rehabilitation are imposed and those conditions will have to be fulfilled by the authorities concerned to implement the project.

e **64.** When the Government in its concern in this regard had constituted HRC and HRC had made various recommendations, some of which have been accepted, as adverted to earlier, certain grievances were set up in an affidavit filed on behalf of the petitioners on 4-9-1999 before this Court and our findings upon those grievances are as follows:

f 1. That HRC gives only 2 acres of land to each displaced family is not satisfactory. In the case of *Sardar Sarovar Project* in Gujarat, it is contended that each family is getting 2 hectares of land as a minimum and there is no logic for discriminating against the project-affected persons of the Tehri Project and such discrimination violates their fundamental rights under the Constitution to be treated as equal under the law. We do not think that it would be appropriate to hold that the extent of land recommended by HRC is inadequate or insufficient. Such recommendation has been made by HRC after due deliberation in the matter on the availability of the land in the region, the lifestyle of the persons affected, their needs and other relevant factors in this regard. Above all, the project is being carried out in a hilly area where land is very scarce. In such circumstances, we do not think any comparison can be drawn between the Sardar Sarovar Project and Tehri Project. Hence we reject this contention raised on behalf of the petitioners.

h 2. The next recommendation in respect of which objection is raised is that the Government of India has chosen to treat as separate families sons

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and unmarried daughters who have attained the age of 21 years on the prescribed date. It is urged that 18 years should have been taken as the age for such classification and not 21 years. These matters are in the realm of decision of the recommendatory body and the Government. If the Government had chosen any other age, we could not have held it to be irrational. The contention that voting rights to citizens had been given even at the age of 18 years has no relevance to the facts under consideration. Therefore, this contention also does not deserve our intervention.

3. The next objection is raised in regard to major sons and unmarried daughters not being given land but only cash; and this is not acceptable as the same results in discrimination particularly once they have been recognised as separate families and such discrimination would be violative of their fundamental rights under the Constitution and it is contended that all major married sons should be given 2 hectares of land as a minimum and all the other benefits due to them as a displaced family under the package and they can be given the option of taking cash, equivalent to the value of 2 hectares of land in lieu of the land, if they so desire. This argument also cannot be accepted because as stated earlier, on account of scarcity of land it may not be feasible to provide land to every family and in even such families as have been treated for purposes of giving larger benefit major sons and unmarried daughters are treated as a separate family and not for any other purposes. Similarly, the other contention that the unmarried sons and daughters should be treated as half a family unit and should be given half hectare of land or cash in lieu thereof, cannot be accepted.

4. The contention now put forth is that the lands have not been acquired as yet for the purpose of rehabilitation and the affected population is not rehabilitated as yet and until they are relocated together no further progress of the work should be allowed and it is further contended that if the families are displaced for the project these affected persons should be rehabilitated keeping in view the policy, package and procedure applicable to the Tehri Project.

65. In regard to the cases where families have already been shifted and where rehabilitation has already been done, HRC recommended only cash amount awarded to be paid instead of land and the cash option is recommended considering lack of land available for rehabilitation. Major married sons receive Rs 1,50,000 and major unmarried sons and major unmarried daughters receive Rs 75,000 each. The Government accepted this recommendation subject to the condition that all additional living eligible family members of fully affected families as on 19-7-1990 (excluding those who are given land for cultivation) including families already shifted in the past to the resettlement colonies from their earlier settlements would be eligible to receive payment of an ex gratia amount equivalent to 750 times the minimum agricultural wage which at current rates is Rs 33,000 per person. These are matters of policy and when the Government takes such a decision

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bearing in mind several aspects, we do not think this Court should interfere with the same.

- a **66.** In cases where families have not been shifted or given rehabilitation benefits for newly recognised additional families, HRC recommended that only cash be paid instead of land for same reasons and also recommended that a residential plot measuring 200 sq m be given in a rural rehabilitation centre or cost thereof be given to each major married son. The existing scheme for grant of interest subsidy on loan for construction of house is recommended. The Government accepted the same and stated that it shall be the responsibility of the State Administration based on the census, voters' lists, and if necessary, separate house-to-house survey may be conducted and that additional family members of the landless agricultural labourers as on 19-7-1990 would also be eligible to receive the recommended ex gratia amount as for the fully affected landowner families. The identification of
- c agricultural landless labourers and their additional family members shall be decided by the State Administration. The recommendation for allotting 200 sq m residential land or cash in lieu thereof, to each married son of the rural landowner family was not accepted by the Government. It is contended on behalf of the petitioners that HRC's recommendations should be accepted by the Government but the Government has formulated another scheme instead
- d of what is recommended by HRC and has suggested payment of ex gratia amount in the same manner as is given in respect of the affected families and, therefore, no exception can be taken to the decision of the Government.

- e **67.** The villages were identified by HRC as fully affected where 75% or more families are fully affected. HRC recommended that in the partially affected villages (where less than 75% families are fully affected), the fully affected families will have the option of resettling elsewhere with rehabilitation provisions or remain in the unaffected part of the village. The families that remain there will be allotted land on *pattas* from the leftover surplus land. The Government accepted the recommendations as to the categorisation of the fully and partially affected families and also stated that they would be entitled to rehabilitation benefits as admissible in the existing
- f policy and all additional family members of those families would also be entitled to receive ex gratia payment of Rs 33,000. It is contended on behalf of the petitioners that HRC recommendations should have been fully accepted by the Government. It was made clear by the Government that the partially affected families that remain in these villages shall be entitled to be allotted submerged land on *pattas* subject to availability during the
- g low-reservoir-level periods for temporary cultivation admissible under the existing policy. It is contended on behalf of the petitioners that the practice of allowing cultivation in submerged land during low-reservoir-level periods leads to enhanced siltation of reservoir and, therefore, should be discouraged. The view taken by the Government is that even after accepting the recommendations made by HRC a condition is imposed that during the
- h low-reservoir-level periods, land should be given for temporary cultivation and not otherwise. Therefore, it cannot be said that such a condition is unreasonable.

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68. The next objection raised by the petitioners is in regard to the house construction assistance to each married son and major unmarried sons and major unmarried daughters @ Rs 60,000 and payment of this amount is linked with the progress of construction and shifting. The Government did not accept the same and ordered that the additional members of urban-entitled houseowner families of Tehri town as on the cut-off date of 6-6-1985 would also be eligible to draw ex gratia of Rs 33,000, which, it is stated, has been subsequently enhanced. For similar reasons stated earlier, objections raised on behalf of the petitioners stand rejected.

69. As regards the rehabilitation programme, the status is that socio-economic study concerning the living standard of resettled families was got done through Administrative Staff College of India, Hyderabad, which revealed that the quality of life of the resettled families is far above and better than what the situation was before rehabilitation. A well-defined R&R policy and package has been formulated by the Government of U.P. and THDC for the Tehri Project-affected families which has been improved from time to time to take care of changing requirements. The rehabilitation of the affected families of the project is now being handled by the Government of Uttaranchal. As a part of Phase II programme covering about 2500 fully affected rural families, to be affected due to reservoir impoundment, additional land has been identified and is being provided and acquired in Haridwar and Dehradun districts. Approval of 275.20 hectares of land at Pashulok and 1083 hectares of land at Pathari Block, on lease basis, has been accorded by the Government for resettlement of the remaining fully affected rural families. In addition, proposal for acquisition of about 900 acres of land in Districts Haridwar and Dehradun is being processed. The State Government proposes to complete rehabilitation by June 2003.

70. The present status of the urban rehabilitation programme covers Tehri town involving a total of 5291 families falling within the cut-off date of 6-6-1985. The rehabilitation package available for them is as follows:

“(i) Under urban resettlement programme, affected families are being rehabilitated at New Tehri Town (NTT) or at Rishikesh and Dehradun, as per their option. Apart from compensation for their existing shops and other structures at Old Tehri Town, land/houseowner oustees are provided with plots at a nominal cost for building their houses. The tenants at Old Tehri Town are being given built-up flats, on payment on subsidised terms.

(ii) For the urban shopkeepers, shops have been constructed at NTT, Rishikesh and Dehradun.

(iii) The details of the urban rehabilitation package are given in the rehabilitation policy booklet enclosed hereto as Annexure IV.”

71. As regards the rural rehabilitation, the policy is:

1. Rural oustees to be compensated through allotment of agricultural land or cash in lieu thereof.

2. The rural oustees should be settled in large blocks so that the fabric of their social life remains intact.

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3. Oustees or their representatives be involved to the extent possible in selecting the rehabilitation centres.

a 4. To the extent possible, consideration be given to the preference of the oustees for settlement at a particular centre.

5. Community facilities be provided at each of the rural rehabilitation centres at the cost of the project even if these did not exist at their earlier settlements.

b 72. It is further pointed out that package has been further improved from time to time without changing its basic features and the details of the rehabilitation are set out in Annexure V. Various facilities provided are set out in Annexure VI. The progress of the rural rehabilitation is as follows:

“RURAL DISPLACED FAMILIES

c	Activity	Total fully affected families**	Families rehabilitated/paid compensation	%age progress
	Phase I	2064	2034	98.50
	Phase II	3365*	973	29.00
	Total	5429	3007	55.38

d *In addition to these fully affected families, 3810 families are partially affected who are not to be relocated but are to be paid cash compensation for their part-land coming under submergence. Besides, they would be provided all other benefits as laid down in the policy for them.

**The figures are based on the survey conducted by Rehabilitation Directorate, Government of Uttaranchal in 2001.

PRESENT STATUS OF RURAL REHABILITATION

f	Sl. No.	Description	No. of affected villagers	Total land affected (in acres)	No. of affected families	Fully affected families to be rehabilitated	Number of fully affected families rehabilitated	Balance of fully affected families from rehabilitation
	1	2	3	4	5	6	7	8
	1	Fully submerged/ affected area	37	2293.93	3355	3355	2883	472
	2	Partially submerged/ affected area	72	1936.911	*5884	2074	124	1950
g		Total	109	4230.841	9239	5429	3007	2422

Add 5% extra (for landless persons + increased families since last survey): 121

h Balance families of Tehri Dam for resettlement: 2543

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Note: (i) Above details are based on survey conducted in the year 2001.

(ii) *3810 families are partially affected families, which are not to be shifted.”

73. A socio-economic study of the families rehabilitated was conducted by Administrative Staff College of India, Hyderabad in March 1993. Similarly, the Estimates Committee of the U.P. Legislature has also visited some of the resettlement colonies in 1989 and an extract from their report reads as follows:

“The Committee during its visit inspected the resettlement colonies at Bhaniawala, Raiwala and Pathri Blocks. The Committee found that the facilities provided in these colonies are better than any village in the country. There are well-laid roads. There is provision for street-lighting. Provisions for irrigation and drinking water are available. Efforts have been made to provide the facilities of hospitals and schools.”

74. There have been several further improvements in the rehabilitation package for the project-affected families. House construction assistance for Old Tehri landowners was increased from the minimum of Rs 60,000 to Rs 1,25,000 without any deduction of previously paid compensation with corresponding increase in other slabs. Thus, the amount of house construction assistance admissible to urban house/landowner families is as under:

1. Tenants to be provided constructed flats at lower rate of pre-1989 cost i.e. @ Rs 1819 per sq m in place of Rs 3771 per sq m. The hire-purchase scheme, therefore, as mentioned in the rehabilitation policy has been withdrawn.

2. The shopkeepers of Old Tehri Town to be provided shops in NTT/Dehradun/Rishikesh at pre-1989 cost i.e. @ Rs 1440 per sq m in place of Rs 3707 per sq m.

3. The Government of Uttaranchal have on 7-7-2001 allowed to the shopkeepers of Old Tehri Town a goodwill grant varying from Rs 1 to 3 lakhs on handing over the possession of their shops. 620 shopkeepers have been paid this amount up to 31-10-2001.

4. The Government of Uttaranchal have also allowed 46 numbers of advocates who were practising before the year 1985 to receive a grant of Rs 1.50 lakhs each, distribution of which is under process.

75. Further proposals have also been made for changes in the conditions of eligibility for allotment of 2 acres of land for such of those persons who had sold their holding to meet emergent needs before the issue of Section 4(1) notification under the Land Acquisition Act, grant of house construction assistance to rural families, increase in the amount of cash grants for purchase of seeds and fertilizers and increase in the amount of cash in lieu of land allotment to Rs 5 lakhs as against the existing limit of Rs 2 lakhs. Proposals had since been discussed with the Government of India in the inter-Ministerial meeting held on 14-12-2001. Further developmental

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activities are also to be carried out including construction of bridges and roads, establishment of degree and intermediate colleges in rural areas, an

- a ITI, upgradation and setting up of hospital/medical facilities, improvement of electricity lines and substation etc. The Government further gives the details of the land available and the proposed number of families for resettlement. For grievance redressal certain camps had been organised by the Director, Rehabilitation approved by the Government and a grievance redressal cell is functioning in the Rehabilitation Directorate, Uttaranchal Government.
- b Coordination Committee under the Chairmanship of the Commissioner, Garhwal and co-Chairmanship of the CMD, THDC and having government officials and public representatives as its members, monitors the progress and coordinates between different departments about the progress of work and redresses the difficulties experienced by different departments and partially affected families and gives its decision/directions. The Government has also
- c set out details on the project works to which reference at this stage may not be necessary.

76. On the question of resettlement and rehabilitation, the first phase covering those affected due to construction of cofferdam and closure of diversion tunnels T-3/T-4 is complete and in the second phase, all remaining families to be affected due to impoundment of reservoir would be

- d rehabilitated. Details of the same are set out as under:

“Urban total affected families

5291 (100% families have been compensated in the form of houses, plots and shops except affected families from the Koteswar Dam).

Gramin total affected families

- e 9239 (compensation paid — 7291 compensation yet to be paid — 1948).”

77. It is no doubt true that in regard to certain aspects such as catchment area treatment, conditions imposed are not fully implemented and it is not very clear from various affidavits filed whether in regard to flora and fauna also the conditions have been fulfilled or not. When *pari passu* conditions

- f have been imposed, it is necessary that the conditions are fulfilled along with the construction of the engineering works. In refuting the contention of the petitioners that impoundment in the reservoir has been done before the *pari passu* implementation of environment and forest conditional clearances, it is stated as follows:

- g “Diversion tunnels on the right bank, T-3/T-4 have been closed in December 2001 for taking up construction of stilling basin and shaft spillway. The reduced levels of T-3 and T-4 tunnels are 606 m and 609 m respectively. Diversion tunnels on the left bank, T-1/T-2 have been kept open for discharging the water downstream. The reduced level of both T-1 and T-2 is the same viz. 632 m. The current quantity of discharge remains unabated from the discharge prior to the start of project
- h construction. There is no alteration/reduction in quantity of water discharged from the river prior to taking up the project and as of now the

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maximum discharge in the river observed during floods in the year 1978, that is 3669 cusecs.

Impoundment in the reservoir is generally done for the purpose of deriving benefits from the storage by creating facility for irrigation, drinking water supply, power generation etc. As a matter of fact, none of the benefits are presently accruing from the project at the current stage. Diversion tunnels T-3/T-4 have been closed for taking up construction of stilling basin before they are permanently closed.”

78. It is submitted on behalf of the respondents that the initial impoundment in the reservoir will start with the closure of diversion tunnels T-1/T-2 and water level rising to EL 700 m. The maximum drawdown level is EL 740 m. The reservoir spread at EL 700 m will be 10 sq km. Compared to full reservoir spread at 830 m of 44 sq km the present waterspread of reservoir at EL 632 m is 1.2 sq km only. It is also made clear on behalf of the respondents that this implied that commensurate safeguards in the works related to catchment area treatment, command area development, rehabilitation and resettlement, protection of flora and fauna, disaster-management plan etc. are ensured along with the progress of the construction works and it was also implied that the completion of the project meant rise in water level in the reservoir and simultaneously increase in the waterspread.

79. It is made clear that the condition of *pari passu* implementation of conditions prior to the commissioning of the project shall be closely monitored under the existing mechanism set up by MoEF and the project authorities will ensure that prior to closing of diversion tunnels T-1/T-2 for impoundment of the reservoir, evacuation, resettlement and rehabilitation are completed in all respects. In addition, the catchment area treatment of direct-draining areas shall be completed and the project authority will obtain clearance from MoEF before closing the outlet at EL 700 m. An additional affidavit has also been filed on behalf of the Union of India to the effect that a high-level Inter-Ministerial Review Committee would be constituted consisting of Secretaries of all the Ministries concerned of the Central Government to examine various aspects and closely monitor the same. It is only after the completion of these conditions, impoundment would start. This categorical statement made by the respondents should assure the petitioners that no impoundment would be allowed until all the conditions in the environmental clearance certificate of the Tehri Dam dated 19-7-1990 are complied with and stand fulfilled.

80. The petitioners have disputed that the respondents have complied with the conditions of clearance. But a careful analysis of their pleadings will indicate that the dispute is to the extent of compliance only and not that there is no compliance at all. On behalf of the Union of India a status report supported by an affidavit is filed which indicates that there is substantial compliance with all the conditions. We have discussed in detail the various facts set out in the said affidavit and status in the earlier portion of this order.

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81. In this background, we find that the petitioners have not established nor is there any material to conclude that the project work is being carried on without complying with the conditions of clearance. Though there were certain lapses at certain stages, they were taken care of by monitoring agencies.

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82. To ensure that all the conditions for environmental clearance are fulfilled and for proper monitoring, we transfer all these cases to the High Court of Uttaranchal to be dealt with by a Division Bench. The High Court shall deal with these matters as if filed before it and shall be at liberty to pass any orders. However, it is made clear that it shall not be open to re-examine the matters such as safety of the dam and other aspects relating to implementation of conditions contained in the government orders which have been decided in this case. This course we are adopting following a line of cases in *Indian Council for Enviro-Legal Action v. Union of India*¹³, *M.L. Sud v. Union of India*¹⁴ and *Mohan Chand v. Union of India*¹⁵, which were all cases filed under Article 32 of the Constitution and in one of the cases, which pertained to environmental issues, it was observed as follows:

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“42. As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the court dealing with such issues to know about the local conditions. Such conditions in different parts of the country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.”

(See *Indian Council for Enviro-Legal Action case*¹³, SCC at p. 301, para 42.)

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¹³ (1996) 5 SCC 281

¹⁴ 1992 Supp (2) SCC 123

¹⁵ 1995 Supp (3) SCC 425

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83. Proceedings arising under Article 32 need not always be dealt with by this Court alone and in appropriate cases suitable directions, including transfer of the matter, can be issued to High Courts or other authorities (like National Human Rights Commission) to deal with such matters. Thus, we find that it is legal and expedient to transfer these cases to the High Court of Uttaranchal. a

84. Accordingly, with these directions, this petition shall stand disposed of. b

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85. In the light of the orders made in Writ Petition No. 295 of 1992, these transferred cases shall stand disposed of in the same terms as set forth above. b

DHARMADHIKARI, J. (dissenting)— Having carefully perused the opinion of learned Brother S. Rajendra Babu, J. I find myself unable to agree with him that no directions to the respondents in this writ petition are required. In my considered opinion, looking to the dimensions and implications of the case on environment and human rights a monitoring mechanism is required to be set up and activated to ensure compliance with the conditions on which clearance was granted to the construction of a dam in the Himalayan valley near Tehri. It may be legal but not efficacious to transfer this writ petition under Article 32 of the Constitution of India to the High Court of Uttaranchal for monitoring the compliance with the conditions on which environmental clearance was given to the Tehri Dam Project. With utmost respect, therefore, I have considered it necessary to record my separate opinion with conclusions containing the directions which are required to be issued to the respondents in this writ petition. c

87. Learned Brother S. Rajendra Babu, J. has in detail given necessary facts and events leading to the filing of the writ petition. I would, therefore, confine myself to giving the necessary background on which my opinion and conclusions are based. d

88. In this writ petition under Article 32 of the Constitution of India filed by the petitioners in public interest, directions are sought to be issued to the respondents, representing the authorities and corporation of the Union and State Governments, to take necessary measures for protecting environment and human rights which are likely to be adversely affected by construction of dam in the valley of the Himalayas near Tehri town of the new State of Uttaranchal. e

89. Rivers Bhagirathi and Bhilangana rise from glaciers in the Himalayas, part of Garhwal of the erstwhile north-western U.P. and now part of the new State of Uttaranchal. The two rivers flow south to the plains to form confluence as the Holy River Ganga. Close to Garhwal town of Tehri at the confluence of two rivers Bhagirathi and Bhilangana more than three-billion dollar clay-core rockfill dam is being constructed in the Upper Ganga basin. The dam area will cover 45 km of Bhagirathi valley and 25 km of Bhilangana valley with waterspread over an area of 42.5 sq km which will submerge nearly 100 villages including Tehri town, as many as 90,000 f

families will be relocated as a result of the dam project. The Government of India and the State of Uttaranchal claim that the dam project had undertaken to generate 2400 MW of electricity and will create irrigation facilities for 2070 lakh hectares of land. There are plans also to create supply of 500 cusecs of water to New Delhi.

- 90.** Human rights and environment activists have approached this Court to protect the interest of the general public and particularly the people living in Tehri town and in surrounding areas of Garhwal who are likely to be displaced for completion of the project. They have also raised issues of great importance such as the safety of the dam and the likely devastation and loss of properties and lives of the people in the downstream, if the dam, being situated in a highly earthquake-prone area, bursts or leaks. It is stated that structurally the dam may be incapable of withstanding an earthquake of above 7 on the Richter scale. It is submitted that great danger is posed to downstream cities and population, particularly, the holy pilgrim centres like Haridwar and Rishikesh which are in the danger zone. The structural flaws of the dam and rehabilitation policies provoked public agitation and international attention. The dam project was stopped which had begun in 1978.

- 91.** A petition was filed in this Court by Tehri Bandh Virodhi Sangh Samiti in the year 1985 for intervention of the Court to stop construction of the dam as it puts great threat to the safety and lives of the people living in surrounding villages and towns and also holy places downstream. The petition was dismissed by this Court and the decision is reported in *Tehri Bandh Virodhi Sangarsh Samiti*³. The Court relied on the technical data furnished by the Government which had prepared the plans for the Tehri Dam Project and held that since all aspects of safety have been taken into account by Indian and foreign experts, the Court has no ground before it to restrain the authorities from proceeding ahead with the implementation of the project.

- 92.** In the year 1986, the Soviet Union agreed to fund the project with loan on concessional terms. As a part of the agreement with the Government of India for funding the project, the Soviet experts conducted a review of the proposed project and gave a finding that the highest seismicity of the Tehri area had not been adequately taken into consideration by Indian planners. The combined Soviet and Indian teams also found that the life of the dam claimed to be 100 years may not be accurate and its life would be 62 years or less. They also found that about 85,600 people would be displaced by the project.

- 93.** At this stage of hearing of the case, several developments which took place in the interregnum are required to be stated. As a result of public agitation and protest from the people of Garhwal region to the project for construction of the dam, in March 1980, the then Prime Minister of India intervened and directed an in-depth review of the project by an expert group constituted by the Ministry of Science and Technology. The technical group submitted its report in 1986 and recommended abandonment of the project

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despite expenditure already incurred in the sum of Rs 2006 crores. The Environmental Appraisal Committee (EAC) which is an expert body within the Ministry of Environment and Forests recorded a unanimous conclusion that the Tehri Project did not merit environmental clearance and should be dropped. The Tehri Project was thereafter revived only when the USSR Government agreed to provide technical and financial assistance. The dam project which was initially taken up by the Irrigation Committee of the erstwhile State of Uttar Pradesh was taken over by a joint venture company of the Government of India and the State Corporation viz. Tehri Hydro Development Corporation (respondent herein). The Corporation took over the construction of dam in July 1988. The Corporation reformulated the environment policy. It was in February 1990 that EAC in the Ministry of Environment and Forests came to the conclusion that taking into consideration the risks and hazards involving ecological and social impact with huge cost and less benefits, the dam project does not merit environmental clearance. The exact words of EAC are as under:

“Therefore, taking into consideration the geological seismic setting, risks and hazards and ecological and social impact accompanying the project, the cost-benefit expected and after a careful examination of the information and data available, the Committee has come to the unanimous conclusion that the Tehri Dam Project, as proposed, should not be taken up as it does not merit environmental clearance.”

94. In normal course, the conclusion of EAC should have closed the matter for abandoning the project. Surprisingly, the continuance of the project was entrusted to a Committee of Secretaries. The Committee reassigned the task to the Department of Mines. The Department of Mines relied on the opinion of Prof. Jai Krishna who is an Earthquake Engineer when Dr V.K. Gaur who is a Seismologist had given a dissenting opinion and so also the foreign expert Dr N. Brune.

95. It is after this reappraisal of project from the safety point of view by the Department of Mines based on the expert opinion of Earthquake Engineer Prof. Jai Krishna, clearance was given on 19-7-1990 to the project by the Ministry of Environment and Forests. Since by this time the Environment (Protection) Act, 1986 with the Environment (Protection) Rules framed thereunder had already come into force making it a statutory requirement to obtain clearance from the Environment Department for undertaking the project of such dimension affecting environment, ecology and human beings, only a *conditional clearance* was granted to the project. The various conditions subject to which the environmental clearance to the project was granted have been reproduced in the opinion of learned Brother S. Rajendra Babu, J.

96. The final condition stated thus:

if the completion of studies, formulation of the action plan and their implementation to be scheduled in such a way that their execution is pari passu with the engineering works is not adhered to, all engineering

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works of the project should be stopped and this condition will be enforced under the provisions of the Environment (Protection) Act, 1986.

a **97.** The Ministry of Environment and Forests wrote a letter on 12-4-1991 expressing dissatisfaction on failure to comply with the conditions on which environmental clearance was given. The respondent Corporation was directed to submit comprehensive environmental plan for effective implementation failing which remedial or prohibitive action under the Act of 1986 was proposed.

b **98.** On 5-1-1991 the petitioner gave a notice under Section 19-B of the Act to the Secretary of the Ministry of Environment and Forests stating that as the result of non-fulfilment of condition of clearance of the project by the Corporation, direction should be issued to stop the project work.

c Significantly, after service of this notice on 21-10-1991 an earthquake measuring 6.1 on the Richter scale hit Garhwal region causing massive damage to Uttarkashi and Chamoli villages killing 2000 people. Damage was also caused to constructions for dam already made and Tehri town itself. The Power Ministry, however, maintained that half-finished dam works were not damaged. This earthquake which shook Garhwal region naturally revived debates and protests on the location of the dam and its safety in such a highly earthquake-prone region. The petitioners again raised the question as to

d whether the dam as designed and completed would withstand likely earthquakes of more than 6.1 on the Richter scale. The present petition was filed on 7-12-1991 in which issues of safety of the dam, its adverse impact on environment, displacement of people and their rehabilitation have all been raised. Specific issue has been raised that due to non-fulfilment of the condition of environmental clearance, there is no legal justification to allow

e further construction works at the dam site.

99. In the communication dated 21-10-1994, the Additional Director, Ministry of Environment clearly mentioned that after grant of clearance in 1990, "the status of implementation of various safeguard measures were lagging far behind". It was also pointed out that there is an urgent need to

f evolve a monitoring mechanism for the Tehri Dam Project. On 5-12-1995 through an intervention application a leading human right activist of Garhwal Shri Sundarlal Bahuguna sought opportunity of participation in the case by producing *on-the-spot* studies of the impact of the project on the environment and the people of the region.

g **100.** On the orders of this Court made in this petition on 17-7-1996 the Government set up two Expert Committees, one on the safety aspects and the other, on the environment and rehabilitation aspects. The case stood thereafter adjourned several times awaiting the report of the Expert Committees. The subsequent developments were reported to this Court that the reports of the Committees were under consideration of the National Committee of Seismic Design Parameters and an Inter-Ministerial Committee of Secretaries of the Department of Environment and

h Rehabilitation. On 27-10-1998, an affidavit was filed by the Secretary,

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Ministry of Power indicating that the State Government has given its concurrence to the report of the Committee on Environment and Rehabilitation Aspects.

101. On 2-2-1999 again an affidavit was filed by the Secretary, Ministry of Power placing on record the Government of India's decision to implement the recommendations of both the Committees. In the said affidavit it was also stated that the Government had issued a final order accepting conclusions of group of experts on safety aspects. It is reported that there is no necessity to undertake further steps as recommended by the experts viz. (1) 3-D non-linear analysis of dam to evaluate its performance against the maximum-credible earthquake, (2) simulated dam-break analysis suggested to be undertaken as a matter of abundant caution by the four experts. It may be mentioned that in the meantime the new State of Uttaranchal having been formed comprising Garhwal in which the site of the dam falls, the State of Uttaranchal has been impleaded as the successor to the erstwhile State of Uttar Pradesh.

102. The learned counsel appearing for the petitioner and the intervener in their separate submissions mainly raised two questions based on the constitutional law and the statutory laws i.e. the Environment Act and the Rules framed thereunder. The thrust of the argument is that from safety aspect and from adverse impact on environment and human life of the area and more so when conditions on which clearance to the project had been given have not been fulfilled, this Court should interdict the project at least till all conditions are fulfilled to the complete satisfaction of the Department of Environment and this Court.

103. It is undeniable that execution of river valley projects is an important element of growth and development strategy. The dams have become a symbol of national development. The dams too have the potential of solving many economic problems. Control of floods, famines, food shortages, unemployment, urban water shortages and power shortages are all possible with the help of execution of such dams. These projects do have benefits but they also have adverse environmental implications. The Tehri Dam Project is in the valley of the Himalayas. The dam project would involve ousting of thousands of poor villagers and farmers living in the valley. Old Tehri Town would be under submergence. New Tehri Town has been raised and is being developed. The basic environmental issues are saving the flora and fauna that is abounding in the region. The other aspect is of danger to the upstream and downstream human population because Tehri Dam area and surrounding Uttarkashi area had already suffered successive earthquakes at short intervals and the area is known to be seismically unstable. It is held by the experts as earthquake-prone. The project will also destroy and has already destroyed forest tracks to a large extent. Along the river deforestation has endangered the river itself and after impounding of water there would be large-scale erosion of riverbank. When such projects are undertaken, there are competing claims of technocrats and engineers eager to put the country on the path of development and environmentalists

who see a serious danger to ecology and environment. These are the two conflicting claims and aspects which need court's intervention for a balanced approach and consequential remedial action. The problem before the country with more and more dam projects being undertaken is how to make use of natural resources for improving human health, welfare and comfort without depleting or damaging them over a foreseeable period of time. A strategy for conserving or resource-effective use of non-renewable resources is the imperative demand of modern times. Whereas, minimum sustainable development must not endanger the natural system that supports life on earth, constant technological efforts are demanded for resource-effective production, so that sacrifice of one ecosystem is counterbalanced or compensated by recreating another system.

(See discussion on the topic in the book *Environmental Solution and Development* authored by Chander Pal at pp. 198-201 and 236-37.)

- c* **104.** By river valley dam projects there are adverse upstream impacts and downstream impacts on environment. The *upstream environmental and ecological impacts* of big dams are:

- d* (1) soil erosion, (2) microclimatic changes, (3) loss of forests, flora and fauna, (4) changes in fisheries, especially on spawning grounds, (5) chain effects on catchment area due to construction and displacement etc. (6) landslips, siltation and sedimentation, (7) breeding of vectors in the reservoir and increase in related diseases, (8) seismicity, (9) loss of non-forest land, (10) waterlogging around reservoir, and (11) growth of weeds.

Downstream impacts

- e* **105.** The downstream environmental impacts of the large dams are:

(1) waterlogging and salinity, (2) microclimatic changes, (3) reduced water flow and deposition in river, with related impacts on aquatic ecosystem, flora and fauna, (4) flash floods, (5) loss of land fertility along with river, and (6) vector-breeding and increase in related diseases.

- f* **106.** These adverse effects have long-term and irreversible loss of quality of human life and other creatures in the region. In order to meet such adverse impacts on environment, a thorough environment-impact assessment has to be made before the clearance of the dam. The Department of Environment and Forests has prepared detailed guidelines before a project is cleared. Wherever certain conditions for clearance are imposed they are to be strictly adhered to.

- g* **107.** There are economic costs as well as social costs and environmental costs involved in a project of construction of a large dam. The social cost is also too heavy. It results in widespread displacement of local people from their ancestral habitat and loss of their traditional occupations. The displacement of economically weaker sections of the society and tribals, is the most serious aspect of displacement from the point of view of uprooting them from their natural surroundings. Absence of these surroundings in the new settlement colonies shatters their social, cultural and physical links.
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108. The large dam projects are, therefore, required to be taken care of by the Government with utmost concern for the poor and the deprived sections of the society who are necessarily to be displaced from their habitat and shifted to a totally new environment and way of life. The poor and the marginalized group in carrying out of a dam project suffer the most because the natural resources — base of their survival — are eroded and cash compensation or land at a different location many times does not fully rehabilitate them. The dams are built by public funds with the aim to satisfy the energy and water needs but what benefit ultimately it would give to the displaced people should also be taken care of. The conflicts over natural resources which frequently come to courts are, therefore, conflicts over rights between the haves and the have-nots. a

109. The protest of ecologists, as is brought before us in this public interest litigation, is not to be seen as obstructionist and anti-progress because the petitioners are actuated by the desire to obstruct ecological destruction and to halt the process that results in progress for a few and hardships for many. c

110. The Government can utilize the natural resources for common good but cannot be allowed to exploit or virtually plunder it in a manner to deprive those presently sustaining their lives on those natural resources and deprive the coming generations who also have a right of living on those resources. On these fundamental issues, there is a cleavage between technological experts, environmentalists and human rights activists. The Court is faced with an issue not easy to decide as to which section of experts and environmentalists is right in its approach. d

111. Ours is a constitutional democracy and we are called a “welfare State”. “Welfare” does not mean that we have only to strive for fulfilment of political theory “Greatest good of greatest number.” Our motto from the Vedic times has been *sarva jan hitay, sarva jan sukhai* (benefit of all and happiness of all). Our Vedic prayer is: e

“Let all be happy, let all be sin-free, let everyone see good in everything. There should be no suffering anywhere.” f

112. It is, therefore, necessary that when a big multimillion dam project is undertaken to generate electricity and for providing water for irrigation and drinking, we should not leave those living by the side of the river from generations to suffering by displacement to a far-off place which would deprive them of their life and lifestyle. In the march of progress, the humblest and the weakest should not be left behind. The man living in the hills or valleys is dependent for survival on natural resources. To remove him and rehabilitate him in the plains is like taking a fish from the river and putting it into an artificial reservoir or an aquarium where it might survive but can never be happy. All efforts are, therefore, required to be made that the displaced or the oustees, who were hitherto getting benefits from the river for their survival, are adequately compensated by minimum-possible disturbance to their life sources and style of life. In implementation of large river dam g
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projects the utmost concern of the State should be the interest of the oustees. Before electricity is generated and drinking water is made available to urban

- a population up to Delhi, care has to be first taken as to the needs and demands of the people who live in the hills and valleys and face ouster. Before the reservoir is full to its optimum capacity to generate electricity and provide irrigation, the work of rehabilitation to the optimum satisfaction of the oustees must be completed. In this direction, the affidavit filed by the Ministry of Environment does not vouchsafe that the work of rehabilitation
- b has been completed to the satisfaction of not only the officials of the Rehabilitation Department but the oustees themselves speaking individually or collectively.

113. On behalf of the Union of India and Tehri Development Corporation, the separate reply-on-affidavit has been filed to counter the allegations made by the petitioner that the conditions granted in the order of clearance given by the Ministry of Environment have not been complied with. Learned counsel Shri Kirit Raval made strenuous effort by taking us

- c through to the several reports of the Committees received from time to time. The technical data and other information collected in the matter of fulfilment of the conditions of clearance have all been placed before us. The submission made is that where the conditions imposed for clearance are to be
- d implemented *pari passu* with the engineering works, it is contemplated by the conditions themselves that side by side with the engineering work, the conditions to protect environment for treatment of catchment area, development of common area and rehabilitation will go on. In a project of such a huge dimension involving multifarious engineering and non-
- e engineering activities, fulfilment of conditions laid down to undertake the project has to be taken up simultaneously with the construction work of the dam and proportionately with the progress of engineering work. A chart to show such progress has been submitted by Tehri Development Corporation to impress upon this Court that although the time schedule has not been strictly
- f adhered to because of the several difficulties and obstructions in the progress of the project, the conditions have been achieved in proportion to the engineering work already taken up. It is submitted that the Corporation is not guilty of non-fulfilment of the conditions and no prohibitive action is called for.

114. So far as the safety aspects of the dam are concerned, reliance is placed on the technical opinion of the experts, which says that a rock-fill dam does not require three-dimensional studies to estimate its safety against an

- g earthquake. It is submitted that such computer-based three-dimensional studies have been found to be only of theoretical value. Two-dimensional test already done fully ensures safety of the dam against an earthquake even up to 7 on the Richter scale. It is submitted that the two-dimensional studies of the dam are made on an assumption that the impact of an earthquake of 7 or more on the Richter scale would be uniform throughout the length and
- h breadth of the dam. The experts have found such two-dimensional studies sufficient for the safety of the dam. Suggestion of only one of the experts for

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conducting a three-dimensional test only by way of abundant caution has been found by the team of experts neither feasible nor desirable.

115. Attempt has also been made by filing itemwise comments that various recommendations of the Hanumantha Rao Committee were in-depth gone into by the Interdepartmental Committee and most of the recommendations except a few have been accepted and also substantially implemented in proportion to the construction work already undertaken. a

116. On behalf of the Corporation, a categorical statement has been made that until all the conditions of the clearance are not fulfilled, Tunnels 3 and 4 shall not be opened and the reservoir shall not be filled beyond its present water level. People presently living in the catchment area in Tehri town would not be evacuated till they are paid either cash compensation or land in lieu thereof, with shelter. The Corporation has also presented before us in the course of hearing status report of fulfilment of the various conditions at the project site up to 31-1-2003. b

117. The project for construction of large dams has been undertaken to provide electricity and irrigation facilities. From environmental and social perspective, large dams raise a variety of issues. They entail massive incursions into the natural ecosystem and human settlements. When the project is undertaken, it is asserted that these incursions can be minimised by appropriate steps like environmental-impact assessment and preventive/ameliorative measures. It is with this purpose that the Environment Act and the Rules require the project to take care of the adverse impacts on environment and human population. Environmental clearance now is a legal requirement. A mechanism has also been evolved for evaluation of the environmental impact and its monitoring. Construction of large dams is accompanied by significant alterations in the upstream and the downstream, physical and biological environment. For building reservoirs, large tracts of forest lands get submerged. Waterlogging and salinisation affect the canal-irrigated land with varying degrees of severity. Several species of wild animals and plants become extinct. There is a likelihood of several diseases like malaria spreading. c

118. On the positive side, the alleviation of water scarcity leads to improvement in the health standard of people and reduction in diseases caused by shortage of potable water. Barren lands become green. New habitats are created for water birds. d

119. In order to take care of the negative aspects of the large dams, the conditions for clearance generally require: e

1. Compensatory afforestation. f

2. Treatment of catchment area to prevent prematured silt in other aspects. g

3. Measures to prevent or minimise waterlogging and salinisation in the command area and around the reservoir.

4. Measures to prevent and minimise impact on health. h

5. Safeguards against ill effects of the seismicity.

6. Ways of saving translocated wild plants and animals.

7. Providing alternative fuels to project labour and ladders for migrant fish to cross over the dam.

- 120.** The Tehri Dam Project has obtained a clearance and a major portion of the dam has already been constructed. The catchment area has not been filled with water as the two diversion channels having gates have not been closed for filling the dam. This is the right stage when there is necessity of close monitoring, evaluation and reappraisal of work to ascertain compliance with the conditions and check adverse impact on environment as also ensure rehabilitation of the people displaced from the dam area and Old Tehri Town. In the instant case, the Corporation claims that it has fulfilled the conditions *pari passu* with the engineering works. This high claim is with the admission that the time schedule in the condition of clearance has not been kept up. This is the proper stage when a thorough assessment by a team of experts in relevant branches is required to be undertaken for ascertaining whether the conditions of clearance have been fulfilled *pari passu* with the engineering works. If this is not done before the dam is allowed to be filled, adverse impacts caused on environment would be irreversible and would not be compensated because of the severe scale of the ecological intervention. The mistake that might have been done in the past with regard to other similar large and small dams should not be allowed to be repeated in the Tehri Dam Project which is different from other dam projects in plains. Tehri Dam being located in the Himalayas, the adverse environmental impact would both be upstream and downstream. Meticulous care and precaution, therefore, is required to be taken for a dam which is being constructed on a high-altitude area posing threat to the downstream population. If the safety aspects are not fully taken care of and the command area treatment is not done to the desired level or standard, the consequence may be catastrophic and beyond repair.

121. Only two aspects, in my considered opinion, need special attention and consequent directions by this Court to the authorities concerned represented through the respondents in this case.

1. Safety aspects of the dam

122. The Tehri Dam has been cleared for construction in a seismically unstable, earthquake-prone area in the valleys of the Himalayas.

123. The project was earlier not cleared on the opinion of the experts as a severe earthquake could burst the dam and destroy several important temples, towns and holy places like Rishikesh and Haridwar. There are other thickly populated towns and villages downstream. The members of the Environmental Appraisal Committee (EAC) which has an expert body within the Ministry of Environment and Forests, had earlier unanimously concluded that the Tehri Project did not merit environment clearance and should be abandoned. Thereafter, a Committee of Secretaries of Departments concerned was constituted which did not agree with EAC's recommendations. A dissenting note was submitted by expert Dr V.K. Gaur to the Committee of Secretaries. The Committee then assigned reassessment

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of the task of safety to the Department of Mines. Professor Jai Krishna, an Earthquake Engineer but not a Seismologist opined in favour of the project. The foreign expert Professor James D. Brune was a Seismologist who did not favour the project due to safety aspects involved. a

124. On safety aspects the matter was brought to this Court in the case *Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P.*³ by environmentalists. This Court while refusing to interfere with the matter went by the opinion of Earthquake Engineer Professor Jai Krishna. In his own language, “The design of the Tehri Dam as suggested by Indian and Soviet experts was *quite safe* against the strongest expected earthquake in the region” (emphasis supplied) (SCC p. 49, para 12). b

125. The petitioners in this case on the basis of expert opinion of Professor Jai Krishna and foreign expert James D. Brune submitted that as an extra-precautionary measure 3-D non-linear analysis of the dam should be undertaken to evaluate its performance against the maximum-possible earthquake. A simulated dam-break analysis (DBA) has also been suggested by the four experts as a matter of abundant caution. c

126. On behalf of the respondents the counsel separately appearing for different departments and the project authorities have taken uniform stand that 3-D non-linear analysis is neither essential nor feasible for want of necessary competent expertise in India and even abroad. It has also been argued that challenge to safety aspects has been negated in the earlier decision of this Court rendered in 1992 and the project was allowed to go ahead and by now has progressed to a very large extent. d

127. On the safety aspect of the dam, particularly, when the location of the dam is in a highly earthquake-prone zone in the valley of the Himalayas, all additional safeguards are required to be undertaken on the “precautionary principle” as contained in “the Rio Declaration on Environment and Development” taken in the United Nations Conference held in January 1992 to which India is a party. The precautionary principle in the Rio Declaration reads: e

“In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities. Where there are threats of series of irreversible damage, *lack of full scientific certainty* shall not be used as a reason for postponing cost-effective measures to prevent environment degradation.” f

(emphasis supplied)

128. The precautionary principle accepted by India being a party and signatory to international agreements and understandings in the field of environment has become part of domestic law i.e. the Environment (Protection) Act. The governmental authorities in India cannot be permitted to set up the plea of scientific uncertainty of 3-D non-linear analysis of the dam. On the safety aspect pleas like *res judicata* based on earlier decisions of this Court cannot be allowed to be raised when further developments and events in the course of the project require further precautions to be taken before filling the dam to the optimum capacity. It is not the case of the h

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- respondents that 3-D non-linear analysis of the dam cannot be undertaken with the assistance of foreign experts on the subject. To take care of all
- a eventualities of damage to the dam by an earthquake, 3-D non-linear analysis of the dam suggested by four experts as a matter of abundant caution must be undertaken. It is only after 3-D non-linear analysis of the dam is completed and the opinion of the experts on the safety aspects is again sought that further impoundment of the dam should be allowed. In *M.C. Mehta v. Union of India*¹⁶ (Trapezium matter) this Court has applied the “polluter-pays principle” and “precautionary principle” of international law as law of the
- b land of this country, India being party to the United Nations Conference and signatory to international declarations and agreements.

Requirement of the provisions of the Act and the conditional clearance

129. Before taking up the rehabilitation aspect for issuing necessary directions it is required to be stated that in accordance with the provisions of
- c Section 3 of the Environment (Protection) Act, 1986 and Rule 5 of the Environmental Rules, 1986, the Tehri Dam Project was granted conditional clearance. A notification dated 27-1-1994 has been issued under the Act and the Rules on environmental-impact assessment of development project. Under the said notification an environmental-impact assessment is required to be made by the Impact-Assessment Agency. Without a proper
- d environmental-impact assessment no project can be accorded environmental clearance. In the present case the environmental clearance was given on 19-7-1990 before the issuance of the notification on 27-1-1994 on the environmental-impact assessment of development project. Nonetheless, the directions and guidelines contained in the said notification have to be applied even to the existing dam projects and a strict monitoring of the impact of the
- e project on the environment has to be done by the Central Government through its Ministry of Environment and Forests. The clearance to the project was given in the year 1990 on, amongst others, the following specific condition that “completion of studies, formulation of action plans and their implementation will be scheduled in such a way that their execution is *pari passu* failing which the works could be brought to a halt”. This condition was
- f enforceable under the provisions of the Environment (Protection) Act, 1986.

130. The letter of the Secretary of the Ministry of Environment and Forests to the Secretary, Ministry of Labour dated 12-4-1991 clearly shows failure on the part of Tehri Hydro Development Corporation (THDC) to comply with the conditions granted for environmental clearance. The Ministry has expressed total dissatisfaction on the compliance. The
- g petitioners gave a notice under Section 19(b) of the Act on 5-9-1991 to the authorities pointing out that non-fulfilment of the conditions provided in the environmental clearance within the stipulated time frame has resulted in lapse of the said clearance and the work of the project should be stopped forthwith. On 20-10-1991 an earthquake of 6.6 on the Richter scale hit Uttarkashi causing immense destruction of property and life. The

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uncompleted dam also suffered trauma but no damage was reported. Even during pendency of this petition, successive earthquakes shook Uttaranchal regions in the vicinity of the dam site. Thereafter, the petitioners had been constantly writing to the authorities that for want of non-fulfilment of the conditional clearance the project construction work should be stopped. There is on record a note dated 21-10-1994 of the Additional Director of the Ministry of Environment recording that although the environmental clearance was granted to the project in the year 1990, “the status of implementation of various safeguard measures was lagging far behind”. It was also pointed out in the note of the Director that there was an urgent need “to evolve a monitoring mechanism for the Tehri Dam Project”.

131. Where the requirements of law as contained in the Act, the Rules and the notification issued thereunder contemplate imposition of conditions for clearance to a project to minimise its adverse impact on environment, the authorities granting such clearance possess a power coupled with duty and obligation to ensure fulfilment of the conditions on the basis of which the environmental clearance is granted. We are sorry to note that in the face of so many conflicting expert opinions on the project undertaken in a highly earthquake-prone region the conditional environmental clearance was granted without monitoring the work of the project to ensure fulfilment of those conditions.

132. A strict vigil on fulfilment of the conditions of environmental clearance was required by the Ministry of Environment and Forests and stringent action should have been taken against the authorities for not adhering to *pari passu* condition of clearance. In the latest affidavit filed by the Ministry of Environment and Forests, it is promised that in future strict monitoring of the fulfilment of the conditions granted for environment clearance would be done. Granting a conditional clearance is not a mere formality. The power to grant clearance even though with conditions was accompanied by duty on the part of the Ministry to have effective check on the progress of the project and ensure fulfilment of the conditions in accordance with the *pari passu* clause. Since the Ministry of Environment and Forests has failed to discharge its duty of exercising proper check on the fulfilment of *pari passu* clause of conditional clearance, it is necessary to provide an independent mechanism through a forum of interdepartmental authorities and experts so that the project presently undertaken by the Corporation with the aid, assistance and finances provided by the States, the Central Government and the World Bank is allowed to progress and be completed strictly on fulfilment of the conditions on which environmental clearance was granted.

2. Rehabilitation aspects

133. The Ministry of Environment and Forests has filed an affidavit before us showing the present position of progress in resettlement and rehabilitation activities undertaken as part of fulfilment of the conditional clearance of the project. It may be recalled that the Ministry of Welfare of the

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Government of India in the year 1985 initiated a rehabilitation policy. It came to be approved only in the year 1997. Thus the *national policy, packages and guidelines for resettlement and rehabilitation* accept the following principles:

- a *1. Displacement should be minimised. So people-displacing projects should be the last option after studying non-displacing and least-displacing projects, and if this is the only alternative.*
- b *2. The public purpose based on which people are displaced or otherwise deprived of their livelihood should be defined. Prior informed consent to be effected by it should be mandatory after the project is explained to them and if they see that it is according to the public purpose thus defined properly.*
- c *3. Replacement value to be the norm for compensation against the present norm of market value which is totally inadequate.*
- c *4. Right to life with dignity enshrined in Article 21 of the Constitution should be respected. So the displaced persons should have a better lifestyle after displacement than before it because they are paying the price of national development.*
- d *5. Displaced persons (DPs/PAPs) should be the first beneficiaries of any project.*
- d *6. Rehabilitation is mandatory and should go on side by side with the project.*
- e *7. Land for land is recommended to all and is mandatory for tribals. Compensation is to be provided for common property resources and forest lands that may be acquired from their dependants.*
- e *8. The DPs/PAPs are defined in a way as to include not only landowners but also those who depend on it without owning it, and those who have common property resources as their sustenance.*
- f *134. This Court in the case of Karjan Jalasay Yojana Assargrath Sahkar Ane Sangarsh Samiti v. State of Gujarat¹⁷ has held thus: (SCC pp. 351-52, para 1)*
- g *"1. (4) Simultaneously with taking possession of the acquired land from any person in occupation of it, such person shall be provided either alternative land of equal quality but not exceeding three acres in area and if that is not possible, then alternative employment where he would be assured a minimum wage. ... No possession of any part of the acquired land shall be taken from any person unless and until he is either provided with alternative land or alternative employment which is not temporary in character so that he and the members of his family do not remain without means of subsistence.... If for any reason the State Government is not able to provide alternative land or arrange for alternative employment, the State Government will subject to the same exception, pay to the head of the family at the latter's place of residence compensation equivalent to*
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¹⁷ 1986 Supp SCC 350 : AIR 1987 SC 532

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minimum wage every fortnight during the period alternative land or employment is not provided.”

135. The above directions of this Court in the case of *Karjan Jalasay*¹⁷ were based on the factual realities that for most marginal farmers and tribals monetary compensation for acquisition of land can never be a sustainable source of dignified living. A new piece of alternative land of equal quality should be given to those dispossessed from land due to acquisition for public purpose. In the last affidavit submitted by the Ministry of Environment and Forests before us to show the status of the progress of rehabilitation and as on 3-2-2003, the figures disclose that out of a total 9239 rural affected families cash compensation is not paid to 1948 families and 260 families affected by the Koteswar Dam have also not received cash compensation.

136. For providing agricultural land to farmers who have been ousted, it is stated that land is being acquired down the valley in the vicinity of Dehradun city. The Government has thus been involved in exercise of rehabilitating the dam oustees on acquired land from other landholders who in turn will have to be ousted. This will give rise to a chain reaction of making other people landless. The process has not yet been completed and according to the affidavit of the Ministry itself the work of resettlement and rehabilitation is underway.

137. When natural resources are exploited in a big way for big projects by the State with all sincerity and good intentions for general common benefit, social conflicts arise as a natural adverse consequence. Generally, the conflicts arise between marginal farmers, peasants and other landless persons who survive on natural resources and those who are better off, rich or affluent and who desire to undertake agriculture and industry. When river projects for dams are undertaken to generate electricity and improve irrigation facilities, conflicts arise between *people living upstream* who have to necessarily lose their source of living and habitat and those *living downstream* who need water and electricity for their homes, industries and agricultural fields. When such social conflicts between different social groups i.e. upstream population and downstream population, between rural population and urban population, between the poor surviving on natural resources and others needing natural resources for further development arise, what should be the duty and priorities of the State and its authorities who have undertaken the projects? When such social conflicts arise between the poor and more needy on one side *and* rich or affluent or less needy on the other, prior attention has to be paid to the former group which is both financially and politically weak. Such less-advantaged group is expected to be given prior attention by a welfare State like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the preamble, fundamental rights, fundamental duties and directive principles, to take care of such deprived sections of people who are likely to lose their home and source of livelihood.

138. Mistakes in resettlement and rehabilitation of people ousted by other similar projects committed in the past have to be avoided. The

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construction of dam cannot be allowed to proceed and be completed leaving the oustees high and dry.

- a* **139.** The oustees of the Tehri Dam Project who are used to valley life in the Himalayas are proposed to be resettled and rehabilitated in the newly built Tehri town and those depending on forest and agriculture are proposed to be given cash compensation or land downstream near Dehradun city. The Ministry of Environment and Forests (MoEF) in its last affidavit has given a status report to show that resettlement work is in progress but not completed.

- b* In the affidavit it is promised as under:

“The project authority shall ensure that prior to closing of diversion tunnels T-1/T-2 for impoundment of the reservoir, evacuation, resettlement and rehabilitation are completed in all respects. In addition, the catchment area and treatment of direct-draining areas etc. shall be completed. The project authority shall obtain clearance from MoEF before closing the outlet at EL 700 m.”

- c* **140.** The Rio Declaration on Environment and Development in the United Nations Conference held in June 1992 to which India was a party and signatory and on which the Environment (Protection) Act, its Rules and policies are modelled, obligates the authorities of India by the norms fixed in international and domestic law that “the environmental and natural resources of people under operation, domination and occupation shall be protected”. A mention has already been made above of the latest rehabilitation policy framed by the Government of India and relevant part has been quoted. These legal and policy obligations are enforceable against the State.

- e* **141.** In my considered opinion, therefore, the present status of the dam project, keeping in view the *pari passu* condition on which “*environmental clearance*” has been granted by MoEF, calls for issuing the following directions to the respondents who represent various Ministries and Departments of the Central and State Governments as also the Corporation to which the project has been entrusted for implementation:

- f* (1) The Central Government in terms of the recommendations of *Expert Committee for Environmental-Impact Assessment* as contained in Schedule III of the notification dated 27-1-1994 issued in exercise of powers under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with clause (f) [*sic (a)*] of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 shall constitute a Committee of experts and representatives of NGOs (if not already constituted) for the purpose of investigating, ascertaining and reporting whether the *pari passu conditions* laid down in the environmental clearance of the project have been fulfilled or not by the authorities of the project. The aforesaid Committee will inspect and report on the status of the work to the Central Government every three months and in case the conditions, as laid down in the clearance, are not fulfilled, recommend remedial or corrective measures/actions.
- g*
- h*

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(2) To take care of the safety aspect, until 3-D non-linear analysis and dam-break analysis are completed as recommended by the Committee on Safety and the result assessed by the aforesaid Expert Committee is submitted to the Central Government, diversion tunnels T-1/T-2 for impoundment of the reservoir shall not be closed. a

(3) The Expert Committee for Environmental-Impact Assessment constituted under Schedule III of the notification dated 27-1-1994 will also look into and submit status report on the progress of resettlement and rehabilitation measures. There will be no impoundment of the reservoir until resettlement and rehabilitation work is fully completed in all respects. b

(4) An effective grievance redressal cell headed by an independent expert in the field of Social Science shall be set up by the State Government with the help of the Central Government for solving rehabilitation and resettlement problems of the oustees of the project. The grievance redressal cell shall submit its status report every three months to the Expert Committee constituted under Schedule III of the notification (supra). c

142. This writ petition succeeds to the extent of directions made above.

143. All connected matters and applications also stand disposed of. The petitioners shall be entitled to all costs incurred by them in prosecuting these petitions in public interest from the respondents who will share them in equal proportion. d

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(BEFORE S.P. BHARUCHA, R.C. LAHOTI AND
N. SANTOSH HEGDE, JJ.) e

COMMISSIONER OF INCOME TAX . . . Appellant;

Versus

SHIVSAGAR ESTATE . . . Respondent. f

Civil Appeals No. 7962 of 1996 with Nos. 12677-80 of 1996 and SLPs

(C) Nos. 6835-36 of 1997, decided on July 27, 2000

Income Tax — Supreme Court — Appeal before — Since no appeal filed against identical assessment for the previous year, Supreme Court refusing to interfere — Income Tax Act, 1961 — S. 256(1)

CAs and SLPs dismissed S-M/IN/29818/S g

ORDER

1. Having regard to the fact that no appeal has been carried against the orders of identical assessment for the previous year, the civil appeals and special leave petitions are dismissed.

2. No order as to costs. h

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lengthy letter running into several paragraphs. The tenor and language of the suicide note would reflect that she was not an illiterate lady. As the Court is rendered helpless to judge whether the words which the deceased heard from the appellant would amount to cruelty, it is far from possible for the criminal court to hold that she is guilty of the offence of cruelty as envisaged in the section. It is also to be pointed out that the deceased did not mention a single deed which the appellant would have done against her. All that is said against the appellant was that she spoke something which she took as objectionable. a

6. In the aforesaid circumstances, it is not possible to hold her guilty of the offence of which she was found guilty by the High Court. No offence at all has been proved against her. She is entitled to be acquitted of the charge as well as the offence now found against her by the learned Single Judge. b

7. In the result, we allow this appeal and set aside the conviction passed on her and acquit her. The fine, if any, paid by her shall be refunded to her. c

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(BEFORE DR A.S. ANAND, C.J. AND S.P. BHARUCHA AND B.N. KIRPAL, JJ.)

NARMADA BACHAO ANDOLAN

.. Petitioner;

Versus

UNION OF INDIA AND OTHERS

.. Respondents. d

Writ Petitions (C) No. 319 of 1994 with Nos. 345 of 1994[†], 104 of 1997, SLP (C) No. 3608 of 1985, TC (C) No. 35 of 1995 and CA No. 6014 of 1994, decided on October 18, 2000

A. Constitution of India — Arts. 32, 226 and 21 — Maintainability — Delay or laches — Peculiar circumstances warranting entertainment of belated writ petition — Sardar Sarovar Dam cleared in 1987 by the Ministry concerned — Writ petition filed in 1994 to challenge the decision to construct the dam and the clearance given thereto — The writ petition raising, inter alia, issues relating to relief and rehabilitation of affected families — Held, per majority, such a petition, held, was highly belated and should have normally been dismissed — But, on account of Supreme Court's concern for protection of oustees' fundamental rights under Art. 21, entertained to examine the implementation of rehabilitation and relief measures — However, certain other issues raised in the petition also considered — Per Bharucha, J. (partly dissenting), writ petition having been filed during the continuance of relief and rehabilitation process, the petitioners are not guilty of laches in that regard e

B. Constitution of India — Art. 32 — Issue of directions and orders — PIL — Even in PIL cases, held, no directions can be issued in conflict with legal provisions — They can be issued when law is silent and inaction on the part of authorities is likely to result in violation of fundamental rights or other legal provisions g

[†] Under Article 32 of the Constitution of India h

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- A dispute arose between the State of Gujarat and its neighbouring States in the matter of use, distribution and control of the waters of the inter-State River Narmada including the height of Sardar Sarovar Dam to be constructed in Gujarat. Acting under Section 4 of the Inter-State Water Disputes Act, 1956, the Government of India constituted a Tribunal and referred the said dispute to it for adjudication. On 7-12-1979 the Water Disputes Tribunal (WDT) gave its final order and the same was published in the Extraordinary Gazette by the Government of India on 12-12-1979. WDT determined the height of Sardar Sarovar Dam at RLF 455 ft providing gross storage of 7.70 MAF. It directed the State of Gujarat to take up and complete the construction of the dam. The final award contained directions regarding submergence, land acquisition and rehabilitation of displaced persons. It directed the Gujarat Government to pay to M.P. and Maharashtra all costs including compensation, charges and expenses incurred by them for and in respect of compulsory acquisition of land. It provided for rehabilitation of oustees and civic amenities to be provided to them. It also provided that no submergence of any area would take place unless the oustees were rehabilitated. It also allocated the quantum of utilisable water among M.P., Gujarat, Rajasthan and Maharashtra. The award directed for the constitution of: (i) an inter-State administrative authority i.e. Narmada Control Authority (NCA) for the purpose of securing compliance with and implementation of the decision and directions of the Tribunal, and (ii) a Review Committee consisting of the Union Minister for Irrigation (now substituted by Union Minister for Water Resources) as its Chairperson and the Chief Ministers of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan as its members. The Review Committee might review the decisions of NCA and the Sardar Sarovar Construction Advisory Committee. The Sardar Sarovar Construction Advisory Committee headed by the Secretary, Ministry of Water Resources as its Chairperson was directed to be constituted for ensuring efficient, economical and early execution of the project. NCA is a high-powered committee having the Secretary, Ministry of Water Resources, Government of India as its Chairperson. On 24-6-1987 the Ministry of Environment and Forests, Government of India accorded environmental clearance to Sardar Sarovar Project subject to the following conditions:
- (i) NCA will ensure that environmental safeguard measures are planned and implemented *pari passu* with progress of work on project.
 - (ii) The detailed surveys/studies assured will be carried out as per the schedule proposed and details made available to the Department for assessment.
 - (iii) The catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling.
 - (iv) The Department should be kept informed of progress on various works periodically.
- In November 1987 for monitoring and implementation of various environmental activities effectively, an independent machinery of Environment Subgroup was created by NCA. This Subgroup was headed by the Secretary, Ministry of Environment and Forests, Government of India. On 5-10-1988 the Planning Commission approved investment for an estimated cost of Rs 6406 crores with the direction to comply with the conditions laid down in the environment clearance accorded on 24-6-1987. According to the State of Gujarat and Union of India, the studies as required to be done by the OM dated 24-6-

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1987, whereby environmental clearance was accorded, have been undertaken and the requisite work carried out. The construction of the dam had commenced in 1987.

In a proceeding arising out of a letter which was treated as a writ petition, the Supreme Court gave a direction on 20-9-1991 to constitute a Committee headed by Secretary (Welfare) to monitor the rehabilitation aspects of the Sardar Sarovar Project. The construction of the dam continued and on 23-2-1994, under the decision of the Ministry of Water Resources closure of ten construction sluices was effected. The petitioners filed the instant writ petition in April 1994 seeking the Union of India and other respondents to be restrained from proceeding with the construction of the dam and to be directed to open the said sluices. The petitioners' arguments were divided into four different heads, namely, general issues, issues regarding environment, issues regarding relief and rehabilitation and issues regarding review of the Tribunal's award. They pleaded that some independent judicial authority should review the entire project, examine the current best estimates of all costs (social, environmental, financial), benefits and alternatives in order to determine whether the project was required in the form it was or it needed to be restructured/modified. They pleaded that till then further construction of the dam should be stopped. They contended that the environmental clearance which was granted in 1987 was without any or proper application of mind as complete studies in that behalf were not available and that till that was done the project should not be allowed to proceed further. They further contended that further submergence should not take place and the height of the dam should be considerably reduced as it was not possible to have satisfactory relief and rehabilitation of the oustees as per the Tribunal's award and thus their fundamental rights under Article 21 read with ILO Convention No. 107 were being violated. That Sardar Sarovar Dam was not required as an exceptional measure, that the project was not in the best national interest. They pleaded that an independent agency should examine the environmental costs and mitigative measures to be undertaken in order to decide whether the environmental costs were acceptable and mitigative measures practical. They contended that starting of impounding in 1994 while the catchment area treatment programme was still incomplete violated the condition that "the catchment area treatment programme and rehabilitation plans be drawn so as to be completed ahead of reservoir filling" contained in the clearance letter, dated 24-6-1987.

Held :

Kirpal, J. (for Dr A.S. Anand, C.J. and himself)

The petitioner is an anti-dam organisation and is opposed to the construction of the high dam. It has been in existence since 1986 but has chosen to challenge the clearance given in 1987 by filing a writ petition in 1994. The project, in principle, was cleared more than 25 years ago when the foundation stone was laid by late Pandit Jawahar Lal Nehru. Thereafter, there was an agreement of the four Chief Ministers in 1974, namely, the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan for the project to be undertaken. Then dispute arose with regard to the height of the dam which was settled with the award of the Tribunal being given in 1978. For a number of years, thereafter, final clearance was still not given. In the meantime some environmental studies were conducted. The final clearance was not given because of the environmental concern which is quite evident. Even though complete data with regard to the

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a environment was not available, the Government did in 1987 finally give environmental clearance. It is thereafter that the construction of the dam was undertaken and hundreds of crores have been invested before the petitioner chose to file the present writ petition. Therefore, it has to be held that the petitioner is guilty of laches in not approaching the Court at an earlier point of time. (Paras 46 and 47)

b When such projects are undertaken and hundreds of crores of public money is spent, individuals or organisations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. The pleas relating to height of the dam and the extent of submergence, environment studies and clearance, hydrology, seismicity and other issues, except implementation of relief and rehabilitation, cannot be permitted to be raised at this belated stage. It was only the concern of the Supreme 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 the present petition. However, some of the other issues have also been dealt with herein. (Paras 48 to 50, 229 and 230)

c While exercising jurisdiction in PIL cases the Court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the Court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions. (Para 231)

Bharucha, J. (partly dissenting)

e When the writ petition was filed the process of relief and rehabilitation, such as it was, was going on. The writ petitioners were not guilty of any laches in that regard. In the writ petition they raised other issues, one among them being related to the environmental clearance of the project. Given what has been held in respect of the environmental clearance, when the public interest is so demonstrably involved, it would be against public interest to decline relief only on the ground that the Court was approached belatedly. (Para 281)

f **C. Constitution of India — Arts. 32 and 21 — Ecology — Construction of dams — Policy decision to construct a high dam — Scope of judicial review of, on merits of such decision — When not in conflict with law or mala fide or arbitrary, held, courts would not interfere with such a decision — Where two or more views are possible and the Government adopts one, the court would not sit in appeal over such decision — However, even on merits, the decision, held, could not be faulted — Height of Sardar Sarovar Dam in Gujarat having been determined by WDT at FRL 455 ft and the Government having given clearance thereto subject to certain conditions, in**
g **a writ petition seeking stoppage of construction of the dam or reduction of its height on account of its adverse effect on the oustees or on flora and fauna etc., held, the only point for the consideration of the Court was: (i) completion of the project at the earliest, and (ii) completion of the conditions of clearance including relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection under the Government's scheme and thereby protecting the affected**
h **persons' fundamental rights under Art. 21 — Detailed directions issued for**

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the said purpose — Administrative Law — Judicial review — Limits of — Policy decisions — Scope of judicial review of

D. Constitution of India — Art. 21 — Right to water — Held, is a fundamental right under Art. 21 — UNO resolution also recognises this right — Ecology a

E. Administrative Law — Judicial Review — Limits — Execution of project as per plans or system devised for that purpose — Court would not intervene unless the system is arbitrary or mala fides are shown

Held :

There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project are to be regarded as a policy decision. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner it was envisaged. (Para 227) b

The courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. c

(Para 229)

The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law. d

(Para 233)

When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision. e

(Paras 234, 238 and 240)

What the petitioner wants the Court to do in this case is precisely that. There is no material to enable the Supreme Court to come to the conclusion that the decision was mala fide. A hard decision need not necessarily be a bad decision. f

(Para 235)

Furthermore, environmental concern has not only to be of the area which is going to be submerged but also its surrounding area. The impact on environment should be seen in relation to the project as a whole. While an area of land will submerge but the construction of the dam will result in multifold improvement in the environment of the areas where the canal waters will reach. Considering g

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- a the benefits which have been reaped by the people all over India with the construction of the dams, the Government cannot be faulted for deciding to construct the high dam on River Narmada with a view to provide water not only to the scarcity areas of Gujarat but also to the small areas of the State of Rajasthan where shortage of water has been there since time immemorial.

(Para 236)

- b Displacement of people living on the proposed project sites and the areas to be submerged is an important issue. A properly-drafted relief and rehabilitation plan would improve the living standards of displaced persons after displacement. In the present case, the relief and rehabilitation packages of the States, specially of Gujarat, are such that the living conditions of the oustees will be much better than what they had in their tribal hamlets.

(Para 241)

- c The loss of forest because of any activity is undoubtedly harmful. But these large dams also cause conversion of wasteland into agricultural land and making the area greener. Large dams can also become instruments in improving the environment.

(Para 242)

- d Water is the basic need for the survival of human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India and can be served only by providing source of water where there is none. The resolution of UNO in 1977 to which India is a signatory, has also during the United Nations Water Conference unanimously recognised this right.

(Para 248)

- e The State of Madhya Pradesh is keen for the reduction of the dam's height to 436 ft. Apart from Gujarat and Rajasthan the State of Maharashtra also is not agreeable to this. The only benefit from the project which Maharashtra would get is its share of hydel-power from the project. The lowering of the height from 455 ft to 436 ft will take away this benefit even though 9399 hectares of its land will be submerged. With the reduction of height to 436 ft not only will there be loss of power generation but it would also render the generation of power merely seasonal.

(Para 251)

- f Moreover, in the present case, a considered decision has been taken and an award made, whereby a high dam having an FRL of 455 ft with capability of developing hydel-power is to be constructed. In the facts and circumstances of the present case, even if the Supreme Court could go into the question, the decision so taken cannot be faulted.

(Para 253)

- g The Supreme Court, as a Federal Court of the country specially in a case of inter-State river dispute where an award had been made has to ensure that the binding award is implemented. While issuing directions and disposing of this case, two conditions have to be kept in mind, (i) the completion of project at the earliest, and (ii) ensuring compliance with the conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the Government thereby protecting the rights under Article 21 of the Constitution.

(Para 254)

[Accordingly, the Supreme Court issued necessary directions.]

- h **F. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Environmental clearance to, by Ministry of Environment and Forests, Government of India OM dated 24-6-1987 whether was given without proper study and without proper planning of mitigative measures — Per majority answered in the negative — Per Bharucha, J., answered in the**

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affirmative and suggested that till necessary surveys and studies are completed, further construction of the dam should be stopped — Constitution of India, Art. 21 — Ecology — Sardar Sarovar Dam — Adverse impact on environment — Disastrous consequences of — Taken note of (per Bharucha, J.)

Per majority

From various documents and letters produced before the Court it is more than evident that the Government of India was deeply concerned with the environmental aspects of the Narmada Sagar and Sardar Sarovar Project. Inasmuch as there was some differences of opinion between the Ministries of Water Resources and Environment and Forests with regard to the grant of environmental clearance, the matter was referred to the Prime Minister. Thereafter, a series of discussions took place in the Prime Minister's Secretariat and the concern of the Prime Minister with regard to the environment and desire to safeguard the interest of the tribals resulted in some time being taken. The Prime Minister gave environmental clearance on 13-4-1987 and a formal letter was issued thereafter on 24-6-1987. In such circumstances, it is not possible to hold that the environmental clearance of the project was given without application of mind. It is evident, and in fact this was the grievance made by Shri Vaghela, the then Member of Parliament that the environmental clearance of the project was unduly delayed. The Government was aware of the fact that a number of studies and data had to be collected relating to environment. Keeping this in mind, a conscious decision was taken to grant environmental clearance and in order to ensure that environmental management plans were implemented *pari passu* with engineering and other works, the Narmada Management Authority was directed to be constituted. This is also reflected from the letter dated 24-6-1987 giving formal clearance to the project. (Paras 89 and 90)

At the time when the environmental clearance was granted by the Prime Minister whatever studies were available were taken into consideration. It was known that the construction of the dam would result in submergence and the consequent effect which the reservoir will have on the ecology of the surrounding areas was also known. Various studies relating to environmental impact had been carried out. There are different facets of environment and if in respect of a few of them adequate data was not available it does not mean that the decision taken to grant environmental clearance was in any way vitiated. The clearance required further studies to be undertaken and this has been and is being done. Care for the environment is an ongoing process and the system in place would ensure that ameliorative steps are taken to counter the adverse effect, if any, on the environment with the construction of the dam. (Para 127)

Per Bharucha, J.

In view of the note prepared by the Ministry of Water Resources in or about October 1986 on the environmental aspects of the Sardar Sarovar and the Narmada Sagar Multipurpose Projects, the same Ministry's note forwarded to the Additional Secretary to the Prime Minister on 20-11-1986, note of the Ministry of Environment and Forests on the environment aspects of the Narmada Sagar and the Sardar Sarovar Projects sent to the Secretary to the Prime Minister on 19-12-1986, and the note prepared in the Prime Minister's office on 15-1-1987 and certain other documents, it is clear that the environment clearance was based on next to no data in regard to the environmental impact of the project. It was, therefore, contrary to the terms of the then policy of the

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Union of India in regard to environmental clearances and, therefore, no clearance at all. (Paras 261, 262 and 267)

- a The environmental clearance of 24-6-1987 stated that details had been sought from the project authorities in respect of the rehabilitation master plan, phased catchment area treatment scheme, compensatory afforestation plan, command area development, survey of flora and fauna, carrying capacity of surrounding area, seismicity and health aspects; field surveys had yet to be completed and complete details had been assured by 1989. Clearly, therefore, the necessary particulars in regard to the environmental impact of the project, as required by the Guidelines for Environmental Impact Assessment of River Valley Projects issued in January 1985 by the Department of Environment in the Ministry of Environment and Forests of the Union Government, were not available when the environmental clearance was given, and it, therefore, could not have been given. (Paras 268 and 258)

- c The conditions upon which the environmental clearance was given were that detailed surveys and studies would be carried out and the Narmada Control Authority would ensure that “environmental safeguard measures” were planned and implemented pari passu with the progress of work on the project. No further assessment of the environmental impact of the project was contemplated by the environmental clearance, nor, indeed, was it ever carried out. (Para 269)

- d What environmental safeguard measures the Narmada Control Authority was to ensure were, and what their cost would be, was not known when the environmental clearance was given. There was, therefore, no way in which this cost could be included in the cost of the project, which was a requirement of the Guidelines. (Para 270)

- e **G. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Ministry of Environment and Forests, GOI OM dated 24-6-1987 — Condition in, that “the catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling” — Whether stood violated by starting impounding of water in 1994 while the catchment area treatment programme was still to be completed — Per majority, answered in the negative — Further held, Environmental Impact Assessment Notification not applicable in the present case as it had no retrospective effect — Per Bharucha, J., answered in the affirmative and further construction directed to be stopped till the entire necessary data was gathered and clearance was given after assessment thereof — Environmental Impact Assessment Notification, 1994, although not applicable, in present case, constitution of a Committee on the model of the Committee stipulated therein suggested for this purpose — Words and Phrases — “Catchment area” — Environment Protection and Pollution Control — Environmental Impact Assessment Notification, 1994 (as amended on 4-5-1994), Sch. III — Held, not applicable retrospectively — Environment Protection and Pollution Control — Environment (Protection) Act, 1986, S. 3**

- g **H. Constitution of India — Arts. 32 and 21 — Ecology — Cases pertaining to environment — Onus of proof — Sustainable development principle and precautionary principle — Applicability — Where the effect of the proposed project is known, the principle of sustainable development and not the precautionary principle, held, applicable — Hence, in a writ petition challenging the clearance of Sardar Sarovar Dam, plea to require**

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the Government to prove that the construction of Sardar Sarovar Dam would not lead to environmental degradation, rejected — Words and Phrases — “Sustainable development”

I. Environment Protection and Pollution Control — Project clearance — That clearance was given by the Prime Minister instead of the Ministry of Environment and Forests is immaterial (per Bharucha, J.)

Per majority

The clearance of June 1987 required the work to be done *pari passu* with the construction of the dams and the filling of the reservoir. The area wherein the rainfall water is collected and drained into the river or reservoir is called catchment area and the catchment area treatment was essentially aimed at checking of soil erosion and minimising the silting in the reservoir within the immediate vicinity of the reservoir in the catchment area. The respondents had proceeded on the basis that the requirement in the letter of June 1987 that catchment area treatment programme and rehabilitation plans be drawn up and completed ahead of reservoir filling would imply that the work was to be done *pari passu*, as far as catchment area treatment programme was concerned, with the filling of reservoir. Even though the filling of the reservoir started in 1994, the impoundment award was much less than the catchment area treatment which had been affected. The status of compliance with respect to *pari passu* conditions indicated that in the year 1999, the reservoir level was 88.0 metres, the impoundment area was 6881 hectares (19%) and the area where catchment treatment had been carried out was 1,28,230 hectares being 71.56% of the total work required to be done. The minutes of the Environmental Subgroup as on 28-9-1999 stated that catchment area treatment works were nearing completion in the States of Gujarat and Maharashtra. Though, there was some slippage in Madhya Pradesh, however, overall works by and large were on schedule. This clearly showed that the monitoring of the catchment treatment plan was being done by the Environmental Subgroup quite effectively. (Para 103)

The “precautionary principle” and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. On the other hand where the effect on ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what mitigative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be an ecological disaster. It is when the effect of the project is known then the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation. (Para 123)

In the present case what is being established is a large dam. The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in an ecological disaster. India has an experience of over 40 years in the construction of dams. The experience does not show that construction of a large dam is not cost-effective or leads to ecological or environmental degradation. On the contrary there has been ecological upgradation with the

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construction of large dams. What is the impact on environment with the construction of a dam is well known in India. (Para 124)

- a *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, *distinguished*
Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647, *referred to*
Sierra Club et. v. Robert F. Froehlke, 350 b F Supp 1280 (1973); *Tennessee Valley Authority v. Hiram G. Hill*, 437 US 153 : 57 L Ed 2d 117 : 98 S Ct 2279; *Arlington Coalition on Transportation v. John A. Volpe*, 458 F 2d 1323 (1972); *Environmental Defense Fund, Inc. v. Corps of Engineers of United States Army*, 325 F Supp 749 (1971), *distinguished*

- b The Environmental Impact Assessment Notification, 1994 dated 27-1-1994 issued under Section 3 of the Environment Protection Act is clearly prospective and the procedure provided therein for getting prior clearance cannot apply retrospectively to the project whose construction commenced nearly eight years prior thereto. (Para 129)

Per Bharucha, J. (dissenting)

- c While the environmental safeguard measures were to be planned and implemented *pari passu* with the progress of the work on the project, the catchment area treatment programme and the rehabilitation plans were required to be "so drawn as to be completed ahead of reservoir filling". This condition clearly required that before any water was impounded in the reservoir the catchment area treatment programme was not only to be drawn but also to be completed; so also the rehabilitation plans. If, as the project authorities
d interpreted this clause, only the drawing of the catchment area treatment programme and the rehabilitation plans were to be completed ahead of reservoir filling, the clause would have read: "The catchment area treatment programme and the rehabilitation plans shall be drawn ahead of reservoir filling." What the clause as drawn required was that the catchment area treatment programme and the rehabilitation plans should be drawn in such a manner that the catchment
e area treatment and the rehabilitation works would be completed ahead of impoundment in the reservoir. This, plainly, was intended to offset, so far as was possible in the circumstances, the adverse effect of the impoundment of water in the reservoir upon the catchment and those who were required to be settled elsewhere. In fact, the impoundment began much before. (Para 271)

- f The fact that the environmental clearance was given by the Prime Minister and not by the Ministry of Environment and Forests, as it would ordinarily have been done, makes no difference at all. Under its own policy, as indicated by the Guidelines, the Union of India was bound to give environmental clearance only after (a) all the necessary data in respect of the environmental impact of the project had been collected and assessed; (b) the assessment showed that the project could proceed; and (c) the environmental safeguard measures, and their cost, had been worked out. (Para 273)

- g An adverse impact on the environment can have disastrous consequences for this generation and generations to come. The Supreme Court has in its judgments on Article 21 of the Constitution recognised this. The Supreme Court cannot place its seal of approval on so vast an undertaking as the project without first ensuring that those best fitted to do so have had the opportunity of gathering all necessary data on the environmental impact of the project and of assessing it.
h They must then decide if environmental clearance to the project can be given, and, if it can, what environmental safeguard measures have to be adopted, and their cost. While surveys and studies on the environmental aspects of the project

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have been carried out subsequent to the environmental clearance, they are not complete. Those who now examine whether environmental clearance to the project should be given must be free to commission or carry out such surveys and studies and the like as they deem necessary. They must also, of course, consider such surveys and studies as have already been carried out. Given that the construction of the dam and other work on the project has already commenced, this factor must play a part in their deciding whether or not environmental clearance should be accorded. Until environmental clearance to the project is accorded by them, further construction work on the dam shall cease. (Para 274)

The Union of India had issued a notification on 27-1-1994 called the "Environmental Impact Assessment Notification, 1994" (and amended it on 4-5-1994). Its terms are not applicable to the present proceedings, but its provisions are helpful insofar as they prescribe who is to assess the environmental impact assessment reports and environment management plans that are submitted by applicants for new projects, including hydroelectric projects. The Environmental Impact Agency of the Union Ministry of Environment and Forests shall now appoint a Committee of Experts composed of experts in the fields mentioned in Schedule III of the Notification and that Committee of Experts shall assess the environmental impact of the project. (Para 275)

J. Constitution of India — Art. 32 — Standing/Locus standi — Award of Water Disputes Tribunal — Locus standi to challenge — Such an award when published, held, is binding on the States — No third party has a right to challenge the correctness thereof — Inter-State Water Disputes Act, 1956, Ss. 5 & 6 — Award of Water Disputes Tribunal — Binding nature of, and locus standi to challenge the award

K. Constitution of India — Art. 21 — Ecology — Displacement of tribals on account of construction of Sardar Sarovar Dam up to a height of 455 ft — Legality — In view of relief and rehabilitation measures provided in WDT award, held, not violative of Art. 21 — ILO Convention No. 107, Art. 12 — Environment Protection and Pollution Control — Ecology

L. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Environmental costs and corresponding mitigative measures to be undertaken, whether needed examination by some independent agency — Answered in the negative — Environment Protection and Pollution Control — Ecology

M. Constitution of India — Art. 32 — Ecology — Compensatory afforestation — Quality of — If done on wasteland or lesser quality land, held, would not be necessarily of lesser quality or quantity — Environment Protection and Pollution Control — Ecology

Held :

Per majority

The Water Disputes Tribunal has in its award come to the conclusion that the height of the dam should be 455 ft. It had rejected the contention of the State of Madhya Pradesh for fixing the height at a lower level. At the same time in arriving at this figure, it had considered the relief and rehabilitation problems and had issued directions in respect thereof. Any issue which has been decided by the Tribunal would, in law, be binding on the respective States. Once the award is binding on the States, it will not be open to a third party like the

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a petitioners to challenge the correctness thereof. In terms of the award, the State of Gujarat has a right to construct a dam up to the height of 455 ft and, at the same time, the oustees have a right to demand relief and resettlement as directed in the award. Therefore, it is not necessary herein to deal with any contention which, in fact, seems to challenge the correctness of an issue decided by the Tribunal. (Paras 52 and 245)

b There is merit in the contention of the respondents that there would be a positive impact on preservation of ecology as a result from the project. SSP would be making positive contribution for preservation of environment in several ways. (Para 61)

c 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 which they enjoyed in their tribal hamlets. The gradual assimilation in the main stream of the society will lead to betterment and progress. (Para 62)

Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey, (1984) 2 SCC 534 : 1984 SCC (Cri) 313; *People's Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433 : 1997 SCC (Cri) 434; *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42 : 1995 SCC (L&S) 604, referred to

d There is no reason whatsoever as to why independent experts should be required to examine the quality, accuracy, recommendations and implementation of the studies carried out. The Narmada Control Authority and the Environmental Subgroup in particular have the advantage of having with them the studies which had been carried out and there is no reason to believe that they would not be able to handle any problem, if and when, it arises or to doubt the correctness of the studies made. (Para 101)

e If afforestation was taking place on wasteland or lesser quality land, it did not necessarily follow. (Para 106)

f **N. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation — Major sons of PAFs — Right to allotment of land — Cut-off date of 1-1-1987 — Legality — As per WDT award, only the sons who had become major one year prior to the issuance of the notification for land acquisition (issued in 1981-82 in this case), held, were entitled to be allotted land — Hence, fixation of 1-1-1987 as cut-off date so as to give extra benefit to those sons who attained the age of majority at a later date, held, could not be faulted — Constitution of India, Art. 14 — Cut-off date — Ecology** (Para 176)

g **O. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation of oustees — Monitoring arrangement and grievance redressal system — Whether there was a need for review of the project and monitoring of relief and rehabilitation of oustees, by an independent agency — Answered in the negative — Further held, Narmada Control Authority was itself an independent authority and its decisions could be reviewed by the Review Committee — Moreover, there existed grievance redressal bodies to hear appeals from the decisions of rehabilitation officers — Also, there are certain other independent**
h **monitoring and evaluation agencies as well**

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Held :

Per majority

WDT's award is final and binding on the States. The machinery of the Narmada Control Authority has been envisaged and constituted under the award itself. It is not possible to accept that Narmada Control Authority is not to be regarded as an independent authority. Of course some of the members are government officials but apart from the Union of India, the other States are also represented in this Authority. The project is being undertaken by the Government and it is for the governmental authorities to execute the same. With the establishment of the R&R Subgroup and constitution of the grievances redressal authorities by the States of Gujarat, Maharashtra and Madhya Pradesh, there is a system in force which will ensure satisfactory resettlement and rehabilitation of the oustees. There is no basis for contending that some outside agency or National Human Rights Commission should see to the compliance with the Tribunal's award. (Paras 177 and 228)

As a consequence of the Tribunal's award, the Narmada Control Authority was created to coordinate and oversee the overall work of the project and to monitor the relief and rehabilitation activities including environmental safeguard measures. The Review Committee of the Narmada Control Authority may suo motu or on the application of any party-State or the Secretary, Ministry of Environment and Forests review any decision of the Narmada Control Authority. In the Narmada Control Authority, Resettlement & Rehabilitation (R&R) Subgroup has been created for closely monitoring the R&R progress. This Subgroup is headed by the Secretary, Government of India, Ministry of Social Justice and Empowerment and is represented by members/invitees of participating States, academic institutions having expertise in R&R, independent socio-anthropological experts and non-governmental organisations. (Para 178)

State of Karnataka v. State of A.P., (2000) 9 SCC 572 : (2000) 3 Scale 505, referred to

The appeal mechanism has been established in the policy statements by all the three State Governments for the redressal of grievances of PAFs. According to this mechanism, if a displaced person is aggrieved by the decision of the rehabilitation officers in respect of any R&R process, he may appeal to the agency/officers concerned. Vide resolution dated 17-2-1999 the Government of Gujarat set up a high-level authority called "Grievance Redressal Authority (GRA)" before which the oustees already resettled and to be resettled in Gujarat could ventilate their grievances for redressal after their resettlement till the process of resettlement and rehabilitation is fully completed. The said Grievance Redressal Authority has Mr Justice P.D. Desai, retired Chief Justice as its Chairman. The Gujarat Rehabilitation Authority has installed a permanent in-house Grievance Redressal Cell (GRC) within Sardar Sarovar Punarvasavat Agency. The Grievance Redressal Cell deals with the grievances of PAFs and the grievances redressal is undertaken by it. (Paras 182 and 183)

At the instance of the Grievance Redressal Authority, an agricultural cell is set up in Sardar Sarovar Punarvasavat Agency with effect from 1-7-1999. This was done with an objective of enhancing the productivity of agricultural land allotted to PAFs by adopting suitable farm management practices and in assisting in resolving land-related grievances. Similarly, w.e.f. 1-5-1999, medical cells have been set up in Sardar Sarovar Punarvasavat Agency for ensuring effective functioning of medical infrastructure and providing organised

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- a system of supervising and monitoring and also for conducting health survey-cum-medical check-up activities. The Grievance Redressal Authority has become an effective monitoring and implementing agency with regard to relief and rehabilitation of the PAFs in Gujarat. Apart from resolving independent grievances of PAFs and ensuring compliance with the provisions of the award through its exhaustive machinery and mechanism, it is also trying to guide in respect of various other issues not covered by the provisions of the award.

(Para 188)

- b Vide notification dated 17-4-2000 the Government of Maharashtra has set up a Grievance Redressal Authority and Mr Justice S.P. Kurdukar, retired Judge of the Supreme Court, has been appointed as its Chairman.

(Para 189)

By notification dated 30-3-2000 the Government of Madhya Pradesh has constituted a Grievance Redressal Authority similar to the one in Gujarat with Mr Justice Sohni, retired Chief Justice of the Patna High Court as its Chairman.

(Para 190)

- c The monitoring and evaluation of the rehabilitation programme is also being carried out by the independent socio-anthropological agencies appointed by the State Governments of Maharashtra, Madhya Pradesh and Gujarat as well as the Narmada Control Authority.

(Para 191)

Thus there is in place an elaborate network of authorities which have to see to the execution and implementation of the project in terms of the award.

(Para 195)

- d **P. Constitution of India — Art. 32 — Ecology — Dams — Sardar Sarovar Dam — Downstream impacts of — Contention that it would have adverse effect on fishing activity and would result in salt water ingress, rejected — Environment Protection and Pollution Control — Dams — Impact of**

(Paras 107 and 108)

- e **Q. Constitution of India — Art. 32 — Ecology — Dams — Sardar Sarovar Dam — Apprehension of adverse impacts of, on health around the submergence area and in the command area, held, incorrect — On facts, held, area of public health was not being neglected by State Government — Ecology**

(Para 117)

- f **R. Constitution of India — Art. 32 — Ecology — Narmada Control Authority — Allegation of ineffective functioning against — Environment Subgroup of, made on the basis of conjecture and surmises, rejected — Evidence Act, 1872, S. 114 Ill. (e) — Ecology**

(Para 119)

- g **S. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation of project-affected families (PAF) — Surveys of, for determining the number of — Contention that such surveys had not been properly done and that their number had been shown by the authorities at a much lower side, rejected — Ecology**

Held :

Each of the States concerned has drawn detailed action plan and it is after requisite study had been made that the number of PAFs have been identified. The number has substantially increased from what was estimated in the Tribunal's award. The reason for the same is the liberalisation of the R&R packages by the State Governments. Except for a bald assertion, there appears to be no material on which the Supreme Court can come to the conclusion that no

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proper surveys had been carried out for determining the number of PAFs who would be adversely affected by the construction of the dam. (Para 165)

B.D. Sharma v. Union of India, 1992 Supp (3) SCC 93, referred to

T. Constitution of India — Arts. 32 and 14 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation packages offered to oustees by different States (Gujarat, Maharashtra and M.P.) — Comparatively liberal package offered by Gujarat State — Legality — Upheld — Contention that it had the effect of restricting the choice of oustees and forced them to shift to Gujarat, rejected

Held :

The resettlement and rehabilitation packages in the three States were different due to different geographical, local and economic conditions and availability of land in the States. The liberal packages available to the Sardar Sarovar Project oustees in Gujarat are not even available to the project-affected people of other projects in Gujarat. It is incorrect to say that the difference in relief and rehabilitation packages, the package of Gujarat being the most liberal, amounts to restricting the choice of the oustees. Each State has its own package and the oustees have an option to select the one which was most attractive to them. There is no requirement that the liberalisation of the packages by the three States should be to the same extent and at the same time, the States cannot be faulted if the package which is offered, though not identical to each other, is more liberal than the one envisaged in the Tribunal's award. (Para 166)

U. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation of non-farmer oustees — Such oustees, held, would be entitled to rehabilitation as per the award of WDT and to benefits of the package offered and chosen — Ecology (Para 167)

V. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation — Colony-affected people — People whose land was acquired for construction of colony for the purpose of the dam, held, were either provided employment in the project works or were paid an ex gratia sum of Rs 36,000 — Ecology (Para 168)

W. Constitution of India — Arts. 32 and 14 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation — Canal-affected families — Families whose land was acquired for construction of canals, held, not entitled to parity in relief with the oustees of submergence area — Ecology (Paras 169 and 131)

X. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation — Pattern of resettlement of oustees — Interpretation of WDT award — Requirement in the award to establish rehabilitation villages for oustees on the norms mentioned for rehabilitation of families willing to migrate to Gujarat, held, did not mean resettlement of oustees as a homogeneous group in a village exclusively set up for them — Ecology (Para 171)

Y. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and Rehabilitation — Provision for grazing land and fuel wood for PAFs, held, was not a requirement of WDT award (Para 175)

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Advocates who appeared in this case :

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The Judgments of the Court were delivered by

KIRPAL, J. (*for Anand, C.J. and himself*)— Narmada is the fifth largest river in India and largest west-flowing river of the Indian Peninsula. Its annual flow approximates to the combined flow of Rivers Sutlej, Beas and Ravi. Originating from the Maikala Ranges at Amarkantak in Madhya Pradesh, it flows westwards over a length of about 1312 km before draining into the Gulf of Cambay, 50 km west of Bharuch city. The first 1077 km stretch is in Madhya Pradesh and the next 35 km stretch of the river forms the boundary between the States of Madhya Pradesh and Maharashtra. Again, the next 39 km forms the boundary between Maharashtra and Gujarat and the last stretch of 161 km lies in Gujarat.

2. The basin area of this river is about 1 lakh sq km. The utilisation of this river basin, however, is hardly about 4%. Most of the water of this peninsular river goes into the sea. In spite of the huge potential, there was hardly any development of the Narmada water resources prior to independence.

3. In 1946, the then Government of Central Provinces and Berar and the then Government of Bombay requested the Central Waterways, Irrigation and Navigation Commission (CWINC) to take up investigations on the Narmada river system for basinwise development of the river with flood

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control, irrigation, power and extension of navigation as the objectives in view. The study commenced in 1947 and most of the sites were inspected by engineers and geologists who recommended detailed investigation for seven projects. Thereafter in 1948, the Central Ministry of Works, Mines and Power appointed an ad hoc committee headed by Shri A.N. Khosla, Chairman, CWINC to study the projects and to recommend the priorities. This ad hoc committee recommended as an initial step detailed investigations for the following projects keeping in view the availability of men, materials and resources:

1. Bargi Project,
2. Tawa Project near Hoshangabad,
3. Punasa Project, and
4. Broach Project.

4. Based on the recommendations of the aforesaid ad hoc committee, estimates for investigations of the Bargi, Tawa, Punasa (Narmada Sagar) and Broach Projects were sanctioned by the Government of India in March 1949.

5. The Central Water and Power Commission carried out a study of the hydroelectric potential of the Narmada basin in the year 1955. After the investigations were carried out by the Central Water and Power Commission, the Navagam site was finally decided upon in consultation with the erstwhile Government of Bombay for the construction of the dam. The Central Water and Power Commission forwarded its recommendations to the then Government of Bombay. At that time the implementation was contemplated in two stages. In Stage I, full reservoir level (hereinafter referred to as "FRL") was restricted to 160 ft with provision for wider foundations to enable raising of the dam to FRL 300 ft in Stage II. A high-level canal was envisaged in Stage II. The erstwhile Bombay Government suggested two modifications, first FRL of the dam be raised from 300 to 320 ft in Stage II and second the provision of a powerhouse in the riverbed and a powerhouse at the head of the low-level canal be also made. This project was then reviewed by a panel of consultants appointed by the Ministry of Irrigation and Power who in a report in 1960 suggested that the two stages of the Navagam Dam as proposed should be combined into one and the dam be constructed to its final FRL 320 ft in one stage only. The consultants also stated that there was scope for extending irrigation from the high-level canal towards the Rann of Kutch.

6. With the formation of the State of Gujarat on 1-5-1960 the Narmada Project stood transferred to that State. Accordingly, the Government of Gujarat gave an administrative approval to Stage I of the Narmada Project in February 1961. The project was then inaugurated by late Pandit Jawaharlal Nehru on 5-4-1961. The preliminary works such as approach roads and bridges, colonies, staff buildings and remaining investigations for dam foundations were soon taken up.

7. The Gujarat Government undertook surveys for the high-level canal in 1961. The submergence area survey of the reservoir enabled assessment of

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- a the storage capability of the Navagam Reservoir, if its height should be raised beyond FRL 320 ft. The studies indicated that a reservoir with FRL +460 ft would enable realisation of optimum benefits from the river by utilising the untapped flow below Punasa Dam and would make it possible to extend irrigation to a further area of over 20 lakh acres. Accordingly, explorations for locating a more suitable site in the narrower gorge portion were taken in hand and finally in November 1963, Site No. 3 was found to be most suitable on the basis of the recommendations of the Geological Survey of India and also on the basis of exploration and investigations with regard to the foundation as well as construction materials available in the vicinity of the dam site.

- b 8. In November 1963 the Union Minister of Irrigation and Power held a meeting with the Chief Ministers of Gujarat and Madhya Pradesh at Bhopal. As a result of the discussions and exchange of views, an agreement (Bhopal Agreement) was arrived at. The salient features of the said agreement were:

- c “(a) That the Navagam Dam should be built to FRL 425 by the Government of Gujarat and its entire benefits were to be enjoyed by the State of Gujarat.

- d (b) Punasa Dam (Madhya Pradesh) should be built to FRL 850. The costs and power benefits of Punasa Power Project shall be shared in the ratio 1:2 between the Governments of Gujarat and Madhya Pradesh. Out of the power available to Madhya Pradesh half of the quantum was to be given to the State of Maharashtra for a period of 25 years for which the State of Maharashtra was to provide a loan to the extent of one-third the cost of Punasa Dam. The loan to be given by the State of Maharashtra was to be returned within a period of 25 years.

- e (c) Bargi Project was to be implemented by the State of Madhya Pradesh. Bargi Dam was to be built to FRL 1365 in Stage I and FRL 1390 in Stage II and the Governments of Gujarat and Maharashtra were to give a total loan assistance of Rs 10 crores for the same.”

- f 9. In pursuance of the Bhopal Agreement, the Government of Gujarat prepared a brief project report envisaging the Navagam Dam FRL 425 ft and submitted the same to the Central Water and Power Commission under Gujarat Government’s letter dated 14-2-1964. Madhya Pradesh, however, did not ratify the Bhopal Agreement. In order to overcome the stalemate following the rejection of the Bhopal Agreement by Madhya Pradesh, a high-level committee of eminent engineers headed by Dr A.N. Khosla, the then Governor of Orissa, was constituted on 5-9-1964 by the Government of India. The terms of reference of this committee were decided by the Government of India in consultation with the States of Madhya Pradesh, Maharashtra and Gujarat. The same read as under:

- g (i) Drawing up of a master plan for the optimum and integrated development of the Narmada water resources.
- h (ii) The phasing of its implementation for maximum development of the resources and other benefits.

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(iii) The examination, in particular, of Navagam and alternative projects, if any, and determining the optimum reservoir level or levels.

(iv) Making recommendations of any other ancillary matters. a

10. The Khosla Committee submitted the unanimous report to the Government of India in September 1965 and recommended a master plan of the Narmada water development. In Chapter XI of the said report, the Khosla Committee outlined its approach to the plan of Narmada development. An extract from this chapter is reproduced below:

“11.1. In their meeting from 14-12-1964 to 18-12-1964 at which the State representatives were also present, the Committee laid down the following basic guidelines in drawing up the master plan for the optimum and integrated development of the Narmada water resources: b

(1) national interest should have overriding priority. The plan should, therefore, provide for maximum benefits in respect of irrigation, power generation, flood control, navigation etc. irrespective of State boundaries; c

(2) rights and interests of the State concerned should be fully safeguarded subject to (1) above;

(3) requirements of irrigation should have priority over those of power; d

Subject to the provision that suitable apportionment of water between irrigation and power may have to be considered, should it be found that with full development of irrigation, power production is unduly affected;

(4) irrigation should be extended to the maximum area within physical limits of command, irrespective of State boundaries, subject to availability of water; and in particular, to the arid areas along the international border with Pakistan both in Gujarat and Rajasthan to encourage sturdy peasants to settle in these border areas (later events have confirmed the imperative need for this); and e

(5) all available water should be utilised to the maximum extent possible for irrigation and power generation and, when no irrigation is possible, for power generation. The quantity going waste to the sea without doing irrigation or generating power should be kept to the unavoidable minimum.” f

11. The master plan recommended by the Khosla Committee envisaged 12 major projects to be taken up in Madhya Pradesh and one, viz., Navagam in Gujarat. As far as Navagam Dam was concerned, the Committee recommended as follows: g

“1. The terminal dam should be located at Navagam.

2. The optimum FRL of the Navagam Dam worked out to RL 500 ft.

3. The FSL (full supply level) of the Navagam Canal at off-take should be RL 300 ft.

4. The installed capacity at the riverbed power station and canal power station should be 1000 MW and 240 MW respectively with one h

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standby unit in each power station (in other words the total installed capacity at Navagam would be 1400 MW).”

- a The benefits of the Navagam Dam as assessed by the Khosla Committee were as follows:

“(1) Irrigation of 15.80 lakh hectares (39.4 lakh acres) in Gujarat and 0.4 lakh hectares (1.00 lakh acres) in Rajasthan. In addition, the Narmada waters when fed into the existing Mahi Canal System would release Mahi water to be diverted on higher contours enabling additional irrigation of 1.6 to 2.0 lakh hectares (4 to 5 lakh acres) approximately in Gujarat and 3.04 lakh hectares (7.5 lakh acres) in Rajasthan.

- b (2) Hydropower generation of 951 MW at 60% LF in the mean year of development and 511 MW on ultimate development of irrigation in Gujarat, Madhya Pradesh, Maharashtra and Rajasthan.”

- c 12. The Khosla Committee stressed an important point in favour of high Navagam Dam, namely, additional storage. They emphasised that this additional storage will permit greater carry-over capacity, increased power production and assured optimum irrigation and flood control and would minimise the wastage of water to the sea. The Khosla Committee also observed that instead of higher Navagam Dam as proposed, if Harinphal or Jalsindhi Dams were raised to the same FRL as at Navagam, the submergence would continue to remain about the same because the cultivated and inhabited areas lie mostly above Harinphal while in the intervening 113 km (70 mile) gorge between Harinphal and Navagam, there was very little habitation or cultivated areas.

- d 13. The Khosla Committee Report could not be implemented on account of disagreement among the States. On 6-7-1968 the State of Gujarat made a complaint to the Government of India under Section 3 of the Inter-State Water Disputes Act, 1956 stating that a water dispute had arisen between the State of Gujarat and the respondent States of Madhya Pradesh and Maharashtra over the use, distribution and control of the waters of the inter-State River Narmada. The substance of the allegation was that executive action had been taken by Maharashtra and Madhya Pradesh which had prejudicially affected the State of Gujarat and its inhabitants. The State of Gujarat objected to the proposal of the State of Madhya Pradesh to construct Maheshwar and Harinphal Dams over River Narmada in its lower reach and also to the agreement reached between the States of Madhya Pradesh and Maharashtra to jointly construct the Jalsindhi Dam over Narmada in its course between the two States. The main reason for the objection was that if these projects were implemented, the same would prejudicially affect the rights and interests of Gujarat State by compelling it to restrict the height of the dam at Navagam to FRL 210 ft or less. Reducing the height of the dam would mean the permanent detriment of irrigation and power benefits that would be available to the inhabitants of Gujarat and this would also make it impossible for Gujarat to reclaim the desert area in the Rann of Kutch.

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According to the State of Gujarat, the principal matters in disputes were as under:

“(i) the right of the State of Gujarat to control and use the waters of the Narmada river on well-accepted principles applicable to the use of waters of inter-State rivers; a

(ii) the right of the State of Gujarat to object to the arrangement between the State of Madhya Pradesh and the State of Maharashtra for the development of Jalsindhi Dam;

(iii) the right of the State of Gujarat to raise the Navagam Dam to an optimum height commensurate with the efficient use of Narmada waters including its control for providing requisite cushion for flood control; and b

(iv) the consequential right of submergence of area in the States of Madhya Pradesh and Maharashtra and areas in the Gujarat State.” c

14. Acting under Section 4 of the Inter-State Water Disputes Act, 1956, the Government of India constituted a Tribunal headed by Hon’ble Mr Justice V. Ramaswamy, a retired Judge of this Court. On the same day, the Government made a reference of the water dispute to the Tribunal, the reference being in the following terms:

“In exercise of the powers conferred by sub-section (1) of Section 5 of the Inter-State Water Disputes Act, 1956 (33 of 1956), the Central Government hereby refers to the Narmada Water Disputes Tribunal for adjudication of the water dispute regarding the inter-State River Narmada, and the river-valley thereof, emerging from Letter No. MIP-5565/C-10527-K dated 6-7-1968, from the Government of Gujarat.” d

15. On 16-10-1969 the Government of India made another reference of certain issues raised by the State of Rajasthan to the said Tribunal. e

16. The State of Madhya Pradesh filed a demurrer before the Tribunal stating that the constitution of the Tribunal and reference to it were ultra vires of the Act. The Tribunal framed 24 issues which included the issues relating to Gujarat having a right to construct a high dam with FRL 530 feet and a canal with FSL 300 feet or thereabouts. Issues 1(a), 1(b), 1(A), 2, 3 and 19 were tried as preliminary issues of law and by its decision dated 23-2-1972 the said issues were decided against the respondents herein. It was held that the notification of the Central Government dated 16-10-1969 referring the matters raised by the State of Rajasthan by its complaint was ultra vires of the Act but constitution of the Tribunal and making a reference of the water dispute regarding inter-State River Narmada was not ultra vires of the Act and the Tribunal had jurisdiction to decide the dispute referred to it at the instance of the State of Gujarat. It further held that the proposed construction of the Navagam Project involving consequent submergence of portions of the territories of Maharashtra and Madhya Pradesh could form the subject-matter of a “water dispute” within the meaning of Section 2(c) of the 1956 Act. It also held that it had the jurisdiction to give appropriate direction to Madhya f g h

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Pradesh and Maharashtra to take steps by way of acquisition or otherwise for making submerged land available to Gujarat in order to enable it to execute the Navagam Project and the Tribunal had the jurisdiction to give consequent directions to Gujarat and other party-States regarding payment of compensation to Maharashtra and Madhya Pradesh, for giving them a share in the beneficial use of Navagam Dam, and for rehabilitation of displaced persons.

a 17. Against the aforesaid judgment of the Tribunal on the preliminary issues, the States of Madhya Pradesh and Rajasthan filed appeals by special leave to this Court and obtained a stay of the proceedings before the Tribunal to a limited extent. This Court directed that the proceedings before the Tribunal should be stayed but discovery, inspection and other miscellaneous proceedings before the Tribunal may go on. The State of Rajasthan was directed to participate in these interlocutory proceedings.

c 18. It appears that on 31-7-1972, the Chief Ministers of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan had entered into an agreement to compromise the matters in dispute with the assistance of the Prime Minister of India. This led to a formal agreement dated 12-7-1974 being arrived at between the Chief Ministers of Madhya Pradesh, Maharashtra and Rajasthan and the advisor to the Governor of Gujarat on a number of issues which the Tribunal otherwise would have had to go into. The main features of the agreement, as far as this case is concerned, were that the quantity of water in Narmada available for 75% of the year was to be assessed at 28 million acre feet and the Tribunal in determining the disputes referred to it was to proceed on the basis of this assessment. The net available quantity of water for use in Madhya Pradesh and Gujarat was to be regarded as 27.25 million acre feet which was to be allocated between the States. The height of the Navagam Dam was to be fixed by the Tribunal after taking into consideration various contentions and submissions of the parties and it was agreed that the appeals filed in this Court by the States of Madhya Pradesh and Rajasthan would be withdrawn. It was also noted in this agreement that “development of Narmada should no longer be delayed in the best regional and national interests”.

e 19. After the withdrawal of the appeals by the States of Madhya Pradesh and Rajasthan, the Tribunal proceeded to decide the remaining issues between the parties.

f 20. On 16-8-1978, the Tribunal declared its award under Section 5(2) read with Section 5(4) of the Inter-State Water Disputes Act, 1956. Thereafter, References Nos. 1, 2, 3, 4 and 5 of 1978 were filed by the Union of India and the States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan respectively under Section 5(3) of the Inter-State Water Disputes Act, 1956. These references were heard by the Tribunal, which on 7-12-1979 gave its final order. The same was published in the Extraordinary Gazette by the Government of India on 12-12-1979. In arriving at its final decision, the

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issues regarding allocation, height of dam, hydrology and other related issues came to be subjected to comprehensive and thorough examination by the Tribunal. Extensive studies were done by the Irrigation Commission and Drought Research Unit of India, Meteorological Department in matters of catchment area of Narmada basin, major tributaries of Narmada basin, drainage area of Narmada basin, climate, rainfall, variability of rainfall, arid and semi-arid zones and scarcity area of Gujarat. The perusal of the report shows that the Tribunal also took into consideration various technical literature before giving its award. a
b

Award of the Tribunal

21. The main parameters of the decision of the Tribunal were as under:

(a) Determination of the height of Sardar Sarovar Dam

The height of the Sardar Sarovar Dam was determined at FRL 455 ft. The Tribunal was of the view that FRL +436 ft was required for irrigation use alone. In order to generate power throughout the year, it would be necessary to provide all the live storage above MDDL for which an FRL +453 ft with MDDL +362 ft would obtain gross capacity of 7.44 MAF. Therefore, the Tribunal was of the view that FRL of the Sardar Sarovar Dam should be +455 ft providing gross storage of 7.70 MAF. It directed the State of Gujarat to take up and complete the construction of the dam. c
d

(b) Geological and seismological aspects of the dam site

The Tribunal accepted the recommendations of the Standing Committee under Central Water and Power Commission that there should be seismic coefficient of 0.10 g for the dam.

(c) Relief and rehabilitation e

The final award contained directions regarding submergence, land acquisition and rehabilitation of displaced persons. The award defined the meaning of land, oustee and family. The Gujarat Government was to pay to Madhya Pradesh and Maharashtra all costs including compensation, charges, expenses incurred by them for and in respect of compulsory acquisition of land. Further, the Tribunal had provided for rehabilitation of oustees and civic amenities to be provided to the oustees. The award also provided that if the State of Gujarat was unable to resettle the oustees or the oustees were unwilling to occupy the area offered by the States, then the oustees will be resettled by home State and all expenses for this were to be borne by Gujarat. An important mandatory provision regarding rehabilitation was the one contained in clause XI sub-clause (IV)(6)(ii) which stated that no submergence of any area would take place unless the oustees were rehabilitated. f
g

(d) Allocation of the Narmada waters

The Tribunal determined the utilisable quantum of water of the Narmada at Sardar Sarovar Dam site on the basis of 75% dependability h

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at 28 MAF. It further ordered that out of the utilisable quantum of Narmada water, the allocation between the States should be as under:

<i>a</i>	Madhya Pradesh	18.25 MAF
	Gujarat	9.00 MAF
	Rajasthan	0.50 MAF
	Maharashtra	0.25 MAF

(*e*) *Period of non-reviewability of certain award terms*

- b* The award provided for the period of operation of certain clauses of the final order and decision of the Tribunal as being subject to review only after a period of 45 years from the date of the publication of the decision of the Tribunal in the Official Gazette. What is important to note however is that the Tribunal's decision contained in clause II relating to determination of 75% dependable flow as 28 MAF was non-reviewable. The Tribunal decision of the determination of the utilisable quantum of Narmada water at Sardar Sarovar Dam site on the basis of 75% dependability at 28 MAF is not a clause which is included as a clause whose terms can be reviewed after a period of 45 years.
- c*

- 22.** The Tribunal in its award directed for the constitution of an inter-State administrative authority i.e. Narmada Control Authority for the purpose of securing compliance with and implementation of the decision and directions of the Tribunal. The Tribunal also directed for constitution of a Review Committee consisting of the Union Minister for Irrigation (now substituted by Union Minister for Water Resources) as its Chairperson and the Chief Ministers of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan as its members. The Review Committee might review the decisions of the Narmada Control Authority and the Sardar Sarovar Construction Advisory Committee. The Sardar Sarovar Construction Advisory Committee headed by the Secretary, Ministry of Water Resources as its Chairperson was directed to be constituted for ensuring efficient, economical and early execution of the project.
- d*
- e*

- 23.** The Narmada Control Authority is a high-powered committee having the Secretary, Ministry of Water Resources, Government of India as its Chairperson, Secretaries in the Ministry of Power, Ministry of Environment and Forests, Ministry of Welfare, Chief Secretaries of the four States concerned as members. In addition thereto, there are a number of technical persons like Chief Engineers as the members.
- f*

- 24.** The Narmada Control Authority was empowered to constitute one or more sub-committees and assign to them such of the functions and delegate such of its powers as it thought fit. Accordingly, the Narmada Control Authority constituted the following discipline-based subgroups:
- g*

- (*i*) Resettlement and Rehabilitation Subgroup under the Chairmanship of Secretary, Ministry of Welfare.
- (*ii*) Rehabilitation Sub-Committee under Secretary, Minister of Welfare to supervise the rehabilitation process by undertaking visits to R&R sites and submergence villages.
- h*

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(iii) Environment Subgroup under the Chairmanship of Secretary, Ministry of Environment and Forests.

(iv) Hydromet Subgroup under the Chairmanship of Member (Civil), Narmada Control Authority. a

(v) Power Subgroup under the Chairmanship of Member (Power), Narmada Control Authority.

(vi) Narmada Main Canal Sub-Committee under the Chairmanship of Executive Member, Narmada Control Authority. b

25. The award allocated the available water resources of the Narmada river between the four States. Based on this allocation, an overall plan for their utilisation and development had been made by the States. Madhya Pradesh was the major sharer of the water. As per the water resources development plan for the basin, it envisaged in all 30 major dams, 135 medium dam projects and more than 3000 minor dams. The major terminal dam at Sardar Sarovar was in Gujarat, the remaining 29 being in Madhya Pradesh. Down the main course of the river, the four major dams were the Narmada Sagar (now renamed as Indira Sagar), Omkareshwar and Maheshwar, all in Madhya Pradesh and Sardar Sarovar in Gujarat. Rajasthan was to construct a canal in its territory to utilise its share of 0.5 MAF. c

Relevant details of the Sardar Sarovar Dam d

26. As a result of the award of the Tribunal, the Sardar Sarovar Dam and related constructions, broadly speaking, are to comprise of the following:

(a) Main dam across the flow of the river with gates above the crest level to regulate the flow of water into the Narmada Main Canal.

(b) An underground riverbed power through which a portion of the water is diverted to generate power (1200 MW). This water joins the main channel of the Narmada river downstream of the dam. e

(c) A saddle dam located by the side of the main reservoir through which water to the main canal system flows.

(d) A canal head powerhouse located at the toe of the saddle dam, through which the water flowing to the main canal system is to be used to generate power (250 MW). f

(e) The main canal system known as Narmada Main Canal, 458-km long which is to carry away the water meant for irrigation and drinking purposes to the canal systems of Gujarat and Rajasthan.

Expected benefits from the project

27. The benefits expected to flow from the implementation of the Sardar Sarovar Project had been estimated as follows: g

Irrigation: 17.92 lakh hectares of land spread over 12 districts, 62 talukas and 3393 villages (75% of which are drought-prone areas) in Gujarat and 73,000 hectares in the arid areas of Barmer and Jalore Districts of Rajasthan.

Drinking water facilities to 8215 villages and 135 urban centres in Gujarat, both within and outside command. These include 5825 villages h

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and 100 urban centres of Saurashtra and Kutch which are outside the command. In addition, 881 villages affected due to high contents of fluoride will get potable water.

a

Power generation: 1450 megawatt.

Annual employment potential: 7 lakh men — years during construction, 6 lakh men — years in post-construction.

Protection against advancement of Little Rann of Kutch and Rajasthan desert.

b

Flood protection to riverine reaches measuring 30,000 ha, 210 villages including Bharuch city and 7.5 lakh population.

Benefits to:

(a) Dhumkhal Sloth Bear Sanctuary.

(b) Wild Ass Sanctuary in Little Rann of Kutch.

c

(c) Black Buck Sanctuary at Velavadar.

(d) Great Indian Bustard Sanctuary in Kutch.

(e) Nal Sarovar Bird Sanctuary.

Development of fisheries: Deepening of all village tanks of command which will increase their capacities, conserve water, will recharge groundwater, save acquisition of costly lands for getting earth required for constructing canal banks and will reduce health hazard.

d

Facilities of sophisticated communication system in the entire command.

Increase in additional annual production on account of

(Rs in crores)

e

Agricultural production 900

Domestic water supply 100

Power generation 400

Total 1400

Post-award clearances

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28. In order to meet the financial obligations, consultations had started in 1978 with World Bank for obtaining a loan. World Bank sent its reconnaissance mission to visit the project site and carried out the necessary inspection. In May 1985, the Narmada Dam and Power Project and Narmada Water Delivery and Drainage Project were sanctioned by World Bank under International Development Agency, Credit No. 1552. The agreement in this respect was signed with the Bank on 10-5-1985 and credit was to be made available from 6-1-1986.

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29. With regard to giving environmental clearance, a lot of discussion took place at different levels between the Ministry of Water Resources and the Ministry of Environment. Ultimately on 24-6-1987 the Ministry of Environment and Forests, Government of India accorded clearance subject to

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certain conditions. The said office memorandum containing the environmental clearance reads as follows:

“OFFICE MEMORANDUM

a

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

1. The Narmada Sagar Project, Madhya Pradesh and Sardar Sarovar Project, Gujarat have referred to this Department for environmental clearance.

2. On the basis of examination of details on these projects by the Environmental Appraisal Committee for River Valley Projects and discussions with the Central and State authorities the following details were sought from the project authorities:

b

1. rehabilitation master plan,
2. phased catchment area treatment scheme,
3. compensatory afforestation plan,
4. command area development,
5. survey of flora and fauna,
6. carrying capacity of surrounding area,
7. seismicity, and
8. health aspects.

c

d

3. Field surveys are yet to be completed. The first set of information has been made available and complete details have been assured to be furnished in 1989.

4. NCA has been examined and its terms of reference have been amplified to ensure that environmental safeguard measures are planned and implemented in depth and in its pace of implementation pari passu with the progress of work on the projects.

e

5. After taking into account all relevant facts the Narmada Sagar Project, Madhya Pradesh and the Sardar Sarovar Project, Gujarat State are hereby accorded environmental clearance subject to the following conditions:

f

(i) The Narmada Control Authority (NCA) will ensure that environmental safeguard measures are planned and implemented pari passu with progress of work on project.

(ii) The detailed surveys/studies assured will be carried out as per the schedule proposed and details made available to the Department for assessment.

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(iii) The catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling.

(iv) The Department should be kept informed of progress on various works periodically.

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a 6. The approval under the Forest (Conservation) Act, 1980 for diversion of forest land will be obtained separately. No work should be initiated on forest area prior to this approval.

7. Approval from environmental and forestry angles for any other irrigation, power or development projects in the Narmada basin should be obtained separately.

sd/-

(S. Mudgal)

Director (IA)”

b

c 30. In November 1987 for monitoring and implementation of various environmental activities effectively, an independent machinery of Environment Subgroup was created by the Narmada Control Authority. This Subgroup was appointed with a view to ensure that the environmental safeguards were properly planned and implemented. This Subgroup is headed by the Secretary, Ministry of Environment and Forests, Government of India, as its Chairperson and various other independent experts in various fields relating to environment as its members.

d 31. After the clearance was given by the Ministry of Environment and Forests, the Planning Commission, on 5-10-1988, approved investment for an estimated cost of Rs 6406 crores with the direction to comply with the conditions laid down in the environment clearance accorded on 24-6-1987.

32. According to the State of Gujarat and Union of India, the studies as required to be done by the OM dated 24-6-1987, whereby environmental clearance was accorded, have been undertaken and the requisite work carried out. The construction of the dam had commenced in 1987.

e 33. In November 1990, one Dr B.D. Sharma wrote a letter to this Court for setting up of National Commission for Scheduled Castes and Scheduled Tribes including proper rehabilitation of oustees of Sardar Sarovar Dam. This letter was entertained and treated as a writ petition under Article 32 of the Constitution being Writ Petition No. 1201 of 1990.

f 34. On 20-9-1991 this Court in the said writ petition bearing No. 1201 of 1990 gave a direction to constitute the Committee headed by Secretary (Welfare) to monitor the rehabilitation aspects of the Sardar Sarovar Project.

g 35. The Narmada Bachao Andolan, the petitioner herein, had been in the forefront of agitation against the construction of the Sardar Sarovar Dam. Apparently because of this, the Government of India, Ministry of Water Resources vide office memorandum dated 3-8-1993 constituted a Five-Member Group to be headed by Dr Jayant Patil, Member, Planning Commission and Dr Vasant Gowariker, Mr Ramaswamy R. Iyer, Mr L.C. Jain and Dr V.C. Kulandaiswamy as its members to continue discussions with the Narmada Bachao Andolan on issues relating to the Sardar Sarovar Project. Three months' time was given to this Group to submit its report.

h 36. During this time, the construction of the dam continued and on 22-2-1994 the Ministry of Water Resources conveyed its decision regarding

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closure of the construction sluices. This decision was given effect to and on 23-2-1994 closure of ten construction sluices was effected.

37. In April 1994 the petitioner filed the present writ petition inter alia praying that the Union of India and other respondents should be restrained from proceeding with the construction of the dam and they should be ordered to open the aforesaid sluices. It appears that the Gujarat High Court had passed an order staying the publication of the report of the Five-Member Group established by the Ministry of Water Resources. On 15-11-1994 this Court called for the report of the Five-Member Group and the Government of India was also directed to give its response to the said report.

38. By order dated 13-12-1994, this Court directed that the report of the Five-Member Group be made public and responses to the same were required to be filed by the States and the report was to be considered by the Narmada Control Authority. This report was discussed by the Narmada Control Authority on 2-1-1995 wherein disagreement was expressed by the State of Madhya Pradesh on the issues of height and hydrology. Separate responses were filed in this Court to the said Five-Member Group report by the Government of India and the Governments of Gujarat and Madhya Pradesh.

39. On 24-1-1995, orders were issued by this Court to the Five-Member Group for submitting detailed further report on the issues of:

- (a) height,
- (b) hydrology, and
- (c) resettlement and rehabilitation and environmental matters.

Dr Patil who had headed the Five-Member Group expressed his unwillingness to continue on the ground of ill-health and on 9-2-1995 this Court directed the remaining four members to submit their report on the aforesaid issues.

40. On 17-4-1985 the Four-Member Group submitted its report. The said report was not unanimous, unlike the previous one, and the members were equally divided. With regard to hydrology, Professor V.C. Kulandaiswamy and Dr Vasant Gowariker were for adoption of 75% dependable flow of 27 MAF for the design purpose, on the basis of which the Tribunal's award had proceeded. On the other hand, Shri Ramaswamy R. Iyer and Shri L.C. Jain were of the opinion that for planning purposes, it would be appropriate to opt for the estimate of 23 MAF. With regard to the question relating to the height of the dam, the views of Dr Gowariker were that the Tribunal had decided FRL 455 ft after going into exhaustive details including social, financial and technical aspects of the project and that it was not practicable at the stage when an expenditure of Rs 4000 crores had been incurred and an additional contract amounting to Rs 2000 crores entered into and the various parameters and features of the project having been designed with respect to FRL 455 ft that there should be a reduction of the height of the dam. The other three members proceeded to answer this question by first observing as follows:

“We must now draw conclusions from the foregoing analysis, but a preliminary point needs to be made. SSP is now in an advanced stage of

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- construction, with the central portion of the dam already raised to 80 m; the canal constructed up to a length of 140 km; and most of the equipment for various components of the project ordered and some of it already wholly or partly manufactured. An expenditure of over Rs 3800 crores is said to have been already incurred on the project; significant social costs have also been incurred in terms of displacement and rehabilitation. The benefits for which these costs have been and are being incurred have not materialised yet. In that situation, anyone with a concern for keeping project costs under check and for ensuring the early commencement of benefits would generally like to accelerate rather than retard the completion of the project as planned. If any suggestion for major changes in the features of the project at this juncture is to be entertained at all, there will have to be the most compelling reasons for doing so.”
- 41.** It then addressed itself to the question whether there were any compelling reasons. The answer, they felt, depended upon the view they took on the displacement and rehabilitation problem. The two views which, it examined, were, firstly whether the problem of displacement and rehabilitation was manageable and, if it was, then there would be no case of reduction in the height. On the other hand, if relief and rehabilitation was beset with serious and persistent problems then they might be led to the conclusion that there should be an examination of the possibility of reducing submergence and displacement to a more manageable size. These three members then considered the question of the magnitude of the relief and rehabilitation problem. After taking into consideration the views of the States of Madhya Pradesh and Gujarat, the three members observed as follows:
- “We find that the Government of India’s idea of phased construction outlined earlier offers a practical solution; it does not prevent FRL from being raised to 455 ft in due course if the necessary conditions are satisfied; and it enables the Government of Madhya Pradesh to take stock of the position at 436 ft and call to it a halt if necessary. We would, however, reiterate the presumption expressed in para 3.9.2. above, namely, that no delinking of construction from R&R is intended and that by ‘phased construction’ the Government of India does not mean merely tiered construction which facilitates controlled submergence in phases. We recommend phased construction in a literal sense, that is to say, that at each phase it must be ensured that the condition of advance completion of R&R has been fulfilled before proceeding to the next phase (i.e. the installation of the next tier of the gates). This would apply even to the installation of the first tier. ‘Judicious operation of the gates’ (while necessary) cannot be a substitute for the aforesaid condition.”
- The possibility of further construction when the FRL 436 ft was reached or a stoppage at that stage was left open by the members. With regard to the environment it observed that this subject had been by and large covered in the first FMG report.

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Rival contentions

42. On behalf of the petitioners, the arguments of Shri Shanti Bhushan, learned Senior Counsel, were divided into four different heads, namely, general issues, issues regarding environment, issues regarding relief and rehabilitation and issues regarding review of the Tribunal's award. The petitioners have sought to contend that it is necessary for some independent judicial authority to review the entire project, examine the current best estimates of all costs (social, environmental, financial), benefits and alternatives in order to determine whether the project is required in its present form in the national interest or whether it needs to be restructured/modified. It is further the case of the petitioners that no work should proceed till environment impact assessment has been fully done and its implications for the project's viability been assessed in a transparent and participatory manner. This can best be done, it is submitted, as a part of the comprehensive review of the project.

43. While strongly championing the cause of environment and of the tribals who are to be ousted as a result of the submergence, it was submitted that the environmental clearance which was granted in 1987 was without any or proper application of mind as complete studies in that behalf were not available and till this is done the project should not be allowed to proceed further. With regard to relief and rehabilitation a number of contentions were raised with a view to persuade this Court that further submergence should not take place and the height of the dam, if at all it is to be allowed to be constructed, should be considerably reduced as it is not possible to have satisfactory relief and rehabilitation of the oustees as per the Tribunal's award as a result of which their fundamental rights under Article 21 would be violated.

44. While the State of Madhya Pradesh has partly supported the petitioners inasmuch as it has also pleaded for reduction in the height of the dam so as to reduce the extent of submergence and the consequent displacement, the other States and the Union of India have refuted the contentions of the petitioners and of the State of Madhya Pradesh. While accepting that initially the relief and rehabilitation measures had lagged behind but now adequate steps have been taken to ensure proper implementation of relief and rehabilitation at least as per the award. The respondents have, while refuting other allegations, also questioned the bona fides of the petitioners in filing this petition. It is contended that the cause of the tribals and environment is being taken up by the petitioners not with a view to benefit the tribals but the real reason for filing this petition is to see that a high dam is not erected per se. It was also submitted that at this late stage this Court should not adjudicate on the various issues raised, specially those which have been decided by the Tribunal's award.

45. We first propose to deal with some legal issues before considering the various submissions made by Shri Shanti Bhushan regarding

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environment, relief and rehabilitation, alleged violation of rights of the tribals and the need for review of the project.

a Laches

46. As far as the petitioner is concerned, it is an anti-dam organisation and is opposed to the construction of the high dam. It has been in existence since 1986 but has chosen to challenge the clearance given in 1987 by filing a writ petition in 1994. It has sought to contend that there was lack of study available regarding the environmental aspects and also because of the seismicity, the clearance should not have been granted. The rehabilitation packages are dissimilar and there has been no independent study or survey done before decision to undertake the project was taken and construction started.

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47. The project, in principle, was cleared more than 25 years ago when the foundation stone was laid by late Pandit Jawahar Lal Nehru. Thereafter, there was an agreement of the four Chief Ministers in 1974, namely, the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan for the project to be undertaken. Then dispute arose with regard to the height of the dam which was settled with the award of the Tribunal being given in 1978. For a number of years, thereafter, final clearance was still not given. In the meantime some environmental studies were conducted. The final clearance was not given because of the environmental concern which is quite evident. Even though complete data with regard to the environment was not available, the Government did in 1987 finally give environmental clearance. It is thereafter that the construction of the dam was undertaken and hundreds of crores have been invested before the petitioner chose to file a writ petition in 1994 challenging the decision to construct the dam and the clearance as was given. In our opinion, the petitioner which had been agitating against the dam since 1986 is guilty of laches in not approaching the Court at an earlier point of time.

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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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49. The petitioner has been agitating against the construction of the dam since 1986, before environmental clearance was given and construction started. It has, over the years, chosen different paths to oppose the dam. At its instance a Five-Member Group was constituted, but its report could not result in the stoppage of construction pari passu with relief and rehabilitation measures. Having failed in its attempt to stall the project the petitioner has resorted to court proceedings by filing this writ petition long after the environmental clearance was given and construction started. The pleas relating to height of the dam and the extent of submergence, environment

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studies and clearance, hydrology, seismicity and other issues, except implementation of relief and rehabilitation, cannot be permitted to be raised at this belated stage.

50. This Court has entertained this petition with a view to satisfy itself that there is proper implementation of the relief and rehabilitation measures at least to the extent they have been ordered by the Tribunal's award. 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. Though it is, therefore, not necessary to do so, we however presently propose to deal with some of the other issues raised.

Award — binding on the States

51. It has been the effort on the part of the petitioners to persuade this Court to decide that in view of the difficulties in effectively implementing the award with regard to relief and rehabilitation and because of the alleged adverse impact the construction of the dam will have on the environment, further construction of the dam should not be permitted. The petitioners support the contention on behalf of the State of Madhya Pradesh to the effect that the height of the dam should be reduced in order to decrease the number of oustees. In this case, the petitioners also submit that with regard to hydrology, the adoption of the figure 27 MAF is not correct and the correct figure is 23 MAF and in view thereof the height of the dam need not be 455 feet.

52. The Tribunal in this award has decided a number of issues which have been summarised hereinabove. The question which arises is as to whether it is open to the petitioners to directly or indirectly challenge the correctness of the said decision. Briefly stated the Tribunal had in no uncertain terms come to the conclusion that the height of the dam should be 455 ft. It had rejected the contention of the State of Madhya Pradesh for fixing the height at a lower level. At the same time in arriving at this figure, it had considered the relief and rehabilitation problems and had issued directions in respect thereof. Any issue which has been decided by the Tribunal would, in law, be binding on the respective States. That this is so has been recently decided by a Constitution Bench of this Court in *State of Karnataka v. State of A.P.*¹ That was a case relating to a water dispute regarding inter-State River Krishna between the three riparian States and in respect of which the Tribunal constituted under the Inter-State Water Disputes Act, 1956 had given an award. Dealing with Article 262 and the scheme of the Inter-State Water Disputes Act, this Court at SCC pp. 630-31 observed as follows: (SCC para 44)

“The Inter-State Water Disputes Act having been framed by Parliament under Article 262 of the Constitution is a complete Act by

1 (2000) 9 SCC 572 : (2000) 3 Scale 505

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- itself and the nature and character of a decision made thereunder has to be understood in the light of the provisions of the very Act itself. A
- a* dispute or difference between two or more State Governments having arisen which is a water dispute under Section 2(c) of the Act and complaint to that effect being made to the Union Government under Section 3 of the said Act the Central Government constitutes a Water Disputes Tribunal for the adjudication of the dispute in question, once it forms the opinion that the dispute cannot be settled by negotiations. The
- b* Tribunal thus constituted, is required to investigate the matters referred to it and then forward to the Central Government a report setting out the facts as found by it and giving its decision on it as provided under sub-section (2) of Section 5 of the Act. On consideration of such decision of the Tribunal if the Central Government or any State Government is of the opinion that the decision in question requires explanation or that
- c* guidance is needed upon any point not originally referred to the Tribunal then within three months from the date of the decision, reference can be made to the Tribunal for further consideration and the said Tribunal then forwards to the Central Government a further report giving such explanation or guidance as it deems fit. Thereby the original decision of the Tribunal is modified to the extent indicated in the further decision as
- d* provided under Section 5(3) of the Act. Under Section 6 of the Act the Central Government is duty-bound to publish the decision of the Tribunal in the Official Gazette whereafter the said decision becomes final and binding on the parties to the dispute and has to be given effect to, by them. The language of the provisions of Section 6 is clear and unambiguous and unequivocally indicates that it is only the decision of
- e* the Tribunal which is required to be published in the Official Gazette and on such publication that decision becomes final and binding on the parties.”

- Once the award is binding on the States, it will not be open to a third party like the petitioners to challenge the correctness thereof. In terms of the award, the State of Gujarat has a right to construct a dam up to the height of
- f* 455 ft and, at the same time, the oustees have a right to demand relief and resettlement as directed in the award. We, therefore, do not propose to deal with any contention which, in fact, seems to challenge the correctness of an issue decided by the Tribunal.

General issues relating to displacement of tribals and alleged violation of the rights under Article 21 of the Constitution

- g* **53.** The submission of Shri Shanti Bhushan, learned Senior Counsel for the petitioners was that the forcible displacement of tribals and other marginal farmers from their land and other sources of livelihood for a project which was not in the national or public interest was a violation of their fundamental rights under Article 21 of the Constitution of India read with
- h* ILO Convention No. 107 to which India is a signatory. Elaborating this contention, it was submitted that this Court had held in a large number of cases that international treaties and covenants could be read into the domestic

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law of the country and could be used by the courts to elucidate the interpretation of fundamental rights guaranteed by the Constitution. Reliance in support of this contention was placed on *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*², *People's Union for Civil Liberties v. Union of India*³ and *Consumer Education & Research Centre v. Union of India*⁴. In this connection, our attention was drawn to ILO Convention No. 107 which stipulated that tribal populations shall not be removed from their lands without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security or in the interest of national economic development. It was further stated that the said Convention provided that in such cases where removal of this population is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of lands previously occupied by them, suitable to provide for their present needs and future development. Shri Shanti Bhushan further contended that while Sardar Sarovar Project will displace and have an impact on thousands of tribal families, it had not been proven that this displacement was required as an exceptional measure. He further submitted that given the seriously flawed assumptions of the project and the serious problems with the rehabilitation and environmental mitigation, it could not be said that the project was in the best national interest. It was also submitted that the question arose whether the Sardar Sarovar Project could be said to be in the national and public interest in view of its current best estimates of cost, benefits and evaluation of alternatives and specially in view of the large displacement of tribals and other marginal farmers involved in the project. Elaborating this contention, it was contended that serious doubts had been raised about the benefits of the project — the very rationale which was sought to justify the huge displacement and the massive environmental impacts etc. It was contended on behalf of the petitioners that a project which was sought to be justified on the grounds of providing a permanent solution to water problems of the drought-prone areas of Gujarat would touch only the fringes of these areas, namely, Saurashtra and Kutch and even this water, which was allocated on paper, would not really accrue due to a host of reasons. It was contended that in spite of concentrating on small-scale decentralised measures which were undertaken on a large scale could address the water problem of these drought-prone areas. Huge portions of the State resources were being diverted to the Sardar Sarovar Project and as a result the small projects were ignored and the water problem in these areas persists. It was submitted that the Sardar Sarovar Project could be restructured to minimise the displacement.

54. Refuting the aforesaid arguments, it has been submitted on behalf of the Union of India and the State of Gujarat that the petitioners have given a highly exaggerated picture of the submergence and other impacts of this

2 (1984) 2 SCC 534 : 1984 SCC (Cri) 313

3 (1997) 3 SCC 433 : 1997 SCC (Cri) 434

4 (1995) 3 SCC 42 : 1995 SCC (L&S) 604

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project. It was also submitted that the petitioner's assertion that there was large-scale relocation and uprooting of tribals was not factually correct.

- a According to the respondents, the project would affect only 245 villages in Gujarat, Maharashtra and Madhya Pradesh due to pondage and backwater effect corresponding to 1 in 100-year flood. The Statewise break-up of affected villages and the number of project-affected families (PAFs) shows that only four villages would be fully affected (three in Gujarat and one in Madhya Pradesh) and 241 would be partially affected (16 in Gujarat, 33 in Maharashtra and 192 in Madhya Pradesh). The total project-affected families who would be affected were 40,827. The extent of the submergence was minimum in the State of Madhya Pradesh. The picture of this submergence as per the Government of Madhya Pradesh Action Plan of 1993 is as follows:

- c "Abadi will be fully submerged in 39 villages and partially in 116 villages, agricultural land will be affected up to 10% in 82 villages, up to 25% in 32 villages, 26 to 50% in 30 villages, 51 to 75% in 14 villages, 76 to 90% in 4 villages and 100% in only 1 village. In 21 villages, only abadi will be affected and government land only in 9 villages. Thus, in most of the villages, submergence is only partial."

The submergence area of SSP can be divided into two areas:

- d (i) Fully tribal, hilly area covering the initial reach of about 105 villages with mainly subsistence economy. It includes 33 villages of Maharashtra, 19 of Gujarat and about 53 of Madhya Pradesh.

(ii) Mixed population area in the plains of Nimad, with a well-developed economy and connected to the mainstream. This area includes about 140 villages in Madhya Pradesh.

- e These two areas have quite different topographic and habitation features which result in totally different types of submergence impacts. The state of the hilly area to be affected by its submergence and where most of the tribal population exists is described by the Government of Madhya Pradesh Action Plan, 1993 as follows:

- f "The Narmada flows in hilly gorge from the origin to the Arabian Sea. The undulating hilly terrain in the lower submergence area of Sardar Sarovar Project exhibits naked hills and depleted forests. Even small forest animals are very rarely seen because of lack of forest cover and water. The oft-quoted symbiotic living with forests is a misnomer in this area because the depleted forests have nothing to offer but fuel wood. Soil is very poor, mostly disintegrated, granite and irrigation is almost nil due to undulating and hilly land. Anybody visiting this area finds the people desperately sowing even in the hills with steep gradient. Only one rainfed crop of mostly maize is sown and so there is no surplus economy.

PAPs inhabiting these interior areas find generous rehabilitation and resettlement packages as a means to assimilate in the mainstream in the valley."

- h 55. In 193 villages of Madhya Pradesh to be affected by the project, a very high proportion of the houses would be affected whereas the land

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submergence was only 14.1%. The reason for this is that the riverbed is a deep gorge for about 116 km upstream of the dam and as a result the reservoir will be long (214 km), narrow (average width of 1.77 km) and deep. The result of this is that as one goes further upstream, the houses on the river banks are largely affected while agricultural land which is at a distance from the river banks is spared. A majority of 33,014 families of Madhya Pradesh (which would include 15,018 major sons) would lose only their houses and not agricultural lands and would be required to be resettled in Madhya Pradesh by constructing new houses in the new abadi. According to the award, agricultural land was to be allotted only if the project-affected families lost 25% or more of agricultural land and on this basis as per the Government of Madhya Pradesh, only 830 project-affected families of Madhya Pradesh were required to be allotted agricultural land in Madhya Pradesh.

56. According to the Government of Gujarat the tribals constituted the bulk of project-affected families who would be affected by the dam in Gujarat and Maharashtra, namely, 97% and 100% respectively. Out of the oustees of project-affected families of Madhya Pradesh, tribals constituted only 30% while 70% were non-tribals. The total number of tribal project-affected families were 17,725 and out of these, 9546 are already resettled. It was further the case of the respondents that in Madhya Pradesh the agricultural land of the tribal villages was affected on an average to the extent of 28% whereas in the upper reaches i.e. Nimad where the agriculture was advanced, the extent of submergence, on an average, was only 8.5%. The surveys conducted by HMS Gour University (Sagar), the Monitoring and Evaluation Agency set up by the Government of Madhya Pradesh, reveals that the major resistance to relocation was from the richer, non-tribal families of Nimad who feared shortage of agricultural labour if the landless labourers from the areas accepted resettlement. In the biannual report, 1996 of HMS Gour University, Sagar, it was observed as follows:

“The pre-settlement study of submerging villages has revealed many startling realities. Anti-dam protagonists present a picture that tribals and backward people are the worst sufferers of this kind of development project. This statement is at least not true in case of the people of these five affected villages. Though, these villages comprise a significant population of tribals and people of weaker sections, but majority of them will not be a victim of displacement. Instead, they will gain from shifting. The present policy of compensation is most beneficial for the lot of weaker section. These people are living either as labourers or marginal farmers. The status of oustee will make them the owner of two hectares of land and a house. In fact, it is the land-owning class which is opposing the construction of dam by playing the card of tribals and weaker sections. The landowners are presently enjoying the benefit of cheap labour in this part of the region. Availability of cheap labour is a boon for agricultural activities. This makes them to get higher return with less inputs.”

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It is apparent that the tribal population affected by the submergence would have to move but the rehabilitation package was such that living conditions would be much better than what they were there before. Furthermore, though 140 villages of Madhya Pradesh would be affected in the plains of Nimad, only 8.5% of the agricultural land of these villages shall come under submergence due to SSP and as such the said project shall have only a marginal impact on the agricultural productivity of the area.

57. While accepting the legal proposition that international treaties and covenants can be read into the domestic laws of the country the submission of the respondents was that Article 12 of ILO Convention No. 107 stipulates that “the populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations relating to national security, or in the interest of national economic development or of the health of the said populations”.

58. The said article clearly suggested that 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.

59. The allegation that the said project was not in the national or public interest is not correct seeing to the need of water for the burgeoning population which is most critical and important. The population of India, which is now one billion, is expected to reach a figure between 1.5 billion and 1.8 billion in the year 2050, would necessitate the need of 2788 billion cubic metres of water annually in India to be above water-stress zone and 1650 billion cubic metres to avoid being a water-scarce country. The main source of water in India is rainfall which occurs in about 4 months in a year and the temporal distribution of rainfall is so uneven that the annual averages have very little significance for all practical purposes. According to the Union of India, one-third of the country is always under threat of drought not necessarily due to deficient rainfall but many times due to its uneven occurrence. To feed the increasing population, more foodgrain is required and effort has to be made to provide safe drinking water, which, at present, is a distant reality for most of the population specially in the rural areas. Keeping in view the need to augment water supply, it is necessary that water storage capacities have to be increased adequately in order to ward off the difficulties in the event of monsoon failure as well as to meet the demand during dry season. It is estimated that by the year 2050 the country needs to create storage of at least 600 billion cubic metres against the existing storage of 174 billion cubic metres.

60. Dams play a vital role in providing irrigation for food security, domestic and industrial water supply, hydroelectric power and keeping flood

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waters back. On full development, the Narmada has a potential of irrigating over 6 million hectares of land and generating 3000 MW of power. The present stage of development is very low with only 3 to 4 MAF of waters being used by the party-States for irrigation and drinking water against 28 MAF availability of water at 75% dependability as fixed by NWDT and about 100 MW power developed. 85% of the waters are estimated as flowing waste to sea. The project will provide safe and clean drinking water to 8215 villages and 135 towns in Gujarat and 131 villages in desert areas of Jalore District of Rajasthan, though against these only 241 villages are getting submerged partially and only 4 villages fully due to the project. a

61. The cost and benefit of the project were examined by World Bank in 1990 and the following passage speaks for itself:

“The argument in favour of the Sardar Sarovar Project is that the benefits are so large that they substantially outweigh the costs of the immediate human and environmental disruption. Without the dam, the long-term costs for people would be much greater and lack of an income source for future generations would put increasing pressure on the environment. If the waters of the Narmada river continue to flow to the sea unused there appears to be no alternative to escalating human deprivation, particularly in the dry areas of Gujarat. The project has the potential to feed as many as 20 million people, provide domestic and industrial water for about 30 million, employ about 1 million, and provide valuable peak electric power in an area with high unmet power demand (farm pumps often get only a few hours’ power per day). In addition, recent research shows substantial economic ‘multiplier’ effects (investment and employment triggered by development) from irrigation development. Set against the futures of about 70,000 project-affected people, even without the multiplier effect, the ratio of beneficiaries to affected persons is well over 100:1...” c

There is merit in the contention of the respondents that there would be a positive impact on preservation of ecology as a result from the project. SSP would be making positive contribution for preservation of environment in several ways. The project by taking water to drought-prone and arid parts of Gujarat and Rajasthan would effectively arrest ecological degradation which was returning to make these areas inhabitable due to salinity ingress, advancement of desert, groundwater depletion, fluoride and nitrite-affected water and vanishing green cover. The ecology of water-scarcity areas is under stress and transfer of Narmada water to these areas will lead to sustainable agriculture and spread of green cover. There will even be improvement of fodder availability which will reduce pressure on biodiversity and vegetation. SSP by generating clean eco-friendly hydropower will save the air pollution which would otherwise take place by thermal generation power of similar capacity. d

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 e

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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.

Environmental issues

63. The four issues raised under this head by Shri Shanti Bhushan are as under:

- a*
 - I.* Whether the execution of a large project, having diverse and far-reaching environmental impact, without the proper study and understanding of its environmental impact and without proper planning of mitigative measures is a violation of fundamental rights of the affected people guaranteed under Article 21 of the Constitution of India?
 - c*
 - II.* Whether the diverse environmental impacts of the Sardar Sarovar Project have been properly studied and understood?
 - III.* Whether any independent authority has examined the environmental costs and mitigative measures to be undertaken in order to decide whether the environmental costs are acceptable and mitigative measures practical?
 - d*
 - IV.* Whether the environmental conditions imposed by the Ministry of Environment have been violated and if so, what is the legal effect of the violations?

- e*

64. It was submitted by Shri Shanti Bhushan that a large project having diverse and far-reaching environmental impacts in the States concerned would require a proper study and understanding of the environmental impacts. He contended that the study and planning with regard to environmental impacts must precede construction. According to Shri Shanti Bhushan, when the environmental clearance was given in 1987, proper study and analysis of the environmental impacts and mitigative measures which were required to be taken, were not available and, therefore, this clearance was not valid. The decision to construct the dam was stated to be a political
- f*

one and was not a considered decision after taking into account the environmental impacts of the project. The execution of SSP without a comprehensive assessment and evaluation of its environmental impacts and a decision regarding its acceptability was alleged to be a violation of the rights of the affected people under Article 21 of the Constitution of India. It was further submitted that no independent authority has examined vehemently the
- g*

environmental costs and mitigative measures to be undertaken in order to decide whether the environmental costs are acceptable and mitigative measures practical. With regard to the environmental clearance given in June 1987, the submission of Shri Shanti Bhushan was that this was the conditional clearance and the conditions imposed by the Ministry of Environment and Forests had been violated. The letter granting clearance, it
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was submitted, disclosed that even the basic minimum studies and plans required for the environmental impact assessment had not been done.

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Furthermore it was contended that in the year 1990, as the deadline for completion of the studies was not met, the Ministry of Environment and Forests had declared that the clearance had lapsed. The Secretary of the said Ministry had requested the Ministry of Water Resources to seek extension of the clearance but ultimately no extension was sought or given and the studies and action plans continued to lag to the extent that there was no comprehensive environmental impact assessment of the project, proper mitigation plans were absent and the costs of the environmental measures were neither fully assessed nor included in the project costs. In support of his contentions, Shri Shanti Bhushan relied upon the report of a commission called the Independent Review or the Morse Commission. The said Commission had been set up by World Bank and it submitted its report in June 1992. In its report, the Commission had adversely commented on practically all aspects of the project and in relation to environment, it was stated as under:

“Important assumptions upon which the projects are based are now questionable or are known to be unfounded. Environmental and social trade-off have been made, and continue to be made, without a full understanding of the consequences. As a result, benefits tend to be overstated, while social and environmental costs are frequently understated. Assertions have been substituted for analysis.

We think that the Sardar Sarovar Projects as they stand are flawed, that resettlement and rehabilitation of all those displaced by the projects is not possible under the prevailing circumstances, and that the environmental impacts of the projects have not been properly considered or adequately addressed.

The history of environmental aspects of Sardar Sarovar is a history of non-compliance. There is no comprehensive impact statement. The nature and magnitude of environmental problems and solutions remain elusive.”

65. Shri Shanti Bhushan submitted that it had become necessary for some independent judicial authority to review the entire project, examine the current-best estimates of all costs (social, environmental, financial), benefits and alternatives in order to determine whether the project is required in its present form in the national interest, or whether it needs to be restructured/modified.

66. Shri Shanti Bhushan further submitted that environmental impacts of the projects were going to be massive and full assessment of these impacts had not been done. According to him the latest available studies show that studies and action plans had not been completed and even now they were lagging behind *pari passu*. It was also contended that mere listing of the studies does not imply that everything is taken care of. Some of the studies were of poor quality and based on improper data and no independent body had subjected these to critical evaluation.

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Re: environmental clearance

67. As considerable stress was laid by Shri Shanti Bhushan challenging the validity of the environmental clearance granted in 1987 inter alia on the ground that it was not preceded by adequate studies and it was not a considered opinion and there was non-application of mind while clearing the project, we first propose to deal with the contention.

68. The events after the award and up to the environmental clearance granted by the Government vide its letter dated 24-6-1987 would clearly show that some studies, though incomplete, had been made with regard to different aspects of the environment. Learned counsel for the respondents stated that in fact on the examination of the situation, the claim made with regard to the satisfactory progress was not correct. In order to carry out the directions in the award about the setting up of an authority, the Inter-State Water Disputes Act, 1956 was amended and Section 6-A was inserted to set out how a statutory body could be constituted under the Act. On 10-9-1980 in exercise of the powers conferred by Section 6-A of the Act the Central Government framed a scheme, constituted Narmada Control Authority to give effect to the decision of the award.

69. In January 1980, the Government of Gujarat submitted to the Central Water Commission a detailed project report in 14 volumes. This was an elaborate report and dealt with various aspects like engineering details, canal systems, geology of area, coverage of command area etc. On 15-2-1980 the Central Water Commission referred SSP to the then Department of Environment in Department of Science and Technology. At that point of time, environmental clearance was only an administrative requirement. An environmental checklist was forwarded to the Government of Gujarat on 27-2-1980 which sought to elucidate information including the following ecological aspects:

- (i) excessive sedimentation of the reservoir,
- (ii) waterlogging,
- (iii) increase in salinity of the groundwater,
- (iv) groundwater recharge,
- (v) health hazard, water-borne diseases, industrial pollution etc.
- (vi) submergence of important minerals,
- (vii) submergence of monuments,
- (viii) fish culture and aquatic life,
- (ix) plant life, forests,
- (x) life of migratory birds,
- (xi) national park and sanctuaries,
- (xii) seismicity due to filling of reservoir.

The Government of Gujarat accordingly submitted information from September 1980 till March 1983. The information was also submitted on physio-social and economic studies for the Narmada Command Area

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covering cropping pattern, health aspects, water requirement etc. A note of influence of Navagam Dam on fish yield including impact on downstream fisheries was also submitted.

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70. The techno-economic appraisal of the project was undertaken by the Central Water Commission which examined water availability, command area development, construction etc. The project was considered in the 22nd meeting of the Technical Advisory Committee on Irrigation, Flood Control and Multipurpose Projects held on 6-1-1983 and found a acceptable subject to environmental clearance.

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71. At this point of time, the matter was handled by the Department of Science and Technology which also had a department dealing with Environment. Environmental Appraisal Committee of the Department of Environment, then headed by a Joint Secretary, had in its meeting held on 12-4-1983 approved the project, in principle, and required that further data be collected. This Environmental Appraisal Committee dealt with the project on two other occasions, namely, on 29-3-1985 when it deferred meeting to await report of Dewan Committee on soil conservation and thereafter on 6-12-1985 when it deferred the meeting to await comments from the Forest Department. As stated hereafter, subsequently the Secretary of newly-constituted Ministry of Environment and Forests took up further consideration of this project along with other higher officials.

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72. After the project was approved, in principle, studies and collections of data were continuing. In May 1983 the Narmada Planning Group, Government of Gujarat after completion of preliminary surveys submitted work plans for various activities such as cropping pattern, health aspects, water requirements, distribution system, layout and operation, development plan of the command, drainage and groundwater development.

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73. In July 1983, a study report on "Ecology and Environmental Impact of Sardar Sarovar Dam and its Environs" prepared by MS University was also submitted by the Government of Gujarat, covering the issues as mentioned below:

- Climate
- Geology
- Soil
- Land use
- Forest and wildlife, aquatic vegetation
- Water regime (salinity, tidal movements etc.)
- Fisheries
- Health
- Seismicity

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74. A review meeting was convened by the Secretary, Ministry of Water Resources in January 1984 which was attended by a representative of the Department of Environment. During this meeting, it was emphasised that the issues regarding catchment area treatment, impact on wildlife, health, waterlogging etc. should be studied in depth for assessment. The issue of

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charging of cost of catchment area treatment to the project was also discussed. To sort out this matter, a meeting was subsequently convened by the Member, Planning Commission on 23-5-1984 in which the Ministry of Environment and Forests took a stand that there was a need for an integrated approach to basin development covering the catchment and command area. A project report, therefore, should be prepared to cover these aspects. Since the catchment area for Narmada Sagar and Sardar Sarovar was very vast, it was decided that an Inter-Departmental committee should be set up by the Ministry of Agriculture under the Chairmanship of Dr M.L. Dewan. This group could submit its report only in August 1985 covering areas of catchment of Narmada and Sardar Sarovar and recommended that at least 25-30% of the area might require treatment for these projects.

75. The consideration of the project in the Ministry, therefore, got deferred for this report on catchment area treatment. During this time, the Government of Madhya Pradesh entrusted the studies on flora for Narmada Valley Project to Botanical Survey of India and other related surveys were being carried out. Even though there was a request on 10-6-1985 from the Chief Minister of Gujarat to the Minister of State for Environment and Forests for delinking of catchment area treatment works on clearance of the project, but this request was not agreed.

76. By this time the approval of SSP was being considered by the Secretary, Ministry of Environment and Forests who invited other high officials in a review meeting which was held on 31-12-1985 under his chairmanship. In this meeting, detailed presentations were made by the State officials of Gujarat, Madhya Pradesh and Maharashtra as well as the experts who were involved in preparation of plans. The Secretary, Ministry of Environment and Forests assessed and reviewed readiness on various environmental aspects like catchment area treatment, compensatory afforestation, rehabilitation, command area development, labour force and health issues, aquatic species, seismicity etc. and discussed the available reports in detail in the presence of the officers of the Central/State Governments, Botanical Survey of India, senior officers of Forest Department, Planning Commission, Agriculture Department, Additional Inspector of Forests, Government of India, Deputy Inspector General, Assistant Inspector General of Forests, Government of India, senior officers of the Ministry of Environment and Forests, Secretary, Irrigation.

77. As a follow-up, the Government of Maharashtra submitted environmental data regarding affected areas in Maharashtra. This included:

- g — Impact assessment on wildlife.
- Impact assessment on genetics, specifically identifying the plant types which are likely to be lost as a result of submergence.
- Socio-anthropological studies on tribals.
- The suitability of alternative land suggested for compensatory afforestation for growing.
- h — Data regarding alternate land in large blocks.

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- Arrangements made for exploitation of mineral resources going under submergence.
- Alternative fuels to the labourers. a
- Micro-climatic changes.
- Arrangements made for treatment of catchment area including soil conservation, afforestation.
- Steps taken for preserving archaeological and historical monuments. b
- Proper land use.
- Actions taken by the Government of Maharashtra in pursuance of the Dewan Committee Report.
- Arrangements for monitoring of environmental impact of the project.
- Data related to rehabilitation of project-affected persons. c

78. The Government of Gujarat also forwarded to the Government of India work plans on the following:

- Forests and wildlife
- Fish and fisheries
- Health aspects d

The work plan on forests and wildlife incorporated actions to be taken on the recommendations of the Inter-Departmental Committee headed by Dr Dewan on soil conservation and afforestation works in the catchment area.

79. In March 1986, a meeting was convened by the Ministry of Water Resources in order to discuss the issues of fisheries, flora/fauna, health, archaeology with the officers of the Botanical Survey of India, Zoological Survey of India, Archaeological Survey of India and the officers of the various departments of the State and Centre to gear up the preparation of the environmental work plans. The next meeting was held on 11-4-1986. The Secretary, Ministry of Environment and Forests, who chaired the meeting of senior officials, representatives of States and other agencies, sought additional information to be made available by 30-4-1986 before assessment and management decision. e

80. In October 1986, the Ministry of Water Resources prepared and forwarded to the Ministry of Environment and Forests, a note on environmental aspects of the two projects and noted the urgency of the decision. It also considered the importance of the project, should the project be taken at all, environmental aspects of the project and ultimately rehabilitation, compensatory afforestation, fauna and flora, catchment area treatment, public health aspect, prevention of waterlogging. It then considered what remained to be done and enumerated the same with time schedule as follows: g

1. Madhya Pradesh to complete the detailed survey of population likely to be affected in all phases of NSP h
- ... Three years

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2. Maharashtra to prepare a detailed rehabilitation plan for 33 villages under Phase 1 of SSP ... Three years

a 3. Madhya Pradesh to identify degraded forest lands twice the forest area to be submerged for compensatory afforestation ... Six months

4. Survey of flora in Narmada valley assigned to Botanical Survey of India ... Two years

5. Survey of wildlife by Zoological Survey of India ... Two years

b 6. Aerial photographs and satellite imagery to be analysed by All-India Soil and Land Use Survey Organisation and National Remote Sensing Agency and critically-degraded areas in catchment.

Field Surveys ... Three years

Pilot studies to determine measures for CAT ... Three years
in 25,000 ha after aerial

c survey.

81. In this note two options were considered — one to postpone the clearance and the other was to clear it with certain conditions with appropriate monitoring authorities to ensure that the action is taken within the time-bound programme. It was concluded that in the light of the position set out, it was necessary that the project should be cleared from the environmental angle, subject to conditions and stipulations outlined.

d 82. The Department of Environment and Forests made its own assessment through a note of the Secretary, Ministry of Environment and Forests. It took the view that the following surveys/studies as set out therein might take at least 2-3 years. It noted in this regard that:

e (i) The estimate of Ministry of Water Resources on analysis of aerial photographs and satellite imageries is 2-3 years.

(ii) Catchment area treatment programme can be formulated by three years thereafter.

(iii) Wildlife census by Zoological Survey of India would take at least three years.

f (iv) Survey by Botanical Survey of India would take three years.

It further took the view that it was essential that there should be a strong management authority. It finally concluded that if the Government should decide to go ahead with the project it should be done with provision of environmental management authority with adequate powers and teeth to ensure that environment management plan is implemented *pari passu* with engineering and other works. It concluded that effective implementation of the engineering and environmental measures simultaneously will go a long way and that such a project could be implemented by harmonising environmental conservation needs with the developmental effort.

g 83. The Ministry of Environment and Forests had not given environmental clearance of Narmada Sagar and Sardar Sarovar Dam despite all discussions which had taken place. The documents filed along with the

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affidavit of Shri P.K. Roy, Under-Secretary, Prime Minister's Office dated 27-4-2000 indicate that there was difference of opinion with regard to the grant of environmental clearance between the Ministry of Water Resources and the Ministry of Environment and Forests. This led to the matter being referred to the Prime Minister's Secretariat for clearance at the highest level. A note dated 20-11-1986 prepared by the Ministry of Water Resources was forwarded to the Prime Minister Secretariat as well as to the Ministry of Environment and Forests after dealing with the environmental aspects relating to rehabilitation, catchment area treatment, command area development, compensatory afforestation, flora and fauna. This note indicated that there were two options with regard to the clearance of the said project. One was to wait for two to three years for the completion of the operational plans and other detailed studies and the second option was that the project should be given the necessary clearance subject to the stipulation with regard to the action to be taken in connection with various environmental aspects and appropriate monitoring arrangements to ensure that the actions were taken in a time-bound manner. The Ministry of Water Resources recommended that it should be possible to give environmental clearance of the project and ensure that the conditions are properly met through a process of clear assignment of responsibility and frequent monitoring. The modus operandi for instituting a monitoring system could be discussed at the meeting.

84. On 26-11-1986 a meeting took place which was attended, inter alia, by the Secretary, Ministry of Water Resources, Secretary, Ministry of Environment and Forests, Additional Secretary, Prime Minister Secretariat and representatives of the Governments of Madhya Pradesh and Gujarat regarding the environmental aspects of the Narmada Sagar and Sardar Sarovar Project. The minutes of the meeting, inter alia, disclosed

“it was decided that the Government of Gujarat would identify lands for allocation to the project-affected persons of Madhya Pradesh within a specified period of time. The meeting also envisaged the arrangement of a monitoring and enforcement authority to monitor the project and to ensure that the actions on the environmental aspects proceed according to the schedule and *pari passu* with the rest of the project”.

This authority was not to be mainly an advisory one but was to be given executive powers of enforcement including the power to order stoppage of construction activity in the event of it being of the opinion that there was lack of progress in action on the environmental front.

85. On 19-12-1986 the Secretary, Ministry of Environment and Forests sent to the Secretary to the Prime Minister a combined note on the environmental aspects of both the projects, namely, Narmada Sagar and Sardar Sarovar Project. In this note, it was, inter alia, stated that there was absence and inadequacy on some important environmental aspects even though the Sardar Sarovar Project was in a fairly advanced stage of preparedness. The note also recommended the establishment of Narmada

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Management Authority with adequate powers and teeth to ensure that the environmental management plan did not remain only on paper but was
a implemented; and implemented *pari passu* with engineering and other works. In the end, in the note, it was stated as follows:

“If, despite the meagre availability of data and the state of readiness on NSP, the Government should decide to go ahead with the project it is submitted that it should do so only on the basis of providing a management authority as outlined above with the hope that the public
b opposition, not just by vested interests but by credible professional environmentalists, can be overcome. Effective implementation of the engineering and environmental measures simultaneously would go a long way to prove that even such a project can be implemented by harmonising environmental conservation needs with the development effort.

c The choice is difficult but a choice has to be made.” Along with this note was the statement showing the cost and the benefits of the Narmada Sagar and the Sardar Sarovar Dam. The same reads as follows:

<i>Costs</i>		<i>Narmada Sagar</i>	<i>Sardar Sarovar</i>
d	1. Dam construction	Rs 1400 crores (1981 price level)	Rs 4240 crores (1982 price level)
	2. Loss of forest	Rs 320 crores	
	3. Environmental cost of loss of forests	Rs 30,923 crores	+ Rs 8190 crores
	4. Catchment area development	Rs 300 crores	Not available
e	5. Command area development	Rs 243.7 crores	Rs 604.0 crores Rs 300.0 crores (conjunctive use)
f	6. Loss of mineral reserves	—	—
	7. Diversion of 42-km railway line	—	—
	8. Population affected	1,29,396 (1981 census) 86,572 (excluding population with land submerged for short period every year)	
g	9. Land submerged	91,348 ha	39,134 ha
<i>Benefits</i>			
h	10. Area irrigated	Net 1,23,000 ha	17,92,000 ha
	culturable land	1,40,960 ha	21,20,000 ha

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11. Power generations 223.5 MW (firm power) 1000 MW (installed capacity) 118.3 MW in 2023 AD”

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86. After a series of meetings held between the Secretary to Prime Minister's Office as well as the Ministry of Water Resources, a detailed note dated 15-1-1987 was prepared by Mrs Otima Bordia, Additional Secretary to the Prime Minister. The note opened by saying that Narmada Sagar and Sardar Sarovar Multipurpose Projects have been pending approval of the Government of India for a considerable amount of time. The States of Madhya Pradesh and Gujarat have been particularly concerned and have been pressing for their clearance. The main issues of environmental concern related to the rehabilitation of the affected population, compensatory afforestation, treatment of the catchment area, command area development, pertaining particularly to drainage, waterlogging and salinity. The said note mentioned that the Department of Environment and Forests had sent a note with the approval of the Minister for Environment and Forests and had recommended conditional approval to the Narmada Sagar and Sardar Sarovar Projects subject to three conditions:

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(i) review of design parameters to examine the feasibility of modifying the height of the dam;

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(ii) preparation in due time, detailed and satisfactory plans for rehabilitation, catchment area treatment, compensatory afforestation and command area development;

(iii) setting up of the Narmada Management Authority with adequate powers and teeth to ensure that environmental management plans are implemented pari passu with engineering and other works.

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87. It is further stated in the note that the Ministry of Water Resources and the State Governments had no difficulty in accepting Conditions (ii) and (iii). With regard to review of design parameters and dam height, the Ministry of Water Resources had examined the same after taking into consideration the comments of the Central Water Commission and concluded that the reduction of the FRL of the Narmada Sagar Project would not be worthwhile. The Secretary to the Prime Minister had discussed the matter with the Secretary, Ministry of Water Resources and Secretary, Ministry of Environment and Forests and it was agreed that the recommendation of the Minister of Environment and Forests of giving clearance on the condition that Items (ii) and (iii) referred to hereinabove be accepted. The note also stated that in view of the technical report, reduction in the dam height did not appear to be feasible. This note of Mrs Otima Bordia recommended that the Prime Minister's approval was sought on giving conditional clearance. On this note Mrs Sarla Grewal, Secretary to the Prime Minister noted as follows:

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“Proposal at para 17 may kindly be approved. This project has been pending clearance for the last 7 years and both the CMs of Gujarat and

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- a* Madhya Pradesh are keenly awaiting the clearance of the same. The agency, which is proposed to be set up to monitor the implementation of this project, will fully take care of the environmental degradation about which PM was concerned. The Ministry of Environment and Forests has recommended clearance of this project subject to conditions which will take care of PM's apprehensions. I shall request Secretary, Water Resources, who will be the Chairman of the Monitoring Agency, to see that no violation of any sort takes place and PM's Office will be kept informed of the progress of this project every quarter. The matter is urgent as last week CM Gujarat had requested for green signal to be given to him before 20th January.

PM may kindly approve."

The Prime Minister Shri Rajiv Gandhi, instead of giving the approval, made the following note:

- c* "Perhaps this is a good time to try for a river valley authority. Discuss."

It appears that the Ministry of Environment and Forests gave its clearance to the setting up of Inter-Ministerial Committee and on 8-4-1987, the following note was prepared and forwarded to the Prime Minister:

- d* "This case has got unduly delayed. PM was anxious that speedy action should be taken. As such, since the Ministry of Environment has given its clearance subject to setting up of an Inter-Ministerial Committee as indicated at 'A' above, we may give the necessary clearance. The three Chief Ministers may be requested to come over early next week to give their clearance in principle for the setting up of a River Valley Authority so that simultaneous action can be initiated for giving practical shape to this concept. The clearance of the project, however, should be communicated within two weeks as I have been informed by Shri Shiv Shanker and Shri Bhajan Lal that interested parties are likely to start an agitation and it is better if clearance is communicated before mischief is done by the interested parties."

- f* **88.** Along with another affidavit of Shri P.K. Roy, Under-Secretary, Prime Minister's Office dated 2-5-2000, some correspondence exchanged between the legislature and the Prime Minister has also been placed on record relating to the granting of the environmental clearance by the Prime Minister. On 31-3-1987, Shri Shanker Singh Vaghela, the then Member of Parliament, Rajya Sabha had written a letter to the Prime Minister in which it was, inter alia, stated that the foundation stone for the Narmada Project had been laid 25 years ago by the late Pandit Jawahar Lal Nehru and that after the Tribunal's award, Mrs Indira Gandhi had cleared the project in 1978, but still the environmental clearance had not so far been given. It was also stated in his letter that the project was now being delayed on account of so-called environmental problems. It was further stated in his letter that the Sardar Sarovar Project, when completed, will solve more of the pressing problems

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of environment than creating them. To this letter of Shri Vaghela, the Prime Minister sent a reply dated 8-4-1987 stating as follows:

“I have seen your letter of 31st March regarding the Narmada Project. All aspects have to be carefully considered before decisions are taken on a project of this size. This is being done. a

The environment and ecological factors cannot be disregarded. We cannot also dismiss the needs of our tribal people. Safeguards are required to ensure that rehabilitation plans are effective.

All these aspects are being examined and a decision will be taken soon.” b

On 30-4-1987 a press note was released by the Government of India, in which it was stated that in a meeting presided over by the Prime Minister, it was agreed by the Chief Ministers of Madhya Pradesh and Gujarat and representatives of the Maharashtra Government that a high-level River Valley Authority would be set up for the control and development of the river basin. This press note also stated that the Narmada Sagar and the Sardar Sarovar Project on River Narmada had been cleared. Soon, thereafter Shri Ahmad Patel, Member of Parliament from Gujarat wrote a letter dated 14-4-1987 to Shri Rajiv Gandhi expressing his gratitude for according clearance to the Narmada Multipurpose Project. This letter was replied to on 22-4-1987 by Shri Rajiv Gandhi who thanked Shri Patel for writing his letter dated 14-4-1987 regarding the Narmada Project. On 20-4-1987 Shri Shanker Singh Vaghela wrote another letter to the Prime Minister. While thanking him for clearing the project, it was stated that there was apprehension about the environment and ecological factors and also about the needs of the tribal people. The Prime Minister was requested c

“to clarify to the people of Gujarat whether or not these aspects have finally been cleared or not and all the doubts on this front have been finally set at rest or not”. d

On 4-5-1987 the Prime Minister replied to this letter in which it was stated as follows:

“There should be no grounds for any misunderstanding in this regard. The Narmada Project has been cleared while at the same time ensuring that environmental safeguards will be enforced and effective measures taken for the rehabilitation of the tribals. You could ask the Ministry of Water Resources or the State Government for details.” e

Lastly, we need to make reference to a letter dated 10-6-1987 written by Smt Chandraben Sureshbhai Shrimali, an MLA of Gujarat and the reply of the Prime Minister thereto. In the said letter dated 10-6-1987 Smt Shrimali thanked the Prime Minister for clearing the Narmada Project and it was stated that the dry land of Gujarat and Saurashtra would be fertilised through Narmada Yojna. To this, reply dated 30-6-1987 of the Prime Minister was as follows: f

“Thank you for your letter of 10th June. The visit to Surendranagar was useful and educative. We are all looking forward to the early g

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implementation of the Sardar Sarovar Project. The question of environmental protection also needs serious attention. I wish you and the people of Surendranagar a good monsoon.”

a

89. From the documents and the letters referred to hereinabove, it is more than evident that the Government of India was deeply concerned with the environmental aspects of the Narmada Sagar and Sardar Sarovar Project. Inasmuch as there was some difference of opinion between the Ministries of Water Resources and Environment and Forests with regard to the grant of environmental clearance, the matter was referred to the Prime Minister. Thereafter, a series of discussions took place in the Prime Minister’s Secretariat and the concern of the Prime Minister with regard to the environment and desire to safeguard the interest of the tribals resulted in some time being taken. The Prime Minister gave environmental clearance on 13-4-1987 and a formal letter was issued thereafter on 24-6-1987.

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90. It is not possible, in view of the aforesaid state of affairs, for this Court to accept the contention of the petitioner that the environmental clearance of the project was given without application of mind. It is evident, and in fact this was the grievance made by Shri Vaghela, that the environmental clearance of the project was unduly delayed. The Government was aware of the fact that a number of studies and data had to be collected relating to environment. Keeping this in mind, a conscious decision was taken to grant environmental clearance and in order to ensure that environmental management plans are implemented *pari passu* with engineering and other works, the Narmada Management Authority was directed to be constituted. This is also reflected from the letter dated 24-6-1987 of Shri Mudgal giving formal clearance to the project.

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e *Re: other issues relating to environment*

91. Prior to the grant of the environmental clearance on 24-6-1987 sufficient studies were made with regard to different aspects of environment on the basis of which conditional clearance was granted on 24-6-1987, one of the conditions of clearance being that the balance studies should be completed within a stipulated time-frame. According to the Government of Gujarat, the conditions imposed in the environmental clearance granted on 24-6-1987 were:

f

(a) NCA would ensure that the environmental safeguard measures are planned and implemented *pari passu* with the progress of work on the project.

g

(b) The detailed survey/studies assured will be carried out as per the schedule proposed and details made available to the department for assessment.

(c) The catchment area treatment programme and rehabilitation plans be so drawn so as to be completed ahead of reservoir filling.

h

(d) The department should be informed of progress on various works periodically.

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92. It was further submitted by the Government of Gujarat that none of these conditions were linked to any concrete time-frame.

(a) The first condition casts a responsibility on NCA to ensure that the environmental aspects are always kept in view. The best way to attain the first and the fourth condition — was to create an Environmental Subgroup headed by the Secretary in the Ministry of Environment and Forests.

(b) The second condition — the conducting of surveys by its very nature — could not be made time-bound. The surveys related to various activities to undo any damage or threat to the environment not only by the execution of the project but in the long term. Therefore, any delay in the conduct of surveys was not critical. Besides, a perusal of the latest status report on environment shows that a large number of surveys were carried out right from 1983 and also after 1987.

(c) The third condition has already stood fully complied with as observed by Environment Subgroup.

(d) The fourth condition again involved keeping the department informed.

93. It was submitted that the concept of “lapsing” is alien to such conditions. In other words, formal environmental and forest clearances granted by the Ministry of Environment and Forests, Government of India have not lapsed and are very much alive and subsisting.

94. With regard to the lapsing of the clearance granted in 1987, it was contended by Mr Harish Salve that a letter dated 25-5-1992 was written by the Secretary, Ministry of Environment and Forests, Government of India to the Secretary, Ministry of Water Resources stating, inter alia, that the conditions of clearance of the project were not yet met and, therefore, a formal request for extension of environmental clearance, as directed by the Review Committee of the Narmada Control Authority, may be made and failing which, a formal notification may be issued revoking the earlier clearance. It is, however, an admitted position that no formal notification has ever been issued revoking and/or cancelling the aforesaid two clearances at any point of time by the Ministry of Environment and Forests, Government of India. The Secretary, Ministry of Environment and Forests has continued to hold and chair the meetings of Environment Subgroup, Narmada Control Authority, closely monitoring the execution of SSP for ensuring that environmental safeguard measures are implemented pari passu with the progress of work. On 11-8-1992, a letter was written by the Narmada Control Authority to the Secretary, Ministry of Environment and Forests sending action plan and status in respect of environmental safeguard measures taken and also stating amongst other details, the following:

“A number of letters were exchanged between MOWR and MOEF and a great deal of discussion took place both in the Environment Subgroup and NCA as to whether an application for extension of time as above is at all necessary. After a detailed discussion in the last NCA

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- a meeting on 25-7-1992 it has been decided that NCA should clearly indicate the additional time required for the completion of the remaining studies like flora and fauna and some aspects of fisheries and a revised action plan based thereon be also sent expeditiously.

* * *

- b Keeping in view the fact and circumstances mentioned above, I request you to kindly agree to the schedule of the studies and the follow-up actions as presented here. A brief account of the action plan together with bar charts are enclosed, presenting a pictorial view.”

On 15-12-1992, a letter was written to the Secretary, Ministry of Environment and Forests, more particularly stating as under, amongst other things:

- c “Narmada Control Authority has already prepared an action plan and status on the environmental measures of Sardar Sarovar Project and submitted to the Ministry of Environment and Forests vide their Letter No. NCA/EM/683 dated 11-8-1992 for concurrence. As may be seen from their report on action, so far there are no safeguard measures.

- d During field season of every year this will be closely reviewed to attain pari passu objectives so that the submergence during monsoon is taken care of.

The above actions are scheduled to be completed by June 1993. No doubt, action in Maharashtra is lagging. The matter was taken up with the Chief Secretary of Maharashtra. A copy of his reply dated 7-11-1992 is enclosed. You will observe that the reasons for the lag are largely due to the uncooperative and agitational approach adopted by some people.

- e Taking all these into account, you will appreciate that the action plans are adequate.”

- f The Minister for Water Resources, Government of India wrote a letter on 27-1-1993 to the Minister of State for Environment and Forests stating that there had been no violation of environmental safeguard measures. On 7-7-1993, the Secretary, Ministry of Water Resources, Government of India wrote a letter to the Secretary, Ministry of Environment and Forests, Government of India, more particularly stating as under:

“Progress of all the environmental works is summarised in the sheet enclosed herewith. I share your concern for initial delay in some of the studies but now it seems that the work has started in full swing. However, there is a need to keep a close watch and I am advising NCA for the same.”

- g By letter dated 17-9-1993 the Minister of State for Environment and Forests, Government of India wrote to the Minister for Water Resources, Government of India appreciating the efforts made by the State Governments concerned in making the environmental plans. The exchange of the aforesaid correspondence and the conduct of various meetings of the Environment Subgroup from time to time under the Chairmanship of the Secretary,
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Ministry of Environment and Forests, dispels the doubt of the environment clearance having been lapsed. In other words, there could not have been any question of the environmental clearance granted to SSP having lapsed more particularly when the Environment Subgroup had been consistently monitoring the progress of various environmental works and had been observing in its minutes of various meetings held from time to time, about its analysis of the works done by the respective States in the matter of the status of studies, surveys and environmental action plans in relation with:

- (i) phased catchment area treatment;
- (ii) compensatory afforestation;
- (iii) command area development;
- (iv) survey of flora, fauna etc.;
- (v) archaeological and anthropological survey;
- (vi) seismicity and rim stability of reservoir;
- (vii) health aspects; and
- (viii) fisheries development of SSP and NSP reservoirs.

95. Shri Shanti Bhushan in the course of his submissions referred to the report of the Morse Commission in support of his contentions that the project was flawed in more ways than one.

96. The Morse Commission was constituted, as already noted, by World Bank. Its recommendations were forwarded to World Bank. Apart from the criticism of this report from other quarters, World Bank itself, did not accept this report as is evident from its press release dated 22-6-1992 where it was, inter alia, stated as follows:

“The Morse Commission provided a draft of its report to the Bank for management’s comments several weeks prior to the final release of the document. About two weeks before this release, the Commission provided a draft of its findings and recommendations. The final version of the report is the sole responsibility of its authors; the report was not cleared by World Bank.

On resettlement and rehabilitation (R&R), bank management agrees with the description of the R&R situation in each of the three States and with the report’s conclusions about the shortcomings in the preparation and appraisal of the project’s R&R aspects. We also agree that work should have been done earlier on the issue of people affected by the canal in Gujarat. However, we do not share the view that resettlement would be virtually impossible even if Maharashtra and Madhya Pradesh adopted the liberal resettlement package provided for displaced people by the State of Gujarat. Given the experience so far, and the fact that most of the impact of submergence on people will not occur until 1997, there is still time to develop meaningful R&R packages and programmes in consultation with the affected peoples. Efforts are being intensified to achieve this.

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- a* On environment, the bank management agrees with the independent review on the need for a more effective central management in the Narmada basin on environment impact studies and mitigation programmes. The management also agrees on the need to accelerate work on estuary studies and health matters in Gujarat. However, management does not share the review's conclusions about the environmental severity of the study delays. Command area issues are being addressed, including issues of waterlogging and salinity. On water availability (hydrology), the bank management disagrees with the finding that there is insufficient impoundment of water upstream of the Sardar Sarovar Dam site to make the irrigation system work as designed."
- b*

The Government of India vide its letter dated 7-8-1992 from the Secretary, Ministry of Environment and Forests did not accept the report and commented adversely on it.

- c* **97.** In view of the above, we do not propose, while considering the petitioners' contentions, to place any reliance on the report of Morse Commission.

- d* **98.** It was submitted on behalf of the petitioners that the command area development was an important aspect as the benefits of the project depended on this and if proper studies and plans were not done and not implemented, the very areas that were supposed to benefit will end up being rendered unfit for cultivation and the waterlogging and salinisation could render vast areas of the command unproductive. It was also submitted that still there was no integrated command area environmental impact assessment. After referring to the status reports and studies regarding the command area development, it was submitted that there was need for some independent agency to examine the various studies, action plans and the experience and to see whether there was ground to believe that the proposed measures will work or not. It was contended that master plan for drainage and command area development was still not in place and even the full studies had not been done.
- e*

- f* **99.** While refuting the aforesaid contentions it was argued on behalf of learned counsel for the respondents that SSP will provide irrigation water for a cultivable command area of 1.9 million hectares in Gujarat and 75,000 hectares in Rajasthan. The introduction of fresh water to the drought-prone areas of Gujarat will create obvious benefits for the farming communities. In order to safeguard these benefits, control and monitoring was suggested by the Secretary, Ministry of Environment and Forests and Chairman of the Environment Subgroup in the following areas from time to time:

- g*
- drainage, waterlogging and soil salinity;
 - water quality;
 - forest loss;
 - potential impact on flora and fauna;
 - effects on public health;
- h*
- socio-economic impacts.

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100. Pursuant thereto, fifty in-depth studies had been carried out by the State Governments of Gujarat and Rajasthan and some of the studies were still in progress. One of the main objectives of carrying out these studies was to prevent excessive use of groundwater and waterlogging. a

101. There is no reason whatsoever as to why independent experts should be required to examine the quality, accuracy, recommendations and implementation of the studies carried out. The Narmada Control Authority and the Environmental Subgroup in particular have the advantage of having with them the studies which had been carried out and there is no reason to believe that they would not be able to handle any problem, if and when, it arises or to doubt the correctness of the studies made. b

102. It was submitted by Shri Shanti Bhushan that the catchment area treatment programme was not to be done *pari passu* but was required to be completed before the impoundment. This contention was based on the terms of the letter dated 24-6-1987 wherein conditional environmental clearance was granted, *inter alia*, on the condition that “the catchment area treatment programme and rehabilitation plans be drawn so as to be completed ahead of reservoir filling”. Admittedly, the impounding began in 1994 and the submission of Shri Shanti Bhushan was that catchment area treatment programme had not been completed by them and, therefore, this very important condition had been grossly violated. Reference was also made to the minutes of the Environmental Subgroup meetings to show that there had been slippage in catchment area treatment work. c
d

103. The clearance of June 1987 required the work to be done *pari passu* with the construction of the dams and the filling of the reservoir. The area wherein the rainfall water is collected and drained into the river or reservoir is called catchment area and the catchment area treatment was essentially aimed at checking of soil erosion and minimising the silting in the reservoir within the immediate vicinity of the reservoir in the catchment area. The respondents had proceeded on the basis that the requirement in the letter of June 1987 that catchment area treatment programme and rehabilitation plans be drawn up and completed ahead of reservoir filling would imply that the work was to be done *pari passu*, as far as catchment area treatment programme is concerned, with the filling of reservoir. Even though the filling of the reservoir started in 1994, the impoundment award was much less than the catchment area treatment which had been affected. The status of compliance with respect to *pari passu* conditions indicated that in the year 1999, the reservoir level was 88.0 metres, the impoundment area was 6881 hectares (19%) and the area where catchment treatment had been carried out was 1,28,230 hectares being 71.56% of the total work required to be done. The minutes of the Environmental Subgroup as on 28-9-1999 stated that catchment area treatment works were nearing completion in the States of Gujarat and Maharashtra. Though, there was some slippage in Madhya Pradesh, however, overall works by and large were on schedule. This clearly showed that the monitoring of the catchment treatment plan was being done by the Environmental Subgroup quite effectively. e
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104. With regard to compensatory afforestation it was contended by Shri Shanti Bhushan that it was being carried out outside the project impact area.

- a* Further, it was submitted that the practice of using wasteland or lesser quality land for compensatory afforestation means that the forest will be of lesser quality. Both of these together defeated the spirit of the compensatory afforestation. It was contended that the whole compensatory afforestation programme was needed to be looked at by independent experts.

- b* **105.** While granting approval in 1987 to the submergence of forest land and/or diversion thereof for SSP, the Ministry of Environment and Forests had laid down a condition that for every hectare of forest land submerged or diverted for construction of the project, there should be compensatory afforestation on one hectare of non-forest land plus reforestation on two hectares of degraded forest. According to the State of Gujarat, it had fully complied with the condition by raising afforestation in 4650 hectares of non-forest areas and 9300 hectares in degraded forest areas before 1995-96 against the impoundment area of 19%. The *pari passu* achievement of afforestation in Gujarat was stated to be 99.62%.
- c*

106. If afforestation was taking place on wasteland or lesser quality land, it did not necessarily follow, as was contended by the petitioners, that the forests would be of lesser quality or quantity.

- d* **107.** It was also contended on behalf of the petitioners that downstream impacts of the project would include not only destruction of downstream fisheries, one of the most important ones in Gujarat on which thousands of people are dependent but will also result in salt water ingress. The project, it was contended, will have grave impacts on the Narmada estuary and unless the possible impacts were properly studied and made public and mitigation plans demonstrated with the requisite budget, one could not accept the claim that these matters were being looked into. The need to assess the problem was stated to be urgent as according to the petitioners rich fisheries downstream of the dam, including the famed hilsa would be almost completely destroyed. The salinity ingress threatened the water supply and irrigation use of over 210 villages and towns and Bharuch city. All these would not only have serious economic and other impacts but would also directly destroy the livelihood of at least 10,000 fisher families.
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- f*

- g* **108.** Again all these contentions were based on the Morse Commission Report which World Bank and the Union of India had already rejected. That apart, according to the respondents, in 1992 Sardar Sarovar Narmada Nigam Limited issued an approach paper on environmental impact assessment for the river reach downstream. This provided technical understanding of the likely hydrological changes and possible impact in relation thereto. It was further submitted by learned counsel for the respondents that the potential for environmental changes in the lower river and estuary had to be seen in the context of the long-term development of the basin. The current stage was clearly beneficial. The three stages could be identified as follows:
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Stage 1 covers the period roughly from the completion of Sardar Sarovar Dam to the year 2015. Events occurring during this stage include (a) SSP Canal Command will have reached full development and require diversion of some water, (b) the upstream demand will reach about 8 MAF, and (c) the Narmada Sagar Dam will have been built and placed into operation.

Stage 2 covers the period from 2015 and 2030 during which the demands upstream of SSP will continue to grow and will reach about 12 MAF, still below the volume of 18 MAF that Madhya Pradesh can take in a 75% year.

Stage 3 covers the period up to and beyond full basin development. The report given by M/s H.R. Wallingford in March 1993 in respect of the downstream impacts of Sardar Sarovar Dam observes, inter alia, as under:

“The overall conclusion of the team undertaking the assessment described in this report is that there are no downstream impacts whose magnitude and effect are such as to cause doubts to be cast over the wisdom of proceeding with the Sardar Sarovar Projects provided that appropriate monitoring and mitigation measures are applied. Much of this work is already in progress under the auspices of NPG, SSNNL and NCA. The recommendations in this report are intended to provide a synthesis of their work and suggestions as to whether it might be modified to enhance its usefulness.”

The said M/s H.R. Wallingford in the findings of 1995 stated as under:

“It is thought unlikely that any significant negative environmental impacts will occur over the next 30 years as a result of the project. Some possible adverse effects have been identified, the main one being the effect of flood attenuation on hilsa migration. These need to be monitored and more studies undertaken to better understand the conditions which trigger spawning. Beneficial impacts in this period include reduced flooding and more reliable dry season flows as well as an overall improvement of the health and well-being of the people to the reliable domestic water supply, improved nutrition and enhanced economic activity.”

The above report clearly demonstrates that the construction of dam would result in more regulated and perennial flow into the river with an overall beneficial impact. It is also evident that until all the dams are constructed upstream and the entire flow of river is harnessed, which is not likely in the foreseeable future, there is no question of adverse impact including the fishing activity and the petitioner's assertions in this regard are ill-conceived.

109. The area of submergence was stated to be rich in archaeological remains but it still remained to be studied. It was contended that there was danger of rich historical legacy being lost and even a small increase in the dam height would threaten to submerge many of the sites listed in the report of the Archaeological Survey of India. There were stated to be five monuments which would be affected at the dam height of 90 metres or above

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and no work was stated to have commenced to protect any of the five monuments.

- a* **110.** According to the State of Gujarat, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 charged the Central and/or State Department of Archaeology with responsibility for the protection of important cultural sites. Under the Act, sites were classified into three categories as follows:

- b* *Type 1:* monuments of national importance which are protected by the Central Government;

Type 2: monuments of religious or cultural importance which are protected by the State Government; and

Type 3: monuments which are neither Centrally nor State-protected, but which are considered to be an important part of cultural heritage.

- c* Under the same law, the authorities charged with the protection of the monuments are permitted to take suitable measures to ensure the preservation of any protected site under threat from decay, misuse or economic activity.

- d* **111.** In the case of Sardar Sarovar, where several sites may be submerged, NDWT award stipulated that the entire cost of relocation and protection should be chargeable to Gujarat. Relocation work was to be supervised by the Department of Archaeology under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

- e* **112.** The three State Governments carried out a complete survey of cultural and religious sites within the submergence zone. The principle of these surveys was to list all archaeological sites, identify and name any site under State protection and further identify sites of religious or cultural significance which, although not protected under national law, were of sufficient value to merit relocation. So far as the State of Gujarat is concerned the Department of Archaeology surveyed archaeological sites in nineteen villages of submergence zone in Gujarat under the title of “Archaeological Survey of Nineteen Villages in Gujarat Submerged by Sardar Sarovar Reservoir, 1989”.

- f* **113.** In addition to baseline studies on archaeological aspects, work had been carried out on the anthropological heritage of Narmada basin, including examination of evidence of ancient dwellings and cultural artefacts. The principal studies in this behalf are described below:

- g* *Anthropological Survey of India: Narmada Salvage Plan.*— The Narmada Salvage Plan contains detailed background data on palaeoanthropological, human ecological and other aspects of the Narmada valley. By May 1992, surface scanning of 17 sample villages coming under the submergence had been carried out and 424 specimens including ancient tools etc. had been collected.

- h* *Anthropological Survey of India: peoples of India.*— This project entailed a complete survey of 33 tribes of India including those of the

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Narmada basin. The study covered all aspects of tribal culture in India and was published in 61 volumes in 1992.

Summary of current situation and progress, Government of Gujarat:

Survey of villages in Complete for all items in the State
submergence zone

Identification of cultural Complete for all items in the State
sites

Collection of data and Complete
documentation of sites

Selection of appropriate Complete
sites

Action plan Complete

It was further submitted on behalf of the respondents that no Centrally- or State-protected cultural sites were located in the submergence area of the project. In Gujarat, the Department of Archaeology concluded that the temples of Shoolpaneshwar and Hampheshwar were important monuments and should be moved to a higher level. Sites were selected for constructing new Shoolpaneshwar and Hampheshwar temples in consultation with temple trustees. Shoolpaneshwar had been relocated and reconstructed near Gora, about 15 km downstream from the present location. Hampheshwar was also constructed at higher ground in consultation with the temple trustees and pranpratistha was also planned on 22-4-2000 to 24-4-2000 i.e. before the temple was submerged.

114. In relation to flora and fauna studies, it was contended by the petitioners that the studies had finished only recently and the action plans were awaited in many cases. In the meanwhile, extensive deforestation of the submergence zone had taken place, as also part of the area had been submerged, even as the studies have been on. It was also contended that the impact on some of the Wild Ass Sanctuary in Kutch would be very severe.

115. The guidelines of the Ministry of Environment and Forests required that while seeking environmental clearance for the hydropower projects, surveys should be conducted so that the status of the flora and fauna present could be assessed. A condition of environmental clearance of 1987 as far as it related to flora and fauna was that the Narmada Control Authority would ensure in-depth studies on flora and fauna needed for implementation of environmental safeguard measures. It is the case of the respondents that a number of studies were carried out and reports submitted. It was observed that the submergence area and catchment area on the right bank of the proposed reservoir exhibited a highly-degraded ecosystem which was in contrast to the left bank area where there was fairly good forest cover which formed part of Shoolpaneshwar Wildlife Sanctuary. With regard to the study of fauna, the said report indicated that a well-balanced and viable ecosystem existed in the Shoolpaneshwar Sanctuary. Moreover, with the construction of dam, water availability and soil moisture will increase and support varieties of plants and animals.

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- 116.** It was also contended on behalf of the petitioners that the whole project will have serious impacts on health, both around the submergence area and in the command. The preventive aspects had not been given attention. There was no linkage between the studies and work.
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- 117.** On behalf of the State of Gujarat, it was contended that a large number of studies had been carried out on the health profile of villagers including studies on water-related diseases in SSP Command Area including the area downstream of the dam. The study of M.S. University in 1983 and other studies concluded that the most common diseases in the basin were malaria, scabies, dysentery and diarrhoea. Of these only a threat to malaria needed to be of concern. The study concluded that the incidence of hygiene-related diseases other than malaria could be reduced by better water availability. The Gujarat Work Plan covered villages within 10-km radius of the reservoir including resettled population and made provision for the monitoring, surveillance and control of malaria. The principal features of the Gujarat Work Plan included establishment of a hospital at Kevadia near the dam site, strengthening of laboratory facility including establishment of mobile unit residual insecticidal spraying operations etc. This showed that the area of public health was in no way being neglected.
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- 118.** The petitioner was also critical of the functioning of the Environmental Subgroup as it was contended that the claims of the studies and the progress report were accepted at their face value and without verification. It was also contended that the Ministry of Environment and Forests had grossly abdicated its responsibility. This submission was based on the premise that clearance, which had been granted, had lapsed and the Ministry of Environment and Forests did not insist on the Ministry of Water Resources for its renewal and furthermore the Ministry of Environment and Forests had not taken any cognizance of the criticism about environmental aspects contained in the Morse Commission Report. Lastly the Five-Member Group in its first report was critical in many respects and pointed out studies which had remained incomplete but no cognizance was taken by the Ministry of Environment and Forests. The repeated abdication, it was submitted, of the responsibility by the Ministry of Environment and Forests indicated that it was not taking the whole issue with the seriousness it deserved.
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- 119.** On behalf of the State of Gujarat, it was contended that various alleged dangers relating to environment as shown by the petitioners were mostly based on the recommendations of the Morse Commission Report and Five-Member Group. While the report of Morse Commission does not require our attention, the same not having been accepted either by World Bank or the Government of India, para 4.5.2 of the report of Five-Member Group which relates to creation of the Environment Subgroup and commends its establishment, its observation about its powers is as follows:
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- “4.5.2. It must be noted that the Environmental Subgroup is not a body which merely observes and reports, but is a watchdog body which can recommend even the stoppage of work if it feels dissatisfied with the
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progress on the environment front. The recommendations of the Environmental Subgroup will have to be considered by NCA, and if there is any difference of opinion at that level, it will have to be referred to the Review Committee, which has the Minister of Water and Environment and Forests as a member. *It seems doubtful whether any more effective mechanism could have been devised or made to work within the framework of our existing political and administrative structures, particularly in the context of a federal system.* The Secretary (Environment and Forests) has, in fact, been given a special position in NCA inasmuch as he can insist on matters being referred to the Review Committee and at the Review Committee the Minister of Environment and Forests can forcefully plead the environmental cause; he can also make the environmental point of view heard at the highest level. If in spite of all these arrangements, the environmental point of view fails to be heard adequately, and if project construction tends to take an overriding precedence, that is a reflection of the relative political importance of these two points of view in our system. This can be remedied only in the long term through persuasion and education, and not immediately through institutional arrangements which run counter to the system.” (emphasis added)

Apart from the fact that we are not convinced that construction of the dam will result in there being an adverse ecological impact, there is no reason to conclude that the Environmental Subgroup is not functioning effectively. The subgroup which is headed by the Secretary, Ministry of Environment and Forests is a high-powered body whose work cannot be belittled merely on the basis of conjectures or surmises.

120. Shri Shanti Bhushan, learned Senior Counsel while relying upon *A.P. Pollution Control Board v. Prof. M.V. Nayudu*⁵ submitted that in cases pertaining to environment, the onus of proof is on the person who wants to change the status quo and, therefore, it is for the respondents to satisfy the Court that there will be no environmental degradation.

121. In *A.P. Pollution Control Board case*⁵ this Court was dealing with the case where an application was submitted by a company to the Pollution Control Board for permission to set up an industry for the production of “BSS castor oil derivatives”. Though later on a letter of intent had been received by the said Company, the Pollution Control Board did not give its no-objection certificate to the location of the industry at the site proposed by it. The Pollution Control Board, while rejecting the application for consent, inter alia, stated that the unit was a polluting industry which fell under the red category of polluting industry and it would not be desirable to locate such an industry in the catchment area of Himayat Sagar, a lake in Andhra Pradesh. The appeal filed by the Company against the decision of the Pollution Control Board was accepted by the appellate authority. A writ petition was filed in the nature of public interest litigation and also by the

⁵ (1999) 2 SCC 718

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a Gram Panchayat challenging the order of the appellate authority but the same was dismissed by the High Court. On the other hand, the writ petition filed by the Company was allowed and the High Court directed the Pollution Control Board to grant consent subject to such conditions as may be imposed by it.

b **122.** It is this decision which was the subject-matter of challenge in this Court. After referring to the different concepts in relation to environmental cases like the “precautionary principle” and the “polluter-pays principle”, this Court relied upon the earlier decision of this Court in *Vellore Citizens’ Welfare Forum v. Union of India*⁶ and observed that there was a new concept which places the burden of proof on the developer or industrialist who is proposing to alter the status quo and has become part of our environmental law. It was noticed that inadequacies of science had led to the precautionary principle and the said “precautionary principle” in its turn had led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed on those who want to change the status quo. At p. 735, this Court, while relying upon a report of the International Law Commission, observed as follows: (SCC para 38)

d “38. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.”

e **123.** It appears to us that the “precautionary principle” and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. When there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to be caused then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution. On the other hand where the effect on ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what mitigative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be an ecological disaster. It is when the effect of the project is known that the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

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124. In the present case we are not concerned with the polluting industry which is being established. What is being constructed is a large dam. The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in an ecological disaster. India has an experience of over 40 years in the construction of dams. The experience does not show that construction of a large dam is not cost-effective or leads to ecological or environmental degradation. On the contrary there has been ecological upgradation with the construction of large dams. What is the impact on environment with the construction of a dam is well known in India and, therefore, the decision in *A.P. Pollution Control Board case*⁵ will have no application in the present case.

125. Reference was made by Shri Shanti Bhushan to the decision of the United States District Court in the case of *Sierra Club et. v. Robert F. Froehlke*⁷. In that case work had begun on Wallisville Project which, inter alia, consisted of construction of a low dam. It was the case of the plaintiff that the construction of the project would destroy hundreds of thousands of trees and enormous grain, fish and other wildlife will lose their habitat and perish. It was contended that the defendants were proceeding in violation of law by not complying with the requirements of the National Environmental Policy Act, 1969 (NEPA). The plaintiff, inter alia, sought an injunction for restraining the undertaking of the project in violation of the said Act. The District Court held that notwithstanding that a substantial amount of work had already been done in connection with the project but due to the failure to satisfy full disclosure requirement of NEPA, injunction would be issued to halt any further construction until requirements of NEPA had been complied with, that even though there was no Act like NEPA in India at the time when environmental clearance was granted in 1987, nevertheless by virtue of Stockholm Convention and Article 21 of the Constitution the principles of *Sierra Club decision* should be applied.

126. In India notification had been issued under Section 3 of the Environmental Act regarding prior environmental clearance in the case of undertaking of projects and setting up of industries including the inter-State river project. This notification has been made effective from 1994. There was, at the time when the environmental clearance was granted in 1987, no obligation to obtain any statutory clearance. The environmental clearance which was granted in 1987 was essentially administrative in nature, having regard and concern for the environment in the region. Change in the environment does not per se violate any right under Article 21 of the Constitution of India especially when ameliorative steps are taken not only to preserve but to improve the ecology and environment and in case of

⁵ (1999) 2 SCC 718

⁷ 350 b F Supp 1280 (1973)

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displacement, prior relief and rehabilitation measures take place *pari passu* with the construction of the dam.

- a 127. At the time when the environmental clearance was granted by the Prime Minister whatever studies were available were taken into consideration. It was known that the construction of the dam would result in submergence and the consequent effect which the reservoir will have on the ecology of the surrounding areas was also known. Various studies relating to environmental impact, some of which have been referred to earlier in this judgment, had been carried out. There are different facets of environment and if in respect of a few of them adequate data was not available it does not mean that the decision taken to grant environmental clearance was in any way vitiated. The clearance required further studies to be undertaken and we are satisfied that this has been and is being done. Care for the environment is an ongoing process and the system in place would ensure that ameliorative steps are taken to counter the adverse effect, if any, on the environment with the construction of the dam.
- b
- c

128. Our attention was also drawn to the case of *Tennessee Valley Authority v. Hiram G. Hill*⁸ where the Tennessee Valley Authority had begun construction of the Tellico Dam and Reservoir Project on a stretch of Little Tennessee River. While a major portion of the dam had been constructed the

d Endangered Species Act, 1973 was enacted wherein a small fish popularly known as the “snail darter” was declared an endangered species. Environmental groups brought an action in the United States District Court for restraining impounding of the reservoir on the ground, that such an action would violate the Endangered Species Act by causing extinction of the snail darter. The District Court refused injunction but the same was granted by the

e United States Court of Appeal. On further appeal the US Supreme Court held that the Endangered Species Act prohibited the authority for further impounding the river. The said decision has no application in the present case because there is no such Act like the Endangered Species Act in India or a declaration similar to the one which was issued by the Secretary of the Interior under that Act. What is, however, more important is that it has not

f been shown that any endangered species exists in the area of impoundment. In *Tennessee Valley Authority case*⁸ it was an accepted position that the continued existence of snail darter which was an endangered species would be completely jeopardised.

- g 129. Two other decisions were referred to by Shri Shanti Bhushan — *Arlington Coalition on Transportation v. John A. Volpe*⁹ and *Environmental Defense Fund, Inc. v. Corps of Engineers of United States Army*¹⁰. In both these decisions it was decided that NEPA would be applicable even in case of a project which had commenced prior to the coming into force of the said Act but which had not been completed. In such cases there was a requirement

h 8 437 US 153 : 57 L Ed 2d 117 : 98 S Ct 2279
9 458 F 2d 1323 (1972)
10 325 F Supp 749 (1971)

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to comply with the provisions of NEPA as already noticed earlier. The notification under Section 3 of the Environment Protection Act cannot be regarded as having any retrospective effect. The said notification dated 27-1-1994, inter alia, provides as follows: a

“Now therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of publication of this notification in the Official Gazette expansion or modernisation of any activity if pollution load is to exceed the existing one, or a new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification;” b c

This notification is clearly prospective and inter alia prohibits the undertaking of a new project listed in Schedule I without prior environmental clearance of the Central Government in accordance with the procedure now specified. In the present case clearance was given by the Central Government in 1987 and at that time no procedure was prescribed by any statute, rule or regulation. The procedure now provided in 1994 for getting prior clearance cannot apply retrospectively to the project whose construction commenced nearly eight years prior thereto. d

Relief and rehabilitation

130. It is contended by the petitioner that as a result of construction of dam, over 41,000 families will be affected in three States spread over 245 villages. The number of families have increased from 7000 families assessed by the Tribunal. It was further contended that the submergence area can be broadly divided into two areas, fully tribal area which covers the initial reach of about 100 or so villages which are almost 100% tribal and hilly. These include all the 33 villages of Maharashtra, all 19 of Gujarat and many of Madhya Pradesh. The second part of the submergence area is the mixed-population area on the Nimad plains with a very well-developed economy that is well connected to the mainstream. While the tribal areas are stated to be having a rich and diverse resource base and a self-sufficient economy, the lack of so-called modern amenities like roads, hospitals and schools are far more a reflection of the neglect and disregard by the Government over the last fifty years than of anything else. Of the 193 villages stated to be affected by Sardar Sarovar submergence, 140 lie in the Nimad plains. The population of these villages is a mixture of caste and tribal and these villages have all the facilities like schools, post offices, bus service etc. e f g

131. It was contended that whereas the project authorities talk only about the families affected by submergence, none of the other families affected by the project are considered as PAFs nor has any rehabilitation package been designed for them. These non-recognised categories for whom no h

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rehabilitation package is given are stated to be those persons living in submergence area who are not farmers but are engaged in other occupation

- a like petty traders, village shopkeepers who are to be affected by submergence; colony-affected people whose lands were taken in 1960 to build the project colony, warehouses etc.; canal-affected people who would be losing 25 per cent of their holdings because of the construction of the canals, drainage-affected people whose lands will be acquired for drainage; 10,000 fishing families living downstream whose livelihood will be affected;
- b lands of the tribals whose catchment treatment area has been carried out; persons who are going to be affected by the expansion of Shoolpaneshwar Sanctuary; persons going to be affected by Narmada Sagar Project and Garudeshwar Weir. It was contended that there was an urgent need to assess comprehensively the totality of the impact and prepare category-specific rehabilitation policies for all of them.

- c **132.** It was also submitted that the total number of affected families in all the three States as per the master plan prepared by the Narmada Control Authority is 40,727. According to the petitioner, however, this figure is an underestimate and the estimate of the land required for these PAFs is also on a much lower side. The basis for making this submission is:

- d (1) In each village there are many persons left out of the government list of declared PAFs. These are joint-holders (non-recognised as landed oustees or PAFs) and the adult sons.

- e (2) Incorrect surveys have been conducted and the affected persons have serious apprehensions about the validity of the surveys since at many places the level markings are suspect, in many cases the people affected at higher levels have been given notices for lower levels, many others at the same levels have been left out and so on. It is also alleged that there have been shortcomings in the policies and if they are corrected many more oustees will be entitled to PAF status. Furthermore the cut-off date for PAFs in Madhya Pradesh including adult son is linked to the date of issuance of notification. Since land-acquisition process is still incomplete the number of adult sons entitled to land
- f would increase with the issuance of fresh Section 4 notification.

133. From the aforesaid it was contended that the total impact in terms of number of oustees as well as land entitlement will be much larger than what is considered in the master plan.

- g **134.** It is also submitted that there was major lacuna in the said policy like the three States having dissimilar policy for R&R. This difference in rehabilitation packages of different States, with the package of Gujarat being more favourable, is leading to a situation where the oustees are forced to shift to Gujarat. The other lacunae which are stated to have many serious problems are alleged to be the non-provision for fuel wood and grazing land with fodder. There is no provision for rehabilitation of people involved in
- h non-agricultural occupation. According to the petitioner the number of affected people even by submergence have been underestimated. The policy

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regime governing them has many serious lacunae. The increase in the numbers is due to lack of proper surveys and planning and the provision of just and due entitlements to PAFs. Since this process of providing just entitlements is still incomplete, and the policies need a thorough review, the numbers and entitlements are likely to go up further. Even the magnitude of the task of R&R cannot be assessed properly till the above are considered and proper policies introduced.

135. It is also contended that before embarking on the Sardar Sarovar Project it was necessary that the master plan for rehabilitation of the families to be affected is completed. According to the petitioner the master plan which was submitted in the Court cannot be regarded as an acceptable master plan inasmuch as it has no mention of people affected by Sardar Sarovar Project other than those affected by submergence and it has no estimate of resource base of the oustees in their original village. Further the plan makes no estimation of the forest land, grazing land and resources being used by the oustees. The master plan persists with the discriminatory and differential policies which are less than just to the oustees. There is also no planning for community resettlement even though the award of the Narmada Tribunal made detailed provision regarding rehabilitation of the oustees which required that there should be villagewise community rehabilitation.

136. In support of this contention reliance is placed on the following stipulation for rehabilitation contained in the award of the Narmada Tribunal “that Gujarat shall establish rehabilitation villages in Gujarat in the irrigation command of SSP on the norms hereafter mentioned for rehabilitation of the families who are willing to migrate to Gujarat”. The submission is that no specific rehabilitation village, as envisaged by the Tribunal’s award, has been established in Gujarat. The issue of community resettlement is stated to be not merely an issue of community facility but is a more fundamental issue. The issue is really one of preserving social fabric and community relation of the oustees which, it is alleged, is being destroyed due to dispersal of the community who are being resettled at different sites.

137. Dealing with the situation of those oustees who have been resettled in Gujarat it is submitted by the petitioner that there are a large number of grievances of the said oustees in 35 resettlement sites. With the passage of time the number of problems overall would become much more, is the contention. The petitioner finds fault with the quality of land which has been given in Gujarat to the oustees contending that a large number of oustees have been given land outside the command area of irrigation and in some resettlement sites there is a serious waterlogging problem. It also contends that though some amenities have been provided but they are not adequate. It is also the case of the petitioner that sufficient land for resettlement of the oustees from Madhya Pradesh is not available in Gujarat despite the claim of the State of Gujarat to the contrary.

138. With regard to Maharashtra it is contended by the petitioner that the official figure of the total number of PAFs affected in Maharashtra is not

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- correct and the number is likely to be more than 3113 PAFs estimated by the State of Maharashtra. Furthermore adequate land of desired quality has not
- a been made available for resettlement till 90 m and even thereafter. Reference is made to the affidavit of the State of Maharashtra in which it is stated that it proposes to ask for the release of 1500 hectares of forest land for resettlement and the submission on behalf of the petitioner is that release of such land shall be in violation of the Forest Conservation Act, 1980 and is not in public interest for forest cover will be further depleted.
- b **139.** With regard to the State of Madhya Pradesh it is submitted that as per the award PAFs have a right to choose whether to go to Gujarat or to stay in the home State. The State of Madhya Pradesh is stated to have planned the whole resettlement based on the assumption that overwhelming proportion of oustees entitled to land will go to Gujarat, yet even for the limited number of oustees who are likely to stay in Madhya Pradesh the submission is that no
- c land is available. The petitioner also disputes the averment of the State of Madhya Pradesh that the oustees have been given a choice as to whether they would like to go to Gujarat or stay in the home State. According to the petitioner the majority of the oustees would prefer to stay in the home State that is Madhya Pradesh but sufficient land for their resettlement in Madhya Pradesh is not available. According to the petitioner the State of Madhya
- d Pradesh has stated that it does not have land for any PAFs above 830 and even for 830 PAFs the land is not available. It is also submitted that the Madhya Pradesh Government cannot wriggle out of its responsibility to provide land for the oustees by offering them cash compensation. The petitioner finds fault with the effort of the State of Madhya Pradesh to push the oustees to Gujarat whose rehabilitation scheme is more attractive and
- e beneficial than that of Madhya Pradesh.
- 140.** The petitioner further contends that one of the fundamental principles laid down is that all the arrangements and resettlement of the oustees should be made one year in advance of submersion. In *B.D. Sharma v. Union of India case*¹¹ this Court has held that resettlement and rehabilitation has to be done at least six months in advance of submersion,
- f complete in all respects. It is, therefore, contended that since offers to the Madhya Pradesh oustees affected at 90 m to be settled in Madhya Pradesh has not been made, there cannot be any question of further construction till one year after the resettlement of these PAFs at 90 m.
- 141.** The petitioner is also critical of the functioning of the R&R Subgroup and it is contended that the said Subgroup has not taken any
- g cognizance of the various issues and problems enumerated by the petitioner. It is submitted that in assuring that the relief and rehabilitation arrangements are being done the said R&R Subgroup merely accepts the assertions of the Government rather than verifying the claims independently. There is also a complaint regarding the manner in which the R&R Committee takes decision
- h on the spot when it makes frequent visits. It is contended that the decisions

11 *B.D. Sharma v. Union of India*, 1992 Supp (3) SCC 93

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which are taken in an effort to solve the grievances of the oustees is done in the most insensitive way. The R&R Subgroup, it is contended, is an official agency of the Government, itself being a subgroup of NCA, which is pushing the project ahead and the question raised by the petitioner is as to how can the same body which is building a project and executing the R&R be also monitoring it. a

142. It is a case of the petitioners that there is a need for independent monitoring agency in the three States who should be asked to monitor the R&R of the oustees and see to the compliance with NWDT award. No construction should be permitted to be undertaken without clearance from this authority. Lastly it is contended that a large number of grievances are persisting even after twenty years and the pace of resettlement has been slow. The petitioner seems to have contended that the relief and rehabilitation can be manageable only if the height of the dam is significantly lessened which will reduce submersion and displacement of people. b

143. In order to consider the challenge to the execution of the project with reference to relief and rehabilitation it is essential to see as to what is the extent and the nature of submergence. c

144. The Sardar Sarovar reservoir level at 455 ft would affect 193 villages in Madhya Pradesh, 33 villages in Maharashtra and 19 villages in Gujarat. The submergence villages are situated on the banks of River Narmada having gentle to steep slopes of the Satpura Hills. A village is considered affected even when the water level touches the farm/hut at the lowest level. It may be noted that only 4 villages (3 villages in Gujarat and 1 village in Madhya Pradesh) are getting submerged fully and the rest 241 villages are getting affected partially. d

145. The Statewise land coming under submergence (categorywise) is given below: e

Sl. No.	Type of land	STATES			(in hectares)
		Gujarat	Maharashtra	Madhya Pradesh	Total
1.	Cultivated land	1877	1519	7883	11,279
2.	Forest land	4166	6488	2731	13,385
3.	Other land including riverbed	1069	1592	10,208	12,869
Total land		7112	9599	20,822	37,533

146. The aforesaid table shows that as much as 12,869 hectares of the affected land is other than agricultural and forest and includes the riverbed area. f

147. When compared to other similar major projects, the Sardar Sarovar Project has the least ratio of submergence to the area benefited (1.97% only). The ratio of some of the existing schemes is as much as 25% as can be seen from the table below: g

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	<i>Sl. No.</i>	<i>Name of project</i>	<i>State</i>	<i>Benefited area (in ha)</i>	<i>Submergence area (in ha)</i>	<i>Irrigation benefit per ha submergence</i>	<i>Percentage of area submerged to area irrigated</i>
<i>a</i>							
	1.	Hirakud	Orissa	2,51,150	73,892	3.40	29.42
<i>b</i>	2.	Shriram Sagar	Andhra Pradesh	2,30,679	44,517	5.24	19.14
	3.	Gandhi Sagar	Madhya Pradesh	5,03,200	66,186	7.60	13.15
	4.	Paithan	Maharashtra	2,78,000	35,000	7.94	15.29
<i>c</i>	5.	Tungbhadra	Karnataka	3,72,000	37,814	9.84	10.16
	6.	Pench	Maharashtra	94,000	7750	12.13	8.24
	7.	Nagarjuna Sagar	Andhra Pradesh	8,95,000	28,500	31.40	3.18
	8.	Bhakra	Himachal Pradesh	6,76,000	16,800	40.24	2.48
<i>d</i>	9.	Sardar Sarovar	Gujarat	19,03,500	37,533	50.71	1.97

148. Countering the assertion that the construction of the dam would result in large-scale relocation and uprooting of tribals, the factual position seems to be that the tribals constitute bulk of PAFs in Gujarat and Maharashtra, namely, 97% and 100% respectively. In the case of Madhya Pradesh, the tribal PAFs are only 30% while 70% are non-tribals.

149. The tribals who are affected are in indigent circumstances and who have been deprived of the modern fruits of development such as tap water, education, road, electricity, convenient medical facilities, etc. The majority of the project-affected families are involved in rain-fed agricultural activities for their own sustenance. There is partial employment in the forestry sector.

Since the area is hilly with difficult terrain, they are wholly dependent on the vagaries of the monsoon and normally only a single crop is raised by them. Out of PAFs of Madhya Pradesh who have resettled in Gujarat, more than 70% are tribal families. Majority of the total tribal PAFs are stated to have already been resettled in Gujarat after having exercised their option. It is the contention of the State of Gujarat that the tribals in large number have responded positively to the resettlement package offered by that State.

150. In Madhya Pradesh, the agricultural lands of the tribal villages are affected on an average to the extent of 28% whereas in the upper reaches i.e. Nimad where the agriculture is advanced, the extent of submergence, on an average, is only 8.5%. The surveys conducted by HMS Gour University, Sagar, the Monitoring and Evaluation Agency, set up by the Government of Madhya Pradesh, reveal that the major resistance to relocation is from the

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richer, non-tribal families of Nimad who fear shortage of agricultural labour if the landless labourers from the areas accept resettlement.

151. The displacement of the people due to major river valley projects has occurred in both developed and developing countries. In the past, there was no definite policy for rehabilitation of displaced persons associated with the river valley projects in India. There were certain project-specific programmes for implementation on a temporary basis. For the land acquired, compensation under the provisions of the Land Acquisition Act, 1894 used to be given to the project-affected families. This payment in cash did not result in satisfactory resettlement of the displaced families. Realising the difficulties of displaced persons, the requirement of relief and rehabilitation of PAFs in the case of Sardar Sarovar Project was considered by the Narmada Water Disputes Tribunal and the decision and final order of the Tribunal given in 1979 contains detailed directions in regard to acquisition of land and properties, provision for land, house plots and civic amenities for the resettlement and rehabilitation of the affected families. The resettlement policy has thus emerged and developed along with the Sardar Sarovar Project.

152. The award provides that every displaced family, whose more than 25% of agricultural landholding is acquired, shall be entitled to and be allotted irrigable land of its choice to the extent of land acquired subject to the prescribed ceiling of the State concerned with a minimum of two hectares land. Apart from this land-based rehabilitation policy, the award further provides that each project-affected family will be allotted a house plot free of cost and resettlement and rehabilitation grant. The civic amenities required by the award to be provided at places of resettlement include one primary school for every 100 families, one panchayat ghar, one dispensary, one seed store, one children's park, one village pond and one religious place of worship for every 500 families, one drinking-water well with trough and one tree platform for every 50 families, an approach road linking each colony to the main road, electrification, water supply, sanitary arrangement, etc. The State Governments have liberalised the policies with regard to resettlement and have offered packages more than what was provided for in the award e.g. the Governments of Madhya Pradesh, Maharashtra and Gujarat have extended the R&R benefits through their liberalised policies even to the encroachers, landless/displaced persons, joint-holders, tapu-land (island) holders and major sons (18 years old) of all categories of affected persons. The Government of Maharashtra has decided to allot one hectare of agricultural land free of cost even to unmarried major daughters of all categories of PAFs.

153. In the environmental clearance granted by the Ministry of Environment and Forests vide its letter dated 24-6-1987 one of the conditions stipulated therein was for information from the project authorities on various action plans including Rehabilitation Master Plan of 1989.

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154. It is the contention of the petitioners that the failure to prepare a “master plan” constitutes non-compliance with the requirement of the Tribunal’s award as well as environmental clearance. The Tribunal’s award does not use the expression “master plan” but as per clause XI sub-clause (IV)(2)(iii), what is required, is as under:

a “The three States by mutual consultation shall determine within two years of the decision of the Tribunal, the number and general location of rehabilitation villages required to be established by Gujarat in its own territory.”

155. It is with regard to this clause in the award that, presumably, the aforesaid letter of 24-6-1987 granting environmental clearance required the preparation of the new master plan.

156. In 1988 when the project was first cleared by the Planning Commission from the investment angle, it was estimated that 12,180 families would be affected in three States. Based on these numbers, the State Governments independently prepared their action plans and announced their R&R policy based on the Tribunal’s award. On the basis of the said action plans the Narmada Control Authority submitted the Rehabilitation Master Plan to the Ministry of Environment and Forests along with its letter dated 3-5-1989/4-5-1989. Out of the total population, which is affected by the submergence, a large number are tribals and hence attention was paid by the State Governments to liberalise their policies for protecting the socio-economic and cultural milieu and to extend the R&R benefits even to other categories of persons who were not covered by the Tribunal’s award. This led to the liberalisation of the R&R packages by the three States, which packages have been referred to hereinabove. As a result of the liberalisation of the packages, the number of PAFs as estimated in 1992 by the State Governments were 30,144. Based on the material available, the three State Governments prepared individual action plans in 1993 but those action plans were integrated by the Narmada Control Authority first in 1993 and again in 1995 as an integrated master plan to present a holistic picture of the R&R programme. The master plan deals with socio-economic and cultural milieu of PAFs, the legal framework, R&R policy and procedures, implementation machinery, organisation for R&R, monitoring and evaluation, empowerment of women and youth, special care for vulnerable groups, financial plans for R&R etc. As per the 1990 Master Plan the total PAFs have increased to 40,227 from 30,144 due to addition of 100 more genuine PAFs in Maharashtra. This master plan includes villagewise, categorywise PAFs and their preference in R&R to settle in the home State or in Gujarat.

157. The reason for increase in the number of PAFs has been explained in the master plan and the reasons given, inter alia, are:

(a) After CWC prepared backwater level data, the number of PAFs in Madhya Pradesh (MP) increased by 12,000 PAFs as their houses are affected in 1 in 100 years’ flood.

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(b) The Government of Gujarat (GoG) included major sons of the dyke villages as PAFs.

(c) Cut-off date for major sons was extended by GoG and the Government of Maharashtra (GoM). a

(d) PAFs affected in M.P., have increased due to delay in publication of Section 4 notification under the Land Acquisition Act.

(e) Persons socially or physically cut off due to impounding of water in the reservoir are also considered as PAFs by all the three States. b

(f) All the three States decided to consider encroachers as PAFs.

(g) Major unmarried daughters in Maharashtra are considered as a separate family by the Government of Maharashtra.

(h) Some genuine PAFs were earlier left out (as many stayed in remote areas or used to undertake seasonal migration to towns and developed areas in search of casual work). c

158. As far as the State of Gujarat is concerned, its contention is that the task of R&R is not impossible as recognised by the FMG-I in its 1994 report and according to the State, it is fully ready and prepared to resettle in Gujarat all PAFs up to FRL 455 ft.

159. On 13-11-1996, a meeting of the Review Committee of the Narmada Control Authority chaired by the Union Minister of Water Resources was held. This meeting was attended by the Chief Ministers of all the States including Rajasthan and representatives of the Ministry of Environment and Forests, Ministry of Social Justice and Empowerment, Government of India. In the meeting it was unanimously decided that the reviews of the implementation of resettlement and rehabilitation measures will be undertaken for every five-metre height of the dam jointly by the R&R Subgroup and Environmental Subgroup concerned so that work could progress *pari passu* with the implementation measures. In its meeting held on 6-1-1999, R&R Subgroup of the Narmada Control Authority observed that arrangements made by the States for R&R of the balance families pertaining to the dam height EL 90 metres were adequate and a meeting of the party-States should be convened shortly to finalise the action plan. Pursuant thereto a special inter-State meeting was convened under the chairmanship of the Secretary to the Government of India, Ministry of Social Justice and Empowerment on 21-1-1999 at New Delhi and action plan for resettlement and rehabilitation of balance families to dam height EL 90 metres was finalised for implementation by the States. It is the case of the State of Gujarat that it had issued notices and made offers in January 1998 to PAFs affected at RL 90 metres in connection with the selection of land and their resettlement in Gujarat. According to it, even in respect of PAFs affected at RL 95 metres, notices were issued in January 1999 and to PAFs included in the subsequent list, notices were issued in September 1999. The process of land selection by PAFs who had opted to resettle in Gujarat at RL 95 metres was already started. According to the Union of India, the master plan was under implementation and the progress of R&R at various elevations of dam d
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viz. EL 90 metres, EL 95 metres, EL 110 metres and FRL 138.68 metres has been made.

- a* **160.** The measures which have been implemented for sustainable development with regard to preserving the socio-cultural environment of the displaced persons in the States of Maharashtra, Gujarat and Madhya Pradesh are stated to be as follows:

- Three choices to the people for the selection of relocation sites.
- b* — Integration of the displaced person with the neighbouring villages by organising medical check-up camps, animal husbandry camps, festivals, eye camps, rural development seminar for village workers, etc.
- Establishment of rehabilitation committees at different levels.
- Respect of traditional beliefs, rituals and rights at the starting of house construction, the day and time of leaving the old house and village and the day and time of occupying the new house etc.
- c* — The sacred places at the native villages are being recreated along with their settlements at new sites.
- Installation of all the religious deities with the due consultation of religious heads.
- Promotion of cultural milieu viz. social festivals, religious rights, rights of passage, presence of priests, shaman, kinsmen, clansmen etc.
- d* — Special consideration for the preservation of holistic nature of the culture.
- Proper use of built-in mechanism of cultural heritage of the displaced persons.
- e* — Launching of culturally-appropriate development plan.
- Genuine representation of the traditional leader.

161. The Tribunal had already made provision of various civic amenities which were further liberalised by the State Governments during implementation. The existing development programmes were strengthened for ensuring sustainable development at the rehabilitation sites. These were

- f* Integrated Rural Development Programme (IRDP) for agriculture, business and village industries, Integrated Child Development Scheme (ICDS) for nutrition, health and education, Jawahar Rozgar Yojna (JRY), aids for improved seeds, fertilizers, irrigation, animal husbandry, Training Rural Youth for Self-Employment (TRYSEM), Employment Guarantee Scheme (EGS), social assistance, Industrial Training Institute (ITI), Tribal
- g* Development Programme (TDP), financial benefits to the backward classes, economically weaker sections, tribals and Other Backward Classes (OBC), eye camps, subsidies to farmers (seed, tractorisation, fertilizers, diesel, etc.) agricultural prices support subsidy etc.

162. Other benefits which were extended for improving the quality of life of the resettled PAFs included fodder farm, mobile sale, shop of fodder, seed cultivation training, initial help in land preparation for agricultural activities,

h better seeds and fertilizers, access to finance, special programme for women

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in the traditional skills' entrepreneurship development, employment skill formation, different plantation programmes, special emphasis for pasture management, environment awareness and education programme, programmes for biogas/smokeless chulhas, safe drinking water supply, electricity, lift irrigation, fertilizer kit distribution, gypsum treatment of soil, etc. a

163. The project authorities in these three States of Madhya Pradesh, Gujarat and Maharashtra represented that comprehensive health care was available in the tribal areas where the displaced families had been resettled. It was contended that extensive preventive health measures like mass immunisation, anti-malaria programme, family welfare programmes, child development schemes etc. had been undertaken. What is important is that primary health centres were established at relocation sites for all necessary health facilities to PAFs. b

164. The submission on behalf of the Union of India was that there was a well-established mechanism of the Government of India for coordination and monitoring of resettlement & rehabilitation (R&R) programmes in case of Sardar Sarovar Project. The R&R Subgroup and Rehabilitation Committee of the Narmada Control Authority are responsible for applying its independent mind on R&R. The Subgroup convenes its meeting regularly to monitor and review the progress of R&R while Rehabilitation Committee visits the submergence areas/relocation sites to see whether the rehabilitation is taking place physically and to hear the individual problems of PAFs. The R&R Subgroup, keeping in view the progress of relief and rehabilitation, has not permitted the height to be raised, until and unless it is satisfied that adequate satisfactory progress has been made with regard to R&R. Whereas at an earlier point of time in 1994, the construction schedule had required the minimum block level to be raised to 85 metres, the R&R Subgroup had permitted the same to be raised to EL 69 metres only during that period to match the R&R activity. It was in the meeting of R&R Subgroup on 6-1-1999 after the R&R Subgroup had reviewed the progress and had satisfied itself that the land for resettlement in Gujarat, Maharashtra and Madhya Pradesh, which was available, was more than required for the resettlement of the balanced PAFs, that it cleared the construction up to the dam height EL 90 metres. The action plan for the same had been approved and is under implementation by the States concerned. c
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165. The petitioners had contended that no proper surveys were carried out to determine the different categories of affected persons as the total number of affected persons had been shown at a much lower side and that many had been denied PAF status. From what is being stated hereinabove, it is clear that each State has drawn detailed action plan and it is after requisite study had been made that the number of PAFs have been identified. The number has substantially increased from what was estimated in the Tribunal's award. The reason for the same, as already noticed, is the liberalisation of the R&R packages by the State Governments. Except for a bald assertion, there appears to be no material on which this Court can come g
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to the conclusion that no proper surveys had been carried out for determining the number of PAFs who would be adversely affected by the construction of the dam.

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166. The resettlement and rehabilitation packages in the three States were different due to different geographical, local and economic conditions and availability of land in the States. The liberal packages available to the Sardar Sarovar Project oustees in Gujarat are not even available to the project-affected people of other projects in Gujarat. It is incorrect to say that the difference in R&R packages, the package of Gujarat being the most liberal, amounts to restricting the choice of the oustees. Each State has its own package and the oustees have an option to select the one which was most attractive to them. A project-affected family may, for instance, choose to leave its home State of Madhya Pradesh in order to avail the benefits of the more generous package of the State of Gujarat while other PAFs similarly situated may opt to remain at home and take advantage of the less liberal package of the State of Madhya Pradesh. There is no requirement that the liberalisation of the packages by the three States should be to the same extent and at the same time, the States cannot be faulted if the package which is offered, though not identical to each other, is more liberal than the one envisaged in the Tribunal's award.

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167. Dealing with the contention of the petitioners that there were a large number of persons who were living in the submergence area and were not farmers and would lose their livelihood due to loss of the community and/or loss of the river and were not being properly rehabilitated, Mr Harish Salve, learned Senior Counsel contended that this averment was not true. According to him, all the families in the 105 hilly tribal villages were agriculturists, cultivating either their own land or government land and all of whom would be eligible for alternative agricultural land in Gujarat. Only a small number of non-agriculturists, mainly petty shopkeepers were found in these villages of tribal areas. In Gujarat there were 20 such non-agriculturist families out of a total of 4600 affected families and all of these had been resettled as per their choice so that they could restart their business. In Maharashtra out of 3213 affected families, not a single family was stated to fall under this category. Amongst the affected families of Madhya Pradesh, the figure of such non-agriculturist families was also stated to be not more than a couple of 100. In our opinion it is neither possible nor necessary to decide regarding the number of people likely to be so affected because all those who are entitled to be rehabilitated as per the award will be provided with the benefits of the package offered and chosen.

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168. With regard to the colony-affected people whose 1380 acres of land was acquired in six villages for the construction of a colony, most of the landholders had continued to stay in their original houses and about 381 persons were stated to have been provided permanent employment in the project works. At the time, the land was acquired in 1962-63, compensation was paid and in addition thereto, the Government of Gujarat devised a special package in August 1992 providing ex gratia payment up to Rs 36,000

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to the land losers for purchase of productive assets or land for those who had not received employment in the project.

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

170. Dealing with the contention of the petitioners that the oustees were not offered a chance to resettle in Gujarat as a community and that there was a clear requirement of villagewise communication (*sic* community) rehabilitation which had not been complied with, the contention of the respondents was that no provision of the Tribunal's award had been shown which caused any such obligation on the Government of Gujarat. What the award of the Tribunal required is resettlement of PAFs in Gujarat at places where civic amenities like dispensary, schools, as already been referred to hereinabove, are available.

171. Subsequent to the Tribunal's award, on the recommendation of World Bank, the Government of Gujarat adopted the principle of resettlement that the oustees shall be relocated as village units, village sections or families in accordance with the oustees' preference. The oustees' choice has actively guided the resettlement process. The requirement in the Tribunal's award was that the Gujarat Government shall establish rehabilitation villages in Gujarat in the irrigation command of the Sardar Sarovar Project on the norms mentioned for rehabilitation of the families who were willing to migrate to Gujarat. This provision could not be interpreted to mean that the oustees' families should be resettled as a homogeneous group in a village exclusively set up for each such group. The concept of communitywise resettlement, therefore, cannot derive support from the above-quoted stipulation. Besides, the norms referred to in the stipulation relate to provisions for civic amenities. They vary as regards each civic amenity vis-à-vis the number of oustees' families. Thus, one panchayat ghar, one dispensary, one children's park, one seed store and one village pond is the norm for 500 families, one primary school (3 rooms) for 100 families and a drinking-water well with trough and one platform for every 50 families. The number of families to which the civic amenities were to be provided was thus not uniform and it was not possible to derive therefrom a standardised pattern for the establishment of a site which had a nexus with the number of oustees' families of a particular community or group to be

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resettled. These were not indicators envisaging resettlement of the oustees' families on the basis of tribes, subtribes, groups or subgroups.

- a **172.** While resettlement as a group in accordance with the oustees' preference was an important principle/objective, the other objectives were that the oustees should have improved or regained the standard of living that they were enjoying prior to their displacement and they should have been fully integrated in the community in which they were resettled. These objectives were easily achievable if they were resettled in the command area
- b where the land was twice as productive as the affected land and where large chunks of land were readily available. This was what the Tribunal's award stipulated and one objective could not be seen in isolation of the other objectives.

173. Master Plan, 1995 of the Narmada Control Authority also pointed out that "the Bhils, who are individualistic people building their houses away from one another, are getting socialised, they are learning to live together".

- c Looking to the preferences of the affected people to live as a community, the Government of Gujarat had basically relied on the affected families' decision as to where they would like to relocate, instead of forcing them to relocate as per a fixed plan.
- d **174.** The underlined principle in forming the R&R policy was not merely of providing land for PAFs but there was a conscious effort to improve the living conditions of PAFs and to bring them into the mainstream. If one compares the living conditions of PAFs in their submerging villages with the rehabilitation packages first provided by the Tribunal's award and then liberalised by the States, it is obvious that PAFs had gained substantially after their resettlement. It is for this reason that in the action plan of 1993 of the Government of Madhya Pradesh it was stated before this Court that
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"therefore, the resettlement and rehabilitation of people whose habitat and environment makes living difficult does not pose any problems and so the rehabilitation and resettlement does not pose a threat to the environment".

- f In the affidavit of Dr Asha Singh, Additional Director (Socio & CP), NVDA, as produced by the Government of Madhya Pradesh in respect of visit to R&R sites in Gujarat during 21-2-2000 to 23-2-2000 for ascertaining the status relating to grievances and problems of Madhya Pradesh PAFs resettled in Gujarat, it was, inter alia, mentioned that

- g "PAFs had informed that the land allotted to them is of good quality and they take the crops of cotton, jowar and tuwar. They also stated that their status has improved from the time they had come to Gujarat but they want that water should start flowing in the canals as soon as possible and in that case they will be able to take three crops in one year as their land is in the command area".

Whereas the conditions in the hamlets where the tribals lived, were not good enough the rehabilitation package ensured more basic facilities and civic amenities to the resettled oustees. Their children would have schools and

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children's park, primary health centre would take care of their health and, of course, they would have electricity which was not a common feature in the tribal villages.

175. Dealing with the contention of the petitioners that there was no provision for grazing land and fuel wood for PAFs, it is rightly contended by the State of Gujarat that grazing land was not mandated or provided for in the Tribunal's award but nevertheless, the grazing land of six villages was available for the use of PAFs. It may be that the grazing land was inadequate but this problem will be faced by the entire State of Gujarat and not making such land available for them does not in any way violate any of the provisions of the award.

176. With regard to providing irrigation facilities, most of the resettled project-affected families were provided irrigation facilities in the Sardar Sarovar Project Command Area or in the command areas of other irrigation projects. In many of the out-of-command sites, irrigated lands were purchased. In cases where the irrigation facilities were not functioning, the Government of Gujarat had undertaken the work of digging tubewells in order to avoid any difficulty with regard to irrigation in respect of those oustees who did not have adequate irrigation facilities. It was contended that because of the delay in the construction of the project, the cut-off date of 1-1-1987 for extending R&R facilities to major sons were not provided. The Tribunal's award had provided for land for major sons as on 16-8-1978. The Government of Gujarat, however, extended this benefit and offered rehabilitation package by fixing the cut-off date of 1-1-1987 for granting benefits to major sons. According to the Tribunal's award, the sons who had become major one year prior to the issuance of the notification for land acquisition were entitled to be allotted land. The land acquisition notification had been issued in 1981-82 and as per the award, it was only those sons who had become major one year prior to that date who would have become eligible for allotment of land. But in order to benefit those major sons who had attained majority later, the Government of Gujarat made a relaxation so as to cover all those who became major up to 1-1-1987. The Government of Gujarat was under no obligation to do this and would have been quite within its right merely to comply with the provisions of the Tribunal's award. This being so, relaxation of cut-off date so as to give extra benefit to those sons who attained the age of majority at a later date, cannot be faulted or criticised.

177. Dealing with the contention of the petitioners that there is a need for a review of the project and that an independent agency should monitor the R&R of the oustees and that no construction should be permitted to be undertaken without the clearance of such an authority, the respondents are right in submitting that there is no warrant for such a contention. The Tribunal's award is final and binding on the States. The machinery of the Narmada Control Authority has been envisaged and constituted under the award itself. It is not possible to accept that Narmada Control Authority is not to be regarded as an independent authority. Of course some of the

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- members are government officials but apart from the Union of India, the other States are also represented in this Authority. The project is being
- a undertaken by the Government and it is for the governmental authorities to execute the same. With the establishment of the R&R Subgroup and constitution of the grievances redressal authorities by the States of Gujarat, Maharashtra and Madhya Pradesh, there is a system in force which will ensure satisfactory resettlement and rehabilitation of the oustees. There is no basis for contending that some outside agency or National Human Rights
- b Commission should see to the compliance with the Tribunal's award.

Monitoring of rehabilitation programme

- 178.** The Ministry of Water Resources, Government of India is the nodal Ministry for the Sardar Sarovar Project and other Union Ministries involved are the Ministries of Environment and Forests and Social Justice and Empowerment. As a consequence of the Tribunal's award, the Narmada
- c Control Authority was created to coordinate and oversee the overall work of the project and to monitor the R&R activities including environmental safeguard measures. The Review Committee of the Narmada Control Authority consists of the Union Minister of Water Resources as its Chairman, the Union Minister of Environment and Forests and the Chief Ministers of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan as its
- d members. This Review Committee may suo motu or on the application of any party-State or the Secretary, Ministry of Environment and Forests review any decision of the Narmada Control Authority. In the Narmada Control Authority, Resettlement & Rehabilitation (R&R) Subgroup has been created for closely monitoring the R&R progress. This Subgroup is headed by the Secretary, Government of India, Ministry of Social Justice and
- e Empowerment and is represented by members/invitees of participating States, academic institutions having expertise in R&R, independent socio-anthropological experts and non-governmental organisations. The functions of this Subgroup are as follows:

1. To monitor the progress of land acquisition in respect of submergence land of Sardar Sarovar Project and Indira (Narmada) Sagar Project (ISP).
2. To monitor the progress of implementation of the action plan of rehabilitation of project-affected families in the affected villages of SSP and ISP in States concerned.
3. To review the R&R action plan from time to time in the light of results of the implementation.
4. To review the reports of the agencies entrusted by each of the States in respect of monitoring and evaluation of the progress in the matter of resettlement and rehabilitation.
5. To monitor and review implementation of resettlement and rehabilitation programmes pari passu with the raising of the dam height, keeping in view the clearance granted to ISP and SSP from

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environmental angle by the Government of India and the Ministry of Environment and Forests.

6. To coordinate States/agencies involved in the R&R programmes of SSP and ISP. a

7. To undertake any or all activities in the matter of resettlement and rehabilitation pertaining to SSP and ISP.

Rehabilitation Committee

179. This Court vide order dated 9-8-1991 in *B.D. Sharma v. Union of India*¹¹ directed the formation of a committee under the chairmanship of the Secretary, Ministry of Social Justice and Empowerment, Government of India to visit the submergence areas/resettlement sites and furnish the report of development and progress made in the matter of rehabilitation. The Rehabilitation Committee headed by the Secretary, Government of India, Ministry of Social Justice and Empowerment and having representatives of the three State Governments as its members had been constituted. It is the case of the Union of India that this Committee visited regularly the various R&R sites in submergence villages in the three States and submitted reports to this Court from time to time. By order dated 24-10-1994, this Court in the aforesaid case of *B.D. Sharma*¹¹ observed that all the directions issued by the Court from time to time have been complied with and nothing may be done in the petition and the petition was disposed of. Most of the recommendations/observations as made by this Committee are stated to have been complied with fairly by the States concerned. b
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180. In addition to the above, the officials of the Narmada Control Authority are also stated to be monitoring the progress of R&R regularly by making field visits. The individual complaints of PAFs are attended to and brought to the notice of the respective Governments. e

Grievance redressal mechanism

181. The appeal mechanism has been established in the policy statements by all the three State Governments for the redressal of grievances of PAFs. According to this mechanism, if a displaced person is aggrieved by the decision of the rehabilitation officers in respect of any R&R process, he may appeal to the agency/officers concerned. f

182. Vide resolution dated 17-2-1999 the Government of Gujarat set up a high-level authority called "Grievance Redressal Authority (GRA)" before whom the oustees already resettled and to be resettled in Gujarat could ventilate their grievances for redressal after their resettlement till the process of resettlement and rehabilitation is fully completed. The said Grievance Redressal Authority has Mr Justice P.D. Desai, retired Chief Justice as its Chairman. This machinery had been established to: g

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- (A) create an authority before whom oustees who have resettled in the State of Gujarat can ventilate their grievances relating to the R&R measures taken by the State of Gujarat;
- (B) ensure that the oustees already settled and the oustees settled hereinafter in the R&R sites created for resettlement and rehabilitation of the oustees from the States of Madhya Pradesh and Maharashtra receive all the benefits and amenities in accordance with the award and the various government resolutions made from time to time;
- (C) ensure that Gujarat oustees resettled in Gujarat have received all the benefits and amenities due to them.
- 183.** The Gujarat Rehabilitation Authority has installed a permanent in-house Grievance Redressal Cell (GRC) within Sardar Sarovar Punarvasavat Agency. The Grievance Redressal Cell deals with the grievances of PAFs and the grievances redressal is undertaken by it in the following three ways:
- (i) Grievance Redressal Cell deals with grievances in the regular course on the basis of applications i.e. by holding inquiries and implementing decisions taken pursuant thereto.
- (ii) Grievance redressal on the spot through mechanism of Tatkal Fariyad Nivaran Samiti.
- (iii) Grievance redressal under the mechanism of Single Window Clearance System.
- 184.** The Grievance Redressal Authority has surveyed sites in which PAFs have been resettled and has submitted reports to this Court from time to time which disclose substantial compliance with the terms of the award and the rehabilitation package.
- 185.** In its fourth report dated 15-11-1999, the Grievance Redressal Authority observed
- “pursuant to the grievances redressal measures taken by GRC, whose approach is positive and grievance-redressal-oriented, a considerable number of grievances have been resolved by extensive land improvement work done on agricultural land at different sites within a period of six months i.e. April-September 1999”.
- 186.** The R&R Subgroup in its 20th field visit of the R&R sites in Gujarat on 12-1-2000/13-1-2000 has noted as follows:
- “The Committee after the visit and from interaction with PAFs, concluded that there is vast improvement in the conditions of PAFs at these R&R sites as compared to the grievances reported for the same sites during previous visits by the Committee/NCA officers. Assessing the perception of PAFs the Committee observed that the majority of PAFs are happy and joining mainstream of country’s development”.
- 187.** The Grievance Redressal Cell has dealt with and decided a total of over 6500 grievances.

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188. At the instance of the Grievance Redressal Authority, an agricultural cell is set up in Sardar Sarovar Punarvasavat Agency with effect from 1-7-1999. This was done with an objective of enhancing the productivity of agricultural land allotted to PAFs by adopting suitable farm management practices and in assisting in resolving land-related grievances. Similarly, w.e.f. 1-5-1999, medical cells have been set up in Sardar Sarovar Punarvasavat Agency for ensuring effective functioning of medical infrastructure and providing organised system of supervising and monitoring and also for conducting health survey-cum-medical check-up activities. The Grievance Redressal Authority has become an effective monitoring and implementing agency with regard to relief and rehabilitation of PAFs in Gujarat. Apart from resolving independent grievances of PAFs and enforcing compliance with the provisions of the award through its exhaustive machinery and mechanism, it is also trying to guide in respect of various other issues not covered by the provisions of the award such as:

- (i) vocational training of the oustees;
- (ii) review of Narmada Oustees Employment Opportunity Rules;
- (iii) issue relating to Kevadia Colony;
- (iv) issue relating to tapu land;
- (v) development of Kevadia as a tourist centre etc.

189. In Maharashtra, a local committee was constituted comprising of Additional Collector (SS), Divisional Forest Officer, Resettlement Officer and two representatives of the oustees nominated by the Local Panchayat Samitis from among the elected members of the Village Panchayats in the project-affected villages/taluka. This Committee is required to examine the claims of PAFs and give directions within a time-frame and an appeal from its decision lies to the Commissioner. In addition thereto, vide notification dated 17-4-2000 the Government of Maharashtra has set up a Grievance Redressal Authority in line with that established by the State of Gujarat and Mr Justice S.P. Kurdukar, retired Judge of this Court, has been appointed as its Chairman. This Authority is expected to be analogous to the Grievance Redressal Authority of Gujarat.

190. In Madhya Pradesh, the grievances of PAFs have first to be made by a claim which will be verified by the Patwari and then scrutinised by the Tahsildar. PAFs may file an appeal against the decision of R&R official before the District Collector who is required to dispose of the same within a period of three months. In the case of Madhya Pradesh also by notification dated 30-3-2000 the Government of Madhya Pradesh has constituted a Grievance Redressal Authority similar to the one in Gujarat with Mr Justice Sohni, retired Chief Justice of the Patna High Court as its Chairman.

Independent monitoring & evaluation agencies

191. The monitoring and evaluation of the rehabilitation programme is also being carried out by the independent socio-anthropological agencies appointed by the State Governments of Maharashtra, Madhya Pradesh and

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a Gujarat as well as the Narmada Control Authority. These agencies, which are professional and academic institutes, conduct surveys and in-depth studies relating to PAFs in the submergence and rehabilitation villages. The main object of the monitoring is oriented towards enabling the management to assess the progress, identify the difficulties, ascertaining problem areas, provide early warning and thus call for corrections needed immediately.

b **192.** The Centre for Social Studies, Surat is the monitoring agency for the Government of Gujarat. This institute has prepared 24 six-monthly progress reports in relation to the resettlement of PAFs of submergence villages of Gujarat. Similarly for the project-affected families of Madhya Pradesh/Maharashtra who have resettled in Gujarat, the Government of Gujarat has appointed the Gujarat Institute of Development Research, Ahmedabad as the independent monitoring and evaluation agency for monitoring R&R programmes.

c **193.** In Madhya Pradesh the monitoring and evaluation had been carried out by Dr H.S. Gaur University, Sagar and the same has been disengaged now and a new agency is being appointed. The findings of Dr H.S. Gaur University, Sagar indicated that displaced families in Madhya Pradesh are, by and large, happy with the new resettlement in Gujarat and one of the main reasons behind their happiness was that the shifting from hamlets had changed their socio-economic status.

d **194.** In Maharashtra the monitoring and evaluation was earlier being done by the Tata Institute of Social Sciences, Mumbai. This agency had reported that overall literacy rate among project-affected persons above six years of age is about 97%, while illiteracy in submergence villages was rampant. Furthermore the report showed that in the submergence villages, the tribals mostly relied on traditional healers for their ailments. Now the current scenario is that at R&R sites, health centres and sub-centres have been established.

e **195.** It is thus seen that there is in place an elaborate network of authorities which have to see to the execution and implementation of the project in terms of the award. All aspects of the project are supervised and there is a Review Committee which can review any decision of the Narmada Control Authority and each of the three rehabilitating States have set up an independent Grievance Redressal Authority to take care that the relief and rehabilitation measures are properly implemented and the grievances, if any, of the oustees are redressed.

f **196.** On 9-5-2000[†] this Court directed the State Governments of Gujarat, Madhya Pradesh and Maharashtra to file affidavits disclosing the latest status of resettlement and rehabilitation work for the existing as well as prospective oustees likely to be affected by raising the height of the dam.

g **197.** Pursuant to the said direction affidavits on behalf of the three States have been filed and, in response thereto, the petitioners have also filed an affidavit.

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[†] *Narmada Bachao Andolan v. Union of India*, see at p. 786

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198. On behalf of the State of Gujarat the affidavit of Shri V.K. Babbar, Commissioner (Rehabilitation) and Chief Executive Officer, Sardar Sarovar Punarvasavat Agency (SSPA) has been filed, according to which at FRL 138.68 m the status with regard to PAFs to be resettled is stated to be as follows: a

<i>State</i>	<i>Total number of PAFs resettled/allotted agri-cultural land in Gujarat</i>	<i>Balance PAFs to be resettled in Gujarat</i>
Gujarat	4575	25
Maharashtra	710	290
Madhya Pradesh	3280	10,450
<i>Total</i>	<i>8565</i>	<i>10,765</i>

b

199. It is the case of the State of Gujarat that 8565 PAFs have been accommodated in 182 R&R sites fully equipped with the requisite civic amenities as provided by the Tribunal's award. The agricultural land allotted to these PAFs is 16,973 hectares. c

200. Dealing specifically with the status of PAFs at RL 90 m, 95 m and 110 m it is averred in the said affidavit that all the PAFs of Gujarat at RL 90 m have been resettled and the balance PAFs of Madhya Pradesh and Maharashtra affected at RL 90 m have already been offered R&R package in Gujarat. The process of resettlement is continuing and reliance is placed on the observation of GRA which has stated in its fourth report dated 15-11-1999 that d

“there is substantial compliance with the resettlement and rehabilitation measures as mandated by the final report of NWDT, including provision of civic amenities, and also of all the interlinked provisions of the Government of Gujarat and that, therefore, PAFs from the States of Madhya Pradesh and Maharashtra affected up to the height of RL 90 m can be accommodated as per their choice at these selected 35 sites in Gujarat”. e

201. With respect to PAFs affected at RL 95 m the affidavit states that PAFs of Gujarat have already been settled and while the affected PAFs of Madhya Pradesh and Maharashtra have been offered R&R package in Gujarat in January 1999, September 1999 and January 2000, the RL 95 m action plan for these PAFs has also been prepared by the Government of Gujarat in consultation with the Governments of Madhya Pradesh and Maharashtra and has been sent to NCA. The case of the State of Gujarat, therefore, is that all PAFs wanting to be resettled in Gujarat have been offered the package but consent of all PAFs has not so far been received but the Government of Gujarat has sufficient land readily available which can be allotted to the said PAFs as soon as they come and select the same. f

202. With regard to the status of PAFs at RL 110 m all PAFs of Gujarat have been resettled and 2761 PAFs (2642 of Madhya Pradesh and 119 of Maharashtra) remain to be resettled in Gujarat and R&R package will be g

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offered to them before November 2000. The land which is required to be allotted to them is stated to be around 6074 hectares and the State of Gujarat has in its possession 8146 hectares. The civic amenities in 40 new R&R sites are scheduled to be completed by December 2000 and these sites would serve to accommodate not only PAFs between RL 95 m and RL 110 m but would also serve to accommodate PAFs from submergence villages which would be getting affected at levels above RL 110 m. The action plan giving the villagewise details is said to have been sent to NCA in June 2000 for its approval.

203. According to the said affidavit the balance number of PAFs remaining to be resettled at Gujarat at FRL 138.68 m is 10,765. Taking into account that an additional area of 10% towards house plot and common civic amenities would be required in addition to the allotment of minimum 2 hectares of agricultural land, the total land requirement per PAF would be approximately 2.2 hectares. For planning purposes in respect of 10,765 PAFs the land requirement would be about 23,700 hectares. As against this requirement the status of land, as per the said affidavit, under different categories with the Government of Gujarat is stated to be as under:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Land (in ha)</i>
1.	Land identified (offers received in respect of private land and government land).	15,716
2.	Land available (private land for which price is approved by Expert Committee and offer/counteroffer conveyed and acceptance of landholder obtained).	480
3.	Land in possession of SSPA/GoG in 12 districts.	8416
<i>Total</i>		24612

204. It is averred that between March and 21-6-2000 the land in possession as well as the land identified has increased considerably.

205. It has also been explained in the said affidavit that the Government of Gujarat has a well-established practice of procuring land for R&R at realistic market prices from willing sellers. Officers hold discussions with prospective sellers, verify the suitability of land and after the prices are settled the same is procured through legal process of the Land Acquisition Act and consent awards are passed so that PAPs are assured of undisputed legal title free from all encumbrances. This process of negotiated purchase has been streamlined. At the instance of GRA, a retired Judge of the High Court is now appointed as Chairman of the Expert Committee with retired senior Government Secretaries as its members. This Expert Committee oversees the exercise of purchase of suitable land at the market price. At the instance of GRA, PAFs are being issued sanads for the land allotted to them which will ensure provision of a proper legal document in their favour.

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206. Dealing with the term of the award to the effect that Gujarat shall acquire and make available a year in advance of the submergence before each successive stage, land and house sites for rehabilitation of the oustees' families from Madhya Pradesh and Maharashtra who are willing to migrate to Gujarat, the affidavit states that the Gujarat Government has already identified sufficient land for accommodating the balance PAFs remaining to be resettled in Gujarat at FRL 138.68 m. In respect of PAFs up to RL 110 m Gujarat has sufficient land available to meet the R&R requirements but for PAFs above RL 110 m suitable land has already been identified and the same would be acquired and made available one year in advance of the submergence before each successive stage. The affidavit gives reason as to why it is not advisable for the State, at this stage, to acquire the total requirement of land for FRL in one go. What is stated in the affidavit is as follows:

(i) Since at present GoG has sufficient land to meet R&R requirement to accommodate PAFs up to RL 110 m, it would not be necessary to acquire further land immediately, especially when the additional land would be required only after the R&R Subgroup and Environment Subgroup give approval for RL 95 m to RL 110 m after examining the preparedness at different stages. This would ensure that public money is not unnecessarily blocked for a long period.

(ii) By acquiring land much before it would be required, problems of illegal trespass are likely to arise.

(iii) The excess land would, by and large, remain fallow and no agricultural production would take place.

(iv) If the land remains fallow for long the overall productivity of the land would be adversely affected.

(v) At the time of allotment, the State Government would again have to spend a sizeable amount to remove weeds, bushes, small trees, etc.

(vi) The State Government would have to incur a sizeable amount to prevent tampering with the boundary marks, prevent neighbouring farmers from removing the topsoil or from diverting natural drains passing through their fields towards the land purchased for R&R etc.

207. The affidavit also gives facts and figures showing that all requisite civic amenities have been developed and made available at the R&R sites. Some of the salient features which are highlighted in this behalf are as under:

- A three-room primary school is provided in all M.P./MH sites irrespective of the number of families resettled.
- A dispensary with examination room, medical equipment, medicines is provided in all M.P./MH sites irrespective of the number of resettled families.
- 3439 PAFs (86%) out of the total M.P./MH PAFs resettled in Gujarat have availed of the Rs 45,000 financial assistance and built pucca core houses.

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- Overhead tanks for drinking water are provided in large R&R sites.
- At the instance of GRA, toilets are being provided in the houses of PAFs with the help of NGOs.

a

208. The total cost incurred so far by the Government of Gujarat in providing the land and civic amenities up to May 2000 is stated to be 194 crores. The Grievance Redressal Cell is stated to have redressed a large number of grievances of PAFs whether they were related to land, grant of civic amenities or others. The salient features of working of the Grievance Redressal Cell is stated to be as follows:

b

- At present 2 senior IAS officers with supporting staff are working exclusively for redressal of grievances.
- A reasoned reply is given to the applicants. The applicant is also informed that if he is aggrieved with the decision he may prefer an appeal to GRA within thirty days.

c

- The Single Window Clearance System's main objective is to proactively resolve grievances and to avoid delays in inter-departmental coordination.

d

- Tatkal Fariyad Nivaran Samitis are held in the R&R sites to resolve grievance of PAFs in an open forum.
- PAFs are being involved at every stage of grievance redressal. The works have been carried out in most cases by PAFs.
- The Agriculture Officers of the Agricultural Cell are actively helping, guiding PAFs in their agricultural operations and upgrading their skills.

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209. With a view to effectively rehabilitate and assimilate PAPs Vasahat Samitis have been constituted in 165 R&R sites, consisting of 5 PAPs, one of whom is a female. This ensures the participation of PAPs in the process of development and these Samitis are vested with the responsibility to sort out minor problems. With a view to ensure more effective participation in panchayat affairs and better integration of PAPs an Order under Section 98 of the Gujarat Panchayats Act, 1993 has been issued by the Government of Gujarat providing that there shall be up to two invitees from amongst PAPs depending upon the number of PAPs at the sites in the Village Panchayat within whose jurisdiction the R&R are situated. Pursuant to this 196 PAPs have been inducted as invitees to the Village Panchayats. The salient features of the rehabilitation programme of PAPs are as follows:

f

g

- PAFs are given productive assets in kind (Rs 7000/PAF) to purchase bullocks, bullock carts, oil engines etc.
- PAFs are given subsistence allowance (Rs 4500/PAF) in cash to meet contingency needs in the initial period.
- Vocational training is provided to PAFs for improving their income levels, priority being given to those dependants who are not entitled

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to be declared as PAFs in their own right. Tool kits are supplied either free or with 50% subsidy.

- NGOs are actively involved in all the rehabilitation activities such as conducting training classes. a
- PAFs are being covered by the ongoing developmental schemes of the Government (DRDA, Tribal Sub-Plan etc.)
- In extension (Agriculture) officers have been appointed for approximately every 150 families to guide them in agriculture operation and assist them in day-to-day problems (getting ration cards, khedut khatavahis etc.) b
- In recent years focus is on empowering PAFs and making them self-dependent.

210. Medical cell has been set up for providing services and treatment to PAPs free of cost. The cell is headed by Deputy Director (Medical) and is having a nucleus of medical experts consisting of a physician, a paediatrician, a gynaecologist, 21 MBBS doctors, pharmacists, etc. The salient features of the medical-help programme for the benefit of PAPs is stated to be as follows: c

- The Medical Officers and paramedic staff are making house-to-house visits to motivate PAPs to come forward to avail of the medical services. d
- In all dispensaries, a full-time multipurpose health worker (female) is available.
- Multi-specialisation diagnostic/treatment camps are organised fortnightly, where advance investigations and diagnostic facilities like ECG, X-ray, ultrasound, are available. e
- Patients requiring further services are brought to government hospitals or any other speciality hospital and necessary treatment given free of cost.
- GoG has placed an order for a mobile medical hospital equipped with diagnostic and treatment equipments. f
- A comprehensive health survey and medical check-up covering 29,423 PAPs has been completed. A special record system of family health folder and health profile of each PAP is prepared.
- Nutrition supplements are given to children (up to 6 years), expectant and lactating mothers through the Integrated Child Development Scheme (ICDS). g
- Special food supplement in the form of “Hyderabad Mix” is given to malnourished children and vulnerable target groups.
- School-going children are covered under the Midday Meal Scheme.
- Under TB control, all chest-symptomatic persons are screened by special examinations like sputum microscopy, X-ray, blood-tests and persons found positive for TB are given domiciliary treatment h

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under direct observation of doctors or paramedics. In 77 cases, treatment is completed and patients are cured.

- a* — Under preventive health care, health education material is distributed and health and cleanliness shivirs are organised.
- A special survey covering physically-handicapped and mentally-retarded persons has been organised and social welfare benefits given.
- b* — Other national health programmes (maternal/child health, immunisation, school health check-up, family welfare, etc.) are regularly conducted.

211. An Agricultural Cell has been set up in SSPA which assists the grievances redressal machinery in resolving the problem relating to the agricultural land. The salient features of this cell are as follows:

- c* — The Agriculture Cell is involved in purchasing land, supervision of land improvement works and processing land-related grievances of PAFs.
- Agricultural training classes are organised for PAFs in the training institutes of the State Government.
- d* — Assistance is given for availing crop-loan credit from banks and extension education is imparted in matters of marketing, cropping pattern, use of improved seeds, insecticides and latest equipments.
- Afforestation was carried out in 33 R&R sites during 1999-2000 by planting 3500 saplings which are protected by bamboo tree-guards. Plantation is done along the roadside, common plots, school premises etc. In the remaining sites plantation work is undertaken by NGOs.
- e*

212. At the instance of GRA an Educational Cell has been set up in SSPA, the main function of which is to improve the quality of education imparted and to improve the school enrolment. The salient features of this cell are as under:

- f* — School enrolment which was 4110 in 1998-99, increased to 4670 in 1999-2000. Out of the 4670 students enrolled, 2126 were girls (46.3%).
- The number of schools is 170 and the number of teachers is 384. In the last academic year, 66 schools were upgraded by increasing the number of classes.
- g* — SSPA is regularly sending the teachers for in-service training. So far 120 teachers have been imparted training.
- Every year during the period of June to August, a special drive is taken to increase the school enrolment.
- h* — In the current year 150 adult education classes have been started in the R&R sites with the help of NGOs.

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— An Advisory Committee has been created to make recommendations on how to improve the education being imparted. Members include faculty of MS University, officers of Education Department, Principal of Teacher Training Centre. a

213. It is further averred in this affidavit that at the instance of GRA a large number of measures have been taken to improve the organisational structure of SSPA so as to effectively meet the challenge of R&R and make the R&R staff accountable. The salient features of this are stated to be as follows: b

— A strategic policy decision has been taken to create three separate divisions in SSPA for rehabilitation, resettlement and planning. Each division is in the charge of a senior level officer of the rank of Additional/Joint Commissioner.

— Staff strength in SSPA has been considerably augmented especially at the field level. c

— To review the structural and functional aspects of SSPA, services of a management consultancy agency (M/s TCS) has been engaged and draft report has been received and is being examined.

— A demographic survey is to be conducted to comprehensively document information regarding PAPs with special reference to their family composition, marriage, births, deaths, life expectancy, literacy, customs, culture, social integration etc. d

— The staff is being trained to sensitise them especially with regard to rehabilitation and second-generation issues. Senior level officers have been sent for R&R training at Administrative Staff College of India, Hyderabad. e

214. From the aforesaid affidavit it is more than clear that GRA, of which Mr Justice P.D. Desai, is the Chairman, has seen to the establishment of different cells and has taken innovative steps with a view to making R&R effective and meaningful. The steps which are being taken and the assistance given is much more than what is required under the Tribunal's award. There now seems to be a commitment on the part of the Government of Gujarat to see that there is no laxity in the R&R of PAPs. It appears that the State of Gujarat has realised that without effective R&R facilities no further construction of the dam would be permitted by NCA and under the guidance and directions of GRA meaningful steps are being undertaken in this behalf. In this connection we may take note of the fact that along with the said affidavit Shri V.K. Babbar, again under the directions of GRA, has given an undertaking to this Court, which reads as follows: f

1. As per this undertaking, inter alia, in respect of scattered pieces or parcels of lands in possession of SSPA for R&R which do not add up to a contiguous block of 7 hectares by themselves or in conjunction with other lands steps will be taken to purchase or acquire contiguous lands so that the said small pieces of land become a part of a continuous block of g
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a 6 hectares or more. This exercise will be undertaken and completed on or before 31-12-2000. In case it is not possible to have a contiguous block of a minimum of 6 hectares further directions will be sought from GRA or such piece or parcel of land will be put to use for other public purposes relating to R&R but which may not have been provided for in NWDT award.

b 2. Henceforth, the land which is acquired or purchased for R&R purposes shall be contiguous to each other so as to constitute a compact block of 6 hectares.

3. Henceforth land to be purchased for R&R will be within a radius of 3 km from an existing or proposed new site and if there is a departure from this policy, prior approval of GRA will be obtained.

c 4. Demarcation of boundary of 5211 hectares of land whose survey has been undertaken by GRA and carving out individual plots of 2 hectares for allotment to PAFs will be undertaken and completed on or before 31-12-2000.

d 5. The other undertakings relate to soil testing and/or ensuring that suitable land is made available to PAFs after the quality of land is cleared by the agriculture experts of Gujarat Agriculture University. With regard to the lands in possession of SSPA which are low-lying and vulnerable to waterlogging during monsoon, an undertaking has been given that the land has been deleted from the inventory of lands available for R&R unless such lands are examined by the Agricultural Cell of SSPA and it is certified that the access to these lands is clear and unimpeded and that they are suitable for R&R. Compliance report in this regard is to be submitted to GRA on or before 31-12-2000.

e 215. In addition to the aforesaid undertaking of Shri V.K. Babbar, undertakings of the Collectors of Khedr, Vadodara, Ahmedabad, Narmada, Panchmahal and Bharuch Districts have also been filed. Apart from reiterating what is contained in the undertaking of Shri V.K. Babbar, in these undertakings of the Collectors it is stated that necessary mutation entries regarding entering the name of SSPA/SSNNL in the village records of right in respect of the land in possession for R&R or PAFs likely to be resettled in Gujarat have been made but the certification of these entries will be completed and the matter reported to GRA before 31-8-2000. If this is not done the land is to be deleted from the inventory of lands available for R&R. Necessary mutation entries in the village records of rights regarding removal of encumbrances of original landholders shall also be completed by that date.

g 216. From what is noticed hereinabove, this Court is satisfied that more than adequate steps are being taken by the State of Gujarat not only to implement the award of the Tribunal to the extent it grants relief to the oustees but the effort is to substantially improve thereon and, therefore, continued monitoring by this Court may not be necessary.

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217. On behalf of the State of Madhya Pradesh, in response to this Court's order dated 9-5-2000, an affidavit of Shri H.N. Tiwari, Director (TW), Narmada Valley Development Authority has been filed. It is stated therein that with a view to arrange resettlement of PAFs to be affected at different levels detailed instructions to the Field Officers of the submergence area were issued by Shri Tiwari vide letter dated 20-5-2000 in respect of all the aspects of resettlement of PAFs. This is related to identification of land, processing of land acquisition cases and passing of the award, taking of PAFs to Gujarat for selection of land, allotment of land to PAFs who decide to remain in Madhya Pradesh and development of sites. There are 92 sites for resettlement of PAFs which are required to be established and out of these, 18 are stated to be fully developed, development in 23 sites is in progress, 18 sites are such where location has been determined and land identified but development work has not started and 33 sites are such where location of land for the development is to be decided by the task force constituted for this purpose.

218. Dealing specifically with the status of PAFs to be affected at different levels this affidavit, inter alia, states that with regard to PAFs to be affected at EL 85 m, those of whom who have opted to go to Gujarat, land has been offered to them by the Government of Gujarat, those PAFs who have changed their mind and now want to remain in Madhya Pradesh, land is being shown to them in Madhya Pradesh.

219. It has not been categorically stated whether PAFs who are so affected have been properly resettled or not. On the contrary, it is stated that no awards in land acquisition cases have been passed in respect of six villages and it is only after the awards are passed that house plots will be allotted and compensation paid. The provision for financial assistance for purchase of productive assets will be released when PAFs shift and start construction of the houses. The reason for not making the payment in advance rightly is that if the grants are paid to the oustees before they shift they may possibly squander the grant and the State Government may be required to pay again to establish them on some self-employment venture. For the resettlement of PAFs in Madhya Pradesh out of ten relocation sites mentioned in the affidavit, only five have been fully developed. It is also stated that 163 PAFs are resisting from shifting to Gujarat under the influence of anti-dam activists, though they have been given notices containing offer of the land and house plots by the Government of Gujarat. In addition thereto, 323 PAFs who were earlier resisting have now been persuaded and arrangements for selection of land for them in Gujarat has been initiated.

220. With regard to the R&R status of PAFs to be affected at EL 95 m it is, inter alia, stated that those losing 25 per cent of their holdings are entitled to be allotted cultivable land and notices were given to them to identify the land which can be allotted. In the said notice it was stated that the

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development process will be undertaken with regard to the said land only after it is selected by PAFs. There is also a mention in the affidavit filed in the name of Narmada Bachao Andolan, the petitioner herein, not allowing the State Government to conduct survey for demarcation of the submergence area and identification of PAFs to be affected at EL 132.86 m (436 ft). Six out of twenty-five relocation sites required to be developed have been fully developed.

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- 221.** An affidavit on behalf of the State of Madhya Pradesh draws a picture of rehabilitation which is quite different from that of Gujarat. There seems to be no hurry in taking steps to effectively rehabilitate the Madhya Pradesh PAFs in their home State. It is indeed surprising that even awards in respect of six villages out of 33 villages likely to be affected at 90 m dam height have not been passed. The impression which one gets after reading the affidavit on behalf of the State of Madhya Pradesh clearly is that the main effort of the said State is to try and convince PAFs that they should go to Gujarat whose rehabilitation package and effort is far superior to that of the State of Madhya Pradesh. It is, therefore, not surprising that a vast majority of PAFs of Madhya Pradesh have opted to be resettled in Gujarat but that does not by itself absolve the State of Madhya Pradesh of its responsibility to take prompt steps so as to comply at least with the provisions of the Tribunal's award relating to relief and rehabilitation. The State of Madhya Pradesh has been contending that the height of the dam should be lowered to 436 ft so that lesser number of people are dislocated but we find that even with regard to the rehabilitation of the oustees at 436 ft the R&R programme of the State is nowhere implemented. The State is under an obligation to effectively resettle those oustees whose choice is not to go to Gujarat. Appropriate directions may, therefore, have to be given to ensure that the speed in implementing R&R picks up. Even the interim report of Mr Justice Soni, GRA for the State of Madhya Pradesh, indicates lack of commitment on the State's part in looking to the welfare of its own people who are going to be under the threat of ouster and who have to be rehabilitated. Perhaps the lack of urgency could be because of lack of resources, but then the rehabilitation even in Madhya Pradesh is to be at the expense of Gujarat. A more likely reason could be that, apart from electricity, the main benefit of the construction of the dam is to be of Gujarat and to a lesser extent to Maharashtra and Rajasthan. In a federal set-up like India, whenever any such inter-State project is approved and work undertaken the States involved have a responsibility to cooperate with each other. There is a method of settling the differences which may arise amongst there like, for example, in the case of inter-State water dispute the reference of the same to a Tribunal. The award of the Tribunal being binding, the States concerned are duty-bound to comply with the terms thereof.

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222. On behalf of the State of Maharashtra in the affidavit in response to this Court's order dated 9-5-2000, the position regarding the availability of land for distribution to PAFs was stated to be as follows:

(i) Total land made available
by the Forest Department 4191.86 hectares

(ii) Land which could not be
allotted at present to PAF

(a) Gaothan land (used for residential purposes) 209.60 hectares

(b) Land occupied by river/nallah/hills 795.62 hectares

(c) Land under encroachment by third parties 434.13 hectares

Therefore, the net land available
at present for allotment was 2752.51 hectares
4191.86 - 1439.35

Total area of land allotted to 1600 PAFs 2434.01 hectares

Remaining cultivable land
available with the State 2752- 318.50 hectares
2434.01

It is further stated in this affidavit that out of 795.62 hectares of forest land which was reported to be uncultivable the State has undertaken a survey for ascertaining whether any of these lands can be made available for cultivation and distribution by resorting to measures like bunding, terracing and levelling. It is estimated that 30 to 40 hectares of land would become available. In addition, thereto, the affidavit states that the Government of Maharashtra has decided to purchase private land in nearby villages for resettlement of PAFs and further that GRA has been established and Justice S.P. Kurdukar, a retired Judge of this Court has been appointed as its Chairman. It is categorically stated in this affidavit that the State Government would be in a position to make these lands available to all the project-affected families concerned.

Conclusion

223. Water is one element without which life cannot sustain. Therefore, it is to be regarded as one of the primary duties of the Government to ensure availability of water to the people.

224. There are only three sources of water. They are rainfall, groundwater or from the river. A river itself gets water either by the melting of snow or from the rainfall while the groundwater is again dependent on the rainfall or from the river. In most parts of India, rainfall takes place during a period of about 3 to 4 months known as the monsoon season. Even at the time when the monsoon is regarded as normal, the amount of rainfall varies from region to region. For example, North-Eastern States of India receive

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- much more rainfall than some of the other States like Punjab, Haryana or Rajasthan. Dams are constructed not only to provide water whenever required but they also help in flood control by storing extra water. Excess of rainfall causes floods while deficiency thereof results in drought. Studies show that 75% of the monsoon water drains into the sea after flooding a large land area due to absence of the storage capacity. According to a study conducted by the Central Water Commission in 1998, surface water resources were estimated at 1869 cu km and rechargeable groundwater resources at 432 cu km. It is believed that only 690 cu km of surface water resources (out of 1869 cu km) can be utilised by storage. At present the storage capacity of all dams in India is 174 cu km which is incidentally less than the capacity of Kariba Dam in Zambia/Zimbabwe (180.6 cu km) and only 12 cu km more than Aswan High Dam of Egypt.

- 225.** While the reservoir of a dam stores water and is usually situated at a place where it can receive a lot of rainfall, the canals take water from this reservoir to distant places where water is a scarce commodity. It was, of course, contended on behalf of the petitioner that if the practice of water harvesting is resorted to and some check dams are constructed, there would really be no need for a high dam like Sardar Sarovar. The answer to this given by the respondent is that water harvesting serves a useful purpose but it cannot ensure adequate supply to meet all the requirements of the people. Water harvesting means to collect, preserve and use the rain water. The problem of the area in question is that there is deficient rainfall and small-scale water-harvesting projects may not be adequate. During the non-rainy days, one of the essential ingredients of water harvesting is the storing of water. It will not be wrong to say that the biggest dams to the smallest percolating tanks meant to tap the rain water are nothing but water-harvesting structures to function by receiving water from the common rainfall.

- 226.** Dam serves a number of purposes. It stores water, generates electricity and releases water throughout the year and at times of scarcity. Its storage capacity is meant to control floods and the canal system which emanates therefrom is meant to convey and provide water for drinking, agriculture and industry. In addition thereto, it can also be a source of generating hydropower. Dam has, therefore, necessarily to be regarded as an infrastructural project.

- 227.** There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project is to be regarded as a policy decision. While there is always a need for such projects not being unduly delayed, it is at the same time expected that a thorough possible study will be undertaken before a decision is taken to start a project. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such

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a system cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner it was envisaged.

228. A project may be executed departmentally or by an outside agency. The choice has to be of the Government. When it undertakes the execution itself, with or without the help of another organisation, it will be expected to undertake the exercise according to some procedure or set manner. NCA was constituted to give effect to the award, various subgroups have been established under NCA and to look after the grievances of the resettled oustees, each State has set up a grievance redressal machinery. Over and above NCA is the Review Committee. There is no reason now to assume that these authorities will not function properly. In our opinion the Court should have no role to play.

229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

230. Public interest litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largesse in the form of licences, protecting environment and the like. But the balloon should not be inflated so much that it bursts. Public interest litigation should not be allowed to degenerate to becoming publicity interest litigation or private inquisitiveness litigation.

231. While exercising jurisdiction in PIL cases the court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions.

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232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

235. What the petitioner wants the Court to do in this case is precisely that. The facts enumerated hereinabove clearly indicate that the Central Government had taken a decision to construct the dam as that was the only solution available to it for providing water to the water-scarce areas. It was known at that time that people will be displaced and will have to be rehabilitated. There is no material to enable this Court to come to the conclusion that the decision was mala fide. A hard decision need not necessarily be a bad decision.

236. Furthermore, environmental concern has not only to be of the area which is going to be submerged but also its surrounding area. The impact on

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environment should be seen in relation to the project as a whole. While an area of land will submerge but the construction of the dam will result in multifold improvement in the environment of the areas where the canal waters will reach. Apart from bringing drinking water within easy reach the supply of water to Rajasthan will also help in checking the advancement of the Thar Desert. Human habitation will increase there which, in turn, will help in protecting the so far porous border with Pakistan. a

237. While considering Gujarat's demand for water, the Government had reports that with the construction of a high dam on River Narmada, water could not only be taken to the scarcity areas of northern Gujarat, Saurashtra and parts of Kutch but some water could also be supplied to Rajasthan. b

238. Conflicting rights had to be considered. If for one set of people namely those of Gujarat, there was only one solution, namely, construction of a dam, the same would have an adverse effect on another set of people whose houses and agricultural land would be submerged in water. It is because of this conflicting interest that considerable time was taken before the project was finally cleared in 1987. Perhaps the need for giving the green signal was that while for the people of Gujarat, there was no other solution but to provide them with water from the Narmada, the hardships of the oustees from Madhya Pradesh could be mitigated by providing them with alternative lands, sites and compensation. In governance of the State, such decisions have to be taken where there are conflicting interests. When a decision is taken by the Government after due consideration and full application of mind, the court is not to sit in appeal over such decision. c d

239. Since long the people of India have been deriving the benefits of the river valley projects. At the time of independence, foodgrain was being imported into India but with the passage of time and the construction of more dams, the position has been reversed. The large-scale river valley projects per se all over the country have made India more than self-sufficient in food. Famines which used to occur have now become a thing of the past. Considering the benefits which have been reaped by the people all over India with the construction of the dams, the Government cannot be faulted with deciding to construct the high dam on River Narmada with a view to provide water not only to the scarcity areas of Gujarat but also to the small areas of the State of Rajasthan where shortage of water has been there since time immemorial. e f

240. In the case of projects of national importance where the Union of India and/or more than one State(s) are involved and the project would benefit a large section of the society and there is evidence to show that the said project had been contemplated and considered over a period of time at the highest level of the States and the Union of India and more so when the project is evaluated and approval granted by the Planning Commission, then there should be no occasion for any court carrying out any review of the same or directing its review by any outside or "independent" agency or body. In a democratic set-up, it is for the elected Government to decide what g h

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- a project should be undertaken for the benefit of the people. Once such a decision had been taken then unless and until it can be proved or shown that there is a blatant illegality in the undertaking of the project or in its execution, the court ought not to interfere with the execution of the project.

- b **241.** Displacement of people living on the proposed project sites and the areas to be submerged is an important issue. Most of the hydrology projects are located in remote and inaccessible areas, where local population is, like in the present case, either illiterate or having marginal means of employment and the per capita income of the families is low. It is a fact that people are displaced by projects from their ancestral homes. Displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions, but then it becomes necessary to harvest a river for the larger good. A natural river is not only meant for the people close by but it should be for the benefit of those who can make use of it, being away from it or near
- c by. Realising the fact that displacement of these people would disconnect them from their past, culture, custom and traditions, the moment any village is earmarked for takeover for dam or any other developmental activity, the project-implementing authorities have to implement R&R programmes. The R&R plans are required to be specially drafted and implemented to mitigate problems whatsoever relating to all, whether rich or poor, landowner or
- d encroacher, farmer or tenant, employee or employer, tribal or non-tribal. A properly drafted R&R plan would improve the living standards of displaced persons after displacement. For example residents of villages around Bhakra Nangal Dam, Nagarjuna Sagar Dam, Tehri, Bhilai Steel Plant, Bokaro and Bala Iron and Steel Plant and numerous other developmental sites are better off than people living in villages in whose vicinity no development project
- e came in. It is not fair that tribals and the people in undeveloped villages should continue in the same condition without ever enjoying the fruits of science and technology for better health and have a higher quality of lifestyle. Should they not be encouraged to seek greener pastures elsewhere, if they can have access to it, either through their own efforts due to information exchange or due to outside compulsions. It is with this object in
- f view that the R&R plans which are developed are meant to ensure that those who move must be better off in the new locations at government cost. In the present case, the R&R packages of the States, specially of Gujarat, are such that the living conditions of the oustees will be much better than what they had in their tribal hamlets.

- g **242.** The loss of forest because of any activity is undoubtedly harmful. Without going into the question as to whether the loss of forest due to river valley project because of submergence is negligible, compared to deforestation due to other reasons like cutting of trees for fuel, it is true that large dams cause submergence leading to loss of forest areas. But it cannot be ignored and it is important to note that these large dams also cause conversion of wasteland into agricultural land and make the area greener.
- h Large dams can also become instruments in improving the environment, as has been the case in western Rajasthan, which transformed into a green area

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because of Indira Gandhi Canal which draws water from Bhakra Nangal Dam. This project not only allows the farmers to grow crops in deserts but also checks the spread of Thar Desert in the adjoining areas of Punjab and Haryana. a

243. The environmental and ecological consideration must, of course, be given due consideration but with proper channelisation of developmental activities ecology and environment can be enhanced. For example, Periyar Dam Reservoir has become an elephant sanctuary with thick green forests all around while at the same time it wiped out famines that used to haunt the district of Madurai in Tamil Nadu before its construction. Similarly Krishnaraja Sagar Dam which has turned Mandya District which was once covered with shrub forests with wild beasts into a prosperous one with green paddy and sugarcane fields all around. b

244. So far a number of such river valley projects have been undertaken in all parts of India. The petitioner has not been able to point out a single instance where the construction of a dam has, on the whole, had an adverse environmental impact. On the contrary the environment has improved. That being so, there is no reason to suspect, with all the experience gained so far, that the position here will be any different and there will not be overall improvement and prosperity. It should not be forgotten that poverty is regarded as one of the causes of degradation of environment. With improved irrigation system the people will prosper. The construction of Bhakra Dam is a shining example for all to see how the backward area of erstwhile undivided Punjab has now become the granary of India with improved environment than what was there before the completion of the Bhakra Nangal Project. c

245. The award of the Tribunal is binding on the States concerned. The said award also envisages the relief and rehabilitation measures which are to be undertaken. If for any reason, any of the State Governments involved lag behind in providing adequate relief and rehabilitation then the proper course, for a court to take, would be to direct the award's implementation and not to stop the execution of the project. This Court, as a Federal Court of the country specially in a case of inter-State river dispute where an award had been made has to ensure that the binding award is implemented. In this regard, the Court would have the jurisdiction to issue necessary directions to the State which, though bound, chooses not to carry out its obligations under the award. Just as an ordinary litigant is bound by the decree, similarly a State is bound by the award. Just as the execution of a decree can be ordered, similarly, the implementation of the award can be directed. If there is a shortfall in carrying out the R&R measures, a time-bound direction can and should be given in order to ensure the implementation of the award. Putting the project on hold is no solution. It only encourages the recalcitrant State to flout and not implement the award with impunity. This certainly cannot be permitted. Nor is it desirable in the national interest that where fundamental right to life of the people who continue to suffer due to shortage of water to e

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such an extent that even the drinking water becomes scarce, non-cooperation of a State results in the stagnation of the project.

- a **246.** The clamour for the early completion of the project and for the water to flow in the canal is not only by Gujarat but is also raised by Rajasthan.

- b **247.** As per clause 3 of the final decision of the Tribunal published in the Gazette notification of India dated 12-12-1979 the State of Rajasthan has been allocated 0.5 MAF of Narmada water in national interest from Sardar Sarovar Dam. This was allocated to the State of Rajasthan to utilise the same for irrigation and drinking purposes in the arid and drought-prone areas of Jalore and Barmer Districts of Rajasthan situated on the international border with Pakistan, which have no other available source of water.

- c **248.** Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India and can be served only by providing source of water where there is none. The resolution of UNO in 1977 to which India is a signatory, during the United Nations Water Conference resolved unanimously *inter alia* as under:

- d “All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.”

- e **249.** Water is being made available by the State of Rajasthan through tankers to the civilians of these areas once in four days during summer season in a quantity, which is just sufficient for their survival. The districts of Barmer and Jalore are part of “Thar Desert” and on account of scarcity of water the desert area is increasing every year. It is a matter of great concern that even after half a century of freedom, water is not available to all citizens even for their basic drinking necessity, violating the human rights resolution of UNO and Article 21 of the Constitution of India. Water in the rivers of India has great potentiality to change the miserable condition of the arid, drought-prone and border areas of India.

- f **250.** The availability of drinking water will benefit about 1.91 lakh people residing in 124 villages in arid and drought-prone border areas of Jalore and Barmer Districts of Rajasthan who have no other source of water and are suffering grave hardship.

- g **251.** As already seen, the State of Madhya Pradesh is keen for the reduction of the dam’s height to 436 ft. Apart from Gujarat and Rajasthan the State of Maharashtra also is not agreeable to this. The only benefit from the project which Maharashtra[†] would get is its share of hydel power from the project. The lowering of the height from 455 ft to 436 ft will take away this benefit even though 9399 hectares of its land will be submerged. With the reduction of height to 436 ft not only will there be loss of power generation but it would also render the generation of power seasonal and not throughout the year.

- h **252.** One of the indicators of the living standard of people is the per capita consumption of electricity. There is, however, perennial shortage of

[†] Ed.: Vide correction made in para 3 of judgment reported at (2002) 10 SCC 408

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power in India and, therefore, it is necessary that the generation increases. The world over countries having rich water and river systems have effectively exploited these for hydel-power generation. In India, the share of a hydel power in the total power generated was as high as 50% in the year 1962-63 but the share of hydel power started declining rapidly after 1980. There is more reliance now on thermal-power projects. But these thermal-power projects use fossil fuels, which are not only depleting fast but also contribute towards environmental pollution. Global warming due to the greenhouse effect has become a major cause of concern. One of the various b factors responsible for this is the burning of fossil fuel in thermal-power plants. There is, therefore, international concern for reduction of greenhouse gases which is shared by World Bank resulting in the restriction of sanction of funds for thermal-power projects. On the other hand, the hydel power's contribution to the greenhouse effect is negligible and it can be termed ecology-friendly. Not only this but the cost of generation of electricity in c hydel projects is significantly less. The award of the Tribunal has taken all these factors into consideration while determining the height of the dam at 455 ft. Giving the option of generating eco-friendly electricity and substituting it by thermal power may not, therefore, be the best option. Perhaps the setting up of a thermal plant may not displace as many families as a hydel project may but at the same time the pollution caused by the d thermal plant and the adverse effect on the neighbourhood could be far greater than the inconvenience caused in shifting and rehabilitating the oustees of a reservoir.

253. There is and has been in the recent past protests and agitations not only against hydel projects but also against the setting up of nuclear or thermal-power plants. In each case reasons are put forth against the execution e of the proposed project either as being dangerous (in case of nuclear) or causing pollution and ecological degradation (in the case of thermal) or rendering people homeless and posing adverse environment impacts as has been argued in the present case. But then electricity has to be generated and one or more of these options exercised. What option to exercise, in our constitutional framework, is for the Government to decide keeping various f factors in mind. In the present case, a considered decision has been taken and an award made, whereby a high dam having an FRL of 455 ft with capability of developing hydel power is to be constructed. In the facts and circumstances enumerated hereinabove, even if this Court could go into the question, the decision so taken cannot be faulted.

Directions g

254. While issuing directions and disposing of this case, two conditions have to be kept in mind, (i) the completion of the project at the earliest, and (ii) ensuring compliance with the conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental h protection in compliance with the scheme framed by the Government thereby

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protecting the rights under Article 21 of the Constitution. Keeping these principles in view, we issue the following directions:

- a (1) Construction of the dam will continue as per the award of the Tribunal.
- b (2) As the Relief and Rehabilitation Subgroup has cleared the construction up to 90 metres, the same can be undertaken immediately. Further raising of the height will be only *pari passu* with the implementation of the relief and rehabilitation measures and on the clearance by the Relief and Rehabilitation Subgroup. The Relief and Rehabilitation Subgroup will give clearance for further construction after consulting the three Grievance Redressal Authorities.
- c (3) The Environment Subgroup under the Secretary, Ministry of Environment and Forests, Government of India will consider and give, at each stage of the construction of the dam, environment clearance before further construction beyond 90 metres can be undertaken.
- d (4) The permission to raise the dam height beyond 90 metres will be given by the Narmada Control Authority, from time to time, after it obtains the above-mentioned clearances from the Relief and Rehabilitation Subgroup and the Environment Subgroup.
- e (5) The reports of the Grievance Redressal Authorities, and of Madhya Pradesh in particular, show that there is a considerable slackness in the work of identification of land, acquisition of suitable land and the consequent steps necessary to be taken to rehabilitate the project oustees. We direct the States of Madhya Pradesh, Maharashtra and Gujarat to implement the award and give relief and rehabilitation to the oustees in terms of the packages offered by them and these States shall comply with any direction in this regard which is given either by NCA or the Review Committee or the Grievance Redressal Authorities.
- f (6) Even though there has been substantial compliance with the conditions imposed under the environment clearance NCA and the Environment Subgroup will continue to monitor and ensure that all steps are taken not only to protect but to restore and improve the environment.
- g (7) NCA will within four weeks from today draw up an action plan in relation to further construction and the relief and rehabilitation work to be undertaken. Such an action plan will fix a time-frame so as to ensure relief and rehabilitation *pari passu* with the increase in the height of the dam. Each State shall abide by the terms of the action plan so prepared by NCA and in the event of any dispute or difficulty arising, representation may be made to the Review Committee. However, each State shall be bound to comply with the directions of NCA with regard to the acquisition of land for the purpose of relief and rehabilitation to the extent and within the period specified by NCA.
- h (8) The Review Committee shall meet whenever required to do so in the event of there being any unresolved dispute on an issue which is before NCA. In any event, the Review Committee shall meet at least

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once in three months so as to oversee the progress of construction of the dam and implementation of the R&R programmes.

If for any reason serious differences in implementation of the award arise and the same cannot be resolved in the Review Committee, the Committee may refer the same to the Prime Minister whose decision, in respect thereof, shall be final and binding on all concerned. a

(9) The Grievance Redressal Authorities will be at liberty, in case the need arises, to issue appropriate directions to the respective States for due implementation of the R&R programmes and in case of non-implementation of its directions, GRAs will be at liberty to approach the Review Committee for appropriate orders. b

(10) Every endeavour shall be made to see that the project is completed as expeditiously as possible.

This and connected petitions are disposed of in the aforesaid terms. c

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

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

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

258. Having said this, I turn to the aspect of the environmental clearance of the project. The Planning Commission accorded provisional sanction to the project subject to the environment clearance thereof being obtained. At the relevant time, the responsibility for giving environmental clearance lay with the Department of Environment in the Ministry of Environment and Forests of the Union Government. The Department had in January 1985 issued Guidelines for Environmental Impact Assessment of River Valley Projects. The preface thereof stated that environmental appraisal was an important responsibility assigned to the Department. It involved the evaluation of the environmental implications of, and the incorporation of necessary safeguards in the activities having a bearing on environmental quality. While river valley projects were a basic necessity to a country whose economy was largely based on agriculture, over the years the realisation had dawned that river valley projects had their due quota of positive and adverse impacts which had to be carefully assessed and balanced for achieving sustained benefits. Therefore, it had been decided in the late 70s that all river valley projects should be subjected to a rigorous assessment of their environmental impact so that necessary mitigative measures could be duly e
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incorporated therein at the inception stage. The Guidelines set out the procedure to be adopted for carrying out environmental impact assessments.

- a In the chapter headed Relevance of Environmental Aspects for River Valley Development Projects, the Guidelines stated

“Concern for environmental pollution is rather a recent phenomenon which has been triggered mainly by the backlash effect of accelerated industrial growth in the developed countries. The two major criteria — the project should maximise economic returns and it should be technically feasible, are no longer considered adequate to decide the desirability or even the viability of the project. It is now widely recognised that the development effort may frequently produce not only sought-for benefits, but other, often unanticipated, undesirable consequences as well which may nullify the socio-economic benefits for which the project is designed.”

- c After reference to the strong feelings that were often expressed in favour of measures that would provide the provision of adequate food and shelter to the millions, the Guidelines stated:

“Such strong feelings are easy to understand in the context of the prevailing economic stagnation. It does not, however, follow that the arguments advanced are valid. The basic flaw in these arguments is that they presume incompatibility between environmental conservation and the development effort.”

- e Apart from some selected cases where the uniqueness of the natural resources, like wildlife, flora and genetic pool, which demanded exclusive earmarking of a given region for their specific use, the majority of cases did not call for a choice between development projects and preservation of the natural environment; but in all cases there was great need to consider the environmental aspects along with the other feasibility considerations. It was imperative to analyse whether the adoption of environmental measures was going to result in any short- or long-term social or economic benefits. A careful study of the direct costs involved, which would be caused by the absence of environmental mitigative measures on river valley projects, was an eye-opener. These included effects on health, plant genetic resources, aquatic resources, waterlogging and salinity of irrigated soils, deforestation and soil conservation. During the planning and feasibility assessment stages, several factors had to be taken into account, including short- and long-term impact on population and human settlements in the inundated and watershed areas, impact on flora and fauna (wildlife) in the vicinity, impact on wildlife, including birds, impact on national parks and sanctuaries, on sites and monuments of historical, cultural and religious significance and on forests, agriculture, fisheries and recreation and tourism. Requisite data for impact assessment was not readily available, this being relatively a new discipline, and it had to be generated through such field surveys as:

- h “— pre-impoundment census of flora and fauna, particularly the rare and endangered species, in submergence areas;

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- census of animal population and available grazing areas;
- land-use pattern in the area with details of extent and type of forest;
- pre-impoundment survey of fish habitat and nutrient levels;
- groundwater level, its quality, and existing water-use pattern;
- mineral resources, including injurious minerals, in the impoundment; and
- living conditions of affected tribals/aboriginals etc.”

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The cost of proposed remedial and mitigative measures to protect the environment had to be included in the project cost. Mitigative measures included, among other things, compensatory afforestation. Only when the incorporation of environmental aspects in the project planning was made a part and parcel of all river valley projects would there be hope to protect and preserve

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“our natural environment and fulfil objective of rapid economic development on the sustained basis while safeguarding the natural resources including the air, water, land, flora and fauna for the benefit of present and future generations”.

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The necessary data that was required to be collected for impact assessment was set out in the Guidelines. A chart of the impact assessment procedure was also contained in the Guidelines.

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

260. A note was prepared by the Ministry of Water Resources in or about October 1986 on the environmental aspects of the Sardar Sarovar and the Narmada Sagar Multipurpose Projects. It stated that a decision on the clearance of these projects from the environmental angle and under the Forest Conservation Act, 1980 had become a matter of urgency. Delays had occurred which had necessitated a recasting of the schedule. The Ministry of Environment and Forests had been doing its best to expedite the process of examination and clearance “but have been finding the material submitted inadequate and unsatisfactory...”. While the State Governments had done their best to meet the requirements, “some of the information and action will necessarily take time and will have to proceed *pari passu* with the implementation of the project, which in any case will take a decade or more to complete”. The note stated that the Ministry of Water Resources shared the concerns and anxieties of the Ministry of Environment and Forests, as also the sense of urgency of the Governments of Gujarat and Madhya Pradesh, who felt that it was urgently necessary to take a decision in regard to the clearance. Under the sub-heading, “Should the projects be taken up at all?”, the note stated that the abandonment of the projects would mean the abandonment of the generation of 2450 MW of power and of the possibilities of economic development which that quantum of power would bring, as also increased agricultural production resulting from the creation of an irrigation

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- potential of 2.041 million hectares. No effective alternatives to the two projects were available. Reference to the adverse environmental impact of the projects carried the implicit assumption that if the projects were not sanctioned the status quo would remain and there would be no deterioration of the environment. Such an assumption was not warranted. Despite the submergence of land and displacement of people and livestock, there was no case for the abandonment of the projects. What needed to be done was to take appropriate and adequate countermeasures to offset the environmental impact of the projects. The note then gave a broad picture of the likely environment impact of the two projects. In respect of the flora and fauna, it said, "Quantified data not yet available." In respect of the possibility of soil erosion from the catchment leading to excessive siltation of the reservoirs, it said, "Extent of critically-degraded area needing treatment to be identified." Specifically in respect of the Sardar Sarovar Project, the note said that for the area to be submerged in Maharashtra, the Maharashtra Government had proposed compensatory afforestation over an area of 6490 hectares and the Madhya Pradesh Government was preparing an action plan to reforest about 5500 hectares of the denuded forest in the impact area. In respect of the fauna the note said that the Narmada Sagar Project authorities had commissioned a wildlife census of the areas by Zoological Survey of India and were negotiating terms with the Indian Institute of Wildlife Management, Dehradun, for carrying out detailed wildlife studies for relocation purposes. They proposed to undertake all necessary steps to minimise the adverse impact of the project on wildlife. Gujarat and Maharashtra were also taking similar action with the help of specialised agencies. In respect of the projects' flora, the note said that the first preliminary survey in the area by Botanical Survey of India was started in December 1985 and it was estimated that the survey would take two to three years to be completed. In respect of catchment area treatment, the note said that field surveys were likely to be started shortly. The project authorities had identified three representative pilot-project areas. The biological and engineering measures to be adopted in the treatment of the balance of the catchment area would be designed on the basis of the experience to be gained from these pilot projects. Under the sub-heading, "What still remains to be done", the note stated:

- "While some plans have been made, studies undertaken and action initiated, it will be clear from the preceding paragraphs that much still remains to be done. Indeed, it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much, and that many matters are as yet in the early and preliminary stages."*

(emphasis supplied)

- What was then set out was an enumeration of what remained to be done. *The survey of flora*, to assess if there were any rare or threatened plant species, had been assigned to Botanical Survey of India, which *is expected to be completed in a period of two years*. *The wildlife survey* undertaken by Zoological Survey of India *was also likely to take two years*. The Indian

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Institute of Wildlife Management, Dehradun was to consider and assess the impact on wildlife on the destruction of their habitat, and to prepare a project report for their relocation. *After all these reports became available, a master plan had to be prepared.* Field surveys for the *identification of the critically-eroding areas* was necessary and *would take three years.* The results from pilot studies would be available only after three years. Then, under the sub-heading, “Options in regard to clearance of the projects”, the note stated:

“There are two options:

(i) As a number of studies, censuses, field surveys, mapping of areas, etc., are likely to take between 2 and 3 years, one possibility is that all these should be completed; detailed operational plans for catchment treatment compensatory afforestation, rehabilitation and resettlement of affected population, and remedial or relocation measures for planned species, wildlife, etc., formulated; the responsibility for their implementation clearly identified; and then the projects should be given a clearance from the environmental and forest angles. This will mean a postponement of the clearance of projects by about 3 years.

(ii) The other option is that the projects should be given the necessary clearance now, with clear conditions and stipulations in regard to the actions to be taken on the various environmental aspects and appropriate monitoring arrangements to ensure that the actions are taken in a time-bound manner.

13.2. The arguments against a postponement of clearance by three years are very strong.” (emphasis supplied)

The postponement of the decision at this stage seemed, to the writers of the note, “scarcely conceivable”. A postponement would lead to substantial increases in project costs and the benefits expected from the projects would be delayed. Also the work that had already been done would be rendered infructuous. The deferment of clearance by three years would put the organisational set-up that had been built up into a state of uncertainty, retard the momentum that had been gathered, and sap the organisational morale and motivation. The note added:

“Finally, the numerous studies, surveys, data-collection exercises, plans for remedial measures, etc., which have been enumerated earlier would involve time, money and organisational commitment. With the project decision postponed for three years, and with no assurance that at the end of that period, the decision will be positive, it is difficult to believe that all these studies, surveys and plans relating to the environmental aspects will be pursued with energy and enthusiasm, and the necessary resources devoted to them. In other words, the postponement of the decision in the interest of collecting the information relating to the environmental aspects and completing the formulation of the necessary operational plans may in fact prove to be a self-defeating exercise. On the other hand, if the project decisions are taken now, subject to firm conditions and stipulations regarding the environmental

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- a aspects, there is greater likelihood of these conditions being met. ... A possible argument against the immediate clearance of the projects could be that once the projects are cleared, the management would concentrate on the engineering and construction aspects and would not pay adequate attention to the environmental and human aspects. There seems to be no need for such apprehensions. It should be entirely possible to give a conditional clearance and ensure that the conditions are properly met through a process of clear assignment of responsibility and frequent monitoring. ... Moreover, even assuming that the postponement of a decision by three years will improve the availability of detailed information and the stage of preparedness on environmental matters, there can be no greater assurance at that stage than there is now regarding the wholehearted and effective implementation of the remedial and ameliorative measures. We would still have to depend on proper monitoring....”
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In conclusion, the note urged that clearance from the environmental angle and under the Forest Conservation Act, 1980 be given immediately, subject to conditions and stipulations relating to the various environmental and related aspects outlined in the note.

- d **261.** Another note was prepared by the Ministry of Water Resources and forwarded to the Additional Secretary to the Prime Minister on 20-11-1986. Insofar as the catchment area treatment was concerned, it concluded that it was certain that the catchment area treatment programme could not be realistically formulated and assessed for at least another three years. Therefore, it was premature to comment on the efficacy or otherwise of the catchment area treatment programme which was still to be formulated. The action programme for command area development was yet to be made available. The lining of the canal network and the digging of tubewells in the command area could not be considered to be adequate. A lot of fieldwork and planning was needed to be done to arrive at a workable and effective command area development programme. As to compensatory afforestation, the land for the same was yet to be identified and procured before it could be evaluated for the purpose. In regard to the loss of flora and fauna, the following studies were considered absolutely essential to determine the adequacy or otherwise of the leftover habitat to sustain the wildlife:
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“ ‘A wildlife census of the area’ (ZSI will take at least 2-3 years to complete the survey):

- g (i) Preparation of a master plan showing all protected areas, national parks, wildlife reserves, reserve and protected forests, etc. on which should be superimposed the area to be taken up for various reservoirs, roads, canals, settlement colonies, etc.

(ii) Study of the carrying capacity of the surrounding areas where the wildlife from the submergence area will disperse.”

- h In the circumstances, it was not considered possible to assess the impact of the loss of habitat on the wildlife and the overall loss of biological diversity.

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The absence and inadequacy of data on the following environmental aspects persisted:

- “(i) rehabilitation;
- (ii) catchment area treatment;
- (iii) command area development;
- (iv) compensatory afforestation; and
- (v) flora and fauna.”

a

Considering the magnitude of rehabilitation, involving a large percentage of tribals, loss of extensive forest area rich in biological diversity, enormous environmental cost of the project and *considering the fact that the basic data on vital aspects was still not available “there could be but one conclusion, that the project(s) are not ready for approval”*. (emphasis supplied)

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“There were two options in regard to the clearance. As a number of studies, censuses, field surveys, mapping of areas etc. was likely to take between two and three years, one possibility was that all these should be completed; detailed operational plans for catchment area treatment, compensatory afforestation, rehabilitation and resettlement of affected population and remedial or relocation measures for plant species, wildlife, etc. formulated; the responsibility for their implementation clearly identified; and then the projects should be given a clearance from the environmental and forest angles. This would mean a postponement of the clearance of projects by about three years.”

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The other option was that the project should be given the necessary clearance with conditions and stipulations in regard to the actions to be taken on the various environmental aspects with appropriate monetary arrangements. The note recommended the latter option.

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262. On 19-12-1986 the Ministry of Environment and Forests sent to the Secretary to the Prime Minister a note on the environment aspects of the Narmada Sagar and the Sardar Sarovar Projects. The note stated that it covered the major environmental issues which included the rehabilitation of the affected population, catchment area treatment, command area development, compensatory afforestation and the loss of flora and fauna. It explained the then status of each of these aspects in terms of availability of data and plans and the readiness to execute them. It said that other components of the environmental aspect like the higher incidence of water-borne diseases and loss of mineral reserves were important but were not dealt with in detail in the note. It stated that in respect of catchment area treatment, the requirement was of demarcation of critically-degraded areas on the basis of aerial photographs, satellite imagery and ground checks; creation of a chain of nurseries of suitable species for biological treatment of the catchment area; and preparation of phased action programme for biological and engineering treatment of the degraded catchment area. Considering that catchment area treatment on an intensive scale was imperative, both to reduce silt load and to maintain ecological balance, and keeping in view the

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- fact that the interpretation of the aerial photographs and satellite imagery would take at least one year for completion, to be followed by ground truth
- a checks; the detailed land and soil surveys would take three years to be completed; the geomorphological studies to suggest the engineering and biological treatment for the eroded areas were still to be taken up and the chain of nurseries needed to provide the necessary saplings in adequate quantity along with manpower and other infrastructure requirements were still to be mobilised, *it was “reasonable to conclude that the catchment area*
- b *treatment programme can be realistically formulated only after three years when these data become available”*. The command area development was to achieve the prevention of waterlogging and salinity, the optimisation of water utilisation and the maintenance of water quality. A detailed survey of the command area was required on priority to prepare a package of the nature and quantity of development and drainage and on-farm works to fully utilise
- c the irrigation potential. An action programme was yet to be detailed. The Ministry of Water Resources was preparing an evaluation report covering the extent of likely waterlogging and salinity problems and the effectiveness of measures proposed or likely to be proposed to combat these problems “as per the action programme to be formulated”. Insofar as compensatory afforestation was concerned, the project authorities had not been able to
- d identify non-forest land for compensatory afforestation and had proposed to undertake afforestation on double the extent for degraded forest land, which proposal was fairly detailed and seemed satisfactory. In the matter of the loss of flora and fauna the note stated
- e “that the forest area, specially affected by the Narmada Sagar Project, represents areas harbouring rich heritage of genetic resources as well as wildlife. The preliminary study carried out by the Environmental Planning and Coordination Organisation, Bhopal as well as the observations made by World Bank clearly underlined the need for preparing a master plan showing not just the present status but also the likely scenarios after the project was implemented. The prime concern was to ascertain the loss of biological diversity and whether the wildlife
- f would be able to sustain itself after the destruction of its habitat. The following studies were considered absolutely essential both to determine the loss of flora and the adequacy or otherwise of the leftover habitat to sustain the wildlife:
- A wildlife census of the area (ZSI will take at least 2-3 years to complete the survey).
- g — Preparation of a master plan showing all protected areas i.e. national parks, wildlife reserves, reserve and protected forests, etc. on which should be superimposed the areas which cannot be taken up for various reservoirs, roads, canals, settlement colonies, etc.
- h — Study of the carrying capacity of the surrounding areas where the wildlife from the submergence area will disperse.

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

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

The note concluded:

“(1) Taking note of the fact that the project formulation has been in progress for more than three decades and the active interaction of the project authorities with the Department of Environment has been going on for almost three years, *the absence and inadequacy of data on some important environmental aspects still persists.* c

(2) In an objective sense NSP is not ready for clearance from environmental angle. *Even though SSP is in a fairly advanced stage of preparedness, it is neither desirable nor recommended that SSP should be given approval in isolation on technical and other grounds.* d

(3) The state of readiness in the case of NSP is such that it gives just an outline of the intention plan. The fact that this intention plan will be converted to an action plan and thereby effectively implemented has to be taken on trust. In case of the Sardar Sarovar Project (SSP), readiness to execute is reasonably good except on the issue of rehabilitation of oustees specially from M.P. and Maharashtra. e

(4) Holding up of the projects even for the next few months is not likely to improve the level of preparedness on most of the environmental aspects, specially in the case of NSP. In the meanwhile, further studies will not perhaps pick up speed and thus at no time will the requisite information be fully available.

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

* * *

The choice is difficult but a choice has to be made.” g

(emphasis supplied)

263. A note was prepared on 15-1-1987 in the Prime Minister’s Office. It noted that the main issues on environmental concerns were the rehabilitation of the affected population, compensatory afforestation, treatment of the catchment area and command area development, pertaining, particularly, to drainage, waterlogging and salinity. The Department of Environment and h

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a Forests had raised the point that the rehabilitation plan was not ready, land had not been surveyed, areas of land-use capability and water availability had not been identified and the land being suggested for rehabilitation, *prima facie*, appeared to be infertile. Detailed meetings with the State Governments revealed that they were seriously undertaking surveys, land identification and preparation of a rehabilitation plan, of which the first phase was more or less ready. The catchment area treatment preparation would take time. A compensatory afforestation programme could be chalked out without difficulty. The issue was whether detailed plans should be made fully ready before giving environmental clearance or whether there could be a conditional clearance so that the project could start. The Secretary to the Prime Minister had discussed the matter with the Secretary, Water Resources and the Secretary, Environment and Forests and it had been agreed that clearance might be given on the following conditions:

c “Preparation in due time of detailed and satisfactory plans for rehabilitation, catchment area treatment, compensatory afforestation and command area development.

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

d Below the aforesaid note, the Secretary to the Prime Minister sought his approval to conditional clearance of the project from the environmental angle. The project, she said, had been pending clearance for seven years and the Chief Ministers of Gujarat and Madhya Pradesh were keenly awaiting it. The Chief Minister of Gujarat had requested a “green signal” before 20-1-1987.

e **264.** On 19-1-1987 the Prime Minister made a handwritten endorsement on the aforesaid note, “Perhaps this is a good time to try for a river valley authority. Discuss.” But it appears that a river valley authority was not found feasible and the sanction to the project from the environmental angle was issued by the Ministry of Environment and Forests on 24-6-1987.

265. The environmental sanction to the project reads thus:

f “OFFICE MEMORANDUM

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

1. The Narmada Sagar Project, Madhya Pradesh and Sardar Sarovar Project, Gujarat have been referred to this Department for environmental clearance.

g 2. On the basis of examination of details of these projects by the Environmental Appraisal Committee for River Valley Projects and discussions with the Central and State authorities, the following details were sought from the project authorities:

(i) Rehabilitation master plan.

h (ii) Phased catchment area treatment scheme.

(iii) Compensatory afforestation plan.

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(iv) Command area development.

(v) Survey of flora and fauna.

(vi) Carrying capacity of surrounding area.

(vii) Seismicity.

(viii) Health aspects.

3. Field surveys are yet to be completed. The first set of information has been made available and complete details have been assured to be furnished by 1989.

4. NCA has been expanded and its terms of reference have been amplified to ensure that environmental safeguard measures are planned and implemented in depth and in its pace of implementation *pari passu* with the progress of work on the project.

5. After taking into account all relevant facts of Narmada Sagar Project, Madhya Pradesh and the Sardar Sarovar Project, Gujarat they are hereby accorded environmental clearance subject to the following conditions:

(i) The Narmada Control Authority (NCA) will ensure that environmental safeguard measures are planned and implemented *pari passu* with progress of work on projects.

(ii) The detailed surveys/studies assured will be carried out as per the schedule proposed and details made available to the department for assessment.

(iii) The catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling.

(iv) The department should be kept informed of progress on various works periodically.

6. Approval under the Forest (Conservation) Act, 1980 for diversion of forest land will be obtained separately. No work should be initiated on forest area prior to this approval.

7. Approval from environmental and forestry angles for any other irrigation, power or development projects in the Narmada basin should be obtained separately.”

266. Even in 1987, when the environmental clearance to the project was given, it had been found necessary by the Union of India to rigorously assess the environmental impact of river valley projects. This was to determine whether the uniqueness of the natural resources, like wildlife, flora and the genetic pool in the region, demanded its exclusive earmarking for that purpose, in which event the river valley project would not be accorded clearance. Even otherwise, it was imperative to consider the project's environmental aspects, such as its effect on health, plant genetic resources, aquatic resources, waterlogging and salinity of irrigated soils, deforestation and soil conservation. Its short- and long-term impact on population, on flora and fauna, on wildlife, on national parks and sanctuaries, on historical,

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- cultural and religious monuments, on forests, agriculture, fisheries and recreation and tourism had to be taken into account. Field surveys were
- a necessary for generating the requisite data for the impact assessment. The cost of the proposed remedial and mitigated measures had to be included in the project cost. The necessary data that was required to be collected for the purposes of the assessment of a project's environmental impact was set out in the Guidelines for the purpose issued by the Ministry of Environment and Forests of the Union Government (which have been referred to above).
- b **267.** The contemporaneous notes prepared by the Ministry of Water Resources and the Ministry of Environment and Forests, also referred to above, leave no manner of doubt that the requisite data for assessment of the environmental impact of the project was not available when the environmental clearance thereof was granted. In the words of one of the notes:
- c “While some plans have been made, studies undertaken and action initiated, it will be clear from the preceding paragraphs that much still remains to be done. Indeed it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much and that many matters are yet in the early and preliminary stages.”
- d The notes make clear that the studies, censuses, mapping of areas and field surveys for the collection of data for assessment of the environmental impact of the project were likely to take a further 2 to 3 years. An environmental clearance based on next to no data in regard to the environmental impact of the project was contrary to the terms of the then policy of the Union of India in regard to environmental clearances and, therefore, no clearance at all.
- e **268.** The environmental clearance of 24-6-1987 stated that details had been sought from the project authorities in respect of the rehabilitation master plan, phased catchment area treatment scheme, compensatory afforestation plan, command area development, survey of flora and fauna, carrying capacity of surrounding area, seismicity and health aspects; field surveys had yet to be completed and complete details had been assured by
- f 1989. Clearly, therefore, the necessary particulars in regard to the environmental impact of the project, as required by the Guidelines, were not available when the environmental clearance was given, and it, therefore, could not have been given.
- 269.** The conditions upon which the environmental clearance was given were that detailed surveys and studies would be carried out and the Narmada
- g Control Authority, whose terms of reference had been amplified, would ensure that “environmental safeguard measures” were planned and implemented *pari passu* with the progress of work on the project. No further assessment of the environmental impact of the project was contemplated by the environmental clearance, nor, indeed, was it ever carried out.
- h **270.** What environmental safeguard measures the Narmada Control Authority was to ensure were, and what their cost would be, was not known when the environmental clearance was given. There was, therefore, no way

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in which this cost could be included in the cost of the project, which was a requirement of the Guidelines.

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

272. Learned counsel for the Union of India submitted that most of the necessary surveys and studies had been carried out in regard to the environmental impact of the project before the environmental clearance was given, and he invited our attention to what had been done. The short answer to the submission on behalf of the Union of India is that the two Ministries of the Union of India concerned thought otherwise at the relevant time. To quote the note of one Ministry again:

“While some plans have been made, studies undertaken and action initiated, it would be clear from the preceding paragraph that much still remains to be done. Indeed it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much and that many matters are yet in the early and preliminary stages.”

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

274. An adverse impact on the environment can have disastrous consequences for this generation and generations to come. This Court has in its judgments on Article 21 of the Constitution recognised this. This Court cannot place its seal of approval on so vast an undertaking as the project

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- without first ensuring that those best fitted to do so have had the opportunity of gathering all necessary data on the environmental impact of the project and of assessing it. They must then decide if environmental clearance to the project can be given, and, if it can, what environmental safeguard measures have to be adopted, and their cost. While surveys and studies on the environmental aspects of the project have been carried out subsequent to the environmental clearance, they are not, due to what are euphemistically called “slippages”, complete. Those who now examine whether environmental clearance to the project should be given must be free to commission or carry out such surveys and studies and the like as they deem necessary. They must also, of course, consider such surveys and studies as have already been carried out. Given that the construction of the dam and other work on the project has already commenced, this factor must play a part in their deciding whether or not environmental clearance should be accorded. Until environmental clearance to the project is accorded by them, further construction work on the dam shall cease.

- 275.** The Union of India has issued a notification on 27-1-1994 called the “Environmental Impact Assessment Notification, 1994” (and amended it on 4-5-1994). Its terms are not applicable to the present proceedings, but its provisions are helpful insofar as they prescribe who is to assess the environmental impact assessment reports and environment management plans that are submitted by applicants for new projects, including hydroelectric projects. The Notification says:

- “The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a Committee of Experts, having a composition as specified in Schedule III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by IAA or such other body under the Central Government authorised by IAA in this regard.”

Schedule III of the Notification reads thus:

- “COMPOSITION OF THE EXPERT COMMITTEES FOR ENVIRONMENTAL IMPACT ASSESSMENT
1. The Committees will consist of experts in the following disciplines—
- (i) Ecosystem management
 - (ii) Air/water pollution control
 - (iii) Water resource management
 - (iv) Flora/fauna conservation and management
 - (v) Land-use planning
 - (vi) Social sciences/rehabilitation
 - (vii) Project appraisal
 - (viii) Ecology

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- (ix) Environmental health
- (x) Subject area specialists
- (xi) Representatives of NGOs/persons concerned with environmental issues. a

2. The Chairman will be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant development sector.

3. The representative of IAA will act as a Member-Secretary. b

4. Chairman and members will serve in their individual capacities except those specifically nominated as representatives.

5. The membership of a Committee shall not exceed 15."

The Environmental Impact Agency of the Union Ministry of Environment and Forests shall now appoint a Committee of Experts composed of experts in the fields mentioned in Schedule III of the Notification and that Committee of Experts shall assess the environmental impact of the project as stated above. c

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

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

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

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

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

281. When the writ petition was filed the process of relief and
c rehabilitation, such as it was, was going on. The writ petitioners were not guilty of any laches in that regard. In the writ petition they raised other issues, one among them being related to the environmental clearance of the project. Given what has been held in respect of the environmental clearance,
d when the public interest is so demonstrably involved, it would be against public interest to decline relief only on the ground that the Court was approached belatedly.

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

283. In the premises,
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(1) The Environmental Impact Agency of the Ministry of Environment and Forests of the Union of India shall forthwith appoint a Committee of Experts in the fields mentioned in Schedule III of the Notification dated 27-1-1994, called the Environmental Impact Assessment Notification, 1994.

(2) The Committee of Experts shall gather all necessary data on the
f environmental impact of the project. They shall be free to commission or carry out such surveys and studies and the like as they deem necessary. They shall also consider such surveys and studies as have already been carried out.

(3) Upon such data, the Committee of Experts shall assess the
g environmental impact of the project and decide if the environmental clearance to the project can be given and, if it can, what environmental safeguard measures must be adopted, and their cost.

(4) In so doing, the Committee of Experts shall take into
h consideration the fact that the construction of the dam and other work on the project has already commenced.

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(5) Until environmental clearance to the project is accorded by the Committee of Experts as aforesaid, further construction work on the dam shall cease.

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(6) The Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra shall ensure that those ousted by reason of the project are given relief and rehabilitation in due measure.

(7) When the project obtains environmental clearance, assuming that it does, each of the Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra shall, after inspection, certify, before work on the further construction of the dam can begin, that all those ousted by reason of the increase in the height of the dam by 5 metres from its present level have already been satisfactorily rehabilitated and also that suitable vacant land for rehabilitating all those who will be ousted by the increase in the height of the dam by another 5 metres is already in the possession of the respective States.

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(8) This process shall be repeated for every successive proposed 5-metre increase in the dam height.

(9) If for any reason the work on the project, now or at any time in the future, cannot proceed and the project is not completed, all oustees who have been rehabilitated shall have the option to continue to reside where they have been rehabilitated or to return to where they were ousted from, provided such place remains habitable, and they shall not be made at all liable in monetary or other terms on this account.

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

285. No order as to costs.

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[CITED ORDER]

(BEFORE DR A.S. ANAND, C.J. AND S.P. BHARUCHA AND
B.N. KIRPAL, JJ.)

NARMADA BACHAO ANDOLAN

.. Petitioner;

Versus

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UNION OF INDIA AND OTHERS

.. Respondents.

Writ Petitions (C) No. 319 of 1994 with Nos. 345 of 1994, SLP (C) No. 3608 of 1985, CA No. 6014 of 1994, WP (C) No. 104 of 1997 and TC (C) No. 35 of 1995, decided on May 9, 2000

ORDER

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1. We have heard arguments of learned counsel for the parties. Orders reserved.

2. During the course of hearing, Mr C.S. Vaidyanathan and Mr T.R. Andhyarujina, learned Senior Counsel appearing for the States of Madhya Pradesh and Maharashtra filed affidavits of competent officers of their respective States indicating identification of resettlement and rehabilitation

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