

**HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**W.P. No.14765/2007 (PIL)**

Narmada Bachao Andolan

- V/s -

State of M.P. & Ors.

**Present :**           **Hon'ble Shri Justice Rajendra Menon.**  
                                 **Hon'ble Shri Justice S. K. Palo.**

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Ms. Medha Patkar, representative of the petitioner's organisation.  
Shri R. N. Singh, learned Sr. Counsel with Shri Arpan J. pawar, learned  
counsel for the respondent/State.  
Shri Syed Naqvi, Advocate with Shri Dharmendra Sharma, learned  
counsel for respondent no.3.  
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**ORDER**  
**16/02/2016**

**I.A. No.948/2016** is an application filed on behalf respondent nos. 1  
& 2 for issuing an appropriate direction to send a copy of the final report of  
the commission received by this Court for being laid before the State  
legislature as per the requirement of Section 3(4) of the Commission of  
Inquiries Act, 1952.

2. Before advertng to consider the application i.e. I.A. No.948/2016 it  
would be appropriate to take note of certain factual aspects of the matter.  
Petitioners herein is an organisation of Farmers, Adivasies, Labourers, Fish  
Workers and other persons who claim to be the affected persons, in view  
of their displacement from the Narmada Valley Area on account of  
construction of the Sardar Sarovar Project on the Narmada River in the  
State of Madhya Pradesh.

3. This petition, pro bono publico was filed by the organisation alleging that various irregularities and corruptions have been committed in the matter of implementing the measures to be undertaken for Rehabilitation and Resettlement of Project Affected Persons (PAP) and the Project Affected Families (PAF) while implementing the Sardar Sarovar Project in the State of M.P.

4. The prayer in the writ petition is that into the allegations made, an enquiry by an independent agency like the Central Bureau of Investigation (C.B.I.) be ordered.

5. The Sardar Sarovar Project is an inter-state project involving the States of Madhya Pradesh, Gujrat & Rajasthan and various disputes have arisen in the implementation of the project which are not relevant for the present. However, as far as the present writ petition is concerned, it may be suffice to take note of the fact that in the matter of taking measures under the Rehabilitation and Resettlement Scheme (RRS) formulated by the State Government, the benefits to be extended to the Project Affected Families (PAF) and persons (PAP) various measures were required to be taken which *inter alia* contemplate amongst others the following :-

(i) every Project Affected Family (PAF) whose 25% or more land was submerged by the Project would be offered a minimum of two hectares of cultivable land;

(ii) every house of PAP likely to be affected by submergence will be acquired under the Land Acquisition Act, 1894 and compensation will be awarded to the concerned PAPs;

(iii) every PAP of the age of 18 years on the date of notification under Section 4 of the Land Acquisition Act,

1894 will be eligible to receive the benefit as contemplated under the resettlement and rehabilitation benefit;

(iv) The government shall establish rehabilitation villages for the Project Affected Families and persons with civic amenities including roads, drainage, Panchayat Bhawan, Schools, Dispensaries etc., besides the land for cultivation by the affected persons. The Narmada Control Authority (for short 'the NCA') was constituted as the implementation agency to monitor and ensure grant of benefit under the Schemes. It was indicated that more than 40,000 families residing in 193 villages in the State of M.P., were affected and they were to be granted the benefit as per the Narmada Award passed by the Narmada Water Disputes Tribunal and the Rehabilitation Scheme formulated in the matter.

6. The case of the petitioners in this writ petition was that in the matter of implementation of the award and while conferring benefits to the Project Affected Persons and Families, various irregularities and corruptions as detailed in the writ petition have occurred which included fake registration of sale deeds, corruption in payment of compensation for houses which are deemed to have been acquired under the Land Acquisition Act, corruption in declaring as to who is a Project Affected Person (PAP), corruption in location and allotment of Rehabilitation and Resettlement Sights and various other aspects of the matter including impersonation in the matter of taking benefit.

7. Making a complaint with regard to all these allegations, it was prayed that a detailed investigation and inquiry should be conducted and for the said purpose the Court may consider appointing the Central Bureau of Investigation (C.B.I.) as the Investigating Agency.

8. Accordingly, in the original writ petition the following prayer was made:-

The criminal proceedings be initiated against those officials and middlemen found guilty on the basis of the CBI Investigation and recovery of illegally appropriated money.

The CAG be requested to examine all financial records of all office of the NVDA concerned and R&R project and pass any other order as deemed fit in the facts and circumstances of the case.

9. Thereafter the prayer clause was amended and certain other reliefs added. On notice being issued, the State Government and the respondents filed a common return and gave various justification for their action, highlighted the steps taken in furtherance to the Rehabilitation Policy, creation of the Grievance Redressal Authority for the purpose of looking into the complaints and grievances. Orders were passed by the High Courts and the Supreme Court at various levels for ventilating the grievance of the Project Affected Families and Persons. However, the State Government filed an additional return *inter-alia* contending that considering the large number of complaints which were received including 686 complaints of fake registration, the State Government has issued a notification on 18.07.2008 exercising its powers under Section 3 of Commission of Inquiries Act, 1952 and has appointed Shri N.C. Nagraj, a retired District and Session Judge as a Single Man Commission of Inquiry to cause an inquiry into the allegations of corruptions, fake registrations etc., it was said that now in view of this development no further action is required to be taken in the matter.

10. When the matter came up for hearing on 22.07.2008, on behalf of the petitioners it was pointed out that in Writ Petition (C) No.328/2002 pending before the Hon'ble Supreme Court, the question of fake registration of sale deed, corruption in payment of compensation for houses acquired under the Land Acquisition Act, corruption in the matter of declaration of Project Affected Persons and corruption in selection of Rehabilitation and Resettlement Sight have been raised and orders passed by the Hon'ble Supreme Court were brought to the notice to say that the fundamental rights of the Project Affected Persons under Article 21 of the Constitution of India is being adversely affected. It was further submitted that the commission appointed, consisting of a retired District and Session Judge is not sufficient enough and a prayer was made that this Court should either direct for a CBI Investigation or this Court should direct appointment of a Multi-Member Judicial Commission under the Chairmanship of a retired judge of the Hon'ble Supreme Court or the High Court to conduct an investigation and submit a report to this Court.

11. Even though the State Government and the Union of India resisted the aforesaid contentions finally after hearing all concerned on 21.08.2008 a Co-ordinate Bench of this Court constituted a one man commission to inquire into various aspects of the matter and appointed, Hon'ble Shri Justice S.S. Jha, a retired judge of this Court to inquire into the matter and submit a report on the matters as were stipulated in the order passed on 21.08.2008, the order reads as under :-

***“We, therefore, appoint Shri Justice S.S. Jha, a retired Judge of this Court, as a Commission to inquire into and submit a report on the following matters.***

***(i) Whether there have been fake registration of sale-deeds under the SRP for rehabilitation and resettlement of***

***PAFs/PAPs of the Sardar Sarovar Project in the districts of Badwani, Dhar, Jhabua, Khargone and Dewas and, if so, the details of such fake registrations of sale-deeds and the persons responsible for such fake registrations of sale deeds?***

***(ii) Whether the civic amenities in the R&R sites such as road, drainage, panchayat bhawan, schools, dispensaries, seeds stores, etc., are of substandard quality as compared to the expenditure incurred by the State Government or the NVDA and, if so, the persons responsible for such constructions of substandard quality.”***

**12.** Thereafter, in Paragraph – 23 it was directed that since Justice Shri S.S. Jha has been appointed as a commission to inquire into the matter, the State Government may, if it is of the opinion that the one man commission of Shri N.C. Nagraj constituted by the State Government is not unnecessary, issue a notification under Section 7(1) of the Commission of Inquiry Act notifying that the one man inquiry commission of Shri N.C. Nagraj ceases to exist.

**13.** Accordingly, records indicate that on 8<sup>th</sup> of October, 2008 not only in pursuance to the order passed on 21.08.2008 by this Court in this writ petition but also exercising its independent power under Section 3 of the Commission of Inquiry Act, the State Government appointed Justice S.S. Jha to inquire into the matter as recorded herein above in Paragraph – 19 of the order passed on 21.08.2008 and also issued a notification immediately thereafter declaring that Shri N.C. Nagraj commission ceases to exist. In Paragraph – 3 of the notification issued on 8<sup>th</sup> of October, 2008 it was directed that the Commission of Inquiry headed by Justice Shri S.S. Jha shall complete the inquiry and submit its report within six months to the High Court of Madhya Pradesh, Jabalpur and the State Government. Thereafter, certain interlocutory applications were filed and on 12.11.2009 by another detailed order passed, the scope of inquiry of the Justice Shri

S.S. Jha commission was enhanced by this Court and the State Government was directed to make available suitable infrastructure, funds and various other facilities to the Jha Commission including the remuneration to be paid to the commission and its staff, other benefit like traveling allowance etc., as is evident from the order passed in this regard on 12.11.2009, thereafter from time to time the term of the commission was extended. The parties came out with interlocutory applications from time to time and thereafter directions were issued not only to the Commission but also to the State Government and the Narmada Valley Development Authority in the matter of extending assistance and with regard to various aspects pertaining to functioning of the Jha Commission, be it as it may be, now after a period of about 8 years the Jha Commission has submitted its report with regard to the reference. Accordingly, inviting our attention to the provisions of Sub-Section (4) of Section 3 of the Commission of Inquiries Act, 1952 which reads as under :-

***“The appropriate government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a Memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.”***

The prayer made is that the report of the Commission received by this Court be placed before the State Legislature as required under law and, therefore, the application in question filed by the respondents i.e. I.A. No.948/2016.

**14.** Shri R. N. Singh, learned Sr. Counsel took us through the provisions of Section 3 of the Commission of Inquires Act, the law laid down by the

Supreme Court in the case of **Sudesh Dogra Vs. Union of India & Ors. - (2014) 6 SCC 486, Guruvayoor Devaswom Managing Committee and Another Vs. C.K. Rajan and Others – (2003) 7 SCC 546, T.T. Antony Vs. State of Kerala and others – (2001) 6 SCC 181**, and made a submission that in accordance to the law, once the Inquiry Commission appointed under the Commission of Inquiries Act, 1952 had submitted its report the report of the Commission should be placed before the State Legislature and its only the State Legislature which is now required to act on the report of the Commission.

**15.** Shri R. N. Singh, learned Sr. Counsel took us through the order passed on 21.08.2008 by this Court modified and clarified on 12.11.2009 and tried to indicate by referring to the material available on record, including the notification issued in the matter of appointment of the Commission to say that as the Commission has been appointed under Section 3 of the Commission of Inquiries Act, now the only course upon to this Court is to place the report before the State Legislature for further action in the matter. He emphasize that in the judgments relied upon by him as referred to herein, the law laid down is about placing of the matter before the State Legislature.

**16.** Ms. Medha Patkar appearing for the petitioner refuted the aforesaid submissions took us through the order passed on 21.08.2008, particularly, the intention which weighed with the Court while appointing the Commission and by referring to Paragraphs – 12, 13, 15, 16, 17, 18 & 19 of the order submitted that this Court had constituted the one man commission of inquiry for the purpose of collecting facts and figures about the allegations made in the writ petition and it was the intention of the Court



based on the report of the Inquiry Commission to exercise its jurisdiction under Article 226 of the Constitution of India, see if the fundamental rights of the Project Affected Families or Persons were vitiated or adversely dealt with, and accordingly to pass such suitable orders or directions in the form of writ as may be necessary to ensure that the constitutional rights of the affected persons are protected. It was submitted by her that it was never the intention of this Court at any point of time while constituting the Commission on 21.08.2008, or while notifying its schedule or passing various orders and while monitoring various aspects of the matter with regard to working of the commission to call for a report from the Commission and then leave it to the State Government to take action. She emphasized that this Court after taking note of the law laid down by the Supreme Court in the case of **Bandhua Mukti Morcha Vs. Union of India and others – 1984 (3) SCC 161**, was, in fact, acting in exercise of its powers under Article 226 of the Constitution of India for appointing the Commission, calling for its report and thereafter had intended to exercise its power under Article 226 of the Constitution for enforcement of the fundamental rights of the affected families and persons, it found to be violated, it is said that if that was the purpose for appointing of the Commission by this Court, this would be frustrated, if now it is left to the State Government to proceed in the matter after receipt of report as canvassed in this interlocutory application. By filing a detailed submission and refuting the contentions advanced by Shri R. N. Singh, learned Sr. counsel for the petitioner, she invites our attention to the judgment of the Supreme Court in the case of **P. Sambamurthy Vs. State of A.P., - 1987 (1) SCC 362** to point out that rule of law would cease to have any meaning,

if it is left to the State Government to act in the manner as done and defy the law and resultantly the fundamental rights available to the citizens. She also places reliance on the judgment rendered in the case of **Ram Krishna Dalmia Vs. Shri Justice SR Tendolkar – AIR 1958 SC 538** and in the case **PV Jagannath Rao & Ors. Vs. State of Orissa – AIR 1969 SC 215**, and another judgment of the Supreme Court in the case of **V. Narayana Rao & Another Vs. State of A. P. & Another – AIR 1987 AP 53** to say that the contentions and the prayer made in the interlocutory application cannot be allowed.

17. Ms. Medha Patkar argues that all the judgments cited by Shri R.N. Singh, learned Sr. Counsel pertains to inquiries conducted at the instance of the State Government under the Commission of Inquiries Act, report submitted by the Commission to the State Government and the consequential action to be taken on such reports and the law with regard to action to be taken in those cases, she submitted that in none of the cases relied upon by Shri R.N. Singh, learned Sr. Counsel the Inquiry or Commission was appointed by the High Courts or the Supreme Court exercising their powers under Article 226 or 32 of the Constitution and thereafter the judgments or principles laid down. She argues that all those judgments are factual, different and will not apply in the facts and circumstances of the present case.

18. By submitting various arguments in rebuttal, Shri R. N. Singh, learned Sr. Counsel, tried to emphasize that once the Commission of Inquiry is ordered under Section 3 of the Commission of Inquiries Act then the statutory procedure contemplated under the Commission of Inquires

Act, 1952 should be permitted to be taken recourse to and, therefore, the application should be allowed.

**19.** We have heard learned counsel for the parties at length and we have considered the rival contentions advanced. As already indicated herein above this writ petition has been filed in public interest by the petitioners' organisation and they are ventilating the grievances of the Project Affected Persons and the Families and it is their contention that in the matter of granting the benefit of Rehabilitation and Resettlement Schemes, award of compensation and various other aspects of the matter, rampant corruption, illegality and irregularities have been committed for which they seek conduct of an inquiry and consequential registration of criminal case against the persons who are responsible for the acts of commission and omission.

**20.** When the matter was taken up in the preliminary stages and when returns and additional returns were filed, the State Government came out with a case that they have already appointed a one member Inquiry Commission headed by a retired District and Session Judge under the Commission of Inquiries Act and, therefore, now no further Inquiry into the matter is called for. While dealing with all these aspects of the matter on 21.08.2008, a Bench of this Court went into various allegations and counter allegations made, the prayer for a CBI investigation or constitution of Multi-Level Inquiry, objections raised that a Commission of Inquiry has been constituted and that the Grievance Redressal Authority under the Chairmanship of a retired High Court Judge is also functioning, this Court went into all these aspects of the matter and in Paragraph – 13 of its order passed on 21.08.2008 came to the conclusion that unless on the basis of

information received or otherwise commission of an offence is not made out, the CBI should not be directed to make any investigation into the matter. It was found by this Court that there are references to large number of complaints of fake registration, statistics has been filed with regard to irregularities, corruption etc. However, the Court found that on the basis of the information furnished in the writ petition replies and rejoinder alongwith the annexures and documents filed thereto it is difficult for this Court to hold that there is reason to suspect the commission of an offence under the Indian Penal Code or any other law and thereafter, in Paragraph – 13 this Court held as under:-

***“It is only when more facts and more materials come to light through a fact finding inquiry that the Court can take a view whether there is reason to suspect the commission of offences under the Indian Penal Code or any other law. At this stage, therefore, we cannot direct investigation by the CBI as prayed for in this writ petition.”***

**(Emphasis Supplied)**

21. Thereafter, this Court in para 14 referred to a judgment of the Supreme Court in the case of **State of Karnataka VS. Arun Kumar Agarwal and others – AIR 2000 SC 411** and take note of the concept of law governing conduct of enquiry by the Central Bureau of Investigation, the fact about appointment of Shri N. C. Nagraj as a one man Enquiry Commission, an objection of Ms. Medha Patkar to the effect that this Enquiry Commission is not in accordance to the requirement of Commission of the Enquiry's Act, 1952 etc, and in para 16 observed that if an enquiry is conducted as ordered by the State Government by Shri N. C. Nagraj and if its report is required to be placed before the Legislature of the State along with memorandum of action taken on the report, the facts found by the

Commission would be for information and action by the State Government and for information of the house of the State Legislature. This Court observed that if that is the position of the enquiry conducted under the Commission of Enquiry's Act, the High Court will have virtually no role to play on the report of the one man commission appointed by the State Government as and when the report is submitted. It is therefore, clear that this Court was conscious of the fact that if Shri N. C. Nagraj Commission of Enquiry was permitted to conduct an enquiry and submit a report, the report would be used for taking action and information by the State Government and the State Legislature and High Court will virtually have no role in the matter. After so observing reference has been made to earlier judgments of the Supreme Court pertaining to the same project, violation of Fundamental Rights of the project effected persons, measures to be taken under the Rehabilitation and Resettlement Act, the allegation of corruption etc., and it is held that it is the duty of the High Court to ensure enforcing of the Fundamental Rights and exercise of the powers under Article 226 of the Constitution and the High Court cannot remain indifferent. It was observed that the High Court will have to find out through a Commission on which it has confidence and trust that the oustees have not been duped by fake registration of sale deeds for the purpose of land and cultivation and public money spent for construction and the rehabilitation, resettlement etc., has not been misused for extraneous purpose. If the observation made by this Court in para 17 is taken note of, it would be very clear that this

Court wanted to find out through the Commission as to whether there has been any act of corruption or misuse of the funds for extraneous purpose. After so observing in para 18 the judgment of the Hon'ble Supreme Court in the case of **Bandhua Mukti Morcha Vs. Union of India and others – 1984(3) SCC 161** is considered and reproduced and after taking note of the manner in which Hon'ble Justice P. N. Bhagwati, J. as he then was, dealt with the issue in exercise of the powers available to the Supreme Court under Article 32 of the Constitution, held that the observations of Justice Bhagwati equally apply to exercise of jurisdiction of the High Court under Article 226 of the Constitution for enforcement of the Fundamental Rights and thereafter the Jha Commission of Enquiry was appointed.

22. It is clearly held in the order passed on 21.08.2008, that this Court is required to see, based on the report of the Enquiry Commission as to whether there is violation of Fundamental Rights of the persons as such which need to be enforced by the High Court. If we go through the detailed observations made and the directions issued in the order passed by this Court on 21.8.2008, we have no iota of doubt that the one man Enquiry Commission headed by Justice S. S. Jha, a retired Judge of this Court was ordered by this Court only for the purpose of getting a report from the Commission with regard to the allegations made in the writ petition, the replies, rejoinders and the documents filed, to examine them and to find out if the Fundamental Rights of the affected persons are violated and if so, consequential action to be taken to enforce the Fundamental

Rights of the Constitution. As already noted herein above, while discarding the appointment of Shri N. C. Nagraj as a one man Enquiry Commission in para 16, it is clearly observed that the High Court will have no role to play with regard to this enquiry. If a report is submitted by this Commission, that report would go to the State Government and the State Legislature and the High Court would be left with no role to play. It is after being conscious of all these aspects of the matter that the Enquiry Commission was appointed and if we go through the order in detail, we are very sure in our mind that the Commission was appointed for the purpose of calling for a report its evaluation by this Court and, thereafter if required to see as to whether there is any irregularity, illegality, corruption or misuse of public fund as alleged and if it is found to be correct steps to be taken particularly for the purpose of enforcing the Fundamental Right of the affected persons. If that was the purpose for which Enquiry Commission was appointed, we are of the considered view that contentions now put forth by the respondents for sending the report to the State Legislature and permit them to proceed in the matter would be nothing but frustrating the very purpose and spirit for which the Commission was appointed. The various aspects of the matter which we have discussed herein above, which we find from the order passed on 21.08.2008 clearly indicates that this Court had appointed the Commission to call for a report, go through the report and thereafter issue appropriate directions in the matter of protecting the fundamental rights of the adversely affected persons and not for the

purpose simply permitting the State Government to take action on the basis of the report.

23. Even though Shri R. N. Singh, learned Senior Counsel submitted that the State Government had issued notification for appointment of Commission in exercise of its power under Section 3 and therefore, procedure contemplated under the Commission of Enquiry's Act, 1952, as laid down in the case of **Ram Krishna Dalmia** etc. should be permitted to be followed, we are of the considered view that we cannot subscribe to or accept the aforesaid contention of Shri R. N. Singh, learned Senior Counsel. The cases cited before us are entirely different. They are the cases where no Commission was appointed by any Court exercising jurisdiction under Article 32 or 226 of the Constitution. Those were the cases where the Courts were considering the reports submitted by certain Enquiry Commission which were appointed without intervention of the Court and direction to be issued with regard to action on the reports submitted by these Commissions. In the present case, the entire enquiry in question was conducted by Hon'ble Justice S. S. Jha after it was constituted by this Court, the enquiry is conducted as per directions and guidelines issued by this Court and once the purpose of appointing such commission was to bring facts on record to enable this Court to exercise jurisdiction under Article 226 of the Constitution with regard to grievance of the petitioner, the prayer made in **I.A. No.984/2016** cannot be accepted.

24. Accordingly, we see no reason to entertain the application **I.A. No.984/2016** and the same is dismissed. We direct that the



enquiry report submitted by Justice S. S. Jha be supplied to all the parties concerned and they may give their say on the report and thereafter this Court shall consider the report and thereafter pass appropriate orders in the matter. It may also be taken note of that while constituting the Justice Jha Commission and while issuing notification dated 08.07.2008, the State Government in para 3 thereof stipulates that the Commission shall conduct its enquiry and submit its report within six months, not only to High Court of M.P. but also to the State Government. That being so, it is clear that even the State Government was conscious of the fact that the commission is to submit the report to High Court and it may be for the High Court to proceed in the matter. That apart, the State Government on its own is also free to proceed to take action on the report but the action if any taken by the State Government shall also be subject to judicial scrutiny or review by this Court if required.

**25.** During the course of hearing Ms. Medha Patkar also invited our attention to certain interim orders passed in the year 2009 in the matter of disbursement of compensation by way of cheque and it was pointed out that disbursement of compensation was subject to scrutiny of Jha Commission. It is said that the Justice Jha vide various communications made to this Court has indicated that in the matter of conducting enquiry and scrutiny about disbursement of cheque certain applications and complaints about 110 in number are still to be scrutinized and time was sought for extension beyond 31<sup>st</sup> December 2015 for conducting scrutiny of these complaints and submit report. Ms. Medha Patkar wanted this Court to issue

direction extending time limit to Jha Commission for conducting scrutiny of these complaints and submit a report. We are informed that Jha Commission has been wound up and it is not functioning from 31.12.2015. Entire staff have also been sent back to their respective parent department. That being so, for the present, we are not inclined to pass any order extending the functioning of Jha Commission for the purpose of scrutiny of these 110 complaints. This question shall be considered at the time of consideration of report and appropriate orders would be passed in the matter of 110 complaints which are referred to in Communication filed as Annexure 1 filed by Ms. Medha Patkar with her reply.

**26. List the matter for further order on 30.03.2016.**

**(Rajendra Menon)**  
**Judge**

**(S.K. Palo)**  
**Judge**

Mrs. Mishra

N.Mohan/-