

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

PRESENT: **Hon'ble Shri Justice A.M. Khanwilkar, C.J.**  
**Hon'ble Shri Justice Sanjay Yadav**

**Writ Petition No.14765/2007**

Narmada Bachao Andolan **...Petitioner**

**Versus**

State of M.P. and others **...Respondents**

Petitioner - Ms. Medha Patkar in person.

Shri R.N. Singh, learned Senior Counsel with Shri Arpan J. Pawar, learned counsel for the respondent No.2.

Shri Dharmendra Sharma, learned counsel for the respondent No.3.

Date of Hearing : **18.12.2014**

Date of Order : **06.01.2015**

**O R D E R**

**Per Sanjay Yadav, J.**

I.A. No.9062/2014 and I.A. No.10264/2014 are taken up for consideration.

2. So far as Interlocutory Application No.9062/2014 is concerned, it is borne out from the record that the same was subject matter of Transfer Petition(s)(Civil) No.978-979/2014 before the Supreme Court, wherein following order came to be passed on 4.8.2014 –

"Mr. Mukul Rohtagi, learned Attorney General for India appearing for Narmada Control Authority submits that the High Court has restored W.P.(C) No.14765 of 2007 for hearing the matter on merits in which the

respondent-Narmada Bachao Andolan has filed I.A. No.9062 of 2013 to question the proposed increase in the height of the dam. He submits that the said issue is currently pending in this Court in I.A. No.18-22 of 2006 in W.P.(C) No.328 of 2002. He submits that since this Court is already seized of the matter relating to the proposed increase in the height of the dam, it is unnecessary for the High Court to undertake any exercise in relation thereto. He submits that either the High Court could be asked to forbear from examining that issue or I.A. 9062 of 2014 could be transferred to this Court to be heard along with pending matters.

Ms. Medha Patkar and Mr. Sanjay Parikh appearing for R-1 submit that instead of transferring I.A. No.9062 of 2014 to this Court as prayed for in the transfer petition, this Court could make it clear that since the issue relating to the proposed increase in the height of the dam is pending consideration before this Court, the said issue need not be examined by the High Court.

In the circumstances and keeping in view the submissions made at the Bar, we do not consider it necessary to direct transfer of I.A. No.9062 of 2014 filed in W.P.(C) No.14765 of 2014 to this Court. All that we need say is that the issue relating to increase in the height of the dam raised in the said application shall not be gone by the High Court but the parties shall be free to raise all issues touching the proposed increase in the height of the dam before this Court in the pending matters. We make it clear that proceedings in writ petition can continue in accordance with law before the High Court except to the extent indicated above. The transfer petition are disposed of with the above observations."

3. In view whereof, we are not called upon to examine the main relief which is being sought i.e. issue a *status quo* on the execution of decision dated 12.6.2014.

4. As regard to other directions sought vide said application i.e. to immediately provide for an Additional Member (Judicial or Administrative) along with other full time staff in consultation with the Commission to assist the process of inquiry and call for an interim report from Justice Jha Commission as well as direction to the State to provide for unhindered financial resources to enable the Commission to complete its inquiry on all other pending matters, are taken up for consideration along with I.A. No.10264/2014 wherein petitioner seeks direction to Government of Madhya Pradesh/NVDA and Justice Jha Commission to ensure full and faithful compliance of the order dated 11.5.2009 passed by the Supreme Court and order-dated 18.7.2013 passed in Writ Petition No.18623/2011 by this Court. Direction is also sought to Govt. of M.P./NVDA to return back all files pending for scrutiny to Hon'ble Justice Jha Commission and also comply with all directions of the Commission by providing all necessary assistance. Petitioner also seeks direction to the Commission to ensure that the oustees, especially and uninformed farmers, dalits and adivasis, landless poor are not duped by the nexus of middlemen and officials. Direction is also sought to Govt. of M.P./NVDA to provide two copies of all the files pertaining to scrutiny to the Commission.

5. Background facts are that the Commission referred to is Shri Justice S.S. Jha, a retired Judge of this High Court appointed vide order-dated 21.8.2008 to enquire into and submit a report regarding -

(i) Whether there have been fake registrations of sale-deeds under the SRP for rehabilitation and resettlement of PAFs/PAPs of 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, seed, stores etc. are of sub-standard quality as compared to the expenditure incurred by the State Government or the NVDA and if so, the persons responsible for such constructions of sub-standard quality ?

6. That, by order dated 12.11.2009, the scope of reference to Justice S.S. Jha Commission was enlarged to -

“enquire into the alleged corruption/irregularities as to livelihood grants and alternative livelihood, house, plot allotment and re-allotment at the R&R sites; payment of compensation and grants to the ineligible persons mentioned in the I.As referred to in the first paragraph of this order and submit a report whether there is *prima facie* material to show that any offence is committed by the officials of the NVDA and Revenue Department engaged in the re-settlement and rehabilitation and disbursement of money to the oustees, eligible or ineligible.”

7. These two orders i.e. order-dated 21.08.2008 and 19.2.2009 is being questioned before the Supreme Court vide Special Leave to Appeal (Civil) CC No.5720/2009; wherein on 11.05.2009, following order came to be passed :-

“Delay condoned. Issue notice.

There shall be interim stay of order dated 24.4.2009.

Disbursement of compensation given by way of cheques or cash after 4.4.2009 will be subject to the scrutiny by Justice Jha Commission.”

8. Pertinently, by order-dated 24.4.2009, the direction was “that by special financial assistance to the oustees, there will be no distribution of compensation in the form of cheque or cash towards various grants as it is alleged in the petition that lot of irregularities and corruption is taken place at the time of distribution of such compensation by cheque or cash. We further direct that the respondent No.5 will immediately register the FIRs and investigate the complaint (Annexure A/2) filed by the PAFs.”

9. That, Justice Jha Commission in furtherance to the order-dated 11.5.2009, passed the following order on 4.4.2012 that : -

“(a) Order be issued to the concerned banks to stop all payments made to the oustees as per the Special Grant. This amount shall be kept as fixed deposit in the Bank until the payment is scrutinized by the Commission and the amount can be available to the oustees, along with interest only after scrutiny by the Commission.

(b) If, the amount paid has been withdrawn from the Bank, then, on scrutiny by the Commission regarding that payment, if it is found that the person who has received that amount is not entitled for receiving the same, then, in this situation, the disbursing officer and the officer on whose order the payment has been made shall be personally responsible for returning the aforesaid amount and that amount can be recovered from them.”

(Emphasis supplied)

10. Consequent whereof, direction was issued by Secretary, Justice Jha Commission by memorandum No.205/SRP/2011-12, Indore, dated 16.04.2012.

11. The order-dated 4.4.2012 came to be challenged by the State of Madhya Pradesh and its functionaries vide Writ Petition No.10816/2012. That, without interfering with the order-dated 4.4.2012, the petition was disposed of on 18.07.2013 by taking into consideration the order dated 11.5.2009 passed by the Supreme Court in the following terms : -

“But from the perusal of order passed by the Apex Court, it is apparent that the Apex Court has specifically directed the Jha Commission to scrutinize all the payments and in that reference the Jha Commission has issued the aforesaid order, in which no fault is found. The Jha Commission is to scrutinize the payments. If after scrutiny it is found that the displaced persons are entitled for payment, then Jha Commission can direct petitioners to release the payments. If the respondent No.2 is aggrieved by the order of release of payment of the oustees in place of land, the respondent No.2 may agitate its grievance before the Apex Court in the pending S.L.P. the objection of respondent No.2 that in place of compensation the oustees be allotted land in lieu of land, is beyond the scope of this petition.”

12. At this juncture, it may be noted that the State Government vide order dated 6.9.2010 devised a new scheme with an object of completing R&R process of Sardar Sarovar Project as an offshoot of Special Rehabilitation Package. This order came to be questioned by the petitioner vide Writ Petition No.18623/2011 (PIL) seeking following reliefs -

(i) set aside order No.F-31-11/2010/Order/27-1 dated 6.9.2010 and repeal all notices issued under it by the GoMP/NVDA, since the same is in blatant violation of the Narmada Water Disputes Tribunal Award, Judgments of Hon'ble the Supreme Court, orders of this Hon'ble Court and also Article 14 and 21 of the Constitution.

(ii) Issue a public declaration that the aforementioned order-dated 6.9.2010 is withdrawn with immediate effect, giving it due publicity.

(iii) Inform every PAF who has received these notices through a written communication that the aforementioned order-dated 6.9.2010 and the notice/s issued thereunder have been withdrawn.

(iv) Give a written undertaking on affidavit to this Hon'ble Court that it shall, henceforth, not issue any such circular or initiate any action, which shall be in contempt of the directives of Hon'ble the Apex Court or this Hon'ble Court, especially all orders pertaining to the powers of Justice Jha Commission to scrutinize all cash and cheque disbursals of rehabilitation entitlements.

(v) Ensure that Justice Jha Commission scrupulously monitors the execution of the orders of this Hon'ble Court and Hon'ble the Supreme Court and does not permit any violation of law and policy through the aforementioned scheme dated 6.9.2010.

(vi) Direct the Narmada Control Authority to take appropriate decision and action to ensure that the GoMP/NVDA withdraws the aforementioned scheme/order dated 6.9.12010 and all related notices with immediate effect.

(vii) Direct suspension of the process that would lead to disbursement of cash grants in lieu of land or other entitlements till the inquiry by Justice Jha Commission of Inquiry is over and report submitted before this Hon'ble Court to direct future course of action in compliance with law and judgments.

13. The Writ Petition : W.P. No.18623/2011 (PIL) was disposed of on 18.7.2013 with the following directions :-

“(i) Any person, who is not inclined to accept the land as has been offered vide Annexure P-1 (a), he may move an application to the Jha Commission for the acceptance of the cash in lieu of the land.

(ii) In case, any such a prayer is made by any of the oustee, the Jha Commission shall examine the genuineness of the aforesaid application and after scrutiny/satisfaction, the Jha Commission will issue proper direction in this regard.

(iii) The petitioner may also raise its contentions before the Jha Commission that the amount so offered is not in accordance with the scheme or award of the Tribunal, which shall be considered by the Jha Commission.

(iv) Until and unless the order is passed by the Jha Commission specifically in respect of any of the oustee, the respondents shall not transfer or disburse the amount in the Bank account of such oustee, as has been provided in the paragraph 2(2) of the order Annexure P-1(a) and only after due verification/satisfaction by the Jha Commission, the said amount will be transferred or disbursed in the bank account of the oustee as per the direction of the Jha Commission.”

14. These two orders when carefully compared are in consonance with the order-dated 11.5.2009 passed by the Supreme Court in SLP(C) No.5720/2009.

15. The State of Madhya Pradesh while allowing the order dated 18.07.2013 passed in Writ Petition No.18623/2011 (PIL) to attain finality, challenged the order dated 18.07.2013 in Writ Petition No.10816/2012 before the Supreme Court vide SLP(C) No.34147/2013 wherein following order came to be passed on 29.11.2013 -

“Issue notice in SLP (C) No.34147/2013.

Mr. Sanjay Parikh, learned counsel accepts notice on behalf of Narmada Bachao Andolan (NBA). He may file counter affidavit within four weeks. Rejoinder affidavit may be filed within three weeks thereafter. In the meanwhile, there shall be stay of the operation of the impugned judgment as also stay of the direction contained in Memorandum No.205/SRP/ 2011-12 Indore dated 16.4.2012 issued by the Office of Commissioner for Enquiry of Sarover Project-Fake Sale Deeds and Irregularities at Rehabilitation sites, Indore. However, we make it clear that final decision in SLP (C) No.34147/2013 will be subject to the decision of main petition i.e. SLP (C) Nos.13213-13214/2009. List both the matters after eight weeks.”

(Emphasis supplied)

In this factual background, interlocutory applications are being considered.

16. I.A. No.10264/2014 was filed on 8.8.2014 whereon dwelling upon two aspects as to whether the Commission has been provided infrastructure as sanctioned and the direction to the Commission to submit interim report on the issue referred to the Commission in terms of order dated 21.8.2008, notice was issued to Secretary of the Commission to submit response. In the meantime, the State Government was also directed to take steps to fill in vacant post of Accountant within a period of one month and two posts of Lower Division Clerk and three posts of Peon within a period of two weeks. Somewhat similar orders came to be passed on 8.9.2014 when the co-ordinate Bench has expressed its concern at the non-cooperation by the State Government as to smooth functioning of Justice Jha Commission. Thereafter, on 13.10.2014 recording the submissions by learned counsel for the State, it was expected of the State to provide complete logistical assistance to the Commission for preparation of the report.

17. After hearing the parties, presently three aspects crop up for consideration; *firstly*, furnishing documents essential for ongoing inquiry by Justice Jha Commission in the context of order dated 21.8.2008 and 12.11.2009; *secondly*, providing infrastructure and logistical assistance including administrative setup as sanctioned by the State Government for smooth functioning of Justice Jha Commission and *thirdly*, implementation of order dated 11.5.2009 passed by the Supreme Court in SLP(C) CC No.5720/2009.

18. As regard to furnishing documents, petitioner has submitted list of documents needed for scrutiny by Justice Jha Commission. These documents are -

1. All the Rehabilitation Policies issued by the GoMP from time to time starting from 1987, 1989, 1991, 1992, 2003 and till date, incorporating the amendments made from time to time.
2. The circulars/Govt. Orders/Memoranda issued by the GoMP/NVDA with regard to various aspects of the resettlement and rehabilitation (R&R) of the families belonging to various categories affected by the Sardar Sarovar Project (including farmers losing more than 25% and less than 25% land; landless agricultural workers, fish workers and other oustees, adult sons and unmarried adult daughters, widow women, married land holder women, encroachers, tenants etc.)
3. Action Plans for the R&R of the Oustees including the Action Plan, 1993, NCA Action Plan, 1995, NCA Action Plan, 2000/2001 and all subsequent Action Plans issued for R&R of PAFs upto FRL and MWL.
4. Certified and up-to-date, complete Action Taken Reports (ATRs) of the R&R of all oustees in the 193 affected villages of M.P. - including those affected from 0 to 138.68 mts, all those affected by the Back Water Level (BWL) and the BWL of Maximum Water Level (MWL), as per the Narmada Water Disputes Tribunal Award, R&R Policies and Judgements of the Hon'ble Supreme Court, dated 18.10.2000 [2000 (10) SCC 64] and 15.03.2005.
5. All the documents submitted in W.P. No.14765/2007 by all parties since 2007.
6. All the files (complete-files) pending with the Department for payment of various rehabilitation

grants, which are to be placed before the Hon'ble Commission for scrutiny as per Order dated 11.05.2009 of the Hon'ble Supreme Court.

7. List of 4374 PAFs declared ineligible by the GoMP/NVDA, [Doc No.6477/2009 submitted to the Hon'ble High Court in 2009]

8. Compilation of the Investigation Reports of the District Level Committees constituted by the GoMP subsequent to the Order dated 12.05.2009 of this Hon'ble Court in the said W.P. and Inquiry Reports submitted otherwise.

9. Complete Village-wise List of Families declared as unaffected (by submergence) due to the revised Back Water Level Surveys.

10. List of various officials and employees working with various departments of GoMP and NVDA (including land acquisition, rehabilitation, engineering, PWD etc.) at Bhopal, Indore and districts of Badwani, Dhar, Khargone and Alirajpur from 2000 till date and other districts where the registries have been executed.

11. Complete files of PAFs referred to in Writ Petition No.14765/2007 and all the IAs filed since 2007 till date, which are subject matter of inquiry before the Commission. This must include all the documents, decisions, orders, GRA orders etc. pertaining to the respective outsee.

12. All minutes and decisions taken by the Hon'ble Chief Minister, Chief Minister, Chief Secretary, Vice Chairman,. NVDA and the Narmada Control Board (NCB) regarding the R&R of SSP PAFs.

13. Business Rules of the NVDA and the NCB.

14. All directions issued by the Narmada Control Authority to the GoMP/NVDA from time to time with regard to R&R of SSP PAFs.

15. Inquiry papers and certificates issued by the District Collectors in all cases where cash papers have been made to adivasi oustees (in the context of Section 5.1 of R&R Policy, GoMP).

16. All other documents sought for by the Commission from time to time in its various orders and letters.

19. Learned Senior Counsel appearing for the State of Madhya Pradesh assures that all relevant documents with the State Government would be made available to Justice Jha Commission, as and when required. And, in case the documents which are not available, reasons would be assigned for its non-availability on affidavit.

20. Although, the petitioner has delineated the documents which ought to be supplied by the State Government to Justice Jha Commission, however, a formal order will have to be passed by the Commission after hearing both sides specifying the relevant documents and, more particularly, in the context of immediate inquiry to be undertaken about the genuineness of the persons to whom cheques or cash has been disbursed by the State Government after 4.4.2009. This inquiry cannot brook delay - considering the allegation of amount having been disbursed to ineligible persons. For the payment so made if found to be improper will have to be recovered from the concerned persons.

21. Indeed, for other inquiries to be conducted by the Commission, a separate formal order for furnishing the documents relevant for that inquiry can also be passed by the Commission, by giving reasonable time to the State Government to furnish the same. If the State Government is incapable of complying with any part of the directions so issued, the Secretary of Narmada Valley Development Department, Mantralaya Bhopal must file his personal affidavit offering reasons for the inability to comply with the directions.

22. In case of failure to comply with the directions issued by the Commission for production of documents, in either of the above mentioned situation, the State Government besides filing affidavit of the Secretary of Narmada Valley Development Department, Mantralaya Bhopal before the Jha Commission within the time frame given by the Commission, must within the prescribed time also move a formal application before this Court to bring that fact to the notice of this Court for effective monitoring of the developments.

23. As to providing infrastructure and financial requirement of Justice Jha Commission, learned Senior Counsel appearing for the State of Madhya Pradesh assures that the issue would be sorted out within a period of seven days. Even if this assurance given by the State is to be accepted we may deem it necessary to remind the State that this Court has expressed concern about the lack of logistical support since 2009 as is manifest from the order dated 19.2.2009 -

“Heard Ms. Medha Patkar, learned counsel for

the petitioner, Mr. R.N. Singh, learned Advocate General for the respondent State and Mr. Dharmendra Sharma, Assistant Solicitor General for respondent Union of India.

By order dated 5.2.2009 in I.A. No.10746 of 2008, we directed that within 15 days, all the facilities as well as assistance, such as Police Officers, Revenue Officers and PWD Engineers will be provided to the Commission so that the Commission may start its work. Additional return has been filed to show compliance of the said order dated 5.2.2009.

On a reading of the aforesaid additional return, we find that the office building for the Commission has been selected and has been handed over to the Secretary of the Commission by the Collector, Indore on 12.2.2009, but the office building requires certain additional work for which a request has been made by letter dated 13.2.2009 of the Secretary of the Commission for allotment of funds of Rs.1,20,484/- which is being considered by the Government. By another letter dated 13.2.2009, the Secretary of the Commission has also requested the Government to allot a sum of Rs.5,08 lacs towards purchase of furnitures and appliances.

The Government of M.P. has sanctioned 6 posts for supporting subordinate staff with direction that these posts will be filled up by deputation/contractual appointment/collector's rate on proposals/recommendations of the Commission. In addition, the Secretary of the Commission has asked for sanction of 12 additional posts on 11.2.2009.

Ms. Medha Patkar, appearing for the petitioner submitted that if all this work is not expedited, it will result in lot of delay in the functioning of the Commission and will cause immense prejudice to the

oustees who are awaiting rehabilitation.

Considering the aforesaid submissions, we direct the State Government to take a decision on the letters dated 13.2.2009 of the Secretary of the Commission for allotment of additional fund of Rs.1,20,484/- for additional building work and for allotment of additional fund of Rs.5,08 lacs for furniture and appliances by 4<sup>th</sup> March, 2009. We also direct that the Commission will make its recommendations and the appointments to the six sanctioned posts will be completed by 4<sup>th</sup> March, 2009. We direct the Government also to take a decision on the request of the Secretary of the Commission for sanction of 12 additional posts vide letter dated 11.2.2009 before 4<sup>th</sup> March, 2009.

In the additional return, it is further stated that the Government of M.P. has nominated Mr. Prakash Jangre, Additional Collector, Indore as Officer of the Revenue Department; Mr. G.P. Parashar, Deputy Superintendent of Police, Indore as Officer from Police Department; and Mr. S. K. Jain, Superintending Engineer, P.W.D., Indore as a Officer from Public Works Department.

Ms. Medha Patkar submitted that unless these officers are exclusively posted to work in the Commission, they may not give priority to the work of the Commission and instead may devote only part of the time for the work of the Commission and the work of the Commission is such, which requires exclusive devotion by the officers, who are nominated.

We direct that as and when, the services of these officers are required by the Commission, these officers will give utmost priority to the work of the Commission to ensure that the Commission's work is completed as early as possible and is done meticulously.

Ms. Medha Patkar further submitted that the Commission should start its work immediately, otherwise the fake registries will go on and the oustees will suffer in rehabilitation work. We find lot of force in the submission of Ms. Patkar and request the Commission to start work immediately with whatever staff is available and not wait till the date the requirements of the Secretary of the Commission are met. Such work can be commenced immediately either in Circuit House or in the Residency Building where facilities are available, pending availability of regular office and all other facilities. The representatives of the oustees can immediately move the Commission by filing representations on their grievances.

List the matter on 6<sup>th</sup> March, 2009 as the second case, when an affidavit in compliance will be filed.

Certified copy of the order be supplied as per rules.”

24. Taking into consideration the undertaking given by learned Senior Counsel appearing on behalf of State of M.P. that all permissible cooperation would be extended to Justice Jha Commission for its smooth functioning, no further order is warranted.

25. With regard to memo dated 15.12.2014 sent by the Commission in pursuance to the order dated 4.12.2014 passed in present proceeding, which narrates the progress report of the Commission, consideration of said memo is deferred.

26. As regard to implementation of order dated 11.5.2009 passed by the Supreme Court in SLP(C) No.5720/2009, it is stated

by learned Senior Counsel while placing reliance on the affidavit dated 17.11.2014 filed by Principal Secretary, Govt. of M.P./NVDA that, vide order dated 6.9.2010, State of M.P., with object of completing the R&R process of Sardar Sarovar Project, devised a new scheme dated 6.9.2010 as an offshoot of Special Rehabilitation Package which provided that - (i) such PAF who has availed first installment of SRP will be again offered allotment of two hc. land from Land Bank. This offer will remain open for 90 days. If the PAF wishes to accept the offer, he can get the offered land by giving his consent and by returning only the amount he has received, (ii) if he refuses to accept the offered land or does not give his consent within a period of 90 days for accepting such land, then his balance amount with simple interest will be transferred into his bank account and (iii) the balance amount will also be payable if such PAF declares on affidavit that he wants to change his occupation.

27. It is further contended that vide communication dated 21.9.2010, an approval was sought for from Justice Jha Commission which was granted on 29.10.2010. It is further stated that in response to memo dated 30.7.2011, Justice Jha Commission by order dated 6.8.2011 directed that a procedure be formulated by Commission (Rehabilitation) facilitating the payment. The operative portion of order-dated 6.8.2011 is extracted hereinunder -

“माननीय उच्चतम न्यायालय द्वारा दिनांक 11.5.2009 को आदेश पारित किया गया है । उपरोक्त आदेश के परिपेक्ष्य में ही आयुक्त द्वारा उपरोक्त प्रतिवेदन प्रथम किश्त के भुगतान हेतु आयोग को प्रेषित किए जा रहे हैं । इन प्रकरणों में भी जांच

आवश्यक है, पश्चात् ही कोई आदेश दिए जा सकते है । यदि इन प्रकरणों में भी जांच की गई, तो आयोग का जो मूल कार्य है, वह प्रभावित होगा और उनमें विलंब भी होगा । उपलब्ध सीमित संसाधनों एवं व्यवस्थाओं में आयोग द्वारा जांच की जाना संभव नहीं है ।

इसलिए यह उचित प्रतीत होता है कि आयुक्त (पुनर्वास/फील्ड), नर्मदा घाटी विकास प्राधिकरण, इंदौर (म.प्र.) आवेदक (विस्थापितों) के द्वितीय किशतों के प्रकरण, जिनमें विक्रय पत्रों का पंजीयन होना है, को छोड़कर शेष, भुगतान से संबंधित प्रकरणों के संबंध में माननीय उच्चतम न्यायालय, माननीय उच्च न्यायालय एवं ट्रिब्यूनल के आदेश एवं निर्देशों के परिप्रक्ष्य में एक नीति (प्रक्रिया बनाएं और स्वयं के पर्यवेक्षण (supervision) में, भुगतान से संबंधित कार्यवाही संपादित कराएं, पश्चात् प्रत्येक प्रकरण माननीय उच्चतम न्यायालय के आदेशानुसार आयोग को समीक्षा (scrutiny) हेतु प्रेषित किए जाएं ।”

28. It is contended that having so empowered, the State Government has disbursed first installment in favour of two persons (however, petitioner has placed on record list of four other persons who have been made payment of first installment) without observing order dated 11.5.2009 i.e. without getting it verified from Justice Jha Commission. It is contended that it was Justice Jha Commission which by its order dated 6.8.2011 empowered the State Government to make payment in the manner as prescribed therein and therefore, certain payments have been made.

29. Learned Senior Counsel has also placed reliance on the order dated 29.11.2013 passed by the Supreme Court in SLP(Civil) No.34147/2013 stating thereon that with passing of said interim order, it was open for the NVDA to go ahead with the disbursement of the pending compensation to the Project Affected

Families (PAFs) without seeking verification from Justice Jha Commission. It is urged that in view of said interim order, the order dated 18.7.2013 passed by a Division Bench of this Court in Writ Petition No.18623/2014 stood eclipsed. It is further contended that the order having eclipsed, the petitioner cannot seek its implementation.

30. The question is whether Justice Jha Commission vide order dated 6.8.2011 facilitated post payment verification and secondly, whether the order-dated 29.11.2013 passed in SLP(C) No. 34147/2013 has rendered the order dated 11.5.2009 inoperative and that the State Government is now free to pay Project Affected Families unobtrusively?

31. As regard the first issue, a careful reading of the operative part of order dated 6.8.2011 i.e. -

इसलिए यह उचित प्रतीत होता है कि आयुक्त (पुनर्वास/फील्ड), नर्मदा घाटी विकास प्राधिकरण, इंदौर (म.प्र.) आवेदक (विस्थापितों) के द्वितीय किशतों के प्रकरण, जिनमें विक्रय पत्रों का पंजीयन होना है, को छोड़कर शेष, भुगतान से संबंधित प्रकरणों के संबंध में माननीय उच्चतम न्यायालय, माननीय उच्च न्यायालय एवं ट्रिब्यूनल के आदेश एवं निर्देशों के परिप्रक्ष्य में एक नीति (प्रक्रिया बनाएं और स्वयं के पर्यवेक्षण (supervision) में, भुगतान से संबंधित कार्यवाही संपादित कराएं, पश्चात प्रत्येक प्रकरण माननीय उच्चतम न्यायालय के आदेशानुसार आयोग को समीक्षा (scrutiny) हेतु प्रेषित किए जाएं ।

- is, in fact, a modality set out by the Commission before the matter is placed for scrutiny, as the Commission would be saved from observing ministerial formalities which, in turn, would save the time utilized to deal with the main issue for which the Commission is constituted. Therefore, the State Government is not

justified in interpreting the order dated 6.8.2011 to mean that the State Government is freed from pre-payment verification.

32. Considered thus, we hold that the State Government is not justified in making payments in installments to PAFs without the Commission's verification. All the payments made without Commission's verification be now placed before Commission for verification within seven days. The Commission shall dwell upon the same and furnish the report within two weeks therehence for necessary orders in the present proceedings.

33. Regarding contention whether the order dated 29.11.2013 passed in SLP (Civil) No.34147/2013 has eclipsed the order-dated 11.5.2009 in SLP(C) No.5720/2009.

34. Reverting to the order dated 11.5.2009 (reproduced in para 7 above) passed by the Supreme Court, in the first place, it is an interim order passed in SLP(C) No.5720/2009. In that proceedings, the orders passed by this Court dated 21.8.2008 and 19.2.2009 have been assailed by the State Government. Those orders have not been stayed. The Supreme Court, however, has stayed the order dated 24.4.2009<sup>1</sup> passed in a disposed of W.P. No.14765/2007, which reads thus :-

"I. A. No.3771/2009 is an application for interim directions.

We heard Ms. Medha Patkar for the petitioner, Mr. V. K. Shukla, Dy. A.G. for the Respondent/State and Mr. Rajneesh Upadhyaya, Advocate for Respondent No.3.

Mr. Shukla prays for some time to file reply.

In the meanwhile, we direct that by special

financial assistance to the oustees, there will be no distribution of compensation in the form of cash or cheque towards various grants as it is alleged in the petition that a lot of irregularity and corruption is taking place at the time of distribution of such compensation by cash or cheque.

We further direct that the Respondent No.5 will immediately register the FIRs and investigate the complaint (Annexure – 2) filed by the PAFs.

List the matter on 12-05-2009.

C.C as per the rules during the course of the day.”

At the same time, the Supreme Court, vide order dated 11.5.2009, directed that the disbursement of compensation given by way of cheques or cash after 4.4.2009 will be subject to the scrutiny by Justice Jha Commission.

35. On the other hand, the order passed by the Supreme Court, dated 29.11.2013 (reproduced in paragraph 15), is in SLP (C) No.34147/2013 - which challenges the decision of this Court dated 18.7.2013 in W.P. No.10816/2012 filed by the State Government upholding the order passed by the Commission dated 4.4.2012 (reproduced in paragraph 9). The stay granted by the Supreme Court is also in respect of direction contained in Memorandum dated 16.4.2012 issued by the Secretary of the Commission on the basis of order dated 4.4.2012 passed by the Commission. The operative part of the order passed by the Commission has been reproduced in paragraph No.9 above. By that order the Commission had issued direction to the banks to stop all payments made to the oustees as per the Special Grant. Neither this order nor the Memorandum can have the effect of whittling down the mandate of the Supreme Court vide order dated 11.5.2009,

namely, to disburse the compensation subject to the scrutiny by Justice Jha Commission. Notably, the purpose of constituting the said Commission was to inquire into the irregularities committed in disbursement of compensation and including to ineligible persons. Scrutiny of that fact must proceed and cannot brook delay.

36. Suffice it to observe that the order dated 29.11.2013 passed by the Supreme Court has the effect of suspending the directions given by Jha Commission regarding payments made to the oustees as per Special Grant vide order 4.4.2012 and the consequential Memorandum dated 16.4.2012 issued in that behalf and nothing more. The State Government is obliged to honour the direction given by the Supreme Court on 11.5.2009 regarding disbursement of compensation by way of cheques or cash after 4.4.2009 - subject to the scrutiny by Justice Jha Commission. That condition is inviolable.

37. Accordingly, we reject the argument of the State that on account of order dated 29.11.2013 passed by the Supreme Court the earlier order passed by the Supreme Court on 11.5.2009 is eclipsed as contended.

38. Interlocutory Applications : I.A. No.9062/2014 and I.A. No.10264/2014 are disposed of in above terms.

39. Let the matter be set out for reporting compliance on 20.1.2015.

**(A.M. KHANWILKAR)**  
**CHIEF JUSTICE**

**(SANJAY YADAV)**  
**JUDGE**