

A DAMNING JUDGEMENT By Prashant Bhushan

At last we have it on excellent authority. The Chief Justice A.S. Anand and Justice B.N. Kripal of the Supreme Court have decreed that Large Dams do not cause environmental damage, they lead to improvement in the conditions of the oustees and are in fact essential for the economic prosperity of the country.

In the words of their lordships contained in their judgement on the Sardar Sarovar project, “The experience does not show that the 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.” They say that “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.”

They go on to say that in most cases of involuntary displacement, the oustees have in fact been left better off after their displacement. “A properly drafted R&R plan would improve living standards of displaced persons after displacement. For example, residents of villages around Bhakra Nangal Dam, Nagarjun 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 came in. It is not fair that tribals and people in un-developed 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 life style”.

So now we have a resounding endorsement of the virtues of large Dams from the highest judicial authority in the country. Every person in the country including judges are entitled to have views on these matters. What is disturbing is when such personal views are delivered as judgements of a court. This is because a judge is required to decide issues on the basis of evidence before him, not on the basis of his personal biases. In this case, these pronouncements have been made in a case where the viability or desirability of large dams in general was not in issue and where the court had repeatedly told the petitioners that they must not make any submissions on this issue. Equally distressing is the fact that such such pronouncements have been made without any evidence of these facts before the judges.

The issue of Large Dams has become highly controversial lately with increased understanding of the problems of those who are involuntarily displaced and long-term damage to the ecology of the catchment area, command area and the downstream areas of the dam. Most developed countries have stopped building large dams and have even begun to dismantle some of them. Recently, the World Bank has sponsored an International Commission to review the performance of large Dams all over the world. This World Commission on Dams (WCD) has representatives from all major stakeholders including the dam construction industry. The India Country study of the WCD, which has recently been released, presents a fairly dismal picture of the impact of large Dams in this country.

According to this report, “Costs are systematically underestimated and benefits exaggerated so that the requisite Benefit/Cost ratio is shown to have been arrived at. Further, during actual implementation, there are enormous escalation of costs, considerable delays and changes in design and scope of the projects. Benefits on the other

hand fall well below anticipated figures as actual irrigated area and achieved yields fall below projected levels”. The report concludes that Major and medium irrigation projects are largely unviable. On hydropower the report concludes that, “Given the high capital cost, long term gestation period and environmental and social costs, hydro power development is not the preferred option for power generation compared to other options”. This is the conclusion after a detailed study of the working of several hydel projects in India. Contrast this with the sweeping statement of the judges without any evidence that, “The cost of generation of electricity in hydel projects is significantly less”.

The WCD India Study goes on to estimate that 56 million persons, of which 62% are SC and ST, have been involuntarily displaced due to large dams, and over 5 million hectares of forests have been submerged by them. Contrary to what the judges say without any evidence, the report says that even the electricity and irrigation benefits routinely bypass the dam affected and other poor communities and are routinely consumed by landed farmers and urban consumers and well to do people. The conclusion of the Report is that “the distribution of most of the costs and benefits of large dam seem to accentuate social-economic inequities.”

Specifically on the Sardar Sarovar project, the World Bank had commissioned a high powered independent review (known as the Morse Committee) which submitted its report in June 1992 after an intense ten month study. The report concluded that,

“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 environment aspects of Sardare Sarovar is a history of non-compliance. There is no comprehensive impact statement. The nature and magnitude of environmental problems and solutions remain elusive.”

“It is clear that the engineering and economic imperatives have driven the projects to the exclusion of human and environmental concerns. Social and environmental trade offs have been made that seem insupportable today.”

This high powered committee’s report, which was so cogently argued has been rubbished in the judgement of Justice Kripal by saying that this report was not accepted by the World Bank or the Government of India. The court routinely appoints experts committees on its own when it is dissatisfied with government committees, and acts on the reports of such committees. But curiously the court refuses to even look at a report which is not endorsed by the World Bank or the Government. Virtually the same short shrift has been given to the two reports of the five members group (FMG) constituted by the Government of India to look at certain aspect of the Sardar Sarovar projects. The

FMG had clearly stated the need for preparing a rehabilitation master plan which should have “ a complete census of all categories, groups, communities and individuals, affected in any manner whatsoever, including the canal affected persons, persons affected downstream of the dam, groups and individuals providing supplies and services to others and so on, so that the data base needed for planning is comprehensive. A number of category specific rehabilitation package should be worked out” Yet the court holds that there is no requirement for rehabilitation of the other categories of oustees and makes no provision for the same.

The FMG, virtually all official agencies and indeed the Narmada Tribunal Award itself emphasized the need for community rehabilitation of the oustees. Thus oustees from one village were entitled to be resettled together if they so desired. The rehabilitation master plan of Narmada Control Authority itself stated that “ Ousteas shall, promptly after their displacement.... be relocated as village units, village sections or families in accordance with the oustees preference.” The same thing was reiterated by all the State Government , R&R sub group of NCA as well as all the monitoring agencies. Yet the court goes on to hold that community rehabilitation of these mostly tribal oustees was not required.

ENVIRONMENTAL CLEARANCE

On the environmental clearance of the project, Justice Bharucha in his minority judgement has pointed out that all the officials notes prepared prior to clearance and even the order of conditional clearance itself brought out the fact that even the basic environmental impact studies had not done by that time. It was noted by the Ministry of Environment, “ Indeed it is view of the Ministry of Environment, forest and wild life that what has been done so far whether by way of action or by way of studies does not amount too much and that many matters are yet in the early and preliminary stages”. The Ministry of Water Resources in its note put up to the Prime Minister has stated that “considering the magnitude of rehabilitation, involving a large percentage of tribals, loss of extensive forest area rich in biodiversity, enormous cost of the project and considering the fact the basic data on vital aspect was still not available there could be but one conclusion that the projects are not ready for approval”. However, despite this state of affairs, conditional environmental clearance was given to the project in June 1997. As pointed out by Justice Bharucha, though those conditions were also violated and no comprehensive environmental impact assessment of the project has been done till date, the project is still being allowed to go ahead. That is why he has directed a comprehensive environmental impact assessment of the project and has restrained further construction till such assessment is done and clearance given.

The majority judgement of Justice Kirpal however, to go on to hold that “the pleas relating to height of the dam and the extent of submergence environmental 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 is surprising that this comes from judges who have acquired the reputation of “Green judges”, having issued tough directions in matters relating to deforestation and pollution. Having said

this, the majority judgement goes on to say that all environmental issues have been considered and are being considered by the Environment Sub Group of the Narmada Control Authority. The majority reposes full confidence in the Narmada Control Authority, and its sub-groups. It says “it is not possible to accept that Narmada Control Authority is not to be regarded as an independent authority”. This despite the fact that the NCA had repeatedly cleared the Dam for construction beyond what was permitted by its own Rehabilitation subgroup, and despite the fact that it was on account of this that the court had ordered a stay on construction of the Dam for 4 years between 1995 and 1999.

Distressingly, the Court has also allowed immediate construction of the Dam till 90 meters on the basis of a clearance given by the NCA in early 1999. This is despite the fact that on the admission of M.P. itself, it had not been able to provide agricultural land to at least 156 families who were affected at this height and who had to be rehabilitated in M.P. The court itself notes that in 6 villages of M.P. affected at 90 meters, even land acquisition awards had not been passed. This means that this construction upto 90 metres would violate the Narmada Tribunal award itself which mandates that under no circumstances can the land of an oustee be submerged till he has been rehabilitated.

The only way to understand the majority judgement is in terms of the biases and prejudices of the authors regarding the desirability of large dams in general and this project in particular, which is reflected in the passages quoted above. The NBA had been reluctant to approach the court since many in the NBA viewed the court as an instrument of the haves, the powerful and the influential. At that time, I had persuaded them to come to court since I had more faith. I must admit however that I have been proved wrong. This judgement is bound to shake the confidence of the people in the ability of the judiciary to protect the rights of the weak and the downtrodden from onslaughts by the State and powerful vested interests. With such judgements, the day is not far when the people will come to regard the courts as a legitimising arm of a rotten establishment.