

IN THE SUPREME COURT OF INDIA  
 CONTEMPT PETITION (CR) NO. 2/2001

IN THE MATTER OF:

J.R. PARASHAR AND ORS ----- PETITIONERS

VERSUS

PRASHANT BHUSHAN AND ORS ----- RESPONDENTS

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO 2

I, Medha Patkar, daughter of \_\_\_\_\_, resident of \_\_\_\_\_ do hereby solemnly state and affirm as under:

That I am the second respondent in this petition. I have read and understood the contents of the contempt petition and my reply to it is as under:

In the first place I would like to point out that the contempt petition has been recklessly made, that many of the material allegations in the petition are completely false and concocted. In particular, all the allegations contained in the FIR that the petitioners have attached to the petition are completely false and defamatory. The petitioners were never threatened, abused or assaulted. Some of the slogans mentioned by the Petitioners in the contempt petition were never raised. No one in the presence of the deponent shouted “Supreme Court bika hua hai” or “Supreme Court ke judges chor hain”. This court should prosecute the petitioners for perjury and contempt for having made such false and motivated charges on affidavit with the object of misleading this court.

It is true however that I did participate in a Dharna of the oustees of the Sardar Sarovar project outside the Supreme Court on the 13<sup>th</sup> December 2000. In order to understand and appreciate what happened at the Dharna, it is necessary to provide a background and indicate the circumstances in which the Dharna took place.

The Sardar Sarovar project involves the involuntary displacement of more than 2,00,000 persons directly by the reservoir of the dam and a similar number by other aspects of the project such as canals, colonies, downstream impacts, compensatory afforestation, etc. The project was taken up without any information to the oustees about the scale and impacts of the project, without any masterplan for rehabilitation, without any assessment of its environmental impacts and without any assessment of its costs and benefits and therefore without any assessment of whether the project was in the national interest.

I began work in the narmada valley in 1985 to seek information and answers to our questions related to displacement and about the rehabilitation of the oustees, as also about the environmental and other impacts of the project. I discovered that most of this information

was just not available with the authorities. After several years of going all over the Narmada Valley and meeting every authority associated with the project, I realized that the project was being pushed without adequate understanding of its impacts and that the land based community rehabilitation of the oustees as mandated by the Narmada Water disputes Tribunal was just not going to take place. On reaching out to the tribal hamlets and villages in Maharashtra we formed a state level organisation, followed by a similar process in Madhya Pradesh – plain areas of Nimad region. The people affected by project related works in Gujarat too approached us and joined the movement. These three, together with support groups all over the country formed meanwhile, were coordinated into Narmada Bachao Andolan. It was then in 1985 that I formed the Narmada Bachao Andolan, which was primarily an organization of the oustees who were organized with a catalytic help by some of us the activists who came to be a part of the valley. For the first several years of the Andolan, it did not take up a stand in categorical opposition of the Dam. During that time, it kept seeking information about the project and holding a dialogue at every level within each of the 3 state governments, in particular, about the rehabilitation of the oustees and right to information to the project. It also worked towards the rehabilitation of the oustees.

It was in 1988 after many official high level meetings during which it became clear that the governments didn't have land for all and no Master Plan for rehabilitation, that many impact studies were incomplete and hence clearness granted were ill based that it became absolutely clear to us, that the benefits of the project were greatly exaggerated, that it would not irrigate even half the area that it was being projected to irrigate, that it would not irrigate the main drought prone areas at all namely Kutch and Saurashtra, that the costs of the project would be greater than projected, that its environmental costs had not even been calculated, that its downstream impacts had not been studied at all, that the oustees a few lakhs in number were not to be fully recognised, they would not be rehabilitated, Narmada Water Dispute Tribunal Award (NWDTA) and policies, World Bank's manual were already violated and indeed that the project was not in the national interest, that the Andolan took a categorical stand in opposition to the project. It was as a result of the Andolan's effort that the World bank commissioned an independent review of the project under the chairmanship of Mr. Bradford Morse. The Morse Committee after intensively studying the project for more than 6 months came to the categorical conclusion that,

“We have discovered fundamental failures in the implementation of the Sardar Sarovar Projects. We think 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 circumstances, and that the environmental impacts of the projects have not been properly considered or adequately addressed.”

“Important assumptions upon which the Projects are based are now questionable or are known to be unfounded. Environmental and social tradeoffs 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 overstated. Assertions have been substituted for analysis.”

“Every decision as to the Sardar Sarovar Projects have always been, and will continue to be, a decision for India and the States involved. Together they have spent a great deal of money. The foundations of the Dam are in, the Dam wall is going up, the turbines have been ordered. No one wants to see this money wasted. But we caution, it will be more wasteful to proceed without full knowledge of the human and environmental costs”.

(one more para saying, “it can go ahead only with unacceptable means”)

After this, the WB set some benchmarks for the steps to be taken for the rehabilitation of the oustees. Since they could not be complied with by the project authorities, the WB withdrew from the project.

Around this time, the Ministry of Environment also pointed out that in view of the failure of the project authorities to carry out the environmental impact studies and the consequent violation of the conditions on which the conditional environmental clearance was given, the environmental clearance had lapsed. However, despite all this the work on the project was not stopped and in 1993 the first set of villages came under submergence due to the project. Due to the agitation of the oustees, the government of India formed a 5 member group to review various aspects of the project. In the next year and a half, the FMG submitted its first consensus report which showed the serious problems with the rehabilitation of the oustees and in the assessment and mitigation of the environmental impacts of the project. The Report recommended the concerned governments to prepare a Master Plan for rehabilitation, considering all categories of the project-affected people and also to complete the impact studies. It was the Apex Court itself that asked the Review Group to give its second report on four specific aspects including rehabilitation, environmental impacts, hydrology and height of the dam. The consensus part of the report reiterated its recommendations on environmental impact assessment and also on planning and execution of rehabilitation. The rest of the report had a divided opinion. Two of the four honorable members of the group (one had dropped and excluded from the second investigation and report). Two (of 4) members of the FMG in their second report found such enormous problems with the project that they recommended a comprehensive review of the project.

However, despite all this, the government neither ordered a review of the project nor stopped further construction of the Dam thus bringing more and more oustees within the zone of submergence. Since 1993 a number of tribal houses in Maharashtra, Madhya Pradesh, and Gujarat got affected, many flew away with all the belongings and a few hundred acres of land with standing up, got destroyed. It was at that stage that we decided to approach this court and filed a writ petition seeking a review of the Sardar Sarovar project after giving an informed hearing to the victims and also to establish an independent body to ensure proper rehabilitation of the oustees prior to submergence.

In the court, we pointed out that not a single oustee had been offered land in M.P. (which is true even today) where the bulk of the oustees have to be resettled. Total official number of

families with land and / or house affected, is now gone upto 35716, almost all belong to tribal, dalit, other lower caste (about 70%) and farmer caste-communities. The M.P. government had admitted this on affidavit and this was also confirmed by the Grievance Redressal Authority of M.P. Despite the fact that the NWDT Award categorically prohibits any submergence without rehabilitation and despite the fact that the court refused to consider restructuring the project on the ground that the Award is sacrosanct, the court still permitted raising the height of the Dam to 90 metres, thus allowing the submergence of the lands and homes of hundreds of families without rehabilitation.

In the court, we had also shown that though the Tribunal mandated community rehabilitation of the oustees, this had not been done even for the vast majority of the 25% of reservoir-affected families who had been relocated over last 20 years and was not even being offered to the remaining oustees. Despite these admitted facts, the court still permitted further construction and submergence without rectifying the situation.

In the court, we demonstrated by documents of the Ministry of Environment itself that there had never been any comprehensive Environmental Impact Assessment of the project, which is also starkly brought out in the minority judgement of Justice Bharucha who directed such an assessment before the project could proceed. Despite this, the majority judges still allowed the project to go ahead without any such assessment.

The Court dismissed the comprehensive and cogently reasoned Independent Review Committee report of the World Bank summarily by saying that it had not been accepted by the Indian Government or the Bank. The Court also did not pay any attention to the report of the FMG which had been set up by the Government of India and whose second report came on the directions of the Court. The Court in its Judgement of 18<sup>th</sup> October went so far as to eulogise large Dams without any evidence for the same before the Court and after having specifically restrained the petitioners from making submissions on the pros and cons of large dams in general.

In such circumstances, the judgement of the Court left the NBA and indeed most independent observers and commentators stunned and angry. A very large number of independent and eminent observers, journalists and writers have written scathing articles criticizing the judgement in most trenchant terms. Copies of some of the articles by some eminent and independent commentators including Shri Ramaswamy Iyer and Shri L.C. Jain (who were members of the FMG) are collectively annexed as Annexure A to this affidavit.

Despite the anger at the judgement, it was decided by the Andolan to file a review petition in this court pointing out the grievous errors in the Judgement. This was done within 30 days, but for a long time the review petition was not even taken up by the court for consideration. It has now been dismissed, more than 4 months after it was filed, without even giving the petitioners an oral hearing despite a strong dissent by Justice Bharucha.

It was in such circumstances, when the review petition was not being taken up for hearing, that the members of the NBA, especially the oustees, whose lands and homes were going to be submerged this monsoon on account of the judgement of this Court decided to come to Delhi and have a dharna outside the Supreme Court. It was decided that they would try and meet the judges and explain their plight to them and even request the judges to come to the valley to see the reality for themselves. It was of course clear that in keeping with the completely peaceful and non violent character of the NBA, this dharna too would be completely peaceful. It was decided that the people would carry placards drawing attention to the reality and the injustice of the judgement. The object was not to pressurize the court into giving a favourable judgement in the pending review but to bring to the notice of the court and the people the plight of the oustees who would be losing their lands and homes this monsoon without rehabilitation.

I believe that in a democratic society, where the court plays such an important role in the lives of people, the court should be influenced by exposure to such reality and to the plight of the poor and the downtrodden. I do believe the court often gives judgements in ignorance of the ground realities because of lack of exposure to it. I believe that it is often necessary for the judges to make field visits themselves in order to have a proper and sensitive appreciation to the reality at the ground. The NBA always wanted the judges to visit the valley and see the condition of the oustees themselves, but that did not happen. So the people of the valley decided to come to the Court to meet the judges and explain to them what was happening in the valley. If such attempts to influence the judges in this way is considered contempt by this court, then I plead guilty.

In the morning of 13<sup>th</sup> December when I and this group of about 500 persons, mostly from the valley reached the Supreme Court in a procession, the gate No C of the Supreme Court was already closed by the Security guards. Since the gate was already closed, we sat outside the gate. We asked the security guards that we wanted to meet the Chief Justice and submit a memorandum. We were however not allowed to go inside.

While sitting outside, the people did raise slogans against the Sardar Sarovar project. They also raised slogans against the judgement of the court. Some people made angry speeches against the injustice meted out to the oustees. In some speeches some people also spoke about corruption in the judiciary in general and about how divorced the courts were from ground realities. I also made a speech and raised some slogans. I however take responsibility for all the speeches and slogans that were raised by the people there that day. To my knowledge, no slogan was raised or speech made impugning the integrity of the judges in connection with the Sardar Sarovar Judgement. To my knowledge nobody said, "Supreme court ke judges chor hain", or "Supreme Court bika hua hai".

I did meet the first Petitioner Parashar who came in the evening and started shouting to the policemen present there that the dharna should not be allowed. He also came up to me and said loudly that the dharna cannot be allowed outside the Court. I only asked him whether he had read the judgement. The allegation that the petitioners were threatened or abused or assaulted are totally false and can be attested by the large number of policemen and policewomen who were present there that day. No one was drunk. The Dharna was completely peaceful and nobody could have apprehended any threat from anyone participating in the Dharna.

I believe that in a democratic society, all persons have the right to protest and demonstrate against any action of any organ of the State including the Judiciary. The oustees of the Sardar Sarovar project do not lose this right merely because they have filed a petition in the Supreme Court or that a review petition on their behalf is pending. I believe that I too have that right and do not lose it merely because I have taken these issues to Court on behalf of these people. The only way to have some kind of accountability of the judiciary today is for the people to comment frankly and fearlessly on the actions and judgements of the Courts. If this is not going to be allowed by invoking the power of contempt against persons who comment adversely, even trenchantly against the Courts actions and judgements, it will render the judiciary totally unaccountable and unresponsive to the needs of the people. I believe it is important for the judiciary to be accountable not just to the Law but also to the people. I do not agree with those who say that justice must be blind—it cannot be blind to the suffering of the poor and the downtrodden.

In conclusion, I wish to say that I have worked almost half my life for the cause of those who will be adversely affected by the Sardar Sarovar project. Most of those that I work with in the valley are going to lose their lands, their homes, their forests, their community, their culture and indeed their very identity because of this project. I have taken up their cause because I can feel their loss, I can identify with them—they are indeed like my family. I will continue to fight for them in every way that I can. I will continue to challenge the unjust system that deprives these people for the benefit of those who already have much more than them. I will continue to help them raise their voices in protest against this system even if I have to do so against the Judiciary and the Courts. I will continue to do so as long as I can, even if I have to be punished for contempt for doing that.

Deponent

Verification: I the deponent abovenamed do hereby verify that the contents of the above affidavit are true to my knowledge and nothing material has been concealed therefrom.

Verified at New Delhi on this the            day of April 2001.

Deponent