

National Commission for Scheduled Tribes

Critical issues concerning tribals relating to acquisition of land and R&R programme for setting up of large projects in Madhya Pradesh

The Commission visited the State of Madhya Pradesh from 10th to 18th September, 2012 to access factual positions with regard to the issues brought to the notice of NCST by (i) Shri Kanti Lal Bhuria, Chairman and Shri Bisahu Lal Singh, Working Chairman, Madhya Pradesh Adiwasi Vikas Parishad vide letter dated 29th August, 2012, (ii) Dr. Mustaq Mansoori, State Working Committee Member, MP Janta Dal (U) vide letter dated 18th March, 2012, and (iii) Ms. Brinda Karat, Member of Parliament vide letter dated 02nd November, 2010, forwarding a Memorandum dated 29th August, 2010 from the MP State Committee of the Communist Party of India (Marxist) in the matter. These references alleged acquisition of land for private companies in Anuppur Distt for M.B Power (MP) Ltd etc., ignoring the protections available to STs under the Constitution and the Ideal Rehabilitation Policy of the MP Govt., 2002 and also displacing the poor tribals from their lands in a fraudulent manner, also without any compensation.

During the visit, the Commission also made field visits to Singrauli and Anuppur Distts. to have detailed discussion with the tribals, particularly displaced as a result of the setting up of Sasan Ultra Mega Power Project, Mahan Aluminum & Captive Power Project, M.B Power (MP) Ltd Project and also with the State and Distt. Authorities.

The tribals primarily questioned the "public purpose" for acquisition of their land in Scheduled Area like Anuppur Distt., quoting judgement in SLP (civil) 4601-02 of 1997, Samatha Vs. Govt. of Andhra Pradesh and Ors., wherein the Supreme Court had observed that in the light of the provisions contained in Clause a of sub-para 2 of Para 5 of Scheduled V of the Constitution, there is implied prohibition on the State's power on allotment of its land to non-tribals in the Scheduled Areas, which also limits the State's power to acquire tribal land for subsequent allotment to non-tribals whether for incidental public purposes or otherwise. Any law which seeks to expropriate tribal rights over land must recognize these differences; and provide appropriate and equitable circumstances as well as compensation of rights. The tribals have also highlighted that, to limit deprivation of tribal land for all other non-strategic purposes, while determining "Public purpose"; the general interest of the community as opposed to the particular/ commercial interest of individuals should be clearly demonstrated, and the livelihood of the tribals should also be adequately protected by providing land in lieu of land (even by purchase of private land/diversion of forest areas) in all cases. The tribals were also found agitated over non-payment of adequate compensation, abnormal delay in payment of compensation, bleak opportunities for regular employment and even part-employment against various projects, poor civic amenities in the R & R programme being implemented by the Companies and apathy being shown by the State/Distt. Admin. towards their legitimate grievances in this regard.

The Commission has noted that the Madhya Pradesh Govt. has formulated the Ideal Rehabilitation Policy of the MP Govt.,2002 which provides that special attention will be given to the rehabilitation of the families from Scheduled Tribes (para 1.3) and also adequate civic amenities in the new settlements (para 1.7), adequate compensation to the displaced persons (para 1.11), and the concerned (requiring) departments will be responsible for completion of the rehabilitation scheme (para 1.18). Notwithstanding this, based on the discussion held with the tribals and the State and Distt. Authorities, the following areas of concern have emerged, which require priority attention:

[I] Deviations in implementation of the Ideal Rehabilitation Policy of the MP Govt., 2002

(A) Provision of lumpsum monetary compensation in lieu of land for land in large projects to Scheduled Tribes

Land is the primary means of production in the tribal society and represents the greater asset of the tribal society. Landlessness, therefore, is both socially and economically depriving as land is the primary source of livelihood for the family. A landless tribal is not able to fulfill many of the social functions expected of him. Higher the incidence of landlessness, greater is the calumny in the tribal society. This is also because of the fact that the nature of the tribal economy is not accumulative and it uses little hired labour since the sharing of labour is still on 'cooperation' basis, the labour market within tribal communities is underdeveloped. The majority of the tribal people seeking employment do so outside their villages; and that too, mostly by migration.

The Commission has noted that the Ideal Rehabilitation Policy of the MP Govt.,2002 provides that if the displaced person is from the Scheduled Tribe, such person will be allotted equal land in lieu of acquired land (para 6.1). Notwithstanding this, the State Govt. has deviated from the said policy and proceeded with one time compensation for land in respect of large projects like Sasan Ultra Mega Power Project, Mahan Super Thermal Power Project (Essar), Chitrangi Power Project, MP Sanik Coal Mines Limited, Jaypee Super Thermal Power at Nigarie, D.B. Power (MP) Ltd., Mahan Aluminum & Captive Power Project, M.B Power (MP) Ltd. New John India Pvt. Ltd., Welspun Energy Pvt. Ltd. etc.

The Commission has also been informed that R & R packages (including compensation for land in respect of Scheduled Tribes) has been approved in case of large projects by the State Level Consultative Committee, constituted with Hon'ble Chief Minister as the Chairman (para 11 of the Ideal Rehabilitation Policy of the MP Govt.,2002). **It is noted with concern that these packages with monetary compensation for land in respect of tribals have diluted the spirit contained in the Ideal Rehabilitation Policy of the MP Govt.,2002 for the STs. This situation is not in the overall interests and protection of the STs.**

The Commission, therefore, recommends that land should invariably be provided to the tribals as compensation against a land acquired from them which was a source of livelihood for them; and, if the Govt. land is not available in the resettlement area, private

land may be purchased and made available to tribal agriculturists. Further, all factors of production viz. land, labour and capital have to be compensated from the project. Since, the land rights are being surrendered in perpetuity, the compensation should be in the form of sweat equity. Further, in Scheduled Areas, since data regarding land transfers may be scanty, the Net Present Value (NPV) of the expected accruals from the current/ future use of the land for 30 years should also be compared while arriving at the market value. Compensation should also be given for forest rights which may become unavailable because of displacement and also sub-surface rights (water/ minerals etc.) as Scheduled Tribes have been traditional owners of land (rather than tenure holders with heritable rights to cultivate land) .

(B) Non-compliance of the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 in Schedule V area

Sub-section (1) Section 4 of the Panchayats (Extension to Scheduled Areas) Act, 1996 stipulates that "the Gram Sabha or the Panchayats at the appropriate level, shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level". However, it is noted from the High court of Madhya Pradesh Judgment dated 11.11.2009 (W.P. No. 6056/2009, Narmada Bachao Andolan vs. State of M.P. and Others) that the Govt. of Madhya Pradesh through Act 43 of 1997 inserted Chapter XIV-A titled "Special provisions for panchayats in the Scheduled Areas" in Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993') and thereafter, also amended some of the provisions of Chapter XIV-A by the MP Act 5 of 1999 and the M.P. Act 23 of 2001. On a detailed examination of **the provisions of Sections 129-A to 129-F in Chapter XIV-A of the Adhiniyam, 1993 as amended, the High Court didn't find therein any provision requiring consultation with the Gram Sabha or the Panchayats at the appropriate level before acquisition of land for a development project or before rehabilitation and re-settlement of persons affected by a development project in Scheduled Areas. The High Court has also opined that the State Legislature ought to have made a provision in the Adhiniyam, 1993 in accordance with Section 4(1) of the PESA Act providing for consultation with the Gram Sabha or Panchayats at the appropriate level before acquisition of land in the village for development projects or before resettlement and rehabilitation of persons affected by such projects.**

The Commission also noted that Govt. of Madhya Pradesh, vide Notification No. F-12-46/97 7-9 dated 31/01/2000, has issued detailed instructions with regard to compliance of Panchayats (Extension to Scheduled Areas) Act, 1996 with reference to land acquisition, which, *inter-alia*, stipulates that in case of agreement for the proposed acquisition, the Gram Sabha has to pass their decision through a resolution. During the meeting held with the ex-Sarpanch of the Gram Sabha at Anuppur, it was informed that no such resolution was passed by the Gram Sabha for showing their agreement for acquisition of land. The District Admin. also could not produce relevant record in this regard.

The Commission, therefore, observes with concern that the State Govt. has not complied with an important and critical requirement in accordance with the Panchayats (Extension to Scheduled Areas) Act, 1996 providing for consultation with the Gram Sabha or Panchayats at the appropriate level before acquisition of land in the village for development projects or before resettlement and rehabilitation of persons affected by such projects and also not followed the procedure contained in its Notification No. F-12-46/97 7-9 dated 31/01/2000 regarding consultation with Gram Sabha in a transparent manner. Further, the Adhiniyam, 1993 is not aligned the Section 4(l) of the PESA Act, which is meant for protection of the Scheduled Tribes in a Schedule V area. **Therefore, in order to ensure desired transparency in the process of acquisition of land, the State Govt. need to take immediate action to align the Adhiniyam, 1993 in accordance with Section 4(1) of the PESA Act, as also observed by the High Court.**

(C) Delay in payment/non-payment of compensation to encroachers

In accordance with para 2.3.1 of the Ideal Rehabilitation Policy of the MP Govt., 2002, compensation is also provided to the encroachers provided the encroached land is either revenue or forest land. However, a large number of such persons represented before the Commission regarding abnormal delay in finalization of their claims in respect of Moser Baer Thermal Power Project. The District Admin. has also informed the Commission that the list of persons identified as encroachers is yet to be finalized. Consequently, a large no. of PAPs, including tribals, are suffering. The State Govt./District Admin. should, therefore, look into the matter urgently and ensure proper compensation to the encroachers in the Moser Baer Thermal Power Project and other projects too, where claims of encroachers are still pending. In this connection, the Commission also recommends that persons like forest dwellers, share croppers, agricultural labourers should not be displaced without settlement of their rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and legal entitlements to the appropriated lands/homestead, more so in regions having forest or customary rights.

The State Govt./Distt. Administration should take urgent action to settle all outstanding claims and periodically review their progress with the PAPs to avoid discontent among them. The State Govt./Distt. Administration may also submit progress in this regard to the Commission against each project in respect of STs (indicating name of the Project, pending claims, nature of claim in brief, time-frame for disposal).

(D) Long-term profit sharing

There is a provision of issue of at least 50% shares to the Gram Sabha, in case of a company issuing shares for the public [Clause 25 (C) (2) of the Ideal Rehabilitation Policy of the MP Govt., 2002]. However, there is no enabling provision for profit sharing with the PAPs/tribals in the Agreements signed with the companies. In this connection, the Commission emphasizes that in case of mining projects, equal royalty should also be paid to the land owners in perpetuity as compensation for the surrender of sub-surface rights in land.

(E) Additional compensation for multiple displacement

The tribals have also complained that no consideration has been given for multiple displacement. In this connection, attention is also drawn to para 24 of the Ideal Rehabilitation Policy of the MP Govt.,2002, which stipulates that repeated displacement should only be done in exceptional cases and prior approval of the State Level Committee is mandatory for such move. The Commission also observes that there is an urgent need to have centralized data of land acquired as well as data base of displaced families in each village/city at taluka/district level.

(F) Development Affected Assistance Fund

As per para 27 of the Ideal Rehabilitation Policy of the MP Govt.,2002, a Development Affected Assistance Fund (with an initial amount of Rs. 50 Crore) was to be set up to provide assistance to those, who are not covered for assistance in the normal manner and are affected because of displacement or any other factor caused by displacement. The funds are required to be utilized at the discretion of the State Level Consultative Committee towards rehabilitation. As the details of the utilization of the fund couldn't be furnished by the State Govt./Distt. Admin. during the visit of the Commission, the position in this regard may be forwarded to the Commission at the earliest.

(G) Avoidable displacement of PAPs

In respect of MBPICL, it is also noted that the land being acquired for the project is for creation of facilities in 2 Phases (Phase-I and II) with no time-frame indicated for Phase II. Notwithstanding this, total area for the project (both Phase I and II) is being acquired with resultant displacement of higher magnitude being caused, which was avoidable. The position in this regard is also required to be critically reviewed in respect of the Project and other Projects too taking into account, inter-alia, progress of the project vis-à-vis committed time- frame for completion. In this connection, attention is also drawn to para 1.16 of the Ideal Rehabilitation Policy of the MP Govt.,2002, which stipulates that land acquisition should be in a phased manner and the land should only be acquired when it is necessary. In any case, excess land, other than what is required should not be acquired.

The Commission is also of the view that in the event of the acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the re-payment of the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received

[II] Payment of reasonable compensation

The PAPs, including tribals, have also reported that the amount of compensation is not according to prevailing market rate and has wide variations for the same project from Rs. 56,000 per acre to Rs. 8 lakh per acre, and also much lower than the price being claimed by the Govt. for revenue land sold to the private companies. In this connection, tribals have also quoted that reported assurance of the Chief Minister for payment of Rs. 8 lakh per acre,

as payment for compensation of land, has not been honoured. The tribals have also informed that compared to the compensation being paid to them for land, they have to pay much higher price (2-3 times) for purchase of equivalent piece of land elsewhere. Under such circumstances, there is an imperative need to provide land for land or at least fix reasonable compensation for the land, taking into considerations the position brought out by the tribals.

[III] Problems relating to direct acquisition of land

The tribals have complained their exploitation in direct purchase of the land by the private companies through the pressure tactics by the vested interests in purchase of land at cheaper prices, while also highlighting that higher prices were being paid to few having nexus with the concerned authorities/intermediaries. The State Govt./Distt. Admin should ,therefore, ensure reasonability of price being paid to the persons even in case of direct purchase and also establish effective mechanisms to avoid possible exploitation of poor tribals in direct sale of their land to the private companies.

Such tribals, whose land has been acquired through direct purchase, have also strongly demanded proper R & R programmes for themselves. The Commission is also of the view that adverse consequences of direct purchase of land is the same as for the involuntary acquisition as far as the rehabilitation of PAPs is concerned. Therefore, the demands of these persons is fully justified and require consideration of the State Govt. The Commission is also of the view that negotiated land transfers/ change in land use should be permitted/ legally validated by the concerned authority only after ensuring that obligations under the R & R laws have been discharged to the satisfaction of R & R Administrator.

[IV] Ambiguous provisions regarding provision of regular employment

The existing provisions in the Agreements signed with the companies with regard to provision of regular employment to the PAPs have been noted to be having floats/ deficiencies, which dilute the responsibility of private companies in this regard. For example, in the R&R Plan submitted by M/s Moser Baer Power & Infrastructure Company Ltd (MBPICL), it has been clearly mentioned that the project requires total 400 employees, consisting mainly Engineers, Diploma holders and Graduates, with their induction commensurate with the progress of the project. The other job opportunities available to the PAPs pertain only to the indirect engagement through contract labour, cooperative societies and allotment of shops etc. Under these circumstances, while the displacement of PAPs including 212 tribals (more than 50%) has taken place in the Project, there is little possibility of providing regular employment to tribals as they are mostly uneducated and not qualified for the jobs/ professionals required by the company. Further, it is a matter of great concern that though the Plant is being set up in a Scheduled Area, and majority of PAPs are STs(50%), no specific provision has been make for reservation for STs in coop. Societies, allotment of shops etc. which are the only possible option for indirect engagement of PAPs, that too limited. Similar position is likely to exist in respect of other Projects also.


In view of the position explained above, the existing R&R obligations on the part of the companies don't provide any protection/ guarantee or even a convincing assurance to the affected tribals with regard to regular employment and even their part engagement through contract services etc though they have lost their sustainable source of the livelihood as a result of setting up of these large projects.

[V] Defeciciencies in Agreements signed with companies with regard to enforcement of R&R programme

The Commission has noted that the Agreements signed with the companies don't have provisions for timelines with regard to provision of various basic amenities to the PAPs, administration and monitoring of R& R Programme and punitive action for delay in creation of these facilities. For example, during the discussion held with the PAPs affected by HINDALCO Power Co.Ltd., and the Sasan Ultra Mega Power Project, the Commission was informed that medical facilities provided by these companies are totally unsatisfactory (absence of doctors and para-medical staff, shortage of medicines) as yet, though the PAPs have been resettled in the resettlement colonies long back. The Tribals also complained restriction of admission of only one child in the Sasan Ultra Mega Power Project. The Commission also noted that the companies have failed to provide basic amenities to the PAPs in accordance with the terms and conditions of the Agreements signed with them. It is, therefore, necessary for the State Govt./District Administration to periodically review the status of implementation of R&R programmes and ensure completion of all necessary facilities in the rehabilitated colonies at the earliest. The progress in this regard against each project may also be communicated to the Commission within a month (indicating name of the project, planned facilities to be created in brief, present position/status of implementation, time- frame for completion, action taken by District Admn./State Govt. against the companies for delay).

[VI] Review of cases under IPC against PAPs/tribals

The PAPs also informed the Commission that the District Admin. had filed cases against 17 persons under various sections of IPC to suppress them and to facilitate forceful construction of boundary wall of the M/s Moser Baer Power & Infrastructure Company Ltd (MBPICL) Project. It is necessary that these cases are reviewed immediately by the State Government and real culprits brought to book in the matter.


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