

Mareshwar Project Jan Sunwai (Public Hearing)



May, 2002, Bhopal

The photographs on the cover are of the public hearing, with a close up of the women participants (top), and bottom (left to right) Aruna Roy, Bharat Dogra and Shekhar Singh conducting the hearing. Photos have been made available by Chittaroopa (Silvy) Palit and Alok Agarwal of the Narmada Bachao Andolan, who were also the main organisers of the *Jan Sunwai*.

REPORT OF THE NCPRI JAN SUNWAI ON THE MAHESHWAR PROJECT

May 2002: Bhopal

The National Campaign for People's Right to Information (NCPRI) organized a public hearing (Jan Sunwai) at Bhopal,

The NCPRI regrets the deliberate non-participation of the GOMP and their financial institutions in this hearing. It is surprising that when political parties and governments are publicly soliciting people's participation in all aspects of governance and development and acknowledging that they cannot promise probity without the active participation of the people, the GOMP chooses to ignore this public hearing. It is unfortunate that while publicly proclaiming its commitment to transparency, the GOMP attempts to weaken people's efforts to demand transparency.

The GOMP was invited, and the S. Kumar were not, because it was felt that the people had a right to ask for information from their government and that the primary responsibility to ensure that there was justice and probity was the governments. However, as representatives of S. Kumars came for the hearing, they were given full opportunity to participate and put forward their point of view.

The government needs to recognize that it is not only they who can create a forum where people can interface with them, but that the people themselves can also create such a forum and that the government is duty bound to participate in the people's forum.

The fact that the government chose not to attend seems to suggest that they might not have answers to the various questions raised by the people. In the absence of their answers, the panel has no alternative but to draw its conclusions on the basis of the evidence produced before it by the affected people and by the representatives of S. Kumars.

on 8 May 2002, on the proposed Maheshwar Dam in Khargone District of Madhya Pradesh. Nearly a thousand people attended the hearing, mostly from the villages likely to be submerged by the Maheshwar Dam. There were also representatives of the of the printed and electronic media, of S.Kumars, the private sector company that is executing the Maheshwar Project, and of various

NGOs and movements including the Narmada Bachao Andolan, Shramik Adivasi Sangathan, Betul, Kisan Adivasi Sangathan, Kesla, Jagrut Dalit Adivasi Sangathan, Badwani, Adivasi Mukti Sangathan, Ekta Parishad Madhya Pradesh, Narmada Bachao Andolan, Khedut Mazdoor Chetna Sanghat, Bhopal Gas Peedit Mahila Udyog Sangathan, Madhya Pradesh Vigyan Sabha, Bharat Gyan Vigyan Samiti, Samta, Tulika Samwad,

Sanket, Hind Mazdoor Sabha, AITUC, Janwadi Lekhak Sangh, Muskan

Representatives of the press and the electronic media also attended the hearing during the day. The panelists at the hearing were Aruna Roy of the Mazdoor Kisan Shakti Sanghathan (MKSS), Rajasthan an member of NCPRI; Habib Tanvir, theatre activist; Bharat Dogra, journalist and national convenor of NCPRI; Rampratap Gupta, economist, and Shekhar Singh, environmentalist and member of NCPRI.

Unfortunately, despite being invited, no representative of the Government of Madhya Pradesh (GOMP) or of the MP financial institutions involved in the project, participated.

The Public Hearing

The hearing started at 11.15 am and went on till 3 pm, after which the panelists conferred among themselves and then briefed the media from 5 pm.

The purpose of the public hearing was to help facilitate the people of the state, of the country and especially those affected by the project to demand information on the project and to raise those questions about the Maheshwar Project that needed to be answered by the government, by financial institutions and by other groups and organizations involved, affected or concerned with the project. It was expected and hoped that, as all the major parties would be present at the hearing, much of the required information and answers would become available during the process of the hearing. The unanswered questions and remaining bits of information could then be highlighted by the panelists and pursued with the concerned agencies.

The Maheshwar Project was selected for conducting a public hearing because not only is it a controversial project but there is also a strong people's movement in opposition to it. Further, many of the affected people have claimed that there is hardly any access to official information and that, sometimes there was actual disinformation. It was, therefore, thought that a public hearing would provide an opportunity for constructive and democratic debate between the government

and the affected people. Bhopal was chosen as a venue, even though it involved extensive travel by the affected villager, because it would make it easier for the GOMP representatives to attend.

Towards this end, the hearing was divided into four major types of issues:

- Financial issues relating to the project.
- Rehabilitation of project affected people (PAPs).
- Technical Issues relating to the project.
- Issues related to the human rights of the PAPs.

Each issue was taken up separately and the participants were invited to raise questions about the issue and to identify the information that they needed.

Financial Issues

Speaking on the issue of financial irregularities involved in the Maheshwar Project, activists of the Narmada Bachao Andolan said that when the Maheshwar project was privatized and the concession for building the dam was given to the S.Kumars company, the justification was that adequate public funds were not available. However, after privatization between the years 1992 and 2002, the costs of the Project was increased five times from Rs. 465 crores to Rs. 2231 crores, most of which is being sought to be tied up from public financial institutions. The Madhya Pradesh Audyogik Vikas Nigam gave the S.Kumars Rs. 8.02 crores, in violation of the limit of Rs. 3 crores. On not returning this and another loan of Rs. 45 crores, the Audyogik Vikas Nigam initiated a process of attachment and sale of the movable and immovable properties of the Maheshwar Project against the S.Kumars but all of a sudden, the matter has been put into cold storage. Yet, even after this, very recently, the Madhya Pradesh government gave a guarantee for bonds worth Rs. 330 crores to be issued by the S.Kumars.

It has also emerged from an appraisal by a public financial institution that Rs. 106.4 crores of public funds slated for the Maheshwar Project has been spent in works unconnected with the Project. The Narmada Bachao Andolan questioned the wisdom of signing a Power Purchase Agreement that will

ensure compulsory payments for the next 35 years with a company that has demonstrated an absence of financial discipline.

Some of the important questions that emerged from the hearing, to which there was an urgent need to seek answers from the government, included :

1. How the cost of the project had increased from Rs. 465 crores in 1994 to over Rs. 2254 crores by 1999, after it was taken over by the S. Kumars?
2. Why did the Madhya Pradesh State Industrial Development Corporation (MPSIDC) give the Induj Enertech Limited Mumbai (a subsidiary of S. Kumar's) a loan of Rs. 8.02 crores in 1997-98, for the Maheshwar Project, when its rules allowed loans only upto Rs. 3 crores without the prior approval of the State Government, which they never got.
3. Why did the MPSIDC further give Rs. 45 crores to Induj Enertech Limited Mumbai, again in violation of their rules?
4. Despite the fact that the MPDIC has publicly notified that Induj Enertech Limited Mumbai are willful defaulters in repayment of overdue principal and interest of over Rs. 11.08 crores (Public Notice in the Economic Times, Mumbai, 13-9-01), why has no action been taken to attach the movable and immovable properties of the Directors?
5. Again, despite the fact that the MPSIDC has also declared them defaulters for the second loan amount and have issued a revenue recovery certificate and requested the Collector, Khargone, to start recovery proceeding for Rs. 18.977 crores due as on 30-9-01, why have the properties of the Directors not been attached?
6. Further, why has the government taken no action nor cognizance of the report of the Industrial Finance Corporation of India (IFCI) that of the over 300 crores of public money disbursed to S. Kumars for the project (by IFCI, IDBI, SBI, LIC, GIC, PFC, Dena Bank, Punjab National Bank and MPSIDC), the S. Kumars have diverted Rs. 106.4 crores of public money to "various

agencies who have not been awarded any project contracts”?

7. Why has the GOMP not taken any action on the report of the Comptroller and Auditor General of India, for the year ended March 31, 2000, that S. Kumars have not even paid the Madhya Pradesh Electricity Board the Rs. 86.11 crores that was owed to them, despite the Maheshwar Project and the Pench Project being sold to them in November 1992 and July 1994 respectively?
8. Despite the S. Kumars defaulting on all the loans that they have taken, not even paying the money originally owed to GOMP, diverting money from the project to other unrelated agencies, and the GOMP itself issuing recovery and attachment orders against them, why has the GOMP decided to give them an in-principle, stand-by, guarantee in March 2002, for a public issue of Rs. 330 crores? Does this guarantee not tantamount to supporting a private sector project through public funds? Does this not go against the spirit of privatization, especially in the power sector, where one of the main rationale was to attract private funding to supplement scant public resources?

Rehabilitation of PAPs

A large majority of those who spoke expressed their dissatisfaction with the process of rehabilitation. These were mainly from 23 of the 24 panchayats affected by the project, and from NBA and other local movements and NGOs. There were, however, a few participants, one from the 24th panchayat and others from S. Kumars, who said that the rehabilitation process was satisfactory.

Basically, six types of issues were raised about rehabilitation. These were:

1. Disinformation and the non-availability of correct information.
2. Dissatisfaction with the rehabilitation package.

3. *Dissatisfaction with the process and results of the survey and demarcation done in order to identify the land being affected and the PAPs.*
4. *Dissatisfaction with the insistence of the GOMP and the project authorities to accept cash compensation instead of the land that they were entitled to.*
5. *Dissatisfaction with the process of rehabilitation, which was seen to be non-participatory, oppressive, unjust, arbitrary and corrupt.*
6. *Dissatisfaction with the quality of land being offered, in the few cases that it was being offered.*

Some of the important questions that emerged from the hearing, to which there was an urgent need to seek answers from the government, included :

1. *How many people will be adversely affected by the Project and in what manner ?*
2. *For how many families out of this, has land for land arrangements been made available ?*
3. *If land for land has not been arranged for all the affected families, is this not a violation of GOMP's own policy (section 3) and the conditions of clearance of the Ministry of Environment and Forests (3 iii), which clearly require PAPs, including major sons, encroachers and the landless, to be given land for land?*
4. *Why has the government not given information to the people about the availability of agricultural land?*
5. *Why was poor-quality land being allowed to be identified for rehabilitation, in those few cases that land was being offered?*
6. *What arrangements have been made for the rehabilitation of Kewats, Kahars and families dependent on fishing, sand quarrying and cultivation of melons and vegetables ?*
7. *Despite there being the real danger of a large proportion of the land becoming water-logged due to the reservoir, why was the GOMP not including those who would be so affected in the list of PAPs?*

Technical Issues

Those who spoke on this issue mainly pointed out the high cost of electricity that would be produced by the Maheshwar Project and the unlikelihood of it being affordable in Madhya Pradesh. It was alleged that the cost of electricity being from Maheshwar would cost between Rs. 5 and 6 per unit, with the cost of peaking power being as high as Rs. 9.65 per kWh, when the cost of power from the MP State Electricity Board utilities was between Rs. 1.25 and Rs. 1.67 per unit.

They also pointed out that the Maheshwar Project would produce most of its electricity during the monsoon season, when the demand in the state was very low. Parallels were also drawn with the Enron case when similar fears had been expressed before the project was constructed, but had been brushed aside by the government. However, subsequently, the government realized that it could not afford the electricity being produced by the Enron Project. It was pointed out that the GOMP had entered into a power purchase agreement with S. Kumars where the GOMP would have to pay Rs. 600 crores a year to the project proponents, irrespective of whether it could afford to buy their electricity, for 35 years, a total of a whopping 21,000 crores!.

Some of the important questions that emerged from the hearing, to which there was an urgent need to seek answers from the government, included :

1. What will be the cost of electricity to be produced by this Project? What is the detailed rationale for the government's estimates, especially considering that independent estimates put it much higher than the government's reported estimates?
2. If it is very high, what will be the impact of compulsory purchase of power from this Project for the next 35 years and how would this compromise the ability to buy cheaper power, from other sources?
3. What will be the impact on farmers and other consumers of electricity?
4. Will a large part of the electricity to be produced by this Project be during the monsoons?

Human Rights Issues

Many of the affected villagers who participated in the public hearing reported serious violations of human rights. They referred to the report of the national Commission on Women (May, 1998), which had concluded that the police and state authorities had used violence extensively against peaceful demonstrators, in April, 1998. They claimed that violence and oppression against them was continuing even till today and gave many examples of such violence.

Several villagers and specially women complained of facing harrasment and violence from the police and authorities. They complained of being beaten up and their clothes being torn. Many people wanted to know whether S.Kumars was running the government in this area? Shri Khumansingh of Pathrad said that we have been run over by horses, assailed by tear gas, faced lathi charges and thus a non-violent movement has been sought to be crushed by violent means.

After hearing the different presentations by speakers at the Jan Sunwai, the panel felt that there is an urgent need to seek answers for the following questions from the government :

1. Why violence was being allowed against peaceful demonstrations?
2. Why the police and other state authorities were being permitted to oppress the people in the area?
3. Why has the government not investigated the alleged violence and taken action against those found guilty of perpetrating it? For instance, what action, if any, was taken on the findings of the National Commission on Women, as stated in their report of 1998?

Miscellaneous Issues

A representative of S.Kumars asked four questions of the NBA and the GOMP:

1. Whether the NBA was only against large dams or against all dams?

2. Whether the NBA considered the Maheshwar Project to be a large dam?
3. Has the government allowed the visit of foreign nationals in the project area?
4. Why has the government not banned the entry of NBA in Khargone district despite the fact that it has 20 cases filed against it and the government usually bans the entry into a district of any one who has five or more cases filed against him/her?

As there was no GOMP representative present, their responses to the questions could not be heard. However, the NBA representatives, in keeping with the spirit of a public hearing, gave answers to these questions. In response they said that they were primarily opposed to large dams but looked at each dam on a case by case basis. They further stated that the Maheshwar Project was listed as a large dam in the official records of the government and, as such, must be considered to be so. They also clarified that any foreign nationals who visited the area must have both a visa and fill in the required form C. Therefore it can be assumed that they have government permission. However, they were not sure whether the representatives of foreign financial agencies brought to the project site by the S. Kumars, in a helicopter, had got the requisite permission. Finally, they clarified that they and their members had many more than 20 cases filed against them, but that their members included over 2000 families of the region and the government did not have the strength to ban these people from their own homes. Besides, they contended that these cases were all false and mentioned that only recently they had been honourably acquitted in four such cases.

Conclusions

After the public hearing, the members of the panel discussed the issues among themselves and came to the conclusions that:

1. Given the facts and data presented at the hearing, it *prima facie* seemed that there were serious questions about the social, technical, and financial viability of the project.

2. *It seemed that neither was the rehabilitation process appropriate, nor was the rehabilitation package adequate. There appeared to be serious problems in the identification of PAPs. The allegation that the GOMP was going back on its own policy and earlier commitment to give land for land as also land to various categories of the landless, was a cause for particular worry and the GOMP must explain this to the people.*
3. *The seeming non-acquisition of adequate and suitable land for rehabilitation was also a major worry and the GOMP needs to explain to the people why it is forging ahead with the project despite their not being able to acquire the required land for rehabilitation.*
4. *On the basis of the information presented, there were serious doubts raised about the technical and financial feasibility of the project and there were good reasons to believe that this project could also become a drain on public resources, like the Enron project. Therefore, it was essential that the GOMP explain why it is still persisting with the project and offering various guarantees.*
5. *There also appeared to be major violations of human rights. The use of force against peaceful demonstrators, efforts at stifling protests and the use of force to shift people out of their homes was particularly disturbing and the GOMP must explain to the people why it had permitted such things to happen.*
6. *Most worrying was the evidence of financial irregularities by the project proponents and the seeming inaction by the GOMP. There appeared to be incontrovertible evidence that the private sector companies involved had drawn loans from the government in violation of the established procedures. There was further incontrovertible evidence that these companies had subsequently defaulted on repayments and recovery orders had been issued against them. They had also not paid the amounts originally owed by them to the GOMP on taking over the project and the CAG had adversely commented on this. There was also incontrovertible evidence that they had diverted a substantial amount of public money to other, unrelated,*

companies and action had been recommended against them. However, despite all this, very little action for recovery of moneys due to the state had been taken so far. The GOMP needs to explain to the public why it has not taken strong and urgent action against the defaulting companies and what action, if any, it has taken against those officials who clearly helped these companies to get hold of public money in violation of rules.

7. Most surprising, even after all this, the GOMP has reportedly agreed, in principle, to guarantee a public issue of these companies to the amount of Rs. 300 crores. The GOMP needs to explain to the people on what basis this guarantee is being given to a company that is already being proceeded against for recovery of bad loans and for financial irregularities, and who is responsible for such careless handling of people's money.

The panel noted, with regret, that the GOMP's absence from the public hearing resulted in their not being able to answer any of these questions raised by the public. It also noted that, though representatives of S. Kumars were present, they were unable to answer these questions. However, in the opinion of the panel, this absence of the government puts a great moral responsibility on them to both publicly answer the questions raised and to not do this just through the media but in open dialogue with the affected people.

Annex 1

The Maheshwar Project

The Maheshwar hydroelectric project is a dam on the Narmada river. The project is located 105 km south of the city of Indore, and is connected through the National Highway via Dhamnod. The project is located 4 km east of Mandleshwar town. Drawing on the aggregate catchment area of 69,184 square km., with regulated releases from the Narmada Sagar project and the Bargi project near Jabalpur, the Maheshwar project plans to produce power only during peak-use hours.

As approved by the CWC/CEA, the project envisages construction of: (1) a concrete dam 1075 meters long, with the maximum height of the dam as 36 meters in the river portion (including a non-overflow portion 65 meters long on the left flank, a non-overflow portion 40 meters long on the right flank, a power dam 250 meters long, an overflow dam 670 meters long in the river portion, and another non-overflow portion 50 meters long on the right flank); (2) construction of an earth dam on the left bank 1620 meters long with a maximum height of 19.87 meters; (3) construction of an ear dam on the right bank 725 meters long with a maximum height of 5.11 meters; (4) erection of 27 radial sluice gates each 20 meters wide and 17 meters high on the overflow portion of the dam; and (5) construction of a power house at the foot of the dam on the right flank to house the ten generating units of 40 MW each.

The approved installed capacity of the project is 400 MW. This project envisages utilization of regulated released from the upstream Narmada Sagar reservoir. The work of construction of Narmada-Sagar is underway, but expected to take many years. Pending this, the Maheshwar project expects to utilize the available run-of-the-river inflows. Regulated releases from Bargi Power House are also expected to be helpful in generation of hydroelectric power.

The control of the project has changed hands three times since its inception. The implementation of the project was with the Narmada Valley Development Authority (NVDA) until 1988. Due to its status as a power project, it was then handed over to the Madhya Pradesh Electricity Board (MPEB). In 1992, the GoMP decided it should be allocated to the private sector, and the concession was awarded to S. Kumars in 1993.