

Mahuva Andolan of Gujarat

Judicialisation of Politics and Protests

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The Mahuva Andolan against the construction of a cement plant by Nirma on ecologically sensitive wetlands highlights the limitations of the people's protest amid the state government's focus on industrialisation at any cost.

Why Study Mahuva Andolan[i]

Since the beginning of the twenty first century, India has witnessed more protests against the environmental degradation and land acquisition than any social or political issues per se. Though land acquisition for industrial development has been going on in Gujarat on a large scale, not many protests have taken place in the state. Since 2003, the state has been organising the "Vibrant Gujarat Global Investors Summit", to attract investment from both domestic and international industrial houses. Between 2008 and 2011, about 78,838 hectares of pastureland, wasteland and fallow land was allocated by the Gujarat government to various industries (Sandesh 2011). This has altered the land use pattern significantly, and the state today faces a huge deficit of pastureland for its 24,728,000-strong cattle population (Indian Express 2010).

According to the 2011 Census, the number of cultivators or farmers has declined by 3.35 lakhs, while the number of agricultural labourers has increased by 16.78 lakhs (Indian Express 2013). In such a scenario, a study of Mahuva Andolan becomes important for two reasons—its attempt to save pasturelands and water bodies and its stress on agriculture-based development vis-à-vis development based on industrialisation.

The Ministry of Environment and Forests[ii] (MoEF) had given the environmental clearance to Nirma Limited for establishing a cement plant in Mahuva block in December 2008. However, it was revoked by the ministry in December 2011, because the clearance was based on incorrect information provided by the company and the Gujarat government that the plant site was a wasteland. The fact that the site was an environmentally sensitive wetland was not disclosed by the company in the rapid environment assessment report submitted to the ministry.

The Supreme Court asked Nirma to prove that the land was a wasteland in response to a petition by a protesting group—Shri Mahuva Bandhara Khetiwadi Pariyavaran Bachav Samiti (SMBKPBS). On 9 December 2011, the apex court disposed the case after the MoEF submitted recommendations of two technical expert committees that said there existed a "water body" on the site of the proposed plant (Babu 2011) and allowed Nirma to approach the National Green Tribunal (NGT). The legal case is pending with the NGT since 8 February 2013.

Though the case continues with the NGT, the verdict of the Supreme Court and the cancellation of the environment clearance by the MoEF have been interpreted as a victory for the Mahuva Andolan. However, this success needs to be taken with a pinch of salt, as it was mainly due to legal and

judicial actions.

The 2002 Gujarat High Court judgement^[iii] regarding protection of existing “water bodies” was crucial for the Andolan’s success. The Mahuva Andolan was not a high profile or a visible protest in terms of its leadership, ideological articulations and positions, mass mobilisation, participation and its organisational strength, protest strategies that include use of social networking and mass media, and transnational alliances and international visibility. Infact, Kanubhai Kalsariya, a leader of the protest, lost two consecutive elections—the legislative assembly election in 2010, and the Lok Sabha elections in 2014.

Enviromental Clearance

Mahuva, a taluka (block) in Bhavnagar district of Gujarat and a part of coastal Saurashtra (western Gujarat), is an ecologically fragile area. Fast spreading salinity ingress and short supply of fresh water are perennial issues in this region. Since the 1990s, several *bandharas* (waste weirs, tidal regulators) and different types of barriers were built to control salinity.

The government of Gujarat constructed four *bandharas*^[iv] as part of Samadhiyala Bandhara Yojana^[v] (SBY) in Mahuva taluka between 1998 and 2010. These *bandharas* were constructed to prevent salinity, conserve sweet river water and provide irrigation facility to the surrounding villages. As a result, the farmers were able to cultivate three crops a year. In the region, more than 5,000 people are directly employed in onion farming and about 5,000 people work in 50 onion dehydration units and 20 cotton-ginning factories operating in the area. Each farmer can earn about two lakh rupees every year per acre (0.4 hectare).

At the Vibrant Gujarat Global Investors Summit, 2003, Nirma proposed to build a cement plant (1.5 MTPA; 150 MTPA clinker), captive power plant (50 MW), and a coke oven plant (1.5 LTPA), worth Rs 900 crores. On 23 February 2004, Nirma proposed Padhiyarka village of Mahuva taluka as the location for the cement plant and sought 280 hectares for its construction and an adjoining 3,460 hectares of land for mining limestone.

Of the 268 hectares land that Nirma had demanded, 222 hectares was a part of Samadhiyala Bandhara, a sweet water reservoir, and its catchment area. Nirma discovered that this land got submerged during the monsoon, and that if the cement plant was constructed then the total capacity of the reservoir (62.31 MCFT^[vi]) would be reduced by 34% due to shrinkage of its catchment area. Nevertheless, Nirma suggested deepening the reservoir to compensate for the loss of water to make the proposed project viable. Nirma applied for setting up the plant on 5 September 2007, proposing that the plant would employ 500 to 700 people and about 2,000 would benefit from ancillary units that would be set up.

Meanwhile, different departments^[vii] of the state government discussed the status of land records and the technical viability of the project and approached the advocate general (AG) of Gujarat for a legal opinion in light of the Gujarat High Court’s judgement concerning the conservation of water bodies. The AG, who had been a designated counsel of Nirma for almost 25 years through his legal firm, opined:

The lands in question do not find place in the revenue record as having any lake, ponds or any other water-bodies nor are they notified as such, so as to encompass them within the purview of the directions contained in the aforesaid judgment of the High Court.^[viii]

Some civil rights activists demanded the AG's resignation "alleging constitutional impropriety". (Indian Express 2010).

On 16 April 2008, Nirma was granted 268 hectares of land by the Gujarat government subject to certain conditions. Following this permission, Nirma submitted an environmental impact assessment (EIA) and environmental management plan (EMP) to the MoEF for seeking clearance. Public hearing for the environmental clearance took place at Padhiyarka village on 9 September 2008. This hearing was called a "stage-managed show" by the project affected people, as they did not get a chance to express their opinion. The MoEF granted environmental clearance to Nirma on 11 December 2008. The no objection certificate (NoC) was given by the Gujarat Pollution Control Board (GPCB) on 25 May 2009.

Farmers Petition High Court

The farmers decided to fight the allocation of land to Nirma for the cement plant and formed SMBKPBS. They approached Kanu Kalsariya, a sitting MLA (member of Legislative Assembly) representing the Bhartiya Janata Party (BJP), to lead this protest. The SMBKPBS in March 2009 filed a petition[ix] in the high court. They sought restoration of the land which included the Samadhiyala check-dam, two other check-dams and a natural lake that covered pastureland of surrounding villages. They also asked the court to direct the government to incorporate the water reservoir, lakes and dams in its records. Whenever the SMBKPBS organised a public meeting or *padyatra*, the protesters were arrested[x] and beaten up by the police for filing the case.

To resolve this issue, as directed by the high court, the state government appointed an expert committee headed by S K Shelat[xi] on 29 May 2009. This committee was asked to look into all the aspects related to Samadhiyala Bandhara and the allocation of land to Nirma. The Shelat committee submitted three alternatives to the cabinet committee for consideration. The first was the establishment of the cement plant in 268 hectares as asked for by Nirma. The second was deduction of 54 hectares from 268 hectares also suggested by Nirma. And the third was to establish the cement plant in 168 hectares as suggested by the National Council for Cement and Building Materials.

The state government appointed a sub-committee on 12 August 2009 consisting of four ministers[xii] and based on its report, the Gujarat government decided that 54 hectares of land would be taken back from Nirma, with imposition of certain new conditions. Thus, Nirma was left with 214 hectares of land; it had to deepen 62 hectares of land to increase the water capacity by 21.23 MCFT and perform other tasks as per the new conditions.

On 26 February 2010, before Kanubhai could plead the Mahuva case in the legislative assembly, security men stopped him and took him out. When Kanubhai insisted on meeting Chief Minister Narendra Modi, only he was allowed to see him. The discussions centered around the recommendations of the Shelat committee and why they were unacceptable. The meeting did not yield any concrete solution.

Supreme Court Approached

A division bench of the Gujarat High Court put a stay on the construction work of the Nirma plant at Mahuva until further orders on 16 March 2010. It also asked the SMBKPBS to file an affidavit along with the relevant documents, maps and satellite images[xiii] of the wetland, and also asked Nirma to surrender additional 46 hectares of land as part of the settlement formula by 31 March 2010.

The company decided to surrender 46 hectares, but the SMBKPBS rejected this solution. The SMBKPBS submitted a review petition to the high court, which was rejected.

SMBKPBS later approached the Supreme Court challenging the grounds on which the review petition was rejected by the high court. It argued that the high court had not taken into account the faulty environment clearance given by the GPCB. The Supreme Court [xiv] issued a notice to the MoEF to file an affidavit indicating whether the water body would get polluted/affected as and when the proposed cement plant became operational. The MoEF filed two affidavits mentioning that the cement plant may not pollute the water body if stipulations specified in the environmental clearance were implemented (Babu 2011).

In January 2011, the MoEF appointed an expert committee consisting of seven members with Professor C K Varshney as chairman to check the ground situation. The Varshney committee's report stated:

Samadhiyala Bandhara possesses all the characteristic features of wetland ecosystem (fresh water body) supporting rich adequate vegetation composed on different types of aquatic plant species, aquatic birds, fish and amphibians.

The MoEF, on 11 March 2011, issued a show cause notice to Nirma under Section 5 of The Environment Protection Act, 1986 for permanent suspension of work and revocation of the environment clearance granted to the cement plant, captive power plant and coke oven plant.

The Supreme Court directed the MoEF to call for the report of an expert body consisting of five independent reputed scientists[xv] on 18 March 2011. The apex court asked the expert body to find out whether the land under contention was a water body; if the water body existed, then how did it affect the environment; what steps could be taken for environment protection; and the current status of the project. This body unanimously concluded that the site of Nirma's industrial complex must be relocated outside Samdhiyala Bandhara—a common property resource—and its periphery (Babu 2011). Based on this report, the MoEF cancelled the environment clearance given to Nirma for the cement plant at Mahuva on 1 December 2011 and filed an affidavit in the Supreme Court stating the same on 8 December 2011.

Conclusions

Parallel collective social action accompanying legal steps since 2009 raises a critical question—whether the Mahua Andolan would have been successful in the absence of the high court judgement regarding conservation of water bodies in the state. The answer is a resounding no.

The judiciary focused exclusively on the “water body” and “wetland” debate and ignored three important points .[xvi] First that the dated land records were manipulated by the state government to show that no water body existed on the project site. The AG's legal opinion was definitely biased and indicated a “conflict of interest”. Secondly, the EIA did not disclose crucial information that the project site contained a water body, did not present the hydrological impact of the project and suppressed and misrepresented the facts to prove viability of the project. The clearance given by the GPCB was not on sound grounds. Yet, the judiciary did not take action against any of the responsible authority for such negligence. Thirdly, despite several newspaper reports saying that pastureland

was shown as wasteland and given to industrial units, the judiciary did not find these issues worth addressing. This analysis reveals limitations of the peoples' protest and its inability to influence the land use policies.

The NGT's judgement can change the scenario. However, this Andolan became a torchbearer for the subsequent protests against land acquisition in Gujarat. Protests against the Mandal-Bechraji Special Investment Region (SIR), spread over 50,884 hectares, prompted the state government to withdraw 36 out of 44 villages from the proposed SIR in 2013

Notes

[i] Mahuva is the name of the place and 'andolan' means a 'protest', not a social movement.

[ii] An industrial unit, coming up in a coastal regulatory zone, needs clearance from the MoEF.

[iii] SCA/10621/2000 dated 02.08.2002. The High Court had asked the government to identify and notify the water bodies to ensure that these water bodies will not be alienated and transferred to anyone.

[iv] Kalsar, Samadhiyala, Nikol and Malan Bandhara.

[v] SBY is a small irrigation project under the Bombay Irrigation Act, 1979.

[vi] Million Cubic Feet.

[vii] Salinity control, the Collectorate of Bhavnagar district, Department of Water Resources, Department of Revenue, and Commissionerate of Industries.

[viii] Quoted from the legal petition.

[ix] Special Civil Application No.3477 of 2009. This case is a matter under Article 14, 21, 48, 48-A, and 226 of the Constitution of India as well as a public interest litigation (PIL).

[x] About 300 were arrested on 13 December 2009. The protesters collected 11,111 signatures in blood and wanted to submit the memorandum to the Chief Minister (CM) on 25 February 2010. The police arrested Kanubhai and other participants on their way to Ahmedabad from Mahuva, beaten women mercilessly, and the rally could not take place.

[xi] Five members - S.K. Shelat, Advisor to the Chief Minister, Gujarat; S.J. Desai, Secretary, Nardama, Water Resources, Water Supply Department; C.L. Meena (IAS), Chairman, Gujarat Pollution Control Board; A. B. Panchal, Former Collector, Bhavnagar; and K.N. Patel, Retired Additional Director, Geology and Mines. http://www.cseindia.org/userfiles/shelat_committee_report.pdf

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[xii] Minister of Finance, Labour & Employment; Minister of Water Resources, Water Supply and Urban Development; Minister of State for Industry & Mining; and Minister of State for Home, Transport, Law & Justice.

[xiii] SMBKPBS submitted Google earth maps and maps by National Remote Sensing Agency, Indian Space Research Organisation (ISRO).

[xiv] SLP Nos 14698 and 15016 of 2010.

[xv] Professor C R Babu (chairperson), Dr. Asad Rehmani, Dr. Parikshit Gautam, Dr. Ligia Noronha, Professor Brij Gopal, Dr. E J James, and Dr. P B Rastogi (secretary). Subsequently, the MoEF included Paritosh Tyagi as member.

[xvi] See the points of prayer and review petition by the SMBKPBS.

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