

## West Bengal Act XXVI of 1958<sup>1</sup>

### THE WEST BENGAL IRRIGATION (IMPOSITION OF WATER RATE FOR DAMODAR VALLEY CORPORATION WATER) ACT, 1958.

AMENDED

West Ben. Act XXIII of 1976.

[30th January, 1959.]

*An Act to provide for the imposition of a water rate in areas in West Bengal where water supplied by the Damodar Valley Corporation is available for irrigation and certain matters ancillary thereto and connected therewith.*

WHEREAS it is expedient to provide for the imposition of a water rate in areas in West Bengal where water supplied by the Damodar Valley Corporation is available for irrigation and certain matters ancillary thereto and connected therewith;

It is hereby enacted in the Ninth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the West Bengal Irrigation (Imposition of water rate for Damodar Valley Corporation Water) Act, 1958.

Short title,  
commence-  
ment and  
application.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

(3) It shall apply to so much of the limits of the Damodar Valley and of the area of operation of the Corporation as is situated in West Bengal.

2. In this Act, unless the context otherwise requires,—

Definitions.

(1) "the Act" means the Damodar Valley Corporation Act, 1948;

(2) "area of operation of the Corporation" has the same meaning as in sub-section (3) of section 11 of the Act;

(3) "canal" means,—

(i) any river or any stream, canal, distributary or other water-course and any reservoir, dam, weir, pond, pool or sheet of water, constructed, maintained, worked or improved by the Corporation or by the State Government or by any agency under arrangement with

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1948.

<sup>1</sup>For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 5th July, 1958, Part IVA, page 2492; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meetings of that Assembly held on the 19th, 21st, 22nd, 23rd, 24th, 30th and 31st July, 1958, the 1st August, 1958 and the 29th and 30th December, 1958; and for proceedings of the West Bengal Legislative Council, see the proceedings of the meetings of that Council held on the 16th, 19th and 23rd December, 1958.

<sup>2</sup>The Act came into force with effect from the 23rd February, 1959. Vide notification No. 6—1, dated 19th February, 1959, published in the *Calcutta Gazette, Extraordinary* of 1959.

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the Corporation or the State Government, in connection with the promotion and operation of any scheme for irrigation, water supply or drainage,

- (ii) any supply or escape channel, conduit, sluice, groin or other inlet into or outlet from a canal as defined in sub-clause (i),
- (iii) any land on the bank of a canal as defined in sub-clause (i) or sub-clause (ii), acquired by the State Government for the Corporation and which is permanently or occasionally covered by water, but does not include any work for the removal of sewage;
- (4) "collector" includes any officer appointed by the State Government to perform any or all of the functions of a Collector under this Act;
- (5) "the Corporation" means the Damodar Valley Corporation constituted under section 4 of the Act;
- (6) "kharif season" means the part of the year from July to October;
- (7) "limits of the Damodar Valley" has the same meaning as in sub-section (1) of section 11 of the Act;
- (8) "rabi season" means the part of the year from November to <sup>1</sup>[February];
- <sup>2</sup>(8a) "summer season" means the part of the year from March to April;
- (9) "year" means a period of twelve months commencing with July.

Act to  
override  
other laws.

3. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in the Act or in any other law or contract for the time being in force.

Imposition  
of water  
rate.

4. (1) Whenever the State Government is of opinion that lands in any area in West Bengal within the limits of the Damodar Valley or within the area of operation of the Corporation are benefited or are likely to be benefited by irrigation during <sup>3</sup>[kharif season, rabi season or summer season] by water supplied by the Corporation through canals,

<sup>1</sup>The word within the square brackets was substituted for the word "March" by s. 2(i) of the West Bengal Irrigation (Imposition of water rate for Damodar Valley Corporation Water) (Amendment) Act, 1976 (West Ben. Act XXIII of 1976).

<sup>2</sup>Clause (8a) was inserted by s. 2(ii), *ibid*.

<sup>3</sup>The words within the square brackets were substituted for the words "the kharif season



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the State Government may, by notification, declare its intention to impose in such area a water rate, for <sup>1</sup>[kharif season, rabi season or summer season], at such rate not exceeding,—

- <sup>2</sup>(a) rupees thirty-two for an area of 4047 hectares for kharif season,
- <sup>2</sup>(b) rupees forty-eight for an area of 4047 hectares for rabi season, and
- <sup>2</sup>(c) rupees one hundred and sixty for an area of 4047 hectares for summer season,

as may be specified in the notification.

(2) On the publication of a notification under sub-section (1), any person interested in any land likely to be affected by the imposition of the water rate referred to in the notification may, within a period of one month from the date of publication of the notification, prefer objections to the State Government to the intended imposition of the water rate, or the rate at which the water rate is intended to be imposed or to the inclusion of such land in the area in respect of which the declaration has been made under sub-section (1).

(3) On the expiry of the period referred to in sub-section (2) for preferring objections, the State Government may, after considering the objections, if any, received by it during such period, by notification—

- (a) withdraw the declaration intending to impose a water rate, or
- (b) impose a water rate, in the area in respect of which the declaration under sub-section (1) was made or in any part thereof (hereinafter referred to as the notified area), not exceeding the rate specified in the notification under sub-section (1):

Provided that such rate shall, in respect of any land for which water is obtained for irrigation by lift irrigation arrangement maintained and operated by the occupier thereof, be one-half of the rate specified in the notification.

<sup>3</sup>(4) The water rate imposed under clause (b) of sub-section (3) shall remain effective until the same is revised by the State Government by similar notification issued under this section.

5. Notwithstanding anything to the contrary contained in any other law for the time being in force or in any custom, usage or contract, the liability for payment of the water rate shall be on the occupiers of the lands included in the notified area:

Liability for  
payment of  
the water  
rate.

<sup>1</sup>See foot-note 3 on page 2, ante.

<sup>2</sup>These clauses were substituted for original clauses (a) and (b) by s. 3(a)(ii) of the West Bengal Irrigation (Imposition of water rate for Damodar Valley Corporation Water) (Amendment) Act, 1976 (West Ben. Act XXIII of 1976).

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Provided that where any such land is cultivated by a *bargadar* as defined in clause (2) of section 2 of the West Bengal Land Reforms Act, 1955, the liability for payment of the water rate shall be on the owner of the land under whom the *bargadar* holds:

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Act X of  
1956.

Provided further that when water rate is paid by the owner of any land cultivated by a *bargadar*, the owner shall be entitled to recover from the *bargadar* half of the amount paid by him as water rate.

Exemption.

6. If for any reason there is, in any season, a total or partial failure of crops in any land in the notified area, the State Government may, grant total or partial exemption from the water rate to the owner or occupier of such land as the case may be.

Assessment.

7. (1) As soon as possible after the notification under sub-section (3) of section 4, imposing a water rate is published, the Collector shall make a preliminary assessment of the rate for <sup>1</sup>[*kharif* season, *rabi* season or summer season] in respect of all lands included in the notified area and shall cause notices of such preliminary assessment to be served on all persons liable to pay the water rate specifying therein the period within which objections to the assessment may be preferred.

(2) On the expiry of the period specified in the notice under sub-section (1), the Collector shall, after considering objections, if any, received by him during such period, make a final assessment of the rate for <sup>2</sup>[*kharif* season, *rabi* season or summer season] which shall be payable annually so long as the notification under clause (b) of sub-section (3) of section 4 remains in force.

The Collector shall cause a notice of demand to be served on every person by whom the water rate is payable according to such assessment requiring him to pay the water rate for the year mentioned in the notice of demand for <sup>3</sup>[*kharif* season, *rabi* season or summer season], as the case may be, by such date as may be specified in the notice of demand not being earlier than one month after the service of such notice:

Provided that such notice of demand shall, if it cannot be served for any reason within the year to which the demand relates, be served as soon thereafter as possible.

(3) Every person who makes payment of water rate by the specified date shall be entitled to a rebate of five *per centum* of the amount of the water rate.

<sup>1</sup>The words within the square brackets were substituted for the words "the *kharif* season or for the *rabi* season" by s. 4(a) of the West Bengal Irrigation (Imposition of water rate for Damodar Valley Corporation Water) (Amendment) Act, 1976 (West Ben. Act XXIII of 1976).

<sup>2</sup>The words within the square brackets were substituted for the words "the *kharif* season



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(4) Subject to the provisions of section 8, if any amount of the water rate due from any person is not paid by the date specified in the notice of demand, interest at such rate not exceeding six and a quarter *per cent. per annum* as the State Government may fix from time to time shall be payable thereon from the date of the default.

8. Any person may, within thirty days from the date of service on him of a notice of demand under sub-section (2) of section 7, appeal to such appellate authority as may be prescribed by rules made under this Act, either regarding his liability to pay the water rate or the amount assessed and the decision of the appellate authority in such appeal shall be final.

Appeal.

9. (1) For the purpose of irrigation or drainage of lands in the notified area, the owners or occupiers of such lands shall be bound to afford free passage for water through or over all lands in their possession or under their control and for that purpose to allow, when so required by the Collector by order made in this behalf, the construction and maintenance of such channels as may be necessary, without causing unnecessary loss or damage to such lands.

Free passage  
of water for  
irrigation or  
drainage to  
be afforded  
through or  
over all  
lands.

(2) If any person refuses to comply with an order under sub-section (1), the Collector may cause the channel to be constructed or maintained and may recover the costs thereof from such person as public demand.

(3) Notwithstanding anything contained in any other law for the time being in force, no person shall be entitled to claim any compensation for any damage or loss which may be caused as a result of the construction or maintenance of any channel under sub-section (1) or sub-section (2).

10. (1) If any obstruction is put in any channel referred to in section 9 or other canal or any cut is made on the bank thereof as a result of which the normal flow of water through such channel or canal is diverted for the purpose of irrigating any land, the Collector may—

Penalty for  
diversion of  
normal flow  
of canal  
water by  
obstruction,  
etc.

- (a) take such measures as he may consider necessary to remove such obstruction or to close such cut, and
- (b) without prejudice to the provisions of section 7, impose a penalty, which may extend to ten times the water rate assessed for '[*kharif* season, *rabi* season or summer season]', as the case may be, having regard to the time when the obstruction

<sup>1</sup>The words within the square brackets were substituted for the words "the *kharif* season or the *rabi* season" by s. 5 of the West Bengal Irrigation (Imposition of water rate for Damodar Valley Corporation Water) (Amendment) Act, 1976 (West Ben. Act XXIII of

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is put or the cut is made, on the persons assessed to water rate under section 7 who are the owners or occupiers of the lands irrigated by water so diverted, after giving them an opportunity of showing cause against the imposition of such penalty:

Provided that no such penalty shall be imposed on any person who proves to the satisfaction of the Collector that such obstruction was put or such cut was made without his knowledge or consent.

(2) Any penalty imposed under this section shall be recoverable as a public demand.

(3) Any person aggrieved by an order imposing a penalty on him under this section may within thirty days from the date of the order appeal to such appellate authority as may be prescribed by rules made under this Act and the decision of the appellate authority in such appeal shall be final.

Arrears of  
water rate to  
be recover-  
able as  
public  
demands.

11. All arrears of water rate together with interest and costs, if any, shall be recoverable as public demands.

Proceeds of  
water rate  
to be  
distributed  
between  
the State  
Government  
and the  
Corporation.

12. The proceeds of the water rate, after deduction of the expenses incurred by the State Government, for supply and distribution of water, including the costs of construction or maintenance of channels, and for assessment and realisation of the water rate shall, notwithstanding anything contained in the Act, be distributed between the State Government and the Corporation in such proportion as may be agreed upon.

Power to  
make rules.

13. (1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for—

- (a) the manner of publication of notifications issued under this Act,
- (b) the form and manner of service of notices and the procedure to be followed for considering objections under section 7, and
- (c) the appellate authority to whom appeals under section 8 shall lie, the fees, if any, payable on petitions of appeal and the procedure to be followed by the appellate authority.

<sup>1</sup>For the West Bengal Irrigation (Imposition of Water Rate for Damodar Valley Corporation Water) Rules, 1959, made under section 13 of the Act, see notification No. 22—L, dated 6.8.59, published in the *Calcutta Gazette, Extraordinary*, of 1959, Part I, pages 2275-2279.