

West Bengal State Tubewell And Lift Irrigation Act, 1974

48 of 1974

[12 December 1974]

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SCHEDULE 1 :- THE SCHEDULE

West Bengal State Tubewell And Lift Irrigation Act, 1974

48 of 1974

[12 December 1974]

PREAMBLE

An Act to provide for the development of agricultural lands in West Bengal by tube well and lift irrigation projects and for the imposition of levy or levies in respect of lands served by any such irrigation projects.

Whereas it is expedient to provide for the development of agricultural lands in West Bengal by tube well and lift irrigation projects and for the imposition of levy or levies in respect of lands served by any such irrigation projects;

It is hereby enacted in the Twenty-fifth Year of the Republic of India, by the Legislature of West Bengal, as follows:-

- 1. For Statement of Objects and Reasons, see the Calcutta Gazette, Extraordinary, Part IV, of the 19th November, 1974, page 2007.

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called the West Bengal State Tube well and Lift Irrigation Act, 1974.

(2) It extends to the whole of West Bengal.

(3) It shall come into force in such area or areas and on such date or dates as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas or for different provisions of this Act.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-

(a) "agricultural lands" means lands used for agriculture and includes lands used for growing fruits, vegetables and the like and culturable waste or fallow lands but not homestead lands;

(b) "appellate authority" means the authority referred to in section 26, to hear and dispose of appeals under this Act;

(c) "Chief Engineer" means the Chief Engineer (Agriculture) in the Department of Agriculture and Community Development and includes any Engineer subordinate to him, but not below the rank of an Executive Engineer, who is authorised by the Chief Engineer to act on his behalf for the purposes of this Act;

(d) "Collector" includes the Additional District Magistrate and any other officer, not below the rank of a Deputy Collector, specially empowered by the State Government to perform all or any of the functions of a Collector under this Act;

(e) "command area" means any area which is served by an irrigation project located within such area shown in a map prepared by the Chief Engineer describing and delineating its local limits and boundaries; such command area may be different with respect to kharif, pre-kharif, rabi seasons or summer crop;

(f) "crop" means any of the pre-kharif, kharif, rabi or summer crops or other fruits, vegetables as specified in the Schedule to this Act:

Provided that the State Government may, by notification in the Official Gazette, revise the Schedule by such addition thereto or alteration therein, as the State Government may consider necessary from time to time;

(g) "development levy" means a levy imposed under this Act in respect of any area and payable by every person being either the owner or occupier of agricultural lands within that area, who does

not avail of the irrigation facility from deep tube wells or shallow tube wells owned by Government or river lift or other irrigation schemes of Government for any season other than kharif during a year by way of requisition for water, for the plot concerned, and payable at such rate per annum for every hectare of agricultural land in the notified area of an irrigation project as may be fixed by the State Government by notification referred to in section 3;

(h) "irrigation project" means a project of the State Government for providing irrigation facilities to any agricultural land through a tube well which may be either a deep tube well or a shallow tube well or lift (pumping) plant set up for the purpose and declared by the Chief Engineer, by notification in the Official Gazette, to be an irrigation project for the purposes of this Act;

(i) "levy" includes both development levy and users levy;

(j) "notified area" means an area declared as such by notification under section 4;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "Project Authority", in relation to an irrigation project, means the Block Development Officer having jurisdiction or an officer appointed by the State Government to be in charge of operation, control or conduct of business of such irrigation project;

(m) "revisional authority" means the authority referred to in section 25 for the purpose of hearing and disposing of any reference under this Act;

(n) "users levy" means a levy imposed under this Act and payable by the owner or the occupier of any land who applies for supply of water to such land under this Act for irrigation of any crop within the command area of a project, at such rate which may be fixed by the State Government for any particular crop in a particular season of the year. A bargadar cultivating land shall be treated as an occupier for the purpose of this Act.

Explanation.-"Bargadar" in this clause has the same meaning as in clause (2) of section 2 of the West Bengal Land Reforms Act, 1955(West Ben. Act X of 1956);

(o) "year", in relation to the assessment and collection of development or users levy, means a year commencing from the first day of the month of July in any year and ending on the thirtieth day of the month of June following that year, and includes any part of such year.

CHAPTER 2 IMPOSITION OF DEVELOPMENT LEVY IN NOTIFIED AREAS

3. Preliminary notification declaring intention to impose development levy :-

(1) Whenever in the opinion of the State Government any area has been developed or is likely to be developed by reason of being within the command area of an irrigation project, the State Government may, by notification in the prescribed form, declare its intention to impose a development levy for that area at such rate as may be specified in such notification payable by the persons referred to in clause (g) of section 2.

(2) A notification under sub-section (1) shall be published in the Official Gazette, and shall state the following additional particulars, namely:-

(a) a full description of the irrigation project and its command area or such part of the command area in respect of which the development levy is to be imposed;

(b) the date with effect from which imposition of the development levy and users levy is proposed to be effective; and

(c) the date within which objection, if any, to the intended imposition should be filed.

4. Declaration of a notified area :-

On the expiry of the period referred to in clause (c) of sub section (2) of section 3 and after considering objections or suggestions, if any, the State Government shall by notification in the Official Gazette and also in such other manner as may be prescribed, either wholly withdraw or confirm its previous declaration under section 3, or make a revised declaration in the prescribed form specifying therein the revisions made, and, on such confirmation or issue of a revised declaration, the whole of the area mentioned in the declaration so confirmed, or such part thereof as may be mentioned in the revised declaration, as the case may be, shall, with effect from the date specified in the notification, be deemed to be a notified area for the purpose of this Act.

5. Revision of notified area :-

The State Government may, so far as may be in the manner hereinbefore provided, from time to time include in or exclude from any notified area, any area which, in the opinion of the State Government, has benefited or has not benefited, as the case may be, from the improvement work.

6. Delegation :-

The State Government may, subject to such conditions as the State Government may deem fit to impose, delegate all or any of its functions under this Chapter to the Chief Engineer.

CHAPTER 3 ASSESSMENT AND COLLECTION OF LEVY

7. Liability for payment of levy :-

The liability for payment of levy under this Act shall be on the owners or occupiers of lands included in a notified area:

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(West Ben. Act X of 1956) and that bargadar applies for supply of water to a particular plot or plots of land, he shall be treated as an occupier of the plot or plots and shall be liable to pay the users levy, provided that he shall be entitled to recover from the owner half of the amount so paid by him.

8. Preparation and publication of annual statement of persons and amount of rates payable by them :-

The Project Authority shall, from time to time, prepare and publish in the prescribed form and manner for a notified area or any part thereof a statement showing-

(i) the name of every person who is liable to pay development levy or users levy or both in respect of any land in such area or part, and

(ii) the amount of development levy or users levy or both to be paid by each such person annually or otherwise, in respect of such land.

9. Notice of demand for payment of levy :-

The Project Authority shall serve a notice of demand in the prescribed form and manner and containing the prescribed particulars on every person whose name appears in the statement published under section 8 requiring him to pay the levy by such date or dates as may be specified in the notice.

10. Revision of statement and issue of revised notice of demand :-

(1) Within such period after the publication of a statement under section 8 as may be prescribed, the Project Authority shall, in accordance with rules made under this Act, republish the statement with such modifications as he may have made as a result of representations submitted to him within the prescribed period by persons whose names were included therein, and, subject to any decisions by any revisional or appellate authority, all entries in the statement as thus republished shall be presumed for the purposes of this Act to be correct in every particular.

(2) If the Project Authority makes any modification in the statement referred to in sub-section (1), he shall serve on the person concerned a revised notice of demand in the prescribed form and manner and containing the prescribed particulars.

11. Supplementary statement :-

(1) The Project Authority may, from time to time, add to or alter in the prescribed manner any statement published under section 8 or republished under sub-section (1) of section 10. In such case the Project Authority shall publish in the prescribed form and manner a supplementary statement showing the addition or alteration made by him, and the provisions of this Act shall apply to such supplementary statement as if it were a statement published under section 8.

(2) Where any addition or alteration is required as a result of a decision of a revisional or appellate authority, the Project Authority shall add to or alter the statement accordingly, and it shall not be necessary to publish any supplementary statement in respect thereof under sub-section (1).

12. Power of the Project Authority to grant abatement or remission :-

(1) It shall be the duty of every person receiving a notice of demand for payment of development levy and users levy to effect payment thereof within the date specified in the notice.

(2) If any person receiving a notice of demand neglects or fails to pay the amount due from him within the due date, he shall also be liable to pay interest at such rate not exceeding six per centum per annum, as may be fixed by the State Government from time to time, on the amount of levy due from him and for the period from the date of justify to the date of full payment.

(3) Any payment of levy and interest under this Act shall be made

to the Project Authority in such manner as may be specified by the Project Authority in the notice of demand and credited to the accounts of the State Government under the head to be notified by the State Government, and against every such payment the Project Authority shall issue a receipt in the prescribed form.

13. Procedure for payment of levy and penalties for justify :-

Notwithstanding anything contained in this Act, the Project Authority may, under such circumstances, subject to such conditions and in accordance with such manner as may be prescribed, grant abatement or remission of the levy or interest, payable under this Act or extend the period within which such levy or interest thereon is to be paid.

14. Recovery of all dues as public demands :-

All arrears of levy and the interest due thereon, payable to the State Government under this Act shall be recoverable as public demand under the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913.).

15. Refund :-

If any person has paid any amount under this Act which, in accordance with the decision of the appellate or revisional authority, or in the opinion of the Project Authority, was not payable by such person, the Project Authority shall, in the prescribed manner, refund the amount to such person.

CHAPTER 4 POWERS AND DUTIES OF THE PROJECT AUTHORITY

16. Procedures for obtaining supply of irrigation water :-

- (1) For obtaining supply of irrigation water for any agricultural land in a notified area every intending user shall submit at least thirty days before the date from which the supply is wanted an indent in the prescribed form containing prescribed particulars to the Project Authority and shall also deposit the users levy at the rate fixed by the Government for a Project for the crop on the basis of the total supply applied for. The farmer before making his indent shall also ensure that outstanding development levy has also been cleared.
- (2) On grounds of hardship or in the interest of cultivation the

Project Authority may accept the indent at any time before the date of actual supply.

17. Enquiry by the Project Authority :-

The Project Authority shall receive all indent and users levy against proper receipt in the prescribed form and shall examine all valid indents and when satisfied that the water indented is required for use for irrigation of agricultural lands, pass the indent in full or with any variation as may be necessary in the public interest or for the purposes of this Act, or refuse any indent, subject however to the decision of the revisional and appellate authority.

18. Powers of the Project Authority :-

- (1) Submission of any indent by an user of irrigation water shall not entitle him to claim such water as a matter of right.
- (2) The Project Authority may refuse to supply water or refrain from supplying water either in part or in full, when due to any mechanical breakdown or disorder or any other reason, beyond the control of the Project Authority it is not possible to supply water for irrigation.
- (3) When the indent is not passed in full or when supply cannot be made in full, the Project Authority shall make proportionate refund of the users levy within such time as may be prescribed.
- (4) In supplying water against indents, normally the supply will be made in order of the distance of the plots applied from the installation.

19. Project Authority to advise on cropping pattern :-

The Project Authority shall advise the indentors on cropping pattern for different seasons in a notified area and such indentors shall as far as may be followed such advice.

CHAPTER 5 MAINTENANCE, SUPERVISION AND CONTROL

20. Inspection and supervision by the Chief Engineer :-

For the purposes of this Act and subject to any rules made thereunder, the Chief Engineer shall, in such manner as he may consider necessary and expedient, provide for the efficient operation and maintenance of the irrigation projects in the notified areas and, for that purpose provide for proper inspection and

supervision of such projects and their command areas, regularly, either by himself or by competent engineers authorised by him, so as to satisfy himself that the projects are operating properly.

21. Submission of reports by the Chief Engineer :-

The Chief Engineer shall submit to the State Government half-yearly and annual reports in the months of November and May, respectively, in such forms as may be prescribed, stating-

- (a) the total number of irrigation projects and their particulars;
- (b) the total number of notified areas served by the irrigation projects; and
- (c) progress of development achieved in every notified area during the period under review in terms of-
 - (i) net area covered by the irrigation,
 - (ii) installed capacity, and
 - (iii) capacity utilised.

22. Submission of returns by the Project Authority :-

The Project Authority shall submit to the State Government half-yearly and annual returns in the months of November and May, respectively, in such forms as may be prescribed, stating the particulars of the development levy and users levy, assessed, realised and out standing at the close of the period under review.

23. Maintenance of records by the Project Authority :-

(1) The Project Authority shall maintain such books, records and accounts and in such forms and manner as may be prescribed, regarding-

- (a) the indents received, the supplies of irrigation water ordered, the lands receiving irrigation and the owners or occupiers thereof; and
- (b) the operation and maintenance of the irrigation project and the conduct of its business.

(2) The Project Authority shall submit to the Chief Engineer and the Collector such particulars, reports or returns in such forms and manner as may be prescribed, or as may be asked for by the Chief Engineer or the Collector for the purposes of this Act.

CHAPTER 6 MISCELLANEOUS

24. Bar to objections to the imposition of levy :-

No objection shall be taken to the imposition of the levy nor shall the liability of any person to pay such levy be questioned except in the manner provided in this Act.

25. Revision :-

- (1) Any person considering himself aggrieved by an order passed-
- (a) by the Project Authority under sections 10, 11, or 13, or
 - (b) by the Project Authority under section 18,
- may refer his case to the revisional authority within such time, in accordance with such procedure and on payment of such fee, as may be prescribed and the revisional authority shall take such decision thereon as it thinks fit.
- (2) The revisional authority for hearing cases arising under clause (a) of sub-section (1) shall be the Collector of the District and the revisional authority for hearing cases arising under clause (b) of the said sub-section shall be the Chief Engineer.
- (3) As soon as a decision is taken by the revisional authority it shall communicate such decision to the Project Authority for taking necessary action thereon and a copy of every such order shall also be sent to the person instituting the case.

26. Appeals :-

- (1) Any person being aggrieved by an order of the revisional authority may, within thirty days from the date of such order and in accordance with such procedure and on payment of such fee, as may be prescribed, prefer an appeal before the appellate authority, that is,-
- (i) to the State Government in the Agriculture and Community Development Department if the revisional authority against whose decision the appeal is preferred was the Chief Engineer, and
 - (ii) to the Commissioner of the Division if the revisional authority against whose decision the appeal is preferred was the Collector.
- (2) The order passed on such appeal by the appellate authority shall be final.

27. Powers of entry, etc. :-

The Collector or the Chief Engineer or any other officer authorised by the Collector or the Chief Engineer as the case may be and his servants and workmen shall have the power, subject to such rules

as may be made in this behalf, to enter upon any land or building or inspect any other property and to set up, construct, repair and maintain field channels or underground pipelines or any irrigation project and to do such other acts as may be necessary for carrying out the purposes of this Act:

Provided that the Collector or the Chief Engineer or the officer authorised as aforesaid shall not enter into any building or any dwelling house or any enclosed courtyard or garden attached to dwelling house or any land with standing crops except by previous notice in the prescribed manner to the owner or occupier thereof, as the case may be:

Provided further that no person shall be entitled to claim any compensation for damage of the land which may be caused as a result of construction and maintenance of channel or pipelines except in the manner as provided in section 30.

28. Power to compel production of statements and documents :-

The Collector or the Chief Engineer or any other officer authorised by the Collector or the Chief Engineer as the case may be and his servants and workmen shall have the power, subject to such rules as may be made in this behalf, to enter upon any land or building or inspect any other property and to set up, construct, repair and maintain field channels or underground pipelines or any irrigation project and to do such other acts as may be necessary for carrying out the purposes of this Act:

Provided that the Collector or the Chief Engineer or the officer authorised as aforesaid shall not enter into any building or any dwelling house or any enclosed courtyard or garden attached to dwelling house or any land with standing crops except by previous notice in the prescribed manner to the owner or occupier thereof, as the case may be:

Provided further that no person shall be entitled to claim any compensation for damage of the land which may be caused as a result of construction and maintenance of channel or pipelines except in the manner as provided in section 30.

(1) Subject to rules made under this Act(45 of 1860.), any of the officers or servants referred to in section 27 may, by notice, require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any land or other property mentioned in that section, at the time and

the place specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

29. Power of Collector and Project Authority to enforce attendance of witnesses and production of documents :-

For the purposes of any inquiry under this Act the Collector and the Project Authority shall have power to summon and enforce the attendance of witnesses, including the persons interested or any of them, and compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908(Act 5 of 1908.).

30. Claims for compensation for damages :-

(1) Whenever any land or any other property is injuriously affected as a result of any work undertaken under this Act, the person by whom any damage or loss is sustained may, not later than three months after the first occurrence of the injury in respect of which the claim is preferred, prefer to the Collector a claim for compensation.

(2) When a claim is preferred under sub-section (1), the Collector shall, in the prescribed manner, after such inquiry as he deems proper and after considering any representations which may be made to him, determine the amount of compensation, if any, which shall be granted.

(3) In determining whether any land, if so, what amount of compensation shall be granted, the Collector shall be bound by the provisions of any rules made by the State Government regulating the grant of compensation under this Act.

(4) If any dispute arises after the amount of compensation has been determined under this section, as to the apportionment of the same or any part thereof, the Collector shall, in the prescribed manner, refer such dispute to the court and the court shall decide the same.

31. Appeals against award of compensation :-

(1) Any person aggrieved by an order of the Collector under sub-

section (2) of section 30 may within thirty days from the date of such order and on payment of the prescribed fee, prefer an appeal in the prescribed manner to the Board of Revenue, West Bengal.

(2) The decision of the Board of Revenue, West Bengal, on such appeal shall be final.

32. Bar to suit for compensation for damage :-

No suit shall lie in any civil court for compensation for any damage, loss or injury resulting from any work done under this Act.

33. Indemnity :-

No suit or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

34. Costs in any appeals and revisions :-

In any appeal or revision under this Act, the costs awarded in favour of the State Government shall be recoverable from the person against whom such costs are awarded as public demand.

35. Levy not to preclude collection of cess, tax or land revenue :-

Imposition of levy in any area under this Act shall not preclude the realisation or collection of any cess, tax or land revenue under any other Act for the time being in force in such area.

36. Restriction to enhance rates, rents or taxes :-

In respect of any land regarding which a levy has been imposed under this Act, no rates, rents or taxes payable under any other Act shall be enhanced by reason of any development effected or any benefit accruing from any development effected, under this Act.

37. Proceedings not to be invalidated by irregularities :-

No proceeding under this Act shall be defeated or invalidated by reasons of any defect or omission in the publication or service of any notice, statement or order unless material injury is done to any person on account of such defect or omission.

38. Power of the State Government to grant exemption :-

Notwithstanding anything contained in this Act, if the State Government is satisfied that it is necessary or expedient in the public interest so to do, the State Government may, by notification in the Official Gazette, exempt any class or classes of persons or any class or classes of agricultural lands from all or any of the provisions of this Act.

39. Supply of copies of entries in statements :-

Copies of entries in any statement, published under sections 8, 10 or 11, may be supplied to any person in the prescribed manner and on payment of the prescribed fee.

40. Punishment for abuse of water and for unauthorised use of water :-

(1) Any abuse in the supply of water from an irrigation project by any person being a user of such water within the meaning of section 18, or any unauthorised use of such water by any person shall be an offence punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both and for continuance of such offence, the offender shall be liable to an additional fine of twenty-five rupees per day so long as such offence is continued.

(2) An offence punishable under sub-section (1) shall be cognizable.

(3) Any police officer not below the rank of a Sub-Inspector of Police may arrest without warrant any person against whom a reasonable complaint has been made or credible information has been received of his having been concerned in any offence punishable under sub-section (1).

41. Power to make rules :-

(1) The State Government may, by notification in the Official Gazette, 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 all or any of the following matters, namely:-

(i) the manner in which the notification under section 4 is to be published;

(ii) the manner in which the statement under section 8 is to be

prepared and published;

(iii) the manner in which a notice of demand under section 9 is to be served;

(iv) the period within which and the manner in which the statement under sub-section (1) of section 10 is to be republished and the manner in which a revised notice of demand is to be served under sub-section (2) of the said section;

(v) the manner in which additions or alterations to, and publication of, a statement under sub-section (1) of section 11 may be done;

(vi) the conditions subject to which and the manner in accordance with which the Project Authority may grant abatement or remission under section 13;

(vii) the manner in which the Project Authority may grant refund under section 15;

(viii) particulars to be observed by the Chief Engineer for the efficient operation and maintenance of irrigation projects under section 20;

(ix) the manner in which the Project Authority shall maintain books, records and accounts and shall submit particulars, reports, etc., to the Chief Engineer or the Collector, referred to in sub-sections (1) and (2) of section 23;

(x) the time within which, the procedure in accordance with which and the fee on payment of which a case may be referred to the revisional authority under sub-section (1) of section 25;

(xi) the procedure in accordance with which and the fee on payment of which an appeal may be preferred under sub section (1) of section 26;

(xii) the conditions to be observed and the manner in which notice is to be served in connection with entry, etc., upon any land or other property referred to in section 27;

(xiii) the conditions, if any, subject to which statements may be asked to be made or records or documents may be asked to be produced under sub-section (1) of section 28;

(xiv) the manner in which and the conditions subject to which the Collector may grant compensation under sub-section (2) of section 30;

(xv) the fee to be paid and the manner to be observed in preferring an appeal under sub-section (1) of section 31;

(xvi) the manner in which copies of entries in any statement may be supplied under section 39 and the fees to be paid for such supply;

(xvii) forms to be prescribed under any of the provisions of this

Act; and

(xviii) any other matter which, under any of the provisions of this Act, either expressly or by implication, is required to be prescribed or to be provided for by rules.

SCHEDULE 1

THE SCHEDULE

THE SCHEDULE
[See Section 2(f)]
(A) Pre-Kharif Crops

(A) Pre-Kharif Crops

1. Aus.
2. Oil-seeds.
3. Maize.
4. Vegetables.
5. Fodder crops.
6. Sesamum (Til).
7. Sun flower.

(B) Kharif Crops

1. Paddy.
2. Vegetables.
3. Maize.
4. Jute.

(C) Rabi Crops

1. Wheat and Barley.
2. Maize.
3. Pulses.
4. Oil-seeds.
5. Potatoes.
6. Vegetables.
7. Fodder crops.
8. Tobacco.

(D) Summer Crops

1. Paddy.
2. Pulses.
3. Oil-seeds.
4. Vegetables.
5. Sugarcane.
6. Cotton.
7. Groundnut.