

Kerala Irrigation And Water Conservation (Amendment) Act, 2006

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SCHEDULE 1 :- Schedule II

Kerala Irrigation And Water Conservation (Amendment) Act, 2006

An Act to amend the Kerala Irrigation and Water Conservation Act, 2003. WHEREAS, it is expedient to amend the Kerala Irrigation and Water Conservation Act, 2003 for the purposes hereinafter appearing; BE it enacted in the Fifty-seventh year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Kerala Irrigation and Water Conservation (Amendment) Act, 2006.

(2) It shall come into force at once.

2. Amendment Of Section 2 :-

In the Kerala Irrigation and Water Conservation Act, 2003(31 of 2003) (hereinafter referred to as the principal Act) in section 2,--

(1) after clause (j) the following clauses shall be inserted namely:--

- (ja) custodian means any State Government, or any local authority, body Corporate, associations of persons or an individual, who under any law, contract, treaty, agreement, order, judgment or decree has been granted the right to establish, or has established or is running or otherwise operating any dam within the State of Kerala;
- (jb) dam means any artificial barrier including appurtenant work

constructed across a river or tributaries thereof with a view to impound or divert water for irrigation, drinking water supply or for any other purpose and unless repugnant to the context, shall include the water spread area;"

(2) after clause (al) the following clause shall be inserted namely:--
"(ala) Scheduled dam means any dam included in the SECOND SCHEDULE or any dam which may be notified by the Government from time to time as a Scheduled dam;"

3. Amendment Of Section 57 :-

(1) in sub-section (1), for the words "surveillance, inspection" the words "ensuring the safety and security" shall be substituted;

(2) in sub section (2) the explanation shall be deleted;

(3) after sub-section (2), the following sub-section shall be inserted, namely:-

"(3) The provisions contained in this Chapter shall be in addition to and not in derogation of any other provisions contained in any other law for the time being in force and none of the provisions in this Chapter shall be construed, treated or read as infructuous or unenforceable on account of any provisions under any law for the time being in force."

4. Amendment Of Section 59 :-

In section 59 of the principal Act,--

(1) the existing section shall be numbered as sub-section (1) of that section and in sub-section (1) as to re-numbered the words "including the quorum there at" shall be deleted;

(2) after sub-section (1) the following sub-section shall be added, namely:-

"(2), The quorum at the meeting of the Authority shall not be less than fifty per cent of the total number of members of the Authority."

5. Substitution Of Section 62 :-

For section 62 of the principal Act, the following section shall be substituted, namely:-

"62. Functions of the Authority".-

(1) Notwithstanding anything contained in any other law, judgment, decree or order of any court or in any treaty, agreement, contract, instrument or other document, the Authority

shall exercise the following functions, namely:-

(a) to evaluate the safety and security of all dams in the State considering among other factors, the age of the structures, geological and seismic factors, degeneration or degradation caused over time or otherwise;

(b) to conduct periodical inspections of all the dams;

(c) to advise the Government on security measures to be adopted in respect of any dam considering its vulnerability to terrorism, sabotage and the like;

(d) to direct the custodians to carry out any alteration, improvement, replacement or strengthening measures to any dam found to pose a threat to human life or property;

(e) to direct the custodian to suspend the functioning of any dam, to decommission any dam or restrict the functioning of any dam if public safety or threat to human life or property, so requires;

(f) to advise the Government, custodian, or other agencies about policies and procedures to be followed in site investigation, design, construction, operation and maintenance of dams;

(g) to conduct studies, inspect and advise the custodian or any other agency on the advisability of raising or lowering of the Maximum Water Level or Full Reservoir Level of any dam, not being a scheduled dam, taking into account the safety of the dam concerned;

(h) to conduct studies, inspect and advise the custodian or any agency on the sustainability or suitability of any dam not being a scheduled dam, to hold water in its reservoir, to get expert opinion of International repute, and provide advise by dam-brake analysis and independent study and to direct strengthening measures or require the commissioning of a new dam within a timeframe to be prescribed to replace the existing dam;

(i) to carry out such other functions not inconsistent with the provisions of this Chapter and necessary or expedient to carry out the provisions of this Chapter; and

(j) such other functions as may be assigned to the Authority by the Government by notification in the Official Gazette.

(2) As soon as may be or within the time specified by the Authority after the receipt of the advice or recommendation under sub-section (1) the custodian, or any other agency to whom it is addressed by the Authority, shall act thereon and take action in accordance with such advice or recommendation.

(3) Where a direction is issued by the Authority under sub-section (1) the custodian or any other agency to whom it is directed shall

take immediate measures within the time frame stipulated by the Authority or do or refrain from doing such things within such time frame as may be stipulated, to comply with the directions of the Authority.

(4) Where the direction is issued to any agency other than the Government, the Government shall ensure that such other agency carries out the directions of the Authority within the time frame stipulated and all officers of the State and all legal remedies available to the State shall be utilised to ensure that the directions of the Authority are complied with.

(5) Where any order or direction issued under sub-sections (1) or (4) is not complied with within the time frame specified therein, the Authority, may direct the Government to take possession and control of the dam for such period and take such measures or do such things or refrain from doing such things as may be necessary to give effect to the order or direction of the Authority and the cost incurred by the Government on that behalf shall be recovered from the custodian or any other agency to whom the order or direction was issued, as if it were arrears of revenue due on land, to the State."

6. Insertion Of New Sections 62 A And 62B :-

After section 62, the following sections shall be inserted, namely:-

"62 A. Scheduled dams.-

(1) The details of the dams which are endangered on account of their age, degeneration, degradation, structural or other impediments are as specified in the SECOND SCHEDULE.

(2) Notwithstanding anything contained in any other law or in any judgment, decree, order or direction of any court, or any treaty, contract, agreement, instrument or document, no Government, custodian or any other agency shall increase, augment, add to or expand the Full Reservoir Level Fixed or in any other way do or omit to do any act with a view to increase the water level fixed and set out in THE SECOND SCHEDULE. Such level shall not be altered except in accordance with the provisions of this Act in respect of any Scheduled dam.

(3) Notwithstanding anything contained in any other law, or in any judgment, decree, order, direction of any court or any treaty, contract, agreement, instrument or document, any Government, custodian or any other agency intending to, or having secured any right under any treaty, contract, agreement, instrument or

document or by any other means to increase, augment, add to or expand, the storage capacity or increase the Full Reservoir Level Fixed of any Scheduled dam, shall not do any act or work for such purpose without seeking prior consent in writing of the Authority and without obtaining an order permitting such work by the Authority.

(4) Any act or work or preparation by any custodian, or any other agency is in progress as on the date of commencement of the Kerala the Irrigation and Water Conservation (Amendment) Act, 2006 shall immediately be stopped and the Government, custodian, or any other agency shall submit an application to obtain prior consent of the Authority for such intended increase, augmentation, addition or expansion of the storage capacity or for increase of Full Reservoir level Fixed of the Scheduled dam and shall recommence the act or work or preparation only after, prior consent in writing of the Authority is obtained.

62 B. Powers of the Authority.-

(1) The Authority while dealing with applications for consent in writing for increasing, augmenting, adding to or expanding the storage capacity or the water spread area or for increasing of Maximum Water Level or Full Reservoir Level Fixed of Scheduled dams, shall have the powers of a Civil Court, trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record, or copy thereof from any Government, local authority, or from any other office; and
- (e) issuing commissions for examination of witnesses or documents.

(2) The proceedings before the Authority shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).".

7. Insertion Of New Section 68 A :-

In the principal Act, after section 68 the following section shall be inserted, namely:-

"68A. Protection of action and immunities from challenge etc".-

(1) No suit, prosecution or other legal proceedings shall lie against the Authority or against any officer or employee in respect of

anything which is done in good faith or intended to be done in the discharge of official duties under this Act.

(2) No civil court shall have jurisdiction to settle, decide or deal with any question of fact or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Authority under this Act."

8. Insertion Of Second Schedule :-

In the principal Act, after the Schedule, the following Schedule shall be added, namely:-

SCHEDULE 1

Schedule II

[See section 62A(1)]

"SECOND SCHEDULE

[See section 62A(1)]

Sl. No.	Name of Dam	Year of completion	Full Reservoir Level Fixed.
1.	Mullaperiyar	1895	41.45 m (136 ft.) from the deepest point of the level of Periyar river at the site of the main dam.
2.	Kundala	1947	1758.70 m MSL
3.	Malampuzha	1955	115.06 m MSL
4.	Mattupetty	1956	1599.59 m MSL
5.	Walayar.	1956	203.00 m MSL
6.	Vazhani	1957	62.48 m MSL
7.	Semgulam	1957	847.64 m MSL
8.	Peringalkutha	1957	423.98 m MSL
9.	Peechi	1958	79.25 m MSL
10.	Neyyar	1959	84.75 m MSL
11.	Meenkara	1960	156.36 m MSL
12.	Kallarkutty	1961	456.59 m MSL
13.	Ponmudy	1963	707.75 m MSL
14.	Sholayar Main	1965	811.69 m MSL
15.	Anayirankal	1965	1207.01 m MSL
16.	Thunakadavu	1965	539.50 m MSL
17.	Chulliyar	1966	154.11 m MSL
18.	Parambikulam	1966	556.26 m MSL
19.	Kakki	1966	981.46 m MSL
20.	Mangulam	1966	77.87. m.MSL
21.	Aruvillara	1933	46.63 . m.MSL
22.	Peruvaripallam	1963	539.50 m.MSL