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Creating Infrastructure for Management of Surface Water: Issues and Challenges Faced by A.P. Government

by
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Introduction

Water governance embraces within its ambit the management of surface water, ground water and hydrological factors and the combination and disaggregating of these factors and their effect. Water, like any other subject is governed by Laws, Policies and Administration. The Central Ministry of Water Resources is responsible for proper planning and providing guidance on all issues concerning water governance. The State Government has a major role in surface water though the Central Government plays a significant role when it comes to inter-state rivers and river valleys¹. In view of the fact that water is a subject in the State List and Union List, both the Governments have their respective role often with defined dimension. The constitutional amendments (73rd and 74th) have empowered local bodies in issues concerning drinking water, watershed development, etc.

Surface water governance differs from ground water in many ways. The land owners have right over ground water where as surface water is governed by the State as its trustee as there is no vested ownership to the government². Ground water pollution is often non-point source and



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difficult to regulate as compared to surface water. Few States have enacted legislation to regulate ground water extraction³.

The legislations that govern surface water include River Boards Act, 1956, Inter State Water Disputes Act, 1956, Water (Prevention and Control of Pollution) Act, 1974, Water (Prevention and Control of Pollution) Cess Act, 1977. The recent policy on water governance was adopted by the Central Government in 2002, National Water Policy. This policy prioritises water uses, first priority is given to domestic use such



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as drinking, washing, live stock needs, etc. In view of the fact that comprehensive National Environment Policy is adopted in 2006 there may not be specific water policy in future.

Water being a valuable resource has to be put to sustainable use and the fact that there are divergent needs for water utilisation prioritisation gains importance. Water utilisation requires consideration of livelihood needs, agrarian structure and institutional mechanism to plan and prioritise, however the right to drinking water and water as human right shall have bearing on this planning.

Irrigation Administration

Irrigation from any source river, tank or otherwise falls under the State domain in

view of Entry 17 of the State list. Irrigation projects for protective irrigation were planned and developed in south India including the Andhra Pradesh. Irrigation projects in the State are divided into three: major, medium and minor. The Ministry for major irrigation is different from medium and minor irrigation. Major irrigation Ministry is responsible for all projects whose command area is above 10,000 hectares. The projects which have up to 2,000 hectares of command area are minor irrigation projects and those between 2,000 to 10,000 hectares of command area are medium irrigation projects. The Principal Secretary of the concerned Ministry heads the irrigation and command area development is under the Command Area Development Authority, (CADA) at the State level. Besides this Water and Land Management Training and Research Institute (WALAMTARI)⁴ is established in Andhra Pradesh in 1983 and the institute is made as autonomous in 1993. WALAMTARI plays a significant role in the development and proper functioning of irrigation projects⁵. Each project is headed by an Engineer-in-chief at the State level and at the District level, it is headed by a Superintendent Engineer.



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The Andhra Pradesh State Government has launched irrigation projects in a big way in the name of "*Jalayagnam*"⁶. The Government intends to harness water to substantially increase cultivable land as a measure to resolve the problems of agriculture sector. The estimation of the Government suggests an increase of the total cultivable land with irrigation facilities in the State from 72 lakh hectares to 150 lakh hectares by the year 2009. The Government has been facing difficulties in *acquiring the land, obtaining environmental clearances*² and also litigations in the courts. Huge budget allocation for all these projects also means reducing the share of other welfare schemes which has met with constant criticism.

Environment Impact Assessment

Construction of dams or other development activities essentially requires environmental clearance which is given after a proper impact assessment being done as per the Environment Impact Assessment Notification⁸. The impact assessment refers to the method to be adopted to ensure that the proposed activities do not leave adverse impact on environment. Hence, it requires identifying the probable adverse consequences and averring them wherever required. It is in a way application of precautionary principle i.e. anticipating and attacking the causes of environment degradation⁹. Whoever takes up any activity




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which might lead to adverse environment impact they should shoulder the responsibility of mitigating the impact as well. The environmental impact of each dam differs in many ways depending upon the geographical location, hydrology of the region, plan of the dam, size of the reservoir, etc. The river valley projects, which have command area of more than 10,000 hectares, are classified as "A" category projects under the Environment Impact Assessment Notification and those with less than 10,000 hectares of command area are classified as "B" category projects. The projects and activities listed in category "A" of the Schedule to the Notification require clearance from the regulatory authority constituted by Central Government i.e.

Ministry of Environment and Forests; whereas, the projects and activities listed in Category "B" require to obtain clearance from the State Environment Impact Assessment Authority. The State Environment Impact Assessment Authority is to be constituted under Section 3(3) of Environment protection Act, 1986.

The State Environment Impact Assessment Authority shall consist of a Chairman, member secretary and other members¹⁰. If the

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State Environment Impact Assessment Authority is not constituted in any State, then the Category B projects will be deemed to be a Category A projects and processed accordingly. The State Environment Impact Assessment Authority (SEIAA) can take a decision of granting prior environment clearance on the basis of the recommendations of the State Expert Appraisal Committee (SEAC) to be constituted as per the Notification. The Central Government will grant prior environmental clearance for category "A" projects on the basis of the recommendations of the Expert Appraisal Committee (EAC). The State Environment Impact Assessment Authority (SEIAA) and the State Expert Appraisal Committee (SEAC) will be constituted by the Central Government in consultation with the State Government. However, if in any State, SEIAA or SEAC is not constituted, then the Category "B" projects shall be treated as the Category "A" projects.

The Notification provides for four stages for environment clearance. However, not all stages apply to all projects. All the four stages are required for river valley projects, they are:

- (1) Screening
- (2) Scoping
- (3) Public Consultancy
- (4) Appraisal

The SEAC shall screen, scope and appraise projects or activities in the Category "B" while the EAC shall screen, scope and appraise projects or activities in the Category "A".

Impact assessment has always been controversial not because of the procedure required to be adopted but rather the way in which it has been complied with. It is often alleged that the procedure is followed just to ensure procedural compliance rather than followed in spirit which defeats the very purpose of impact assessment. An impact Assessment is a tough job as it requires inputs from various experts such as geologists, hydrologists, structural engineers, etc., besides the costs such as social, cultural costs which is often undervalued in cost benefit analysis. The World Commission on Dams also states that construction of dams should not be done by use of unnecessary force.

Relief and Rehabilitation

People displaced from the areas of these projects are required to be compensated sufficiently¹¹. Out of the displaced, some of them may

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get land in return to land, but, mostly it would be in the form of compensation. Most of the times, the amount of compensation is less than the actual value as the market

value is taken into consideration, and also, with the irrigation infrastructure coming in place the value of lands escalates to the disadvantage of the displaced. The displacement has raised many controversial debates in the country than any other environment issue. It affects the socio-economic aspects of the people and the environment of the region. It may be pointed out that relief and rehabilitation are major issues which the Supreme Court faced in *Narmada Bachao Andolan v. Union of India*¹². In this case the Court unanimously held that those ousted by reason of canals emanating from the reservoir in the project need not be given the same relief and rehabilitation benefits as those ousted on account of the reservoir itself because these two fall in different classes.

The Court, following the *Vellore Citizens' case*¹³, made it clear that in case of construction of dam, resulting in environmental degradation, the burden of proof would be upon the person challenging the construction of dam. The Supreme Court also made it clear that relief and rehabilitation should be done along with and simultaneously on par with the construction of dam¹⁴. The irrigation projects proposed by the Andhra Pradesh Government necessitate people, living in the areas likely to be submerged, to sacrifice for the sake of projects. The benefits of the dams generally go to the people far downstream while the people displaced are the one who will be residing at the upstream and are submerged due to reservoir. It is suggested that care should be taken particularly for the people who sacrificed for the projects and further that they should also be made the beneficiaries of the project. Equity considerations should be given importance. The Government should analyse as to which group of people sacrificed and take due care to see




that it does not result in unduly benefiting some people at the expense of vulnerable¹⁵.

Conclusion

The National Advisory Council constituted to oversee the implementation of the common minimum program sent a list of suggestions¹⁶ to the Government with regard to the National Rehabilitation Policy¹⁷. The Advisory Council felt that the displaced persons under the policy are only entitled to get monetary compensation; whereas the affected families are assured to get compulsory allotment of land or wage earning through jobs. The Council felt that there was a need to establish a Rehabilitation Commission at the national level in case where the project affects the interests of more than one State, and a State Grievance Redress Commission in case of project affecting only one State. The grievance of the project affected families is mainly that they should be allotted land but the policy document suggests a mandatory allotment only for hydropower projects and to tribal people that too if the land is available with the Government, provided that the party loses entire land. Secondly the policy document suggests for compulsory acquisition from landowners in command area for the purpose of allotment to project affected families. A compulsory acquisition for project itself is having its own problems hence compulsory acquisition for rehabilitation purpose may not be feasible. As per the Land Acquisition Act, 1894 apportionment or ascertaining amount payable for land acquired is considered as sufficient but people whose land is acquired are aggrieved as their recourse is often not fruitful. The policy document suggests acquisition quickly and peacefully and house sites allotment is made mandatory even if the displaced do not own any land.

The former Irrigation Chief Engineer of the State feels that the experts in irrigation field are very few in view of the fact that irrigation was a Government monopoly since

the beginning and, therefore, so there is no private sector in the field and that structural engineers are seen as

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irrigation engineers in the State which may create problems¹⁸. In the *Tehri dam case*¹⁹ the Supreme Court held that, "we do not have the expertise to decide on the reports based on the safety of the dam but we are of the considered opinion that the Government has applied its mind and taken precaution for ensuring safety of the dam". The Courts, Government and all officers of the State are indirectly supporting the projects which ensure acceptance of all proposals of the A.P. Government under the *Jalayagnam* scheme, however, the concern of displaced remains unquestioned. The relief and rehabilitation package proposed by the State Government for the tribals displaced due to Pedagedda irrigation project was accepted by the Central Government. The Central Government has assured the project affected families with a grant of land with irrigation facilities at new site, including fishing rights in the proposed reservoir²⁰. The studies in Andhra Pradesh suggests that the assessment of impact will be made after the completion of the projects, placing standards in accordance with Standardisation²¹.

So what comes out? The challenges, presently faced by the Government of Andhra Pradesh can be meted out with a sincere, dedicated commitment and active cooperation by one and all. Unless this is not forthcoming, the projects will ultimately meet a doomsday.

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¹. Constitution of India, Seventh Schedule, Entry 56 of Union List (Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest.).

The Constitution of India, Seventh Schedule, Entry 17 of State List (Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List 1).

². In *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388 the Supreme Court declared that public trust doctrine is a part of law of the land. The Court held that public has a right to expect that running waters, air forests, etc. belong to public at large and the State is only a trustee of these and converting them to private ownership would be breach of that trust. The Supreme Court of India held that our legal system - based on English common law — includes the public trust doctrine as part of its jurisprudence.

The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. The State, as a trustee, is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. The Court drew a fine distinction between "public use" and "public purpose". If the natural resource meant for public use is to be converted to public purpose especially into private ownership Government must be cautious and see to it that it does not commit breach of that trust.

The Supreme Court had also an occasion to consider the application of the doctrine of public trust in *Susetha v. State of T.N.*, (2006) 6 SCC 543 : A.I.R. 2006 SC 2893. The Supreme Court considered the matter and held that as discussed by the Court earlier in dealing with natural resources in *Intellectuals Forum v. State of AP*, (MANU/SC/8047/2006) and opined:

"This is an articulation of the doctrine from the angle of public trust. Formulated from a nugatory angle, the doctrine does not exactly prohibit the alienation of the property held as public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the government, no matter how inconsistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the Courts must make a distinction between the Government's general obligation to act for the public benefit, and the

special, more demanding obligation which it may have as a trustee of certain public resources....

The Court concluded that in the above decisions they have not laid down a law that alienation of the property held as public trust is necessarily prohibited.

3. For example: A.P. Water, Land and Trees Act, 2002. The Act prohibits deep digging of bore wells and requires the landowner to obtain permission for digging a bore well while obtaining permission for house construction. The Act requires that an authority to be constituted at the State level which is to be headed by a Minister for panchayatraj and an authority at each district headed by the district Collector. These authorities will grant permission for the digging bore wells and do not allow owners to do business with extracted water. The authority shall oversee the conservation of water.

4. Governing Council of WALAMTARI lays down the policies and guidelines regarding functioning of the Institute. The Hon'ble Chief Minister is the President of the Governing Council. The Hon'ble Minister for Major and Medium Irrigation is the Vice-President. There are 22 members in the Governing Council.

5. The main objectives of WALAMTARI are:

- To train officials of the I and CAD and Agriculture Departments, in planning, designing, construction, operation and maintenance of Irrigation Projects.
- To train Water Users Associations (WUA) functionaries and farmers on better water management.
- On-farm development practices to ensure optimum utilisation of water resources, maximising agriculture production.

6. <http://www.jalayagnam.com> "Jalayagnam" literally means ritual for water utilisation. This envisages doubling the irrigation land in the State by developing irrigation infrastructure lift irrigation and others. 30 major and 18 medium projects, meant for irrigation and supply of drinking water are the part of the program. It also envisages linking of rivers Godavari and Krishna, the first effort in post-independent India with an idea to utilise especially the Godavari river water which joins the sea. The estimated budget for the entire program initially is about 46,000 crore rupees (estimate is very likely to increase). The Chief Minister of the State declared many times that he is committed for the completion of these projects as he believes that this is the only solution to solve the problems of farmers in dry and drought effected areas.

7. Few of the irrigation projects already received environmental clearance while others are under process of application or clearance (<http://envfor.nic.in>, www.jalayagnam.com.)

8. The Central Government issued the Notification concerning impact assessment on 14-9-2006 whereby the earlier Notification dated 27-01-1994 and all the amendments made to it from time to time are thereby superseded.

9. This principle is evolved in its present form in the United Nations Conference on Environment and Development held at Rio de Janeiro in 1992 however the principle was part of International customary law and was also discussed and applied in rudimentary form earlier. Principle 15 of the Rio declaration adopted by the parties at the United Nations Conference on Environment and Development is as follows:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

10. A State Level Environment Impact Assessment Authority, *hereinafter* referred to as the SEIAA, shall be constituted by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member-Secretary to be nominated by the State Government or the Union Territory Administration concerned.

- (1) The Member-Secretary shall be a serving officer of the State Government or Union Territory Administration concerned familiar with environmental laws.
- (2) The other two members shall be either a professional or expert, fulfilling the eligibility criteria given in Appendix VI to the Notification.
- (3) One of the Members who is an expert in the Environmental Impact Assessment process shall be the Chairman of the SEIAA.
- (4) The State Government or Union Territory Administration shall forward the names of the Members and the Chairman to the Central Government and the Central Government shall constitute the SEIAA within thirty days of the date of receipt of the names.

(5) The non-official Member and the Chairman shall have a fixed term of three years.

All decisions of the SEIAA shall be unanimous.

11. <http://wrmin.nic.in> (The National Water Policy, 2002, states that Resettlement and Rehabilitation Policy should be formulated in such a way that the project affected people share the benefits in rehabilitation and that the construction and rehabilitation should be done simultaneously and smoothly. The compensation should be such that they are better placed than before).
12. 2000 AIR SCW 4809.
13. *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 : A.I.R. 1996 SC 2715 the Court, while interpreting precautionary principle in the context of municipal law, held that the onus of proof will be upon the actor to prove that his action is environmentally benign.
14. The people working in the region finds the implementation of the judgment very difficult especially relating to "along with the construction of the dam", because the construction of dam usually take many years and the people cannot be made to wait for such a long time.
15. The Government statistics show that 76% of the displaced people in Ichhampally project and 52% of the displaced people in Polavaram project are tribals (<http://www.dams.org>) the World Commission on Dams.
16. <http://nac.nic.in> (Letter sent to the Government on 6-3-2006)
17. National Rehabilitation Policy, 2004 states that the objective of the policy is to see that the displaced persons receive similar benefits as the project beneficiaries and also that the standard of living should be more than before and to ensure that they do not fall below poverty line.
18. www.jalayagnam.com (T. Hanumantha Rao, Former Irrigation Engineer-in-chief, A.P., "Integrated Water Resources Development in A.P. Problems faced in Jalayagnam and solutions".)
19. *Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P.*, 1992 Supp (1) SCC 44.
20. Deccan Chronicle Daily Newspaper dated 12-8-2006, "Centre okays RR package", P. 2.
21. World Commission on Dams suggests looking into the possibility of standardising the dams by ISO.

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