

## **MULLAPPERIAR DAM – LEGAL TUSSLE – A BRIEF**

1. On 29-10-1886 a lease indenture for 999 years was made between Maharaja of Travancore and Secretary of State for India for Periyar irrigation works by another agreement in 1970, Tamil Nadu was permitted to generate power also.
2. The Mullaperiyar Dam was constructed during 1887-1895 across Periyar River in the then Travancore state (now Kerala) territory after said indenture. The Periyar Dam with full reservoir level of 152 ft. provides for diversion of water from the reservoir through a tunnel to Vaigai basin in Tamil Nadu for irrigation benefits in 68558 ha.
3. In 1979, reports appeared in Kerala Press about the safety of Mulla Periyar Dam. On 25<sup>th</sup> November, 1979 Chairman, CWC held discussions at Thirvananthapuram regarding strengthening Periyar dam with officers of Irrigation and Electricity, Deptt. of Kerala and PWD of Tamil Nadu. In the meeting, emergency measures to be completed before next monsoon (1980), medium term measures and long-term measures for strengthening of Periyar Dam were decided. One of the emergency measures was to keep the shutters of spillway raised fully to lower the reservoir level to 136 ft.
4. A second meeting under the Chairmanship of Chairman, CWC was held on 29<sup>th</sup> April 1980 at New Delhi and it was opined that after the completion of emergency and medium term measures in the form of cable anchoring, the water level in the reservoir can be restored up to 145 ft.
5. As per the Memorandum on the Rehabilitation of Mulla Periyar Dam prepared by CWC and forwarded to Tamil Nadu on 25<sup>th</sup> March, 1986, emergency measures were implemented. In the aforesaid Memo, CWC gave its recommendation about peak flood and size of additional vents to be added in the spillway for implementing remaining emergency measure of providing additional spilling capacity. It also gave its recommendation about the design details of concrete backing on the downstream face of the dam. Besides this, CWC suggested The Government of Tamil Nadu to examine the possibility of raising the top of RCC parapet by another two feet apart from few other suggestions. It was opined in the forwarding note that after completion of the proposed strengthening measures, provision of other additional vents and implementation of other suggestions, Periyar dam would be competent to hold water upto FRL of 152 ft.
6. The matter became subjudice with several petitions in the Kerala and Tamil Nadu High Courts. All these cases were transferred to the Supreme Court which heard the matter and desired in its order dated 28.4.2000 that Hon'ble Minister (WR) may convene a meeting of the Chief Ministers of both the states of Kerala and Tamil Nadu to amicably resolve the issue. .

7. Hon'ble Minister (WR) convened the Inter-State meeting on 19.5.2000 and as decided in the meeting, an Expert Committee under Member (D&R), CWC with representatives from both States was constituted in June 2000 to study the safety of the dam with respect to strengthening of dam carried out by The Government of Tamil Nadu on the advice of Central Water Commission and advise regarding raising of water level in the reservoir beyond 136 ft as a result of strengthening of dam.

8. The Committee in its report of March, 2001 opined that with the strengthening measures implemented, the water level can be raised from 136 ft. to 142 ft. without endangering safety of the dam. Further raising of water level to 152 ft. will be considered after balance strengthening measures are implemented.

9. In the case of Transfer Petition (Civil) No. 779-783/1998 Dr. Subramanian Swamy Vs Tamil Nadu, the Report of the Expert Committee was filed in the Hon'ble Supreme Court on 31.8.2001 and also sent to the State Governments of Kerala and Tamil Nadu.

10. In writ Petition ( C) No. 386 of 2001 (Mulla Periyar Environmental Protection Forum Vs Union of India and Ors) the Supreme Court in its Judgement dated 27.2.2006, permitted the Government of Tamil Nadu to raise the water level of Mulla Periyar dam from 136 ft. to 142 ft. and take up the remaining strengthening measures.

11. Consequent to the aforesaid orders of the Supreme Court of India, the Kerala Government passed the Kerala Irrigation and Water Conservation (Amendment) Act 2006 which received the assent of the Governor on 18<sup>th</sup> March 2006 which prohibited the raising of water level beyond 136 ft. in the Mulla Periyar Dam as Mullaperiyar Dam was placed under the Schedule of 'Endangered Dams'.

12. The Government of Tamil Nadu filed a suit No. 3 of 2006 - State of Tamil Nadu v/s State of Kerala and Union of India in the Hon'ble Supreme Court on 31.3.2006 praying for -

- (i) Declaration of Kerala Irrigation and Water Conservation (Amendment) Act 2006 passed by Kerala Legislature as unconstitutional in its application to and effect on Mulla Periyar Dam.
- (ii) Pass a decree of permanent injunction restraining Kerala from application and enforcing impugned legislation enforcing with or obstructing Tamil Nadu from increasing the water level to 142 feet and from carrying out the repair works as per judgment of Supreme Court dated 27<sup>th</sup> February 2006.

13. A Review Petition filed by the State of Kerala on 3.4.2006 was dismissed by the Supreme Court on 27.7.2006.

14. In the matter referred to in para 13 above, the Hon'ble Supreme Court has passed an order on 25.9.2006 stating "the two State Governments independently or with the intervention of the Union of India may try to sort out the dispute, if possible.

15. The Hon'ble Union Minister (WR) convened an inter-State meeting of the Chief Ministers of States of Tamil Nadu & Kerala on Mulla periyar dam issue on 29.11.2006 at New Delhi. Hon'ble Union Minister (WR) further discussed matter with the Minister (WR/PW) from the States of Tamil Nadu & Kerala on 18.12.2006. The States of Tamil Nadu and Kerala reiterated their respective stand in the meetings and no consensus could be reached regarding a solution acceptable to both States. The matter is now subjudice.

16. Subsequently, Hon'ble Chief Minister of Tamil Nadu met Hon'ble Prime Minister on 18.12.2007 and Hon'ble Prime Minister suggested him to have a meeting with Hon'ble Chief Minister of Kerala on Mulla Periyar issue. Hon'ble Chief Minister of Tamil Nadu met Hon'ble Chief Minister of Kerala on 19.12.2007 in presence of Hon'ble Union Minister of Water Resources. Further a letter dated 20.12.2007 was received from the Hon'ble Chief Minister of Tamil Nadu mentioning that in the above meeting, Hon'ble Chief Minister of Tamil Nadu suggested to oversee the seepage measurement of the dam by engineers not belonging to either of the two States through CWC and Hon'ble Chief Minister of Kerala agreed to consider them.

17. Later, the Govt. of Tamil Nadu forwarded a letter dt 22/1/08 of Hon'ble Chief Minister of Kerala addressed to Hon'ble Chief Minister of Tamil Nadu wherein it is mentioned that in the meeting dt 19/12/2007 he suggested a joint mechanism to monitor the seepage. The Govt. of Tamil Nadu also enclosed a letter dated 4/2/2008 from Hon'ble Chief Minister of Tamil Nadu addressed to Hon'ble Chief Minister of Kerala wherein it is mentioned that joint monitoring was not discussed in the meeting.

18. CWC was requested to suggest a suitable mechanism for monitoring the seepage and possible structure of the Committee to monitor it. They suggested a nine-member Committee headed by a Chief Engineer, Central Water Commission having representatives from both States for Monitoring the seepage of Mulla Periyar Dam. The composition of the Committee along with terms of reference was sent to Chief Secretary, Government of Tamil Nadu and Kerala vide letter dated 28.4.2008 for their concurrence / suggestions.

19. The Government of Tamil Nadu vide its letter dated 17.6.2008 has sent its comments on the proposed Monitoring Committee stating that the present proposal of the Government of India to constitute a Committee comprising officers from CWC, Tamil Nadu Government and Kerala Government to measure the seepage in Mulla Periyar Dam is not in conformity with the discussion held in the meeting dated 19.12.2007 and proposal will lead to more and more complications and thus not acceptable to Govt. of Tamil Nadu. The Govt. of Kerala vide letter dt 24.2.2009

informed that the stand taken by the Govt. of Tamil Nadu for neutral agency of experts excluding those from Kerala and Tamil Nadu is not acceptable to them.

20. In the meanwhile, Govt. of Kerala has got done hydrological review studies from a professor of IIT, Delhi and has since filed the said hydrological studies report in the Hon'ble Supreme Court on 15.07.08 in connection with Suit No.3 of 2006 filed by the Government of Tamil Nadu. It has been concluded in the report that the Mulla Periyar dam is hydrologically unsafe for passing the estimated Probable Maximum Flood (2,91,275 cusec / 8,248 cusec) with the existing spillway capacity. Comments of Hydrological Studies Organisation, CWC on the report were forwarded to the Govt. Advocate as per instructions of MoWR vide CWC letter dated 13.10.08. CWC has commented that the difference in the adopted values of Design Rainfall (Storm) depth, Time distribution of rainfall, Unit hydrograph & Infiltration rate have resulted in estimation of higher flood peak (PMF) and the said studies by the IIT Professor does not appear to be well founded.

21. Meanwhile the Government of Kerala constituted a Committee in May 2009 which submitted its report in June, 2009. The Committee suggested mapping of the underwater area, installation of highly sensitive computer operated Seismograph and construction of a new Dam downstream of existing dam. The Committee has also opined that the dam has reached such a deteriorated condition that no amount of rectification work could salvage it to a safe and healthy condition. Keeping in view this report, Minister (WR) advised Chairman, CWC in July, 2009 to constitute a team of officers to visit the dam and assess the present condition of the Mulla Periyar dam and look into the issues raised in the report of the above Expert Committee. The team had proposed a visit to the dam from 22-25 July, 2009 and the conveniences of the Government of Kerala and Tamil Nadu for the visit were sought. The Government of Tamil Nadu agreed to the proposed visit but the Government of Kerala requested for postponement of the proposed visit because of torrential rains. Thereafter, the visit could not materialize.

22. Thereafter, Secretary (WR) convened a meeting on the Mulla Periyar Dam on 31.7.2009. The meeting was attended among others by Principal Secretary, PWD, Tamil Nadu and Additional Chief Secretary, WRD, Kerala. In the meeting the representative of Kerala informed that the Kerala Govt. visualizes construction of new dam as the only feasible solution and they have started survey and investigation for a new dam at an alternate site downstream of the existing dam and they may also consider the construction of a new dam at their own cost. Representative of Kerala stated in the meeting that the Govt. of Kerala also recognizes the established uses of water from the dam by Tamil Nadu as per the existing agreement between the two States and will continue the same after the construction of a new dam. In the said meeting the representative of Govt. of Tamil Nadu informed that the Govt. of Tamil Nadu would examine the proposal of the Govt. of Kerala for new Dam after the same is formally received from them. In view of this, Hon'ble Minister (WR) vide DO dated 26.08.2009

requested Hon'ble Chief Minister, Kerala to send the proposal in this regard to the Govt. of Tamil Nadu for their consideration.

23. Later, Govt. of Tamil Nadu vide letter dated 14.9.09 mentioned that as regards the decision that has emerged in the meeting, to examine the proposal of the Kerala Government for the construction of a new dam by Tamil Nadu Government, the Government of Tamil Nadu had already communicated to the Government of India as well as to the Government of Kerala that there is no need for construction of a new dam by the Kerala Government, as the existing dam after it is strengthened, functions like a new dam. They also mentioned that Hon'ble Chief Minister of Tamil Nadu in his letter dated 13.07.09 to Hon'ble Chief Minister of Kerala had mentioned that Kerala Govt. may not raise the issue of new dam any more.

24. The Govt. of Kerala vide letter dated 26.9.2009 sent comments on the minutes of the meeting dated 31.7.2009 mentioning that the statement "The Govt. of Kerala also recognizes the established use of water from the dam by the Tamil Nadu as per the existing agreement between the two States and continue the same after the construction of new dam" is not acceptable. What was mentioned in the meeting was that Kerala is willing to give water to Tamil Nadu.

25. Further, Hon'ble Supreme Court heard the issues related to Mulla Periyar Dam on 10.11.2009 and passed the order that,  
"As the case involves the resolution of said questions, the suit may be placed before the Hon'ble Chief Justice of India for necessary directions for placing it before a constitution Bench.

The contesting parties shall maintain status quo in respect of Mulla Periyar Dam as existing today. However, order of status quo will not be an impediment for the plaintiff (State of Tamil Nadu) to carry out maintenance and repairs for proper upkeep of the said Dam."

26. The case was heard by five judges on 18.2.2010 and the Court directed Central Govt. to constitute an empowered Committee in this regard which would hear the parties to the suit on all issues that will be raised before them, and furnish a report, as far as possible, within six months from their constitution.

27. Following the order of Hon'ble Supreme Court dated 29.02.2010, Centre (MoWR) has constituted an Empowered Committee vide Notification dated the 30<sup>th</sup> April, 2010. The Committee started its functioning and was to submit its report within six months period. Further, Supreme Court vide its order dated 20<sup>th</sup> September, 2010 has extended the term of Committee by a further period of six months. Therefore, implementing the said directions of the Supreme Court, the Central Government

extends, the terms of Empowered Committee for a further period of six months w.e.f. 30<sup>th</sup> October, 2010 vide Notification dated the 28<sup>th</sup> October, 2010