

THE BANGLADESH IRRIGATION WATER RATE ORDINANCE, 1983

(ORDINANCE NO. XXXI OF 1983).

[10th July, 1983]

An Ordinance to consolidate and amend the law relating to the imposition of water rate for supply, regulation or storage of water for irrigation or drainage.

WHEREAS it is expedient to consolidate and amend the law relating to the imposition of water rate for supply, regulation or storage of water for irrigation or drainage and to provide for certain matters connected therewith;

NOW, THEREFORE, in pursuance of the Proclamation of the 24th March, 1982, and in exercise of all powers enabling him in that behalf, the Chief Martial Law Administrator is pleased to make and promulgate the following Ordinance:-

Short title and commencement

1. (1) This Ordinance may be called the Bangladesh Irrigation Water Rate Ordinance, 1983.

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

Definitions

2. In this Ordinance, unless there is anything repugnant in the subject or context,-

1[ \* \* \* ]

(b) "Board" means the Bangladesh Water Development Board constituted by the Bangladesh Water and Power Development Boards Order, 1972 (P.O. No. 59 of 1972);

(c) "canal" means any canal, channel, including field channel, plot channel and intake channel, river, stream, water course, reservoir, pump or tube well constructed, installed, maintained or controlled by the Government or by the Board or by the Corporation for supply, regulation or storage of water for the purpose of irrigation or drainage, and includes any work, embankment, structure, supply or escape channel connected with any such canal, channel or reservoir, and any land on the bank of any canal as defined in this clause;

(d) "Corporation" means the Bangladesh Agricultural Development Corporation established under the Bangladesh Agricultural Development Corporation Ordinance, 1961 (E.P. Ord. XXXVII of 1961);

2[ \* \* \* ]

(f) “Deputy Commissioner” means the Deputy Commissioner of a district and includes such other officer of the Government or such officer of the Board or of the Corporation as may be empowered by the Government to perform all or any of the functions of a Deputy Commissioner under this Ordinance;

(g) “prescribed” means prescribed by rules made under this Ordinance; and

(h) “Water rate” means the water rate payable under this Ordinance.

#### Ordinance to override other laws

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

#### Imposition of water rate

4. 3[ (1) Whenever the Government is of opinion that lands within any area are benefitted or are likely to be benefitted by water supplied or regulated by the Government or by the Board or by the Corporation through any canal during any financial year, the Government may, by notification, declare its intention to impose in such area, hereinafter referred to as the notified area, a water rate for such financial year.]

(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 Government 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 Government may, after considering the objections, if any, received within such period, by notification,-

(a) withdraw the declaration intending to impose a water rate, or

4[ (b) declare that a water rate in the area in respect of which the declaration under sub-section (1) was made or any part thereof shall be imposed.]

#### Determination of water rate etc

5[ 5. (1) The water rate to be imposed in a notified area shall be determined by such authority and in such manner as may be prescribed:

Provided that the water rate so determined may vary from one notified area to another notified area and from one year to another year.

(2) Notwithstanding anything to the contrary contained in section 4, a water rate determined for a financial year shall remain in force and be payable for subsequent financial years unless the notification published under that section is rescinded or the rate is varied under sub-section (1).

(3) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any custom, usage or contract, a water rate determined under sub-section (1) shall be payable in respect of all agricultural lands in the notified area.]

#### Remission

6[ 6. If, for any reason, there is, in any financial year, a total or partial failure of crops in any land in the notified area, the Government may grant total or partial remission of the water rate in respect of such lands.]

#### Assessment and collection of water rate

7[ 7. The water rate payable under section 5 shall be assessed and collected in such manner as may be prescribed.]

#### Free Passage of water for irrigation or drainage

8. (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 and for that purpose, to allow, when so required by the Deputy Commissioner, by an order in writing, construction and maintenance of such channels as may be necessary:

Provided that the capacity of such channels shall not exceed in any case two cusecs of flow.

(2) If any person refuses to comply with an order under sub section (1), the Deputy Commissioner may cause the channel to be constructed or maintained and may impose a penalty which may extend to five times the water rate assessed on such land.

(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 construction or maintenance of any channel under sub section (1) or sub section (2):

Provided that he shall be entitled to remission of water rate in respect of that portion of land which is affected by such construction or maintenance of channels.

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

#### Penalty for diversion of normal flow of water by obstruction, etc

9. (1) If, without any written permission of the Deputy Commissioner, any obstruction is put in any channel referred to in section 8 or other canal or any cut is made on the bank thereof as a result of which the normal flow of water through

(a) take such measures as he may consider necessary to remove such obstruction or to close such cut;

(b) impose a penalty, which may extend to ten times the water rate assessed for the 8[ financial year] during which the obstruction is put or the cut is made, on the persons who are the owners or occupiers of lands irrigated by, or filled up with, 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 Deputy Commissioner that such obstruction was put or such cut was made without his knowledge or consent.

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

#### Prevention of unauthorised use or waste of water

10. (1) It shall be the duty of the owners or occupiers of lands in the notified area to take proper precautions for the prevention of waste of the water supplied through any canal in the area or use of such water in an unauthorised manner.

(2) If water supplied through a canal be suffered to run to waste, the person by whose act or neglect such water is suffered to run to waste shall be liable to pay a penalty which may extend to ten times the water rate that could be charged if the water so wasted were supplied in bulk.

(3) If water supplied through a canal in the area be used in an unauthorised manner, the person by whose act or neglect such use has occurred shall be liable to pay a penalty which may extend to five times the water rate assessed on the land in which such water is used or on which such water has flowed.

(4) A penalty under this section may be imposed by the Deputy Commissioner after causing such enquiry as he deems necessary and after giving the persons liable to pay the penalty an opportunity of showing cause against the imposition of such penalty.

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

#### Recovery of arrears of water rate and penalties

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

#### Delegation of power

12. The Government may, by notification, direct that any power conferred or any duty imposed on it by this Ordinance may, in such circumstances and under such conditions, if any, as may be specified in the notification, also be exercised or performed by such officer or authority as may be mentioned in the notification.

#### Bar to Jurisdiction of Civil Courts

13. Notwithstanding anything contained in any other law for the time being in force, no Civil Court shall entertain any application or suit for any action taken or anything done under this Ordinance.

#### Indemnity

14. No suit, prosecutions or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Ordinance.

#### Power to make rules

15. (1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

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

(a) the authority or person for assessment of water rate;

9[ \* \* \* ]

(c) the manner of publication of notification or public notices issued under this Ordinance;

10[ \* \* \* ]

(e) the form and manner of service of notices;

11[ \* \* \* ]

(g) the persons by whom water rate may be collected and the remuneration, if any, payable to them; (h) the manner of collection of water rate;

(i) the amount of rebate to which a person paying water rate in time is entitled and penalty to which he may be liable in case of default;

(j) the appellate authorities to whom appeals under sections 8, 9 and 10 shall lie;

(k) the fees, if any, payable on petitions of appeal;

(l) the procedure to be followed by the appellate authorities.

#### Repeal and savings

16. (1) The Irrigation (Imposition of Water Rate) Ordinance, 1963 (E.P. Ord. VII of 1963), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken, including any notification published, water rate imposed or assessed, notice issued, order made or appeal preferred under the said Ordinance shall be deemed to have been done, taken, published, imposed, assessed, issued, made or preferred under the corresponding provision of this Ordinance.

1 Clause (a) was omitted by section 2 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

2 Clause (e) was omitted by section 2 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

3 Sub-section (1) was substituted by section 3 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

4 Clause (b) was substituted by section 3 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

5 Section 5 was substituted by section 4 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

6 Section 6 was substituted by section 5 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

7 Section 7 was substituted by section 6 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

8 The words “financial year” was substituted for the words “crops season” by section 7 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

9 Clause (b) was omitted by section 8 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

10 Clause (d) was omitted by section 8 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)

11 Clause (f) was omitted by section 8 of the Bangladesh Irrigation Water Rate (Amendment) Act, 1990 (Act No. XXXIV of 1990)