CHAPTER I

Law and Policy Relating to the Role of Panchayat Raj Institutions in Irrigation Management Tamilnadu and Karnataka.

M.S. Vani.

INTRODUCTION

Agriculture and irrigation, that is the artificial application of water to the land for purposes of agriculture in order to supplement natural rainfall, has been practised in India from time immemorial. Up to the 19th century, except the Grand Anicut on the River Cauvery built by the Chola King Karikala in the 2nd century AD[1]., the weirs on the Tungabhadra built in the sixteenth century by the Vijayanagar Monarch Krishna Deva Raya,[2] and the 150-mile long canal on the right bank of the Jumna built in the fourteenth century by Firoz Shah Tughlak[3] most of the irrigation works in the country have been of the small type-storage and lift irrigation works - i.e. tanks, wells, picotahs etc. These works evolved and developed over the centuries, from the efforts of local populations and local governments to harness water resources for local benefit. They have been the backbone of agriculture in most parts of the country.[4] Tanks, Wells, and other minor irrigation sources together account for more than 50% of the net area irrigated in the country.[5] Of the various types of Minor Irrigation sources, tanks have occupies a prominent place, particularly in South India - Tamilnadu and Karnataka - where they irrigate even today more than 25% of the irrigated area of the states.[5a]

contd.

However, over the last 150 years, the efforts of the government in the country have largely been direc to extension of irrigation through works of the larger type, and in particular those involving diversion of riv waters for distribution through canals.[6] This has been done to the detriment of Minor Irrigation Works. Even so, it is in the area of minor irrigation that the irriga potential created has been higher than major and medium projects, in spite of much lower outlay than for the latter, throughtout the last 40 years (Table 1).

Minor irrigation works therefore are of immense present and future importance.

Minor Irrigation Works, particularly tanks, have historically been a concern of local government. In pre-British South India, from the 2nd to the 17th Century, local village assemblies or 'Sabhas' managed them almost entirely on their own. During British rule, though centralised administration systems like the Revenue Department and public Works Department were involved in the management of this resource, the government never ceased to stress on the customary obligation of the villagers to maintain and protect their sources of irrigation and attempted various executive and legislative measures to ensure this. After Indenpendenc from the late 50's and early 60's, panchayatiraj institutions were, as a policy, given jurisdiction over irrigation functions subject to certain conditions.

This paper reviews the efficacy of current legislative measures in [illegible] resource and

ensuring its best use. It also traces the origin of the policy animating current law on the subject, and suggests a fundamental reorientation in policy and law.

Irrigation Management and the Need for Decentralisation.

In relation to irrigation, the exercise of the policy of decentralisation is important for the following reasons.

a) Though water is a universal resource, its use is localised to the area where it is present. Importantly, water exists in obeyance to its own natural laws which link it inextricably with land. Water falls, or flows in streams or rivers, stagnates, seeps, gushes out in springs or evaporates in relation to the land on which or in which it exists. The wide variations in type of land determines the variations in behaviour of water, making it a localised phenomenon.

b) Agriculture itself being very much a localised art, with cropping patterns chosen in accordance with its suitability to land types, it necessarily follows that irrigation should also be modelled to suit specific land type and cropping pattern.

c) Whether water use projects are large or small, to be successful they must function at optimum level at every point, which implies highly regulated localised units acting in consonance.

Logically, therefore, it would appear that wherever irrigation was practiced, local organisations utilising the

resource would be closely involved in its management. In any attempt to do so, by a local community, the following powers or controls in relation to water would necessarily emerge as decisive :

1) The ownership of the water sources.

2) The power to create, develop and protect the resource, which implies legal power over the land surface connected with the water resource.

3) The power to assign monetary value to the resource.

4) The power to define conditions of use of water, with regard to time, space and purpose, and to define rights and duties, offences and sanctions in relation to that resource, as also the power of adjudication in the context of disputes over the water resources.

The question that now has to arise is whether the legally constituted local government institutions at present exercise these powers. The answer is a clear negative.

Current Law on the Subject.

Current legislation on Panchayats in the States of Karnataka and Tamilnadu do contain provisions relating to irrigation. The provisions of the Tamilnadu Village Panchayats Act of 1958 read with the Rules under the Act are in summary as follows[7] :-

1) The panchayat or panchayet union council is given the "duty" of protection amd maintenance of any irrigation work, the management of turns of irrigation, or the regulation of distribution of water from any irrigation work to the fields depending upon it".

2) The duties according to the section only "may" be transferred to the Panchayat or Panchayat Union Council by the Government.

3) The transfer is also subject to the conditions and control as the Government may prescribe.

4) The P.R. bodies however "shall" execute Kudimaramat or community labour in respect of any irrigation source in the village or town. While power is given to levy fee for this purpose, the quantum and basis was to be "as prescribed".

5) In cases where such functions were transferred, the fishery rights of the government in such work were also to be transferred, and, thereafter vest in the Panchayat or P.U. Council. However, both the vesting of fishery rights as well as the utilisation of fishery income was to be "subject to such terms and conditions as may be specified by the Government".

6) The Rules framed under the Act sabotage this attempt at 'decentralisation' in myriad ways i.e.

a) The transfer was effected to Panchayat Union Councils and not Panchayats.

b) Only minor irrigation sources which irrigated less than 100 acres and which were under the control of the Revenue Department were transferred to Panchayat Union Councils. (In 1989, this has become 50 acres, the rest going to the PWD).

c) No works which were part of a riverine system were to be transferred.

d) Also excluded were tanks, which form part of a chain which were to remain with the PWD, even if they irrigated less than 100 acres.

e) The Revenue Department retained the power of appointment, punishment, dismissal and payment of salary or other allowances to nirganties.

f) While a fee could be levied by the P.U. Council from all the registered holders of lands served by any irrigation work, the rate per acre was to be determined not by itself, but by the collector of the district. Moreover, this fee was to be in addition to the wet or dry assessment and the water rate, if any, chargeable on the land. This provision clearly sayes this basic function of collecting tax or water or cess from the purvi of local bodies to the benefit of the 'State' which assumes thereby an interest in contradiction to that of local institutions.

These and various firther provisions[9] severely circumscribe the exercise of any legal powers for irrigati development by panchayat Unions in [illegible], which, when

they are functioning[10], contain, as part of their administrative structure, mini-PWDs, under the control of the union Engineer and his Overseers, whose jurisdiction includes Roads and Buildings, besides Minor Irrigation Works. Needless to say, M.I. Works receive least attention, and are taken up for repair, maintenance or reconstruction in accordance with a long-standing norm - i.e., works are chosen in rotation once in five years.[11]

This single rule by itself, which in practice decides the entire scope, and pace of Minor Irrigation Development, is fully indicative of the top-down approach, dictated by the size of the budget and works to be done, by an agency completely alienated from the village community as a whole, or village panchayat institutions. This agency, PWD-in-the-guise-of-panchayat unions - and this approach are further instrumental in divorcing irrigation Management from agriculture at the village level. Nothing could be less conducive to the functioning of village panchayats as "Units of Self Government".

Karnataka

In furtherance of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act 20 of 1983, Zilla Parishads and Mandal Panchayats were established on 1.4.1987. Under this Act, Construction renovation and maintenance of minor irrigation works with an atchkat not extending beyond the district was brought under the purview of Zilla Parishads[12]. Mandal Panchayats were given no powers over Irrigation. While Minor

Irrigation works are defined as works (other than river systems) with an atchkat of up to 2000 acres, administrative delegation has been effected only with respect to works with an atchkat of 50 hectares. Thus all works above 50 hectare command area continue to be controlled by the Irrigation Department from the State headquarters.

Mandal Panchayats have been given wide ranging powers under the Act in several areas.[13] Of these, powers given to them for providing water supply, pure and sufficient for public and private use, are noteworthy.

For this purpose, Mandal Panchayats can construct, repair and maintain tanks wells and clear streams or water courses; they can purchase or acquire by gift or otherwise, any tank, well, stream or water course within or without the area under their control; with the consent of the owner, Mandal Panchayats can utilise cleanse or repair any tank well stream or water course or provide facilities for obtaining water therefrom; Mandal Panchayats can contract with any person for supply of water or do any other act necessary for carrying out the purposes of the section (Sec.77(1)). Further, they may set apart for supply of water to public for drinking or culinary purposes any tank well stream or water course, as well as prohibit certain acts such as bathing washing of clothes or animals etc. to prevent pollution of any tank, well, stream or water course. (Sec.77(2) & (3)).

Importantly, Mandal Panchayats may make byelaws for conserving and preventing injury to sources and means of water supply and appliances for distribution of water whether

within or without the limits of the Mandal Panchayat and for regulating all matters connected with the supply and use of water, the turning on and turning off and preventing the waste of water; the construction maintenance and control of Mandal Panchayat water works, pipes and fittings in connection therewith whether the property is of the Mandal Panchayat or not (sec 78). The Mandal Panchayats could also levy a water rate for supply of water sec.116(4)(a). While Mandal Panchayats have been considered competent to exercise all these powers, for drinking water supply, they cannot do the same things for irrigation.

Mandal Panchayats have been given wide ranging functions relating to agriculture animal husbandry and fisheries, (Sec.56 (c))[13]. They have no power, whatsoever, over irrigation works. While cart tracts, drains, bunds, village roads, walls, bridges, public housing sites, and public buildings vest in the Mandal Panchayat, (S.63) mandal forests may be transferred to them : wastelands pasture lands common lands or vacant lands may be made over to them (s. 57(a) & (b)) while even the collection of land revenue by their own agency may be entrusted to them (s.57(c) and powers have been given to protect, construct, repair, maintain, cultivate, use and raise funds for these resources, transfer of irrigation works seems an inexplicable omission. Most inappropriately, Zilla Parishads have been given the power of construction renovation and maintenance of minor irrigation works, providing for the timely and equitable distribution and full use of water under irrigation schemes under the control of Zilla Parishads, and development of ground water resources.

The new Panchayat legislation in Karnataka provides for legal, financial and administrative decentralisation to a greater degree than ever before. Under the Act, the Mandal Panchayats have exclusive jurisdiction over specific developmental programmes legally and financially.

While the Mandal Panchayat have been deemed to be competent to exercise wide ranging powers related to almost all developmental functions,[15] they have not been considered to be "equipped enough" to deal with irrigation works within their by themselves, or in conjunction with other Mandals.[16]

The comprehension of the rationale underlying this obvious reluctance of the state to yield control over irrigation work in favour of local institutions is better aided by a look into the history of the issue.

CHAPTER II

A Page from History

Any concept, or function can be best perceived if it is viewed against its contrast, or measured against a standard. As the situation is today, there is limited political, administrative and financial decentralisation in favour of panchayat institutions. Regarding irrigation, the statutory bodies at the lower level possess legal non-powers; irrigation sources such as tanks are in a greatly deteriorated condition; water supply is scarce; with decline in access to surface water, groundwater is bein

exploited more and more; with increasing demands on the energy section; for electricity supply, large hydroelectricity generating systems such as large dams or reservoirs become a necessity. As a corollary, forests are lost, people are displaced, the ecosystem is altered; soil erosion floods and drought occur as a consequence, resulting in further degradation of life and property.

Of the three major types of irrigation - canals or River systems; tanks; and wells, the second type as a choice is being eliminated quite steadily in a process which began 150-200 years ago. This type represents a particular societal organisation. It is a Community-controlled system. Its very design (as opposed to a linear river system) promotes not a liner hierarchical control system, but a cooperation and consensus among its users, without which, not only the water source, but also the physical and natural environment which is essential for its existence, cannot function. The tank or tanks being within the confines of a village holds no scope for an outside authority to control, unless deliberately assumed.

As we are award, the vast majority of these tanks were designed and constructed centuries ago. The historical evidence dating the creation of the tank system also provide very valuable evidence of the system of management adopted and exercised by local bodies in that period. It is this evidence, which when reconstructed into a pattern (the stone inscriptions relating to tanks and village organisations belong to various places and various times in South India covering a span of time from the 2nd to the 16th century A.D.

under the Pallava, Early Chola, Later Imperial Chola and Vijayanagara empires which at one time or another included modern Tamilnadu, Karnataka, Andhra Pradesh and Kerala). pose the contrast to present day panchayat institutions role in irrigation.

Irrigation Management by Village Assemblies in Ancient Times in South India.

Village Government in medieval South India.

Local autonomy was a characteristic feature in Medieval Tamil country as well as contemporary kingdoms in Mysore. Most of the evidence relating to the subjects of village government and irrigation relate to the span of six centuries from the 11th to 16th century, which period saw the rise expansion of the major kingdoms in the South - the Imperial Cholas and the Vijayanarar Empire. The former held away for a considerable period of time - 400 years - while the kings of the latter Empire ruled for about 200 years. A widely recognised distinctive feature of medieval South Indian states was the primary of various kinds of assemblies in the governance of the numerous localised societies of which contemporary South India consisted.[17] The villages of that period were "to a great extent self governing, the forms of democracy which operated in them were perhaps more vital than those which have been so laboriously imposed on India in modern times".[18]

While most of the information available relates to the Chola period, the beginning of the system of the village government that are seen in full swing under the