

# MULLA PERIYAR DAM ISSUE

1. A lease indenture for 999 years was made on 29-10-1886 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. The Mullaperiyar Dam was constructed during 1887-1895. Its full reservoir level is 152 ft and it provides water through a tunnel to Vaigai basin in Tamil Nadu for irrigation benefits in 68558 ha area.
2. In 1979, reports appeared in Kerala Press about damage to Periyar Dam. On 25th November, 1979 Chairman, CWC held meeting with the officers of Irrigation and Electricity, Deptt. Of Kerala and PWD of Tamil Nadu and some emergency medium term measures and long-term measures for strengthening of Mullaperiyar Dam were decided. A second meeting under the Chairmanship of Chairman, CWC was held on 29th April 1980 and it was opined that after the completion of emergency and medium term measures, the water level in the reservoir can be raised up to 145 ft.
3. The matter became sub judice with several petitions. On the directions of the Supreme Court in its order dated 28.4.2000, 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. 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. would be considered after balance strengthening measures are implemented.
4. The Supreme Court in its orders on 27.2.2006, permitted the Government of Tamil Nadu to raise the water level of Mullaperiyar dam from 136 ft. To 142 ft. and to carry out the remaining strengthening measures. After that the Government of Kerala passed the Kerala Irrigation and Water Conservation (Amendment) Act 2006 on 18th March 2006 which prohibited the raising of water level beyond 136 ft. in the Mullaperiyar Dam and placed it in the Schedule of 'Endangered Dams'. Government of Tamil Nadu filed a suit in the Supreme Court on 31.3.2006 praying for declaration of above Act as unconstitutional in its application to and effect on Mullaperiyar Dam and restraining the State of Kerala from obstructing Tamil Nadu to increase the water level to 142 feet.
5. The Union Minister (WR) convened an inter-State meeting of the Chief Ministers of States of Tamil Nadu and Kerala on Mullaperiyar dam issue on 29.11.2006 at New Delhi. Both

States reiterated their respective stand in the meeting and no consensus could be reached regarding a solution acceptable to both States.

6. Subsequently, Chief Minister of Tamil Nadu met Prime Minister on 18.12.2007 and Prime Minister suggested him to have a meeting with Chief Minister of Kerala on Mullaperiyar issue. Chief Minister of Tamil Nadu met Chief Minister of Kerala on 19.12.2007 in presence of Union Minister of Water Resources. Chief Minister of Tamil Nadu vide letter dated 20.12.2007 mentioned that in the above meeting, he had suggested to oversee the seepage measurement of the dam by engineers not belonging to either of the two States through CWC and Chief Minister of Kerala agreed to consider this. However a consensus of both the states on such monitoring mechanism could not be achieved
7. In the meanwhile, Govt. of Kerala carried out hydrological review studies through a professor of IIT, Delhi and concluded in the report that the Mullaperiyar dam is hydrologically unsafe for passing the estimated Probable Maximum Flood. CWC examined this report and observed that the report does not appear to be well founded.
8. Secretary (WR) convened an interstate meeting on the Mullaperiyar Dam on 31.7.2009. In the meeting, the representative of Kerala informed that the Kerala Govt. visualizes construction of a new dam as the only feasible solution. They could also consider the construction of a new dam at their own cost. Later, Govt. of Tamil Nadu vide letter dated 14.9.2009 mentioned that there is no need for construction of a new dam by the Kerala Government, as the existing dam after it is strengthened, would function like a new dam.
9. The Mullaperiyar case being heard by a five member bench of Hon`ble Supreme Court, who vide order 18.2.2010 directed constitution of an Empowered Committee. The Hon`ble Court observed :  
"That apart from the legal and constitutional issues, inter alia the real grievance that concerns the state is Tamil Nadu is of not being able to increase the reservoir level of Mullaperiyar Dam to 142 feet. The concern of the State of Kerala, on the other hand, appears to be relating to the safety of the Dam."
10. As per the said order, the terms of reference of the Empowered Committee were to :
  - i. Hear parties to the suit on all issues that will be raised before them, without being limited to the issues that have been raised before the Hon`ble Supreme Court, and furnish a report, as far as possible, within six months from their constitution.

- ii. The Committee shall frame its own procedure and issue appropriate directions as to the hearings as well as venue of its sittings.
  - iii. The Committee is free to receive such further evidence as it considers appropriate.
  - iv. Legal and constitutional issues including the validity of the Kerala Irrigation and Water Conservation (Amendment) Act, 2006 would be considered by the Hon'ble Supreme Court of India.
11. Accordingly, the Ministry of Water Resources, vide Gazette Notification issued on 30.4.2010 constituted the Empowered Committee as under :
1. Justice (Dr.) A.S. Anand : Chairmen
  2. Justice Shri K.T. Thomas : Member
  3. Justice (Dr.) A. R. Lakshmanan : Member
  4. Dr. C.D. Thatte : Member
  5. Shri D.K. Mehta : Member
  6. Shri Sat Pal : Member Secretary
12. The Committee held twenty meetings and also visited the site in December, 2010. In its report submitted on 23.4.2012, the Committee concluded that dam is hydrologically safe and that the proposal of State of Kerala to build a new dam requires reconsideration by State of Kerala.
13. A Constitution Bench, consisting of 5 Judges of Hon'ble Supreme Court, has heard the Mullaperiyar Dam Case, in July/August, 2013, involving the States of Tamil Nadu and Kerala. Arguments in the case were completed on 21.8.2013. The Constitution Bench consisting of 5 judges of Hon'ble Supreme Court has delivered its judgement on 07.05.2014. The Hon'ble Supreme Court has declared the Kerala Irrigation and Water Conservation (Amendment) Act, 2006 unconstitutional and directed Union Government to set up a three member Supervisory Committee about the safety of the Mullaperiyar Dam on restoration of the FRL to 142 ft. After consulting Ministry of Law and Justice, a Cabinet Note on setting up the Supervisory Committee on Mullaperiyar Dam, was forwarded to Cabinet Secretariat on 13.06.2014. The Cabinet has accorded its approval on 18.06.2014 for setting up of a three member Supervisory Committee on Mullaperiyar Dam. In pursuance to the approval of the Cabinet, an OM constituting a three member supervisory committee on Mullaperiyar Dam was issued on 01.07.2014. The Supervisory

Committee has its office at Kumily, Kerala. So far, 14 meetings of the Supervisory Committee on Mullaperiyar Dam have been held.

14. Hon'ble Supreme Court in its Judgement dated 11.01.2018 in the Writ Petition (Civil) No 878 of 2017 between Russel Joy versus Union of India & Others directed Union Govt. to form a Sub-Committee under National Executive Committee (NEC) of National Disaster Management Authority (NDMA) to monitor the measures for ensuring high level of preparedness to face any disaster in relation to MullaPeriyar Dam. Disaster Management Wing of Ministry of Home Affairs, Govt. of India constituted the Sub-Committee vide letter dated 12th March 2018 under chairmanship of Secretary MoWR, RD&GR. So, far 4 meetings of the sub-committee have been conducted on 04 June, 17 August, 23 August and 26 Oct 2018. Hon'ble Supreme Court further stated in the said judgment that our directions for constitution of exclusive Sub-Committees for the disaster management for the Mullaperiyar Dam does not anyway remotely suggest that there is any doubt about the safety or life span of the dam, as is alleged in the writ petition. We have said so only keeping in view the consequences of unpredictable disaster, which have astutely been canvassed before us.
15. In Writ petition no. 880 of 2020 in the matter of Dr. Joe Joseph & Ors. vs State of Tamil Nadu & Ors, Hon'ble Supreme Court, vide its Order dated 16.03.2021, directed Supervisory Committee on Mullaperiyar Dam to address on three core issues i.e. instrumentation plan of the dam, the rule curve & the gate operation schedule/reservoir operation plan. Accordingly, the State of Tamil Nadu has submitted their report on the proposed Rule Curve, Gate Operation Schedule and Instrumentation Plan for Mullaperiyar Dam, and State of Tamil Nadu has submitted their report on proposed Rule Curve for Mullaperiyar Dam to the Supervisory Committee. The Report on Rule Curve prepared by State of Tamil Nadu in consultation with the Central Water Commission is as per the ruling of Hon'ble Supreme Court and is being recommended by CWC for kind consideration of Hon'ble Supreme Court. The Gate Operation Schedule and Instrumentation Plan for Mullaperiyar Dam as submitted by State of Tamil Nadu was also discussed with State of Kerala in the meeting held on 09.07.2021 and they were found generally in order. However, State of Kerala has expressed their dissent on the reports submitted by State of Tamil Nadu.