

Case Note: An Act to Provide for the establishment and regulation of a Corporation for the development of the Damodar Valley in the provinces of Bihar and West Bengal.

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DVC Act

Preamble

Act No. XIV of 1948

(The Act received the assent of the Governor General on the 27th of March, 1948.)

An Act to Provide for the establishment and regulation of a Corporation for the development of the Damodar Valley in the provinces of Bihar and West Bengal.

Whereas it is expedient to provide for the establishment and regulation of a Corporation for the development of the Damodar Valley in the provinces of Bihar and West Bengal;

And Whereas in pursuance of section 103 of the Government of India Act, 1935 (26 Geo. 5, c. 2), resolutions have been passed by all the Chambers of the Provincial Legislatures of the said Provinces to the effect that certain matters dealt with in this Act which are enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Dominion Legislature;

It is hereby enacted as follows: -

Part I

Introductory

1. Short title, extent and commencement :

- (1) This Act may be called the Damodar Valley Corporation Act, 1948.
- (2) It extends to the Provinces of Bihar and West Bengal.
- (3) It shall come into force on such date as the Central Government may, by Notification in the official Gazette, appointed on this behalf.

2. Interpretation :

In this Act, unless there is anything repugnant in the subject or context, -

- (1) "Corporation" means the Damodar Valley Corporation;
- (2) "Damodar Valley" includes the basin of the Damodar river and its tributaries;

- (3) “member” means a member of the Corporation and includes the Chairman;
- (4) “Participating Governments” means the Central Government, the Provincial Government of Bihar and the Provincial Government of West Bengal;
- (5) “prescribed” means prescribed by rules made under section 59;
- (6) “Provincial Government” means the Government of Bihar or as the case may be of West Bengal, and “Provincial Governments” means the Governments of Bihar and of West Bengal;
- (7) “Regulations” means the regulations made by the Corporation under section 60.

Part II

Establishment of The Corporation

3. Incorporation:

- (1) With effect from such date as the Central Government may, by notification in the official Gazette, appointed on this behalf, there shall be established a Corporation by the name of the Damodar Valley Corporation.
- (2) The said Corporation shall be a body corporate having perpetual succession and a common seal, and shall by the said name sue and be sued.

4. Constitution of the Corporation:

- (1) The Corporation shall consist of a Chairman and two other members appointed by the Central Government after consultation with the Provincial Governments.
- (2) A person shall be disqualified for being appointed, or for continuing as, a member of the Corporation –
 - (a) if he is a member of the Central or any Provincial Legislature; or
 - (b) if he has, directly or indirectly, any interest in a subsisting contract made with, or in any work being done for, the Corporation except as a shareholder (other than a director) in an incorporated company provided that where he is a shareholder, he shall disclose to the Government the nature and extent of shares held by him in such company.
- (3) Not act or proceeding of the Corporation shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the appointment of a member thereof.

5. Conditions of service of members :

- (1) Omitted. (Vide Damodar Valley Corporations of service of the members shall be such as may be prescribed.)
- (2) The remuneration and other conditions of service of the members shall be such as may be prescribed.

6. Appointment of officers and servants :

- (1) The secretary and the financial adviser of the Corporation shall be appointed by the Central Government.
- (2) The secretary shall be the chief executive officer of the Corporation.
- (3) The Corporation may appoint such other officers and servants as it considers necessary for the efficient performance of its functions.

7. Conditions of service of officers and servants :

The pay and other conditions of service of the officers and servants of the Corporation shall –

- (a) as respects the secretary and financial adviser, be such as may be prescribed; and
- (b) as respects the other officers and servants, be such as may be determined by the regulations.

8. Functions and duties of the financial adviser :

The functions and duties of the financial adviser shall be such as may be prescribed.

9. General disqualification of all officers and servants :

No person who has directly or indirectly, by himself or his partner or agent, any share or interest in any contract, by or on behalf of the Corporation or in any employment under, by or on behalf of the Corporation otherwise than as an officer or servant thereof, shall become or remain an officer or servant of the Corporation.

10. Appointment of Advisory Committee :

Subject to any rules made under section 59 the Corporation may from time to time appoint one or more Advisory Committees for the purpose of securing the efficient discharge of the functions of the Corporation, and in particular for the purpose of securing that those functions are exercised with due regard to the circumstances and requirements of particular local areas.

Part III

Functions and Powers of the Corporation

General

11. Limits of Damodar Valley and areas of operation :

- (1) The Central Government shall, by notification in the official Gazette, specify the limits of the Damodar Valley.

- (2) The Corporation shall carry out all or any of its functions and exercise all or any of its powers within the Damodar Valley.
- (3) The Central Government may, after consultation with the Provincial Governments by notification in the official Gazette, direct that the Corporation shall carry out such function and exercise such power in such other area as may be specified therein and the area so specified shall be called the “area of operation” of the Corporation.

12. Functions of the Corporation :

The functions of the Corporation shall be –

- (a) the promotion and operation of schemes for irrigation, water supply and drainage,
- (b) the promotion and operation of schemes for the generation, transmission and distribution of electrical energy, both hydroelectric and thermal,
- (c) the promotion and operation of schemes for flood control in the Damodar river and its tributaries and the channels, if any, excavated by the Corporation in connection with the scheme and for the improvement of flow conditions in the Hooghly river,
- (d) the promotion and control of navigation in the Damodar river and its tributaries and channels, if any,
- (e) the promotion of afforestation and controls of soil erosion in the Damodar Valley, and
- (f) the promotion of public health and the agricultural, industrial, economic and general well-being in the Damodar Valley and its area of operation.

Irrigation and water-supply

13. Provision for irrigation and water-supply :

The Corporation may, with the approval of the Provincial Government concerned which shall not be unreasonably withheld, construct canals and distributaries and maintain and operate them :

Provided that the Provincial Government may, after giving notice and subject to the payment of fair compensation, take over the maintenance and operation of any such canal or distributary.

14. Rates for supply of water for irrigation :

- (1) The Corporation may, after consultation with the Provincial Government concerned, determine and levy rates for the bulk supply of water to that Government for irrigation, and fix the minimum quantity of water which shall be made available for such purpose.
- (2) The rates at which such water shall be supplied by the Provincial Government to the cultivators and other consumers shall be fixed by that Government after consultation with the Corporation.

15. Rates for supply of water for industrial and domestic purposes :

The Corporation may determine and levy rates for bulk supply and retail distribution of water for industrial and domestic purposes and specify the manner of recovery of such rates.

16. Supply of water to those whose supply has been stopped or reduced :

If, with a view to operating its schemes, the Corporation has stopped or reduced the supply of water to any person for agricultural, industrial or domestic purposes which such person was, prior to such stoppage or reduction, enjoying by virtue of any prescriptive right the Corporation shall arrange such supply of water on the same terms as before.

17. Construction of dam etc., prohibited except with approval of the Corporation :

Save as otherwise prescribed, no person shall construct, operate or maintain in the Damodar Valley any dam or other work or any installation for the extraction of water without the consent of the Corporation.

Supply and generation of electrical energy

18. Supply and generation of electrical energy :

Notwithstanding anything contained in the Indian Electricity Act, 1910 (IX of 1910) or any licence granted thereunder –

- (i) No person shall without the permission of the Corporation –
 - (a) sell electrical energy to any consumer in the Damodar Valley where the energy is taken by the consumer at a pressure of 30,000 volts or more;
 - (b) transmit electrical energy in the Damodar Valley at a pressure of 30,000 volts or more;
 - (c) generate any electrical energy at an installation having an aggregate capacity of more than 10,000 kilowatts in any part of the Damodar Valley lying to the north of a straight line drawn east to west passing through a point at latitude twenty-two degrees, fourteen minutes and forty seven seconds and longitude eighty-seven degrees, fifty-one minutes and forty-two seconds except such portion of the municipal area of Burdwan as may lie to the north of such straight line :

Provided that nothing in sub-clause (c) shall apply to any person who was, at the commencement of this Act, generating electrical energy at an installation having an aggregate capacity of more than 10,000 kilowatts, so long as the capacity of such installation is not increased :

Provided further that nothing in sub-clause (c) shall apply to the power station installation of the fertilizer factory at Sindri having an aggregate capacity of 80,000 kilowatts so long as the capacity of such installation is not increased beyond 80,000 kilowatts.

- (ii) The Corporation may sell electrical energy to any consumer in the Damodar Valley but no such sale shall, except with the permission of the Provincial Government concerned, i.e. made to any consumer requiring supply at a pressure of less than 30,000 volts.
- (iii) The Corporation may, with the permission of the Provincial Government concerned, extend its transmission system to any area beyond the Damodar Valley and sell electrical energy in such area.

19. Effect on existing licences :

- (1) Where any licence granted under the Indian Electricity Act, 1910 (IX of 1910), becomes inoperative wholly or partly by virtue of the provisions of section 18, the licence shall be deemed to have been revoked or modified so as to be consistent with those provisions.
- (2) Where a licence is deemed to have been revoked under sub-section (1), the Corporation shall purchase the undertaking of the licensee, and where a licence is modified under that sub-section, the Corporation shall, at the option of the licensee, either purchase the undertaking or pay fair compensation to the licensee.
- (3) The purchase price or the amount of compensation payable by the Corporation under sub-section (2) shall be such as may be agreed to between the Corporation and the licensee or, in the event of disagreement, as may be determined by arbitration.

20. Charges for supply of electrical energy :

The Corporation shall fix the schedule of charges for the supply of electrical energy, including the rates for bulk supply and retail distribution, and specify the manner of recovery of such charges :

Provided that the Corporation may in any contract for bulk supply of electrical energy impose such terms and conditions including a retail rate schedule as it may deem necessary or desirable to encourage the use of electrical energy.

Other activities

21. Other activities of the Corporation :

- (1) The Corporation may establish, maintain and operate laboratories, experimental and research stations and farms for conducting experiments and research for –
 - (a) utilizing the water, electrical energy and other resources in the most economical manner for the development of the Damodar Valley.
 - (b) Determining the effect of its operations on the flow conditions in the Hooghly river,

- (c) Making improvements in navigation conditions in the port of Calcutta, and
 - (d) Carrying out any other function specified under section 12.
- (2) The Corporation may set up its own planning, designing, construction and operating agencies, or make arrangements therefore with the Participating Governments, local authorities, educational and research institutions or any person carrying on the business of an architect, an engineer or a contractor.

Powers

22. General powers of the Corporation :

- (1) The Corporation shall have the power to do anything which may be necessary or expedient for the purposes of carrying out its functions under this Act.
- (2) Without prejudice to the generality of the foregoing provision, such power shall include the power-
 - (i) to acquire and hold such movable and immovable property as it may deem necessary and to lease, sell or otherwise transfer any such property;
 - (ii) to construct or cause to be constructed such dams, barrages, reservoirs, power houses, power structures, electrical transmission lines and sub-stations, navigation works, irrigation, navigation and drainage canals and such other works and structures as may be required;
 - (iii) to prevent pollution of any water under its control and to take all measures to prevent discharges into such water effluents which are harmful to water supply, irrigation, public health or fish life;
 - (iv) to stock its reservoirs or water courses with fish and to regulate or prohibit taking out fish from the water under its control;
 - (v) to undertake resettlement of the population displaced by the dams, acquisition of land for reservoirs, and protection of watersheds;
 - (vi) to aid in the establishment of co-operative societies and other organizations for the better use of facilities made available by the Corporation;
 - (vii) to undertake measures for the prevention of malaria.

23. Power to close roads and open spaces :

- (1) The Corporation may, after giving notice to the persons concerned or to the public generally –
 - (a) turn, divert or discontinue the public use of, or permanently close, any road or any part thereof, or
 - (b) discontinue the public use of, or permanently close, any open space, or any part thereof.

(2) Whenever the Corporation discontinues the public use of, or permanently closes, any road or open space, the Corporation shall pay reasonable compensation to every person –

- (a) who was entitled, otherwise than as a licensee, to use such road or open space or part thereof as a means of access, or
- (b) whose immovable property was receiving air and light on account of such open space or part.

And who has suffered damage –

- (i) in any case falling under clause (a) from such discontinuance or closure and
 - (ii) in any case falling under clause (b) from the use to which the Corporation has put such open space or part.
- (3) In determining the compensation payable to any person under sub-section (2), the Corporation may take into consideration any benefit accruing to such person from the construction, provision or improvement of any other road, or open space at or about the same time that the road or open space or part thereof, an account of which the compensation is to be paid, is discontinued or closed.
- (4) When any road or open space or any part thereof, is permanently closed under sub-section (1), the Corporation may sell or lease such part of it as is not required for its purposes.

24. Powers under certain other enactments :

- (1) Notwithstanding anything contained in the Acts specified in column one of Part I of the Schedule, the Corporation may carry out all or any of the functions and exercise all or any of the powers of a Provincial Government in the Damodar Valley under the provisions of such Acts specified in column two thereof against each item of column one.
- (2) Notwithstanding anything contained in the Acts specified in column one of Part II of the Schedule, any officer authorized by the Corporation may carry out all or any of the functions and exercise all or any of the powers of a Canal Officer, Collector or Forest Officer, as the case may be, in the Damodar Valley under the provisions of such Acts specified in column two thereof against each item of column one.

Co-operation and avoidance of submersion

25. Co-operation with other authorities to minimize inconvenience caused by submersion :

The Corporation shall co-operate with the Participating Governments, railway authorities and local authorities and bodies, with a view to minimizing the inconvenience likely to be caused by the submersion of roads and communications

and shall bear the cost of any realignment thereof or resettlement of any population rendered necessary by such submersion.

26. Submersion of coal mines to be avoided by the Corporation :

The Corporation shall make every endeavour to avoid submersion of coal or mineral deposits and shall co-operate with the coal mining industry and the bodies set up by the Participating Governments to ensure the maintenance of supplies of sand for stowing purposes in coal mines and in other ways to minimize the inconvenience to the coal mining industry.

Part V

Miscellaneous

48. Directions by the Central Government :

- (1) In discharge of its functions the Corporation shall be guided by such instructions on questions of policy as may be given to it by the Central Government.
- (2) If any dispute arises between the Central Government and the Corporation as to whether a question is or is not a question of policy, the decision of the Central Government shall be final.

49. Disputes between the Corporation and Governments :

- (1) Save as otherwise expressly provided in this Act, any dispute between the Corporation and any Participating Government regarding any matter covered by this Act or touching or arising out of it shall be referred to an arbitrator who shall be appointed by the Chief Justice of India.
- (2) The decision of the arbitrator shall be final and binding on the parties.

50. Compulsory acquisition of land for the Corporation :

Any land required by the Corporation for carrying out its functions under this Act shall be deemed to be needed for a public purpose and such land shall be acquired for the Corporation as if the provisions of Part VII of the Land Acquisition Act, 1894 (1 of 1894) were applicable to it and the Corporation were a company within the meaning of clause (e) of section 3 of the said Act. (In its application to West Bengal, Section 50 has been amended by the DVC (West Bengal Amendment) Act., 1955 (West Bengal Act III of 1956) by substitution of the words “by the State Government under any law for the time being in force” for the words “for the Corporation as if the provisions of Part VII of the Land Acquisition Act, 1894 (I of 1894) were applicable to it and the Corporation were a company within the meaning of clause (e) of section 3 of the said Act.”)

51. Control of Central Government :

- (1) The Central Government may remove from the Corporation any member who in its opinion –
 - (a) refuses to act,
 - (b) has become incapable of acting,
 - (c) has so abused his position as a member as to render his continuance on the Corporation detrimental to the interest of the public, or
 - (d) is otherwise unsuitable to continue as member.
- (2) The Central Government may suspend any member pending an enquiry against him.
- (3) No order of removal under this section shall be made unless the member concerned has been given an opportunity to submit his explanation to the Central Government, and when such order is passed the seat of the member removed shall be declared vacant and another member may be appointed under section 4 to fill up the vacancy.
- (4) A member who has been removed shall not be eligible for reappointment as member or in any other capacity to the Corporation.
- (5) The Central Government may declare void any transaction in connection with which a member has been removed under sub-section (1).
- (6) If the Corporation fails to carry out its functions, or follow the directions issued by the Central Government under this Act, the Central Government shall have the power to remove the Chairman and the members of the Corporation and appoint a Chairman and members in their places.

52. Application of certain provisions of the Indian Forest Act. 1927, to the forests of the Corporation :

All acts prohibited in respect of a reserved forest under section 26 of the Indian Forest Act. 1927 (XVI of 1927) shall be deemed to be prohibited in respect of any forest owned by or under the supervision or control of the Corporation and all offences in respect of such forest shall be punishable under the said Act as if they were committed in respect of a reserved forest.

53. Penalty :

Whoever contravenes the provisions of sections 17 and 18 of this Act or any rule made thereunder shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

54. Procedure for prosecution :

No Court shall take cognizance of an offence under this Act except on the complaint of an officer of the Corporation authorized by it in this behalf. (In exercise of the powers vested under section 54 of the Damodar Valley Corporation Act (XIV of 1948), the Damodar Valley Corporation has authorized the Forest Officer in the employ of the Corporation to file complaints in the Court of the Subdivisional Magistrate or any Magistrate of the First or Second Class having jurisdiction in the area and specially empowered in that behalf by the State Government in respect of offences under Section 26 of the Indian Forest Act, (Act XVI of 1927), read with

Section 52 of the Damodar Valley Corporation Act.)(DVC Notification No. 6 dated the 4th February, 1957).

55. Power of entry :

Any officer or servant of the Corporation generally or specially authorized by the Corporation may at all reasonable times enter upon any land or premises and there do such things as may be reasonably necessary for the purpose of lawfully carrying out any of its works or of making any survey, examination or investigation preliminary or incidental to the exercise of powers or the performance of functions by the Corporation under this Act.

56. Members, officers and servants of the Corporation to be public servants :

All members, officers and servants of the Corporation, whether appointed by the Central Government or the Corporation, shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

57. Protection of action taken under the Act :

- (1) No suit, prosecution, or legal proceeding shall lie against any person in the employment of the Corporation for anything which is in good faith done or purported to be done under this Act.
- (2) Save as otherwise provided in the Act no suit or other legal proceeding shall lie against the Corporation for any damage caused or likely to be caused by anything in good faith done or purported to be done under this Act.

58. Effect of other laws :

The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

59. Power to make rules :

The Central Government may, by notification in the official Gazette, make rules to provide for all or any of the following matters, namely :-

- (1) the salaries and allowances and conditions of service of members, the secretary and the financial adviser;
- (2) the functions and duties of the financial adviser;
- (3) the dams or other works or the installations which may be constructed without the approval of the Corporation;
- (4) the forms of the budget, the annual report and the annual financial statements and the dates by which copies of the annual financial statements shall be made available to the Participating Governments;
- (5) the manner in which the accounts of the Corporation shall be maintained and audited;
- (6) the appointment of an Advisory Committee; and

(7) the punishment for breach of any rule made under this Act.

60. Power to make regulations :

- (1) The Corporation may, with the previous sanction of the Central Government, by notification in the Gazette of India, make regulations for carrying out its functions under this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, in such regulation the Corporation may make provision for –
 - (a) making of appointments and promotions of its officers and servants;
 - (b) specifying other conditions of service of its officers and servants;
 - (c) specifying the manner in which water rates and charges for electrical energy shall be recovered;
 - (d) preventing the pollution of water under its control;
 - (e) regulating the taking out of fish from the water under its control.
 - (f) regulating its proceedings and business;
 - (g) prescribing punishment for breach of any regulation.
- (3) All regulations made under sub-sections (1) and (2) shall, as soon as possible, be published also in the official Gazettes of the Provincial Government.

The Schedule

(See section 24)

Part I

Sl. No.	Acts	Provisions of the Acts specified in column (1)
	(1)	(2)
1.	The Canals Act, 1864 (Ben. Act V of 1864)	Section 6 (Power of Provincial Government to fix and alter rates of tolls). Section 8 (Power of Provincial Government to appoint persons to collect tolls who may farm collection).
2.	The Indian Forest Act, 1927 (XVI of 1927)	Section 35 (Protection of forests for special purposes). Section 36 (Power to assume management of forests).

Part II

Sl. No.	Acts	Provisions of the Acts specified in column (1)
	(1)	(2)
1.	The Bengal Irrigation Act, 1876 (Ben. Act III of 1876)	Part III (Power of the maintenance of canals), Section 41 of Part IV (Power of Canal Officer to issue notice to person causing obstruction). Section 42 of Part IV (Power of Canal Officer to cause obstructions to be removed).

2.	The Bengal Embankment Act, 1882 (Ben. Act, II of 1882).	Part II (Powers of Collector and procedure thereon).
		Part III (Powers of Collector in cases of imminent danger to life or property).
3.	The Indian Forest Act, 1927 (XVI of 1927)	Section 36 (Power to assume management of forests).

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