

CHAPTER – 5

WATER TAX

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5.1 Results of audit

Audit on “Assessment and collection of Water Tax” was conducted in 18 Divisions of Water Resources Department during the period February 2017 to June 2017 and irregularities involving ₹ 1,627.54 crore were noticed. The Department accepted irregularities amounting to ₹ 1,626.24 crore.

Audit findings are discussed in the following paragraphs.

5.2 Audit on “Assessment and collection of Water Tax”

5.2.1 Introduction

The Water Resources Department (Department) in Madhya Pradesh is responsible for assessment and collection of water tax for irrigation and non-irrigation purposes. The assessment and collection of water tax is governed by the Madhya Pradesh Irrigation Act, 1931 and Madhya Pradesh Irrigation Rules, 1974 made thereunder.

Under the above Act/Rules, water may be drawn for the purpose of irrigation, industrial use and domestic water supply. Water is provided through agreements between the Water Resources Divisions and local bodies, industries and cultivators.

*Jamabandi*¹ Register is the initial and basic record for computing water tax and is prepared on the basis of *Khasra*². Water tax for irrigational purposes is levied on the basis of agricultural land (per hectare) to be irrigated, whereas, for non-irrigation purposes measuring devices are installed to ascertain the quantity of water used. There are provisions for imposition of additional rates for unauthorised use of water and interest for non-payment of water tax. Arrears of water tax are to be recovered as arrears of land revenue³.

5.2.2 Organisational Setup

The Department is headed by the Principal Secretary at the Government level and the Engineer-in-Chief (E-in-C) at the Departmental level. Chief Engineers and Superintending Engineers are the heads of zonal offices and circle offices respectively whereas the field offices i.e., the divisional offices and sub divisional offices are headed by Executive Engineers and Sub Divisional Officers respectively. Sub Divisional Officers, Irrigation Inspectors and *Amin*⁴ are the key persons primarily responsible for assessment and collection of tax on water used for irrigation.

¹ *Jamabandi* Register contains the names of owners, area of land, shares of owners and their rights. It also indicates cultivation, rent and revenue, and other cesses payable on land.

² An agricultural document that specifies land and crop details.

³ Section 61 of MP Irrigation Act, 1931.

⁴ *Amin* prepares *khasra* which forms the basis for assessment of water tax to be charged from the cultivators.

5.2.3 Audit Objectives

The audit was conducted to ascertain whether:

- The system of assessment and collection of water tax was efficient and effective;
- An adequate revenue recovery system existed for realisation of water tax; and
- The Department has an effective internal control and monitoring mechanism.

5.2.4 Audit Criteria

Audit Criteria have been derived from the following:

- Madhya Pradesh Irrigation Act, 1931;
- Madhya Pradesh Irrigation Rules, 1974;
- Madhya Pradesh Financial Code;
- Madhya Pradesh Treasury Code; and
- Orders / Notifications issued by the Government/ Department from time to time.

5.2.5 Scope and methodology

Out of 86 Water Resources (WR) Divisions dealing with water tax receipts, 18 WR Divisions⁵ were selected on the basis of stratified random sampling method. Records for the period 2012-13 to 2016-17 were examined in 18 WR Divisions and information from Zonal Offices was collected and scrutinised between February 2017 and June 2017.

An entry conference to discuss the audit objectives and scope of audit was held on 4 April 2017 in which the Principal Secretary and other officers of the Department participated. The findings were discussed with the Principal Secretary of the Department in an exit conference held on 27 October 2017. Replies given in the exit conference and detailed reply (on issues related to industries) given in February 2018 by the Department have been suitably incorporated.

The Department may like to internally examine records in other WR Divisions with a view to check whether irregularities pointed out in test checked Divisions also prevail there and to take remedial actions.

Acknowledgement

The cooperation of the Department in providing necessary information and records to Audit is acknowledged.

⁵ Anuppur, Betul, Chhindwara, Datia, Damoh, Deolond, Indore, Itarsi, Jabalpur, Katni, Nasrullaganj, Sehore, Seoni Malwa, Shivpuri, Shohagpur, Singrauli, Umaria and Ujjain.

Audit findings

5.2.6 Shortage of revenue staff

The Madhya Pradesh Works Department Manual prescribes one *Amin* for each 800 hectare of land and one Irrigation Inspector for every 10 *Amins*.

Audit observed that under 18 WR Divisions water was available for irrigation of 5,50,757 hectare land. Against the required 688 *Amins* and 72 Irrigation Inspectors, only 195 *Amins* and five Irrigation Inspectors were posted in these Divisions.

The revenue recovery and follow up was adversely affected due to shortage of staff. The Department had not assessed the position of the revenue staff (*Amins* and Irrigation Inspectors) as per the norms and did not make recruitment accordingly.

During the exit conference (October 2017), the Department accepted the facts and assured to initiate the recruitment process.

Recommendation:

The Government may review the staff position and initiate recruitment process at the earliest.

5.2.7 Internal Audit

The Department does not have Internal Audit Wing. Records pertaining to establishment and construction works maintained in the Divisional Offices are inspected by the officials of the controlling offices.

Reports of revenue realisation only were being sent by the Executive Engineers to higher authorities but the issues of drawal of water by the cultivators and the local bodies without execution of agreements, and accumulation of huge outstanding water tax were not being addressed by the higher authorities of the Department.

During the exit conference (October 2017), the Department assured that the issue of internal control would be properly addressed as to strengthen the revenue recovery mechanism in all categories. Progress in this regard would be watched in audit.

5.2.8 Target and recovery of water tax

The targets set by the Department against the total recoverable amount of water tax and amount recovered during the last five years are given in **Table 5.1**.

Table 5.1
Details of target and recovery of water tax

(₹ in crore)

Year	Opening Balance	Current demand	Total demand	Recovery target (percentage of total demand)	Recovery			Closing Balance
					against outstanding demand	against current demand	Total (percentage of target)	
2012-13	577.86	378.13	955.99	328.90 (34.40)	36.33	238.69	275.02 (83.62)	680.97
2013-14	680.96	119.91	800.87	316.71 (39.55)	22.65	54.49	77.14 (24.36)	723.73
2014-15	723.73	229.30	953.03	313.40 (32.88)	19.00	62.20	81.20 (25.91)	871.83
2015-16	871.83	238.07	1,109.90	406.47 (36.62)	14.94	50.29	65.23 (16.05)	1,044.67
2016-17	1,044.67	127.57	1,172.24	414.28 (35.34)	18.65	56.39	75.04 (18.11)	1,097.20

(Source: Data provided by the office of Engineer-in-Chief)

From the above, it is evident that despite increasing total demand, the Department set target of revenue recovery below 40 per cent since 2012-13 while the actual recovery ranged from 16 per cent to 26 per cent of the recovery target during the period 2013-14 to 2016-17.

Scrutiny of files revealed that there were no orders of the Government or any departmental instructions for fixing target of water tax recovery. Besides, Audit could not ascertain the reasons for drop and fluctuations in demand and targets during the period 2013-14 to 2016-17 from the files.

On being asked about the method of assessment of demand, the Engineer-in-Chief stated (August 2017) that demand is assessed on the basis of budget provisions, recovery made in previous years and area to be irrigated. However, reply regarding abnormal drop and fluctuations in demand and targets was not provided.

Recommendation:

The Department may formulate a suitable mechanism for assessment of demand and fixing target of water tax recovery.

5.2.9 Non-formation of irrigation *panchayat*

None of the 18 Divisions formed Irrigation *panchayats* which were supposed to play a significant role in realisation of water tax.

The MP Irrigation Act prescribes the constitution of Irrigation *panchayats* for every village or for a group of villages in the command area of a canal, for the purpose of collection of water tax from the cultivators.

As per the Act, the Executive Engineer is required to recommend to the District Collector the number of members to be elected in an irrigation *panchayat* besides appointing an Irrigation Inspector to preside over the elections. *Sarpanch*, the head of the irrigation *panchayat*, is required to deliver the *parcha* i.e., the demand to the cultivators, collect the water tax from the cultivators, give acknowledgement to the cultivators and remit the tax

to the Government. Thus, irrigation *panchayats* play a significant role in the collection of water tax.

Audit test check of records of 18 Divisions revealed that none of the Divisions had formed irrigation *panchayats*. The Executive Engineers did not initiate action for formation of irrigation *panchayats* due to which the revenue realisation process was weakened, which is evident from the fact that water tax amounting to ₹ 162.13 crore for the period from 2012-13 to 2016-17 is outstanding against the cultivators.

During the exit conference (October 2017), the Department intimated that the system of Irrigation *panchayat* was initially evolved as per provision, but due to improper functioning, the system was discontinued. The Department however assured that the issue of formation of irrigation *panchayat* would be reconsidered so as to strengthen the revenue recovery mechanism in all categories. Progress in this regard would be watched in audit.

5.2.10 Non-recovery of minimum water tax

Minimum water tax amounting to ₹ 17.13 crore was not recovered.

In terms of the agreements executed between WR Divisions and industry, the industry concerned shall pay water tax for at least 90 *per cent* of the quantum of water allowed (as per the effective dates and quantum shown in the agreement) to be drawn by it, even if the actual quantity of water drawn by the company is less than 90 *per cent* of sanctioned quantity.

Audit test check of the records of WR Division, Anuppur revealed that M/s Moser Baer Power and Infrastructures Limited had executed agreement (October 2014) for drawal of 75.60 MCM⁶ water *per annum*. However, the Executive Engineer, Anuppur failed to raise bills for the quantity of water drawn by the company or 90 *per cent* of sanctioned quantity, whichever was more, resulting in non-recovery of minimum water tax of ₹ 17.13 crore for the period October 2014 to March 2017.

The Department replied (February 2018) that bills on the basis of 90 *per cent* quantity of water have been raised. Progress in this regard would be watched in audit.

5.2.11 Non recovery of penal water tax from NTPC

Penal water tax amounting to ₹ 1.30 crore was not recovered from NTPC, which had failed to commence industrial production within the specified period of 48 months.

According to sub Rule 3(c) of Rule 71 A (amended by Gazette Notification, dated 31 August 2016) of the MP Irrigation Rules, 1974, an industrial unit shall pay water tax equivalent to five *per cent* of the water tax payable on the annual allocation of water if it does not start industrial production within 48 months from the date of issue of the water allocation order.

⁶ Million cubic metre

In WR Hiran Division, Jabalpur a water allocation order had been issued to the National Thermal Power Corporation (NTPC), New Delhi in June 2009 for drawing 111.64 MCM water *per annum*. Further, an agreement between NTPC and the Department had been executed on 30 April 2015 for its 4 x 800 MW Thermal Power Plant at Dongargaon, Gadargara for 30 years commencing from the said date.

NTPC failed to start industrial production from the plant within the specified period of 48 months, i.e., by 12 July 2016, and was therefore required to pay ₹ 1.30 crore⁷ for 18 months delay up to 12 January 2018. But the Executive Engineer did not take any action for imposition and recovery of the penal water tax.

The Department replied (February 2018) that the NTPC has been granted extension (October 2017) up to August 2018 and in case of failure to commence production an amount of ₹ 1.85 crore would be recovered in accordance with the provisions.

The reply is not acceptable because the subsequent extension was allowed after this was pointed out by Audit. Moreover, sub Rule 3(c) of Rule 71 A does not provide for exemption from payment of penal water tax.

5.2.12 Non-recovery of outstanding water tax

WR Divisions had failed to recover the outstanding water tax amounting to ₹ 1,489.67 crore from industries, domestic water supply entities (local bodies) and cultivators.

Audit observed that water tax amounting to ₹ 1,489.67 crore was outstanding (March 2017) from industries, domestic water supply entities and cultivators as follows:

5.2.12.1 Water tax outstanding from industries

According to Clause 12 of the standard agreement, the industry shall pay the amount of water tax for the water drawn by it during the preceding month within 30 days of receipt of monthly bills; non-payment of bills up to six months from the due date of payment shall be treated as breach of agreement. Further, the Government may terminate the agreement forthwith and any sum due and payable by the company shall be recoverable from the company in the same manner as arrears of land revenue.

Audit test checked records in seven WR Divisions⁸ revealed that 11 units of ten industries drawing water under their respective agreements were not making timely payments of water tax. Scrutiny of monthly bills and statements revealed that water tax amounting to ₹ 506.34 crore inclusive of interest for the period between April 1988 to March 2017 was pending for recovery (March 2017).

⁷ 11,16,40,000 cu.m (Agreement quantity of water) x ₹ 1.55 (Rate per cu.m) x 5 per cent x 1 ½ year = ₹ 1,29,78,150 (say ₹ 1.30 crore).

⁸ WR Dn No.2 Singrauli, Bansagar Masonry Dam Dn Deolond, Tawa Project Dn Itarsi, WR Hiran Dn Jabalpur, WR Dn Chhindwara, WR Dn Ujjain, and WR Dn Anuppur.

The Executive Engineers had raised the monthly bills to the companies but had not taken measures such as disconnection of water supply or termination of agreements in order to ensure timely payment of the bills.

The Department stated (February 2018) that action was being taken for recovery of dues from the industries. Progress in this regard would be watched in audit.

5.2.12.2 Water tax not recovered from company after dismissal of the petition

In WR Division Anuppur, an amount of ₹ 771.06 crore was pending for recovery from M/s Orient Paper Mill, Amlai for the period from June 1998 to March 2018.

The company had executed an agreement with the Department for drawal of water from Sone river in September 1970 when the water tax was not in existence. Clause X of the Agreement, however empowered the Department to recover water tax if it decides to recover the same in future. Later in compliance with the provisions notified vide Gazette Notification dated 6 May 1998, the Department demanded water tax from the company from June 1998. Aggrieved by this, the company filed writ petitions before Hon'ble High Court, Jabalpur and the Hon'ble Supreme Court, which were dismissed in January 2009 and March 2009 respectively.

The Executive Engineer did not make concrete effort to recover water tax even after dismissal of the petitions by Hon'ble Supreme Court and High Court.

The Department stated (February 2018) that the company approached (February 2015) to Hon'ble High Court, Jabalpur for appointment of arbitrator, and the decision of Hon'ble High Court, Jabalpur is awaited (May 2018).

The reply of the Department is not acceptable, as there was no bar on the Department to recover the water tax till 11 February 2015, when Hon'ble High Court, Jabalpur suggested for referring the matter for arbitration and restrained the Department from taking coercive steps. The Department did not accept the suggestion for arbitration and the matter is pending for final hearing.

5.2.12.3 Water tax outstanding from local bodies

Audit test checked records of 18 WR Divisions and found in four WR Divisions⁹ that six local bodies¹⁰ had executed agreements with the Department and had drawn water. However, an amount of ₹ 158.03 crore was pending for recovery from these six local bodies as on 31 March 2017.

The Executive Engineers had raised the bills but no concrete measures for recovery of the outstanding amount was made. They had neither discontinued

⁹ WRD, Chhindwara; Kolar Canal Division, Nasrullaganj; WRD, Ujjain; and WRD, Indore
¹⁰ Municipal Corporation, Chhindwara; Municipal Corporation, Bhopal; Municipal Corporation, Ujjain; Nagar Panchayat, Tarana; Municipal Corporation, Nagda; and PHED, Indore.

the water supply nor taken any action for termination of the agreement. The case of Municipal Corporation, Bhopal was reported by the Engineer-in-Chief to the Department (April 2014), but no further action could however be traced in records.

During the exit conference (October 2017), the Department stated that matter of recovery of outstanding water tax would be looked into and suitable revenue recovery mechanism would be developed shortly. Progress in this regard would be watched in audit.

5.2.12.4 Water tax outstanding from the cultivators

Audit test check of records in 16 WR Divisions (except Anuppur and Damoh) revealed that the cultivators had made agreements for drawal of water for irrigation but were not paying the water tax on time. An amount of ₹ 54.24 crore was recoverable from defaulting cultivators as detailed in **Table 5.2**.

Table 5.2
Water tax outstanding from cultivators taking water under agreement

(₹ in crore)

Year	No. of cultivators	Water tax			Percentage of recovery
		Demand	Recovered	Outstanding	
2012-13	1,36,926	14.74	4.76	9.98	32.29
2013-14	1,44,982	15.99	4.25	11.74	26.58
2014-15	1,39,128	16.59	4.72	11.87	28.45
2015-16	1,40,561	17.11	4.28	12.83	25.01
2016-17	1,22,751	10.17	2.35	7.82	23.11
Total		74.60	20.36	54.24	

(Source: Data provided by the WR Divisions)

Audit could not find steps taken by the Executive Engineers for recovery of the above outstanding amount in the divisional records.

During the exit conference (October 2017), the Department stated that matter of recovery of outstanding water tax would be looked into and suitable revenue recovery mechanism would be developed shortly. Progress in this regard would be watched in audit.

Recommendation:

The Department may consider putting in place a dedicated recovery machinery focusing on recovery of outstanding water tax. The Department may also immediately review all cases of such outstanding recoveries, and where it is of the view that any of such amounts are beyond recovery, approach the Finance Department to consider write off.

5.2.13 Irregular drawal of water without agreement

Three WR Divisions had provided water to four local bodies without any agreement. An amount of ₹ 11.55 crore was pending for recovery from those local bodies. Further, more than 1.5 lakh cultivators of 18 WR Divisions had drawn water without any agreement and an amount of ₹ 107.89 crore was recoverable from them.

5.2.13.1 Providing water to local bodies without agreement

According to the MP Irrigation Rules, water may be supplied for any village tank, town or for industrial purposes at specified rates, on the basis of agreements between the Department and the entity.

Audit test check of records in three WR Divisions revealed that four local bodies had taken water from Government sources without any agreement. An amount of ₹ 11.55 crore was pending for recovery from those local bodies as detailed in **Table 5.3**.

Table 5.3
Water tax outstanding from local bodies taking water without agreement

(₹ in crore)

Sl. No.	WR Divisions	Name of local body	Period	Amount
1.	Indore	Nagar Parishad, Manpur	2009-14	0.12
2.	Sehore	Municipal Corporation, Sehore	2000-16	7.11
		Municipal Corporation, Ashtha	2000-16	4.17
3.	Damoh	Municipal Corporation, Damoh	2014-16	0.15
Total				11.55

(Source: Data provided by the WR Divisions concerned)

The Executive Engineers had not made any effort to execute agreements with the above entities. Although demands had been raised but no pursuance for recovery of water tax from them were made.

During the exit conference (October 2017), the Department stated that matter of recovery of outstanding water tax would be looked into and suitable revenue recovery mechanism would be developed shortly. Progress in this regard would be watched in audit.

5.2.13.2 Providing water to cultivators without agreement

According to the MP Irrigation Rules, irrigation cannot be done from a canal unless an agreement is executed between the Government of Madhya Pradesh and the permanent holder of land except in those cases which are exempted under these rules. Irrigation without agreement shall be treated as unauthorized and such holder of land shall be liable to punishment and assessment under the MP Irrigation Act.

Audit test check of the records of all the selected WR Divisions revealed that more than 1.5 lakh cultivators were drawing water without executing any agreement. An amount of ₹ 107.89 crore was recoverable from those unauthorised cultivators as detailed in **Table 5.4**.

Table 5.4
Water tax outstanding from cultivators taking water without agreement

(₹ in crore)

Year	No. of cultivators	Water tax			Percentage of recovery
		Demand	Recovered	Outstanding	
2012-13	2,03,946	24.00	3.33	20.67	13.88
2013-14	2,10,483	26.49	2.87	23.62	10.83
2014-15	2,14,069	29.20	3.56	25.64	12.19
2015-16	1,82,327	21.20	2.64	18.56	12.45
2016-17	1,49,457	20.96	1.56	19.40	7.44
Total		121.85	13.96	107.89	

(Source: Data provided by the WR Divisions)

The Executive Engineers had not made any effort to get the agreements executed with those cultivators or to stop the cultivators from drawing water in unauthorised manner.

During the exit conference (October 2017), the Department accepted that agreement with the cultivators should be executed. As regards recovery of outstanding water tax it was stated that matter would be looked into and suitable revenue recovery mechanism would be developed shortly. Progress in this regard would be watched in audit.

5.2.14 Conclusion

- There was shortage of *Amin* and Irrigation Inspectors in the Department who were mainly responsible for assessment and collection of water tax.
- Irrigation *panchayats* which were responsible for collection of water tax have not been formed under Madhya Pradesh Irrigation Act, 1931.
- A huge amount of ₹ 1,277.40 crore was outstanding against the companies but the measures such as disconnection of water supply and termination of the agreements were not taken by the Executive Engineers.
- Agreements were not entered with the cultivators to regulate the permissible water supply and levy of water tax by the divisional officers.