

(1995) 01 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5867 of 1992

Amar Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-01-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Rajasthan Irrigation and Drainage Act, 1954 — Section 60
Rajasthan Irrigation and Drainage Rules, 1955 — Rule 11(3)

Citation : AIR 1995 Raj 151 : (1995) 1 RLW 34 : (1995) 1 WLC 744

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Hameer Singh Sidhu, for the Appellant; Bastichand Bhansali, for the Respondent

Final Decision : Allowed

Judgement

R.R. Yadav, J.—The petitioners have filed the instant writ petition alleging therein that Annx. 1 to the writ petition passed by the Superintending Engineer, Irrigation Circle, Sri Ganganagar on 19-10-1991 is per se illegal and without jurisdiction and the impugned order Annx. 1 has been passed without giving an opportunity of being heard under Sub-rule (3) of Rule 11 of the Rajasthan Irrigation and Drainage Rules, 1955 (for short "the Rules of 1955").

2. After service of notice, the respondents have filed a detailed reply stating therein that the cultivators including the petitioners play mischief and lower down the cill level of the outlet by illegal means to increase pressure of water on cill level. In the case of the petitioners too, while checking was being made in 1991, it was found that the out-let is having H-2.20 ft. against the required H-1.39 ft, as per its latest approved datas. The aforesaid situation necessitated to set right the outlet as per required datas to check its over drawal being managed illegally by the shareholders of Chak No. 10 Q/1 including the petitioners destroying the shape of the cill level of the outlet. It is also stated in the reply that against the

order impugned passed under Sub-rule (3) of Rule 11 of the Rules of 1955 there is an alternate remedy to file an appeal. Since no appeal has been filed against the impugned order Anx. 1 to the writ petition, therefore, the instant writ petition is liable to be dismissed on the ground of alternate remedy available to the petitioners.

3. Mr. B.C. Bhansali, learned counsel for the respondents invited my attention towards the newly added Rule 55(c), which is made effective from 8-1-1987.

4. I have heard Mr. Hameer Singh Sidhu, learned counsel for the petitioners and Mr. Basti Chand Bhansali, learned counsel for the respondents and have critically gone through the material available on record.

5. Mr. Hameer Singh Sidhu, learned counsel for the petitioners strenuously argued before me that the impugned order Anx. 1 has been passed without affording an opportunity of being heard to the petitioners and his second submission is that where the principles of natural justice is violated, the existence of alternate remedy is no bar for filing a writ petition.

6. The aforesaid arguments raised on behalf of the petitioners have been refuted by Mr. B.C. Bhansali, learned counsel for the respondents. According to the learned counsel for the respondents, no material change has been introduced in the out-let by the impugned order dated 19-10-1991 Anx. 1 passed by the respondent No. 1, therefore, in such situation, petitioners were not entitled to be given an opportunity of being heard before passing the impugned order. Learned counsel for the respondents submitted that since there is no violation of the principles of natural justice, therefore, the instant writ petition is liable to be dismissed on the ground of alternate remedy.

7. I have given my thoughtful consideration to the rival submissions raised at the Bar. In my considered opinion, it is apparent from the averments made in para 8 of the reply that material change has been introduced in the out-let without affording an opportunity of being heard to the petitioners against the principle of natural justice. It is stated by the respondents that the petitioners were not entitled to the opportunity of hearing. According to Sub-rule (3) of Rule 11 of the Rules of 1955, as notice of hearing is to be given before introducing any material change or substantial change. Since by virtue of impugned order passed by respondent No. 3, material change has been introduced in the out-let, therefore, the impugned order Anx. 1 is liable to be quashed and the instant writ petition is liable to be allowed. There are positive words used under Sub-rule (3) of Rule 11 of the Rules of 1955 providing to issue notices to the persons affected and to afford an opportunity of hearing to such persons, therefore, in my considered opinion, the impugned order passed by respondent No. 3 without issuing notices to the petitioners and without affording an opportunity of being heard is per se illegal and without jurisdiction.

8. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely

pervasive rule affecting large areas of administrative action. The inquiry must, always be, does (sic) fairness in action demand that an opportunity to be heard should be given to the person affected.

9. A close scrutiny of the impugned order Anx. 1 reveals that material change in the out-let has been introduced without affording an opportunity of being heard to the petitioners while under the Statutory Rules as well as under principle of natural justice, the petitioners are entitled to have notice about materials alteration in the out-let and no order introducing material change in the outlet could be passed without affording an opportunity of hearing to the petitioners.

10. In my humble opinion since the order impugned Anx. 1 has been passed without giving an opportunity of being heard to the petitioners against the principle of natural justice and fair play, therefore, alternate remedy is no bar in the instant case. It must be taken to be settled that where order is passed without jurisdiction or it is passed against the principle of natural justice, in both the situations, alternate remedy are not taken to be a bar for maintainability of a writ petition under Article 226 of the Constitution of India.

11. In view of the aforesaid discussion, the writ petition is allowed and the impugned order Anx. 1 passed by the respondent No. 3 is quashed. The matter is remitted back to the Superintending Engineer (Irri.), Sri Ganganagar to pass a fresh order after giving an opportunity of hearing to the petitioners. The petitioners are directed to appear before the Superintending Engineer (Irrigation), Sri Ganganagar on 1-2-1995.

12. Both the parties are directed to bear their own costs.