
(2004) 02 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5820 of 2003

Angrej Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 3 RLW 1930 : (2004) 3 WLC 371

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : H.S.S. Kharlia, for the Appellant; B.C. Mehta, for Respondent Nos. 1 to 3 and Vijay Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—The petitioners have filed the present writ petition under Article 226 of the Constitution of India on 1.10.2003 against the respondents with a prayer that by an appropriate writ, order or direction the impugned order dtd. 12.12.2002 (Annex.1) passed by the Divisional Irrigation Officer {respondent No. 3) by which the Divisional Irrigation Officer (respondent No. 3) transferred the land situated in Square No. 30 and 31 in Chak 5-CC to Chak-6 NNN and the appellate-judgment dtd. 28.4.2003 (Annex.2) passed by the Superintending Engineer, Irrigation Circle (respondent No. 2) by which the case was remanded to the Divisional Irrigation Officer (respondent No. 3) and the order dtd. 27.5.2003 (Annex.3-A) passed by the Divisional Irrigation Officer (respondent No. 3) by which the Divisional Irrigation Officer remanded the case back to the Superintending Engineer, Irrigation Circle (respondent No. 2) and the appellant judgment dtd. 22.8.2003 (Annex.6) by which the Superintending Engineer (respondent No. 2) has affirmed the order dtd. 12.12.2002. (Annex.1) passed by the Divisional Irrigation Officer (respondent No. 3) be quashed and set aside.

2. The facts of the case as put forward by the petitioner are as under:

i) That agricultural land of the petitioners is situated in Chak-6NN, Tehsil Padampur and irrigation is being done through the outlet of Chak 6 NN. The agricultural land of non-petitioners No. 4 to 6 is situated in Chak-5CC, Tehsil Padampur, Distt. Sri Ganganagar and they were getting the water facility through the outlet of Chak-5CC.

ii) That the non-petitioners No. 4 to 6 filed an application before the Divisional Irrigation Officer, Gangnahar, North Division, Sri Ganganagar (respondent No. 3) to transfer their land in Square No. 30 and 31 in Chak 5-CC to Chak 6 NNN mainly on the ground that their land is at about 15 square away from the head of Chak-5CC, so they were not getting the proper irrigation from Chak-5CC.

iii) That further case of the petitioners is the Divisional Irrigation Officer (respondent No. 3) without adopting the proper procedure and without giving the proper opportunity of hearing and without examining the law in this regard vide order dtd. 12.12.2002 (Annex.1) transferred the land in question from Chak-5CC to Chak 6 NN and also sanctioned some new water course and nakas without adopting the proper procedure as provided under the Rajasthan Irrigation and Dainage Act, 1954 (hereinafter referred to as the Act of 1954).

iv) Further case of the petitioners is that aggrieved from the order dtd. 12.12.2002 (Annex.1), the petitioners filed an appeal before the Superintending Engineer, Irrigation Circle, Sri Ganganagar (respondent No. 2) who also without adopting the proper procedure and without examining the legal procedure and without giving a proper opportunity of hearing to the petitioners vide appellate judgment dtd. 28.4.2003 (Annex.2) remanded the case back to the Divisional Irrigation Officer with the directions that the case be put before the Chief Engineer, Irrigation, Hanumangarh Junction with the detailed technical reports as for the proposed transfer of the agricultural land from one system to another system neither the Divisional Irrigation Officer (respondent No. 3) nor the Superintending Engineer (respondent No. 2) are competent to make such transfer.

v) Further case of the petitioners is that against the appellate judgment dtd. 28.4.2003 (Annex.2), one of the petitioners Hardayal Singh filed a writ petition being S.B. Civil Writ Petition No. 2703/2003 before this Court which was disposed of by this Court vide order dtd. 11.6.2003 with the observations that since the case has been remanded back to the Divisional Irrigation Officer (respondent No. 3) and Superintending Engineer (respondent No. 2) for putting it before the Chief Engineer, Irrigation (North (respondent No. 1), the same did not require any interference and the petitioners will be at liberty to raise these objections before the Chief Engineer (respondent No. 1).

vi) Further case of the petitioners is that in pursuance of the appellate judgment dtd. 28.4.2003 (Annex.2) passed by the Superintending Engineer (respondent No. 2), the Divisional Irrigation Officer (respondent No. 3) submitted the case back to the Superintending Engineer (respondent No. 2) without giving an

opportunity of hearing to the petitioner vide order dtd. 27.5.2003 (Annex.3-A).

vii) Further case of the petitioners is that the Superintending Engineer (respondent No. 2) forwarded the matter to the Chief Engineer, Irrigation Circle, Hanumangarh Junction (respondent No. 1) on 2.6.2003 for passing the proper order.

viii) Further case of the petitioners is that the Chief Engineer, Irrigation Hanumangarh Junction (respondent No. 1) without giving an opportunity of hearing to the petitioners, remitted the case back to the Superintending Engineer (respondent No. 2) vide order dtd. 9.7.2003 (Annex.4).

ix) Further case of the petitioners is that on receipt of the case file by the Superintending Engineer (respondent No. 2), the Superintending Engineer without issuing the notices and without giving an opportunity of hearing to the petitioners No. 1 to 10 passed a stereo-typed appellate judgment dtd. 22.8.2003 (Annex.6) and affirmed the order dtd. 12.12.2002 (Annex.1) passed by the Divisional Irrigation Officer (respondent No. 3) after hearing only caveator Hardayal Singh (one of the petitioners), whereas the petitioners No. 1 to 10 were also most affected persons by this transfer of agricultural land to Chak 6 NN as they were also shareholders of Chak-6NN and their irrigation facility would be badly affected by inclusion of 50 bighas of land in Chak 6 NNN because the original appeal (Annex.5) was filed by the petitioners No. 1 to 10 along with the petitioner Hardayal Singh. Hence, this writ petition with the abovementioned prayer.

3. In this case, the main submission raised by the learned counsel for the petitioners is that the appellate judgment dtd. 22.8.2003 (Annex.6) passed by the Superintending Engineer (respondent No. 2) is against the principles of natural justice as it has been passed behind the back of the petitioners without giving an opportunity of hearing and without issuing notices to them and it has been prayed that the matter be remanded back to the Superintending Engineer (respondent No. 2) to pass a fresh judgment in appeal after giving an opportunity of hearing to the petitioners.

4. Reply to the writ petition was filed by the respondents No. 1 and 3 and it has been submitted that proper opportunity was given to the petitioners and hence the impugned orders do not suffer from any basic infirmity and illegality.

5. Reply was also filed to the writ petition on behalf of respondents No. 4 to 6 and it has been submitted by the learned counsel for the respondents No. 4 to 6 that S.B. Civil Writ Petition No. 2263/2003 was filed after being aggrieved against the appellate judgment dtd. 28.4.2003 (Annex.2) passed by the Superintending Engineer (respondent No. 2) and that appellate judgment dtd. 28.4.2003 (Annex.2) was further re-affirmed by the respondent No. 2 (Superintending Engineer) vide appellate judgment dtd. 22.8.2003 (Annex.6) and since the writ petition No. 2263/2003 was dismissed as infructuous vide order dtd. 1.9.2003 (Annex.R4/1), in view final order passed by the

Superintending Engineer (respondent No. 2) dtd. 22.8.2003 (Annex.6) and since this fact was concealed, therefore, the writ petition suffers from basic infirmity and concealment of facts. Apart from this, the impugned appellate judgment dtd. 22.8.2003 (Annex.6) was passed by the respondent No. 2 (Superintending Engineer) after the administrative sanction of the Chief Engineer (respondent No. 1) on the basis of technical report submitted by the Executive Engineer and therefore, there was no infirmity in that appellate judgment dtd. 22.8.2003 (Annex.6) passed by the Superintending Engineer (respondent No. 2). Further case of the respondents No. 4 to 6 is that since the petitioners were heard when the appellate judgment dtd. 28.4.2003 (Annex.2) was passed by the Superintending Engineer (respondent No. 2) and thereafter only thing left was administrative sanction of the Chief Engineer (respondent No. 1) which was accorded on 9.7.2003, in these circumstances, after administrative sanction, if the appellate judgment dtd. 22.8.2003 (Annex.6) was passed by the respondent No. 2 (Superintending Engineer), there was no necessity of hearing the petitioners again and thus it would not lead to the conclusion that the same suffers from basic infirmity as one of the petitioners Hardayal was heard.

6. The main case of the respondents No. 4 to 6 is that since petitioners were heard when the impugned appellate judgment dtd. 28.4.2003 (Annex.2) was passed by the Superintending Engineer (respondent No. 2) and since that was re-affirmed later on through appellate judgment dtd. 22.8.2003 (Annex.6) passed by the Superintending Engineer (respondent No. 2), therefore, it was not necessary that each of the petitioners should be heard and when one of the petitioners Hardayal was heard, it cannot be said that proper opportunity of hearing was not accorded to rest petitioners and it has further been submitted that since formal approval was required and same was obtained, therefore, it was not necessary to hear the petitioners again. Hence, the writ petition be dismissed.

7. Heard and perused the record.

8. During the course of arguments, the learned counsel for the respondents No. 1 to 3 have submitted that in case the matter is remanded back to the Superintending Engineer (respondent No. 2), he had no objection.

9. There is no dispute on the point that through order dtd. 12.12.2002 (Annex.1) passed by the Divisional Irrigation Officer (respondent No. 3), the respondent No. 3 (Divisional Irrigation Officer) transferred the land in question from Chak-5 CC to Chak 6 NN and also sanctioned some new water course and nakas.

10. There is also no dispute on that point that aggrieved from the order dtd. 12.12.2002 (Annex.1) passed by the respondent No. 3 (Divisional Irrigation Officer), the petitioners filed two separate appeals before the Superintending Engineer (respondent No. 2) being appeals 115/2002 and 116/2002.

11. There is also no dispute on point that at the time when above two appeals were heard by the Superintending Engineer (respondent No. 2), all the

petitioners were heard by him.

12. There is also no dispute on the point that the Superintending Engineer (respondent No. 2) while disposing of the appeals through appellate judgment dtd. 28.4.2003 (Annex.2), came to the following conclusions:

i) that the petitioners remained unsuccessful in proving the fact that if the land in question was transferred from Chak 5 CC to 6 NN, they would be effected.

ii) That in all matters of transfer, technical sanction is a must.

iii) That the case was remanded back by the Superintending Engineer (respondent No. 2) to the Divisional Irrigation Officer (Respondent No. 3) with a direction that he would prepare the case of transfer from the Rakba to another Rakba on technical basis and after preparing a note, the said note would be sent to the Chief Engineer (respondent No. 1) for approval and till sanction of the Chief Engineer (respondent No. 1) was obtained, the Status-quo shall be maintained.

13. There is also no dispute on the point that the writ petition No. 2703/2003 was filed by one of the petitioners Hardayal after being aggrieved from the appellate judgment dtd. 28.4.2003 (Annex.2) passed by the respondent No. 2 (Superintending Engineer) and the writ petition was dismissed by order dtd. 11.6.2003 (Annex.3).

14. There is also no dispute on the point that in compliance to the appellate judgment dtd. 28.4.2003 (Annex.2) passed by the Respondent No. 2 (Superintending Engineer) the Divisional Irrigation Officer (respondent No. 3) through order dtd. 27.5.2003 (Annex.3-A) submitted the case back to the Superintending Engineer (respondent No. 2) which was subsequently forwarded by the Superintending Engineer (respondent No. 2) to the Chief Engineer (respondent No. 1).

15. There is also no dispute on the point that before sending the case back to the Superintending Engineer (respondent No. 2) through order dtd. 27.5.2003 (Annex.3A) passed by the respondent No. 3 (Divisional Irrigation Officer), the petitioners were not heard.

16. There is also no dispute on the point that the Chief Engineer (respondent No. 1) through order dtd. 9.7.2003 (Annex.4) remitted the case back to the Superintending Engineer (respondent No. 2) with a direction that the matter be decided at his own level under the provisions of Act of 1954.

17. There is also no dispute on the point that thereafter through appellate judgment dtd. 22.8.2003 (Annex.6) passed by the respondent No. 2 (Superintending Engineer) order dtd. 12.12.2002 (Annex.1) passed by the Divisional Irrigation Officer (respondent No. 1) was affirmed.

18. There is also no dispute on the point that when the Superintending Engineer (respondent No. 2) passed the appellate judgments dtd. 28.4.2003 and

22.8.2003 (Annex.2 and 6), he was functioning in the capacity as appellate forum.

19. There is also no dispute on the point that on remand, the Superintending Engineer (respondent No. 2) did not hear the petitioners before passing the appellate judgment dtd. 22.8.2003 (Annex.6).

20. A bare perusal of the appellate judgment dtd. 22.8.2003 (Annex.6) passed by the Superintending Engineer (respondent No. 2) reveals the following facts:

i) That one of the petitioners Hardayal filed caveat before him that he should also be heard.

ii) On this, it was observed that previous judgment/order was given after hearing the caveator and that other petitioners and since there is no provision for review, therefore, as per law, the petitioners are not entitled to be heard, but still, if the appellants of appeals No. 115/2002 and 116/2002 want to file any objection, they could file the same upto 16.7.2003 in writing and in response, petitioner Hardayal filed his objections and thereafter he passed the impugned appellate judgment dtd. 22.8.2003 (Annex.6) under the provisions of Act of 1954 and affirmed the order dtd. 12.12.2002 (Annex.1) passed by the Divisional Irrigation Officer (respondent No. 3).

21. A bare perusal of appellate judgment dtd. 22.8.2003 (Annex.6) passed by the respondent No. 2 (Superintending Engineer) reveals that the respondent No. 2 (Superintending Engineer) was; of the view that he was deciding the matter as per the directions of the Chief Engineer (respondent No. 1) given by the order dtd. 9.7.2003 (Annex.4) and according to him, it was not obligatory on his part to hear the petitioners again as the petitioners were already heard at the time when the appeals were decided through appellate judgment dtd. 28.4.2003 (Annex.2). However, he heard one of the petitioners Hardayal as he filed caveat, but it is also clear that no notices were issued to other petitioners before passing the appellate judgment dtd. 22.8.2003 (Annex.6) by the Superintending Engineer (respondent No. 2).

22. Now in the facts and circumstances of the case the question which arises for consideration is whether the rest of the petitioners other than Hardayal were entitled to be heard by the Superintending Engineer (respondent No. 2) before passing the appellate judgment dtd. 22.8.2003 (Annex.6) and whether the observations of the Superintending Engineer (respondent No. 2) that they were not liable to be heard as there were no provisions for review under the Act of 1954 are correct one or not.

23. As per Rule 11(4) of the Rajasthan Irrigation and Drainage Rules, 1955 (hereinafter referred to as the Rules of 1955), an appeal shall lie to the Superintending Engineer, Irrigation against the order of the Divisional Irrigation Officer. Thus, when the Superintending Engineer (respondent No. 2) hears the appeal against the order passed by the Divisional Irrigation Officer (respondent

No. 3), he can be termed as appellate forum, meaning thereby that he has to pass the order in appeal in conformity with law required for passing appellate judgment.

ON PRINCIPLES OF APPELLATE JUDGMENT

24. The judgment of the Appellate Court should contain the points for determination, decision thereon, reasons for decision and relief to which the appellant is entitled. A judgment of the appellate Court should be self contained. It should be a speaking judgment. It should contain decision on each and every point arising for consideration before the Court/forum with reasons therefor. It may be observed that the requirement of giving reasons for decision on each point is a salutary requirement. It is like the principle of audi alteram partem. It has to be observed in proper spirit. A mere pretence of compliance will not suffice. An Appellate Judgment, which does not comply with these requirements, would be vitiated. The requirements of above principle, however should not be given too technical an interpretation. Literal compliance thereof should not be insisted upon. If in a particular case, it is found that the Court/forum has properly considered all the questions raised and has given reasons for its decision, the judgment would not be vitiated just because the points for determination had not been formulated. In other words, substantial compliance with the requirement of the above principle rule will be sufficient.

25. Therefore, it is held that in this case since the Superintending Engineer (respondent No. 2) was appellate Authority against the orders passed by the Divisional Irrigation Officer (respondent No. 3), therefore, the judgment delivered by Appellate forum should be on the guidelines just mentioned above.

26. It may be started here that the word "remand" means to send a case back to the court from which it came for some further action. If an appeal is remanded, its effect would be to reopen the matter before the lower forum and lower forum is competent to pass a fresh order and not only this when the appeal/case is remanded, the case would be readmitted to its original number and lower forum would proceed to determine and decide the issue involved with fresh mind.

ON PRINCIPLES OF NATURAL JUSTICE

27. In general, the essential principles of natural justice are that (i) the person whose rights are to be affected must be given notice of the case or the charges which he is to meet; (ii) he must be given an opportunity to make representation and to explain the allegations made against him and to have his say in the matter; and (iii) the authority conducting the proceedings must not be biased and should act in good faith.

28. Applying the above principles in the present case, it is very much clear that the respondent No. 2 (Superintending Engineer) decided the two appeals through judgment dtd. 28.4.2003 (Annex.2) by remanding the matter to the Divisional Irrigation Officer (respondent No. 3) and therefore, the submission of the learned

counsel for the respondents that through appellate judgment dtd. 28.4.2003 (Annex.2), appeals were not remanded cannot be accepted. Actually from the operative portion of the appellate judgment dtd. 28.4.2003 (Annex.2), it clearly reveals that the matter was remanded in appeals by the Superintending Engineer (respondent No. 2) and some directions were given to the Divisional Irrigation Officer (respondent No. 3). That being the position, on remand, it is settled principle of law that when the matter is remanded back to the lower authority and appellate Authority has not fixed any date, the lower authority before proceeding further shall serve notices on both the parties. In the present case from the order dtd. 27.5.2003 (Annex.3A) passed by the Divisional Irrigation Officer (respondent No. 3), it does not appear that he served notices on the parties and from this point of view the order dtd. 27.5.2003 (Annex.3A) passed by the Divisional Irrigation Officer (respondent No. 3), suffers from basis infirmity. This is one of the aspects of the matter.

29. From a bare perusal of the order dtd. 9.7.2003 (Annex.4) passed by the Chief Engineer (respondent No. 1), it further appears that Chief Engineer (respondent No. 1) remitted the matter back to the Superintending Engineer (respondent No. 2) who was hearing two appeals No. 115/2002 and 116/2002, in other words the appeals which were decided through appellate judgment dtd. 28.4.2003 (Annex.2) by the Superintending Engineer (respondent No. 2), were further restored to their original numbers.

30. When these two appeals were restored to their original number, it was duty of the Superintending Engineer (respondent No. 2) to issue fresh notices of hearing of these appeals to the concerned parties and a bare perusal of appellate judgment dtd. 22.8.2003 (Annex.6) reveals that the Superintending Engineer (respondent No. 2) was of the view that since the matter was sent to him by the Chief Engineer (respondent No. 1), and since there was no provision of review under the Act of 1954, it was not necessary for him to give notices to the concerned parties. However, one of the , petitioners Shri Hardayal Singh appeared before him, but the respondent No. 2 (Superintending Engineer) did not take any step to give notices to the petitioners and in their absence, he decided the matter through judgment dtd. 22.8.2003 (Annex.6) and affirmed the order dtd. 12.12.2002 (Annex.1) passed by the Divisional Irrigation Officer (respondent No. 3) and thus it can be said that before passing the appellate judgment dtd. 22.8.2003 (Annex.6), no opportunity of hearing was given to the petitioners by the Superintending Engineer (respondent No. 2) and thus the appellate judgment dtd. 22.8.2003 (Annex.6) passed by the Superintending Engineer (respondent No. 2) suffer from basic infirmity and illegality.

31. The learned counsel for the respondents No. 4 to 6 has placed reliance on the case of High Court of Judicature for Rajasthan Vs. P.P. Singh and Another, , and has submitted that when an approval is required, the action holds good and therefore, since in the present case only technical approval was required and the same was obtained, it was not necessary

for the Superintending Engineer (respondent No. 2) to hear the petitioners again. In my opinion, this authority would not be helpful to the learned counsel for the respondents in view of the discussions just made above as in the present case when through appellate judgment dtd. 28.4.2003 (Annex.2) the case was remanded by the respondent No. 2 (Superintending Engineer) to the Divisional Irrigation Officer (respondent No. 3) with a direction that the case be put before the Chief Engineer Irrigation (respondent No. 1) with the detailed technical reports, it would mean that both the appeals were decided and the matter was remanded back to the Divisional Irrigation Officer (respondent No. 3) and there was nothing left for the Superintending Engineer to decide. Since in the present case, both the appeals were restored to their original number as per the direction of the Chief Engineer (respondent No. 1), it became necessary for the Superintending Engineer (respondent No. 2) to hear the parties concerned again as by the judgment dtd. 22.8.2003 (Annex.6) passed by the Superintending Engineer (respondent No. 2), the order dtd. 12.12.2002 (Annex.1) passed by the Divisional Irrigation Officer (respondent No. 3) was affirmed and the appeals were finally decided. When this being the position, since no opportunity of hearing was afforded to the petitioners, the appellate judgment dtd. 22.8.2003 (Annex.6) passed by the respondent No. 2 (Superintending Engineer) is liable to be quashed and set aside on the ground of violation of principles of natural justice as fulfillment of natural justice is only requirement of Article 14 of the Constitution of India, for, natural justice is antithesis of arbitrariness and hence the writ petition filed by the petitioner is liable to be allowed and the appellate judgment dtd. 22.8.2003 (Annex.6) is liable to be set aside.

For the reasons mentioned above, the present writ petition is allowed and the appellate judgment dtd. 22.8.2003 (Annex.6) passed by the Superintending Engineer, Irrigation Circle, (respondent No. 2) is set aside and the matter is remanded back to the Superintending Engineer, Irrigation Circle, Sri Ganganagar (respondent No. 2) to decide appeals No. 115/2002 and 116/2002 on merits a fresh after giving an opportunity of hearing to all the parties. The parties are directed to appear before the respondent No. 2 (Superintending Engineer, Irrigation Circle, Sri Ganganagar) on 15.3.2004.

Till the appeals are decided by the respondent No. 2, the status-quo as it exists today shall be maintained by all the parties concerned.