

(1967) 11 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1786 of 1966

Dhan Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 14-11-1967

Acts Referred:

Northern India Canal and Drainage Act, 1873 — Section 30FF

Citation : (1967) 11 P&H CK 0008

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : S.P. Goyal, for the Appellant; J.C. Verma, for the Respondent

Final Decision : Allowed

Judgement

Tek Chand, J.—In order to dispose of the writ petition, it is not necessary to go into detailed scrutiny of the facts as the impugned order carries its own condemnation on its face. The petitioners had made an application to the Divisional Canal Officer under provisions of section 30FF of Northern India Canal and Drainage Act for restoration of a water course which was alleged to have been demolished by respondents 3 and 4. After enquiry, the Divisional Canal Officer issued a notice in writing dated 26th April, 196(3, to respondents 3 and 4 requiring them to restore the said water course to its original condition within two days vide Annexure A. The Divisional Canal Officer specifically stated that the demolition of the channel passing through killa numbers referred to therein had caused great loss to the crops of the petitioners and their lands had been rendered barani. He ordered them to restore the said khal at the spot within two days failing which this would be done by the department at their expense. Respondents 3 and 4 filed an appeal to the Superintending Canal Officer u/s 30 FF(4) of the Act. This appeal was to be preferred within thirty days but actually it was preferred on 6th of July, 1966, 71 days later or in ether words, 41 days late excluding 30 days allowed. The appeal was allowed and the entire order under appeal is reproduced below :

Neither the respondent nor the zilled or are present. The case submitted to me also incomplete. I have, therefore, no alternative than to accept the appeal. The khal need not of restored through the area of Shri Mangha Ram. Announced today the 3rd, June, 66 and the decision be conveyed.

All canons of fairness, every rule of justice and all notions of logic have been departed from when the case before the appellate authority was incomplete, he should not have entertained it on that date. The record had to be sent for from the office of the Divisional Canal Officer. If respondent could not be present, the appellate authority could have heard the appeal ex parte, and disposed it of on merits. In the circumstances, to say that he had no alternative than to accept the appeal is tantamount to manifest denial of justice. There is not a word said in the order about the merits of the case. There is no reference to the reasons which prevailed with the Divisional Canal Officer. There is no allusion to the facts of the case or to the respective contentions of the parties. Under the Act, the Superintending Canal Officer is the final authority, as Sub-section 4 of section 30FF provides that Superintending Canal Officer's decision on such appeal shall be final. It does not call for any deep knowledge of law that the basic principle of justice rests on the ancient maxim "hear the other side" (*audi alteram partem*). It is a well known principle of justice that no man should be condemned unheard and unsummoned (*Nemo inauditus nec insummonitus condemnari debet*).

2. The petitioners in this case have filed an application on 3rd of August, 1966, the very date when the appeal was allowed, requesting the Superintending Canal Officer that the ex parte order be set aside. It was stated in the application that they had reached at 11.00 a.m. and could not reach earlier because they and their counsel were delayed on account of heavy rains. This request of theirs was refused and no order was passed on the application which was returned. The original application (Annexure E) has been filed by the petitioners along with their writ petition. The petitioner Sheo Chand has sworn an affidavit that the petitioners along with their counsel had submitted an application to the Superintending Canal Officer for setting aside the ex-parte order giving the reason for their late arrival, but the application was not entertained and was returned to the petitioners without writing any order thereon.

The order of the Superintending Canal Officer furnishing an extreme instance of complete disregard of his statutory obligation which are of a highly responsible nature. The writ petition is allowed. The impugned order of Shri A.D. Chowdhri. Superintending Canal Officer is quashed and that of the Divisional Canal Officer is restored. The appeal may be disposed of by the Superintending Canal Officer after notice to the parties and after sending for the complete record. The parties and their counsel may be heard on questions of limitation and on law and facts. If it is feasible, the Government of Haryana may depute some other Superintending Canal Officer to hear and dispose of the appeal. The petitioners are entitled to their costs.

3. A copy of the order may be sent to Haryana Government and also to Shri A.D.

Chowdhri, Superintending Canal Officer, wherever he may be serving at present.