
(1975) 01 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1013 of 1966

Jai Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 21-01-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1975) 01 P&H CK 0024

Hon'ble Judges : Manmohan Singh Gujral, J

Bench : Single Bench

Advocate : Surinder Sarup, for the Appellant; H.N. Mehtani, Assistant Advocate-General, Haryana and Mr. S.P. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh Gujral, J.—This petition under Articles 226 and 227 of the Constitution of India, which has been filed by 83 residents of village Ghilaur Kalan, tehsil Gohana, district Rohtak, is directed against the order of the Sub Divisional Canal Officer dated the 17th July 1965, passed u/s 30-B of the Northern India Canal and Drainage Act, 1873 (hereinafter called the Act) and the order of the Divisional Canal Officer dated the 18th September, 1965 and that of the Superintending Canal Officer dated the 12th April, 1966.

2. The case of the petitioners is that their land was being irrigated through outlet No. RD 109170D of Rohtak distributary and that respondent No. 3 Bhagwan Singh whose land was situated in village Sangi got his water through outlet No. RD 1,12000-L of the same distributary as that village was attached to the second outlet. It was asserted that outlet No. RD 109170-L was meant exclusively for the residents of village Ghilaur Kalan and that this had been the position a since long. In order to cause harm to the residents of village (sic) Kalan, respondent No. 5 made an application for transfer of hi; Tea to outlet No. RD 109170-L and this application was accepted by he Divisional Canal Officer on the 20th July, 1963. Being aggrieved by this order, the residents of village Ghilaur Kalan filed

an appeal which was accepted by the Superintending Canal Officer by order dated the 10th September, 1964 (Annexure A). The case of the petitioners further is that in spite of this order of the Superintending Canal Officer respondent No. 5 again moved the Sub Divisional Canal Officer who accepting this application prepared a scheme and forwarded it to the Divisional Canal Officer by order dated the 17th July, 1965. The Divisional Canal Officer confirmed this scheme u/s 30-B (4) of the Act on the 18th September, 1965. The persons aggrieved by this order filed an application on the 10th February, 1966 which was disposed of by the order of the Superintending Canal Officer dated (sic) 12th April, 1966 (Annexure C). Having been unsuccessful before in Canal authorities, the petitioners, have approached this Court is quashing the orders of the Sub Divisional Canal Officer, Divisional Canal Officer and the Superintending Canal Officer mentioned above.

3. The petition is contested on behalf of the respondents and in the return tiled by respondents Nos. 1 to 4 through the affidavit of Shri Bhagirath Lal, Divisional Canal Officer, it is pointed out that the orders dated the 20th July, 1963, and the 10th April 1964, were passed u/s 20 of the Act and that subsequently a scheme was prepared u/s 30-A and was approved u/s 30-B of the Act and that no illegality had been committed in the framing and approval of the scheme.

4. On behalf of the petitioners in the main two objections have been raised. It is firstly pointed out that having passed the order on the 20th July, 196, the Divisional Canal Officer could not approve the scheme, as this would amount to reviewing the order of the Superintending Canal Officer dated the 10th September 1964 by which the application of respondent No. 5 had been dismissed. The second contention raises the question whether while confirming the scheme the Divisional Canal Officer is required to give a hearing to the parties or not ; the argument on behalf of the petitioners being that at this stage also a hearing to the objectors is necessary.

5. Section 20 of the Act provides the whenever an application is made to the Divisional Canal Officer for the supply of water from a canal and it appears to him expedient that such supply should be given through some existing watercourse, he shall give notice to the persons responsible for the maintenance of such water course and shall then determine on what conditions the said supply is to be conveyed through such watercourse. It is further provided that if the Divisional Canal Officer determines that supply has to be made, (sic) orders are to be confirmed by the Superintending Canal Officer and those orders would be binding on the applicant and also on the person responsible for the maintenance of the said watercourse.

6. The above provision would show that no scheme is to be drawn up u/s 20 and that this provision only deals with the situation where demand is made for the supply of canal water from an existing watercourse. This section does not envisage the transfer of land attached to one watercourse to another watercourse. To meet this eventuality sections 30-A and 30 B were introduced by

the Northern India Canal and Drainage (Amendment) Act, 1958, which are as follows :--

30-A. (1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf, the Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters, namely :--

(a) the construction, alteration, extensions and alignment of any watercourse or realignment of any existing watercourse ;

(b) reallocation of areas served by one watercourse to another :

(c) the lining of any watercourse;

(d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse.

(2) Every scheme prepared under sub-section (1) shall, amongst other matters, set out the estimated cost thereof, the alignment of the proposed watercourse or realignment of the existing watercourse, as the case may be, the site of the outlet, the particulars of the shareholders to be benefited and other persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme.

30-B. (1) Every scheme shall, as soon as may be, after its preparation be published in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions with respect thereof within 30 days of the publication.

(2) After considering all objections and suggestions that may have been received by the Divisional Canal Officer the Divisional Canal Officer shall submit the scheme with such amendments as he considers necessary together with his remarks on the objections and suggestions received by him, to the Superintending Canal Officer for his approval.

(3) The Superintending Canal Officer may direct the Divisional Canal Officer to furnish such information as he may require for the purpose of approving the scheme submitted to him under this section.

(4) The scheme submitted by the Divisional Canal Officer may be approved by the Superintending Canal Officer either as it was submitted to him by the Divisional Canal Officer or in such modified form as he may consider fit.

The sections were amended by the Punjab Act No 21 of 1963 and for the words "Superintending Canal Officer" the words "Divisional Canal Officer" and for the words "Divisional Canal Officer" wherever occurring, the words "Sub Divisional Canal Officer" were substituted. Clause (b) of section 30-A (1) quoted above shows that reallocation of areas served by one watercourse to another is to be

governed by the newly added section. This of course has to be done after a scheme is prepared. When respondent No. 5 filed the first application no scheme was prepared and it was treated as if it was an application for the supply of water from an existing watercourse and this application was ultimately dismissed. No doubt having regard to the facts of the case, the first application could have been treated as an application u/s 30-A but as that had not been done and it was disposed of only as an application u/s 20, it cannot be plausibly contended that subsequent proceedings under sections 30-A and 30-B were illegal and amounted to a review of the earlier orders. I have seen the record and find that the averment contained in paragraph 8 of the written statement of respondents, Nos. 1 to 4 is correct and that the first application was treated as one u/s 20 of the Act. In this situation, I find no merit in the first contention that the subsequent orders of the Sub-Divisional Canal Officer and the Divisional Canal Officer amounted to review of the earlier orders, as the earlier orders were not passed under sections 30-A and 30-B and were only passed u/s 20.

7. The second argument is equally without merit. Section 30-B, as it stood then, envisages that a draft scheme was to be prepared by the Sub-Divisional Canal Officer and it was then to be published for inviting objections and suggestions. The Sub-Divisional Canal Officer was then to consider these objections and suggestions and was to make a recommendation to the Divisional Canal Officer who was then to approve the scheme in the form recommended or with modifications. From the scheme of section 30 A it emerges that only the Sub Divisional Canal Officer was to give hearing to the objectors and to consider the objections and suggestions and was then to send the entire file to the Divisional Canal Officer for according approval to the scheme finalised by the Sub Divisional Officer. There is no provision which makes it obligatory on the Divisional Canal Officer to give a hearing to the objectors or to issue notice to them. The entire scheme along with the objections and suggestions was to be before the Divisional Canal Officer and he could approve it on the basis of the material obtained by the Sub-Divisional Canal Officer. Taking this view of the matter, I hold that it was not necessary that the Divisional Canal Officer should have issued notice to the objectors and heard them before approving the scheme.

8. For the reasons indicated above, I find that there is no merit in this petition and the same is, therefore, dismissed but with so order as to costs.