

(1971) 12 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 647 of 1969

Madan Mohan and Others

APPELLANT

Vs

The Superintending Canal Officer and Others

RESPONDENT

Date of Decision : 10-12-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Northern India Canal and Drainage Act, 1873 — Section 30A

Citation : AIR 1973 P&H 208

Hon'ble Judges : P.C. Jain, J;D.K. Mahajan, J

Bench : Division Bench

Judgement

1. This petition was referred by my learned brother by his order dated December 9, 1969, in view of certain observations in Dalip Singh Bhagwana and Others Vs. Supdt. Canal Officer, Rohtak and Others, .

2. The petitioners are residents of village Jandwala, tehsil Sirsa, district Hissar. They are shareholders in outlet R. D. 16000-L, Barukhera minor. This minor was extended to R. D. 19000. This extension adversely affected the rights of irrigation of the petitioners. This led to an application praying that a pacca nakka at R. D. 16000-L may be provided to them. An undertaking was given to pay all expenses which had to be incurred for the construction of nakka. The Zildar recommended the case of the petitioner. The sub-Divisional Officer agreed with the report of the Zildar. He accordingly prepared a scheme for the same u/s 30A of Northern India Canal and Drainage Act, 1873, hereinafter referred to as the Act. When the matter came before the Divisional Canal Officer he did not agree with the draft scheme and rejected it vide his order dated 28th November, 1967, (Annexure A). Feeling aggrieved from the order of the Divisional Canal Officer, the petitioners filed a revision petition., presumably u/s 30B of the Act. This petition was rejected by the Superintending Canal Officer on 13th September, 1968 (Annexure C). The petitioners being aggrieved moved this Court under Articles 226 and 227 of the Constitution of India. The matter came up before my learned brother and as already observed in view of the decision in Dalip Singh

Bhagwana and Others Vs. Supdt. Canal Officer, Rohtak and Others, , the matter was directed to be placed before a larger Bench.

3. As observed by my learned brother the point that requires determination is very short. It is, whether u/s 30-B(2) of the Act, a Divisional Canal Officer has the power to reject the scheme in toto. Before we answer this question it will be proper to set out the provisions of Sections 30-A and 30-B of the Act, which are reproduced below:--

" 30-A. (1) Notwithstanding anything obtained to the contrary in this Act and subject to the rules described 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, extension and alignment of any watercourse or realignment of any existing watercourse.

.0 (b) reallocation of areas served by one watercourse to another;

(c) the lining of any watercourse;

(cc) the occupation of land for the deposit of soil from watercourse clearances:

(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 share-holders 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 for inviting objections and suggestions with respect thereof within twenty-one days of the publication.

(2) After considering such objections and suggestions, if any, the Divisional Canal Officer shall approve the scheme either as it was originally prepared or in such modified form as he may consider fit.

(3) The Superintending Canal Officer may, suo motu at any time or on an application by any person aggrieved by the approved scheme made within a period of thirty days from the date of publication of the particulars of the scheme u/s 30-A revise the scheme approved by the Divisional Canal Officer:

Provided that such revision shall not be made without affording to the person affected an opportunity of being heard."

4. It is undoubtedly true that if an authority has the power to approve something

it would necessarily also have the power to disapprove that thing. But it can be otherwise. This really depends how the expression is used in a statute. The context in which it is used will necessarily determine its true interpretation. In other words it is the set up in which the expression occurs which will provide a guide for its interpretation. The scheme of Section 30-A of the Act, is that the Divisional Canal Officer, on his own motion or on an application of the shareholders, as in the present case, prepares a draft scheme. The draft scheme has to comply with the statutory requirements. After that, objections are invited to it. After hearing the objections the Divisional Canal Officer can either approve the scheme, as originally prepared or approve it in a modified form, the modifications being left to him. This is clear from the language of sub-section (2) of Section 30-B of the Act. When we advert to Section 30-B(3) we find that the order approving the scheme as prepared u/s 30-A of the Act, by the Divisional Canal Officer is subject to revision by the Superintending Canal Officer. But the order rejecting the scheme, if that power is to be with the Divisional Canal Officer, it is not revisable. It is also obvious that if a scheme is rejected on the same ground there would be no question of getting a second scheme on the same grounds prepared u/s 30-A of the Act. Therefore, the intention of the framers of Section 30-B(2) of the Act, appears to be that the only power that the Divisional Canal Officer can exercise is either to approve the draft scheme as such or to approve it with modifications. In the set up in which sub-section (2) of Section 30-B of the Act is placed, it is obvious that the power to reject the scheme was by implication excluded. The obiter observations in Dalip Singh Bhagwana and Others Vs. Supdt. Canal Officer, Rohtak and Others, support our view. For facility of reference these observations are quoted below:

"It is further pointed out that if the word approved in Section 30-B and section 30-C is not to be read as including the word "disapproved" in the present cases the Divisional Canal Officer having prepared the draft schemes, he could not reject those schemes outright, and thus his orders would be against this statutory provision. However, nobody has come forward to challenge the orders of the Divisional Canal Officer before this Court and this consideration cannot thus prevail. The validity or legality of the orders of the Divisional Canal Officer can only be seen when a challenge is made to the same which is not what is claimed by the petitioners in these petitions. The contention on the said of the respondents cannot prevail because of the language used in Section 30-C and sub-section (3) of Section 30-B of the Act., u/s 30-C what has to be published by the Divisional Canal Officer is the particulars of the scheme approved by him and the object is to call upon the share-holders to implement the same. A scheme not approved or rejected cannot be implemented and if this argument on the side of the respondents was accepted, a part of S. 30-C would become redundant. Redundancy is not to be imputed to the legislature. Once this is the conclusion revision is only permitted under sub-section (3) of Section 30-B in regard to the scheme published u/s 30-C and if the conclusion is that a scheme disapproved or rejected cannot be published u/s 30-C there is no power of

revision given by sub-section (3) of Section 30-B to the Superintending Canal Officer against the disapproval or rejection of a draft scheme."

5. It may be observed further that the legislature was aware of this lacuna and remedied the defect by an ordinance published in the Government Gazette of 10th December, 1970, wherein Section 2, it was provided that in Section 30-B for sub-section (2) the following shall be substituted, namely:--

"After considering such objections and suggestions if any, the Divisional Canal Officer shall approve, modify or reject the scheme within thirty days of the receipt of such objections and suggestions, unless this period is extended by the Superintending Canal Officer for good and sufficient reasons."

Sub-Sections (3) of Section 30-B was also substituted and now reads thus-

"The superintending Canal Officer, may, suo motu at any time or on an application by any person aggrieved by the approved scheme, modified scheme or rejection thereof made within a period of thirty days from the date of publication of the particulars of the scheme or rejection thereof u/s 30-C, revise the scheme so published or pass such orders as he may deem fit:

Provided that such revision shall not be made without affording the person affected an opportunity of being heard."

These amendments clearly show that there was lacuna in the Act and it has been filled by the aforesaid amendments. The interpretation we have placed, on the Act as it stood at the relevant time is fully justified.

6. For the reasons recorded above we allow this petition, quash the impugned order of the Divisional Canal Officer, dated 28th November, 1967. He is directed to proceed with the draft scheme in accordance with law.

Prem Chand Jain, J.

7. I agree.

8. Order accordingly.