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**(1976) 11 RAJ CK 0023**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 284 of 1974**

Narainsingh and Others

APPELLANT

Vs

The Superintending Irrigation Officer and Others

RESPONDENT

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**Date of Decision :** 07-11-1976

**Acts Referred:**

Rajasthan Irrigation and Drainage Act, 1954 — Section 53  
Rajasthan Irrigation and Drainage Rules, 1955 — Rule 55

**Citation :** (1977) WLN 254

**Hon'ble Judges :** D.P. Gupta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

D.P. Gupta, J.

1.This writ petition raises a question relating to the interpretation of Section 53 of the Rajasthan Irrigation & Drainage Act, 1954 (hereinafter referred to as "the Act"). The facts which give rise to the present writ petition are a few & simple. The petitioners as well as the respondents No. 4 to 30 are agriculturists owning agricultural land situated in Chak 3b in Tehsil Sri Ganganagar and there were irrigating their fields according to turns fixed by common consent. This system is known as "Panchayati Bari". However, as disputes arose between the parties, the petitioners submitted an application to the Divisional Irrigation Officer, Gang Canal, North Division, Sri Ganganagar requesting him to resolve the dispute by fixing the turns of all persons in Chak 3b regarding the supply of water from the common water-course. The Divisional Irrigation Officer by his order dated October 17, 1973 directed that "Gili Sukhi Khatewar Bari" would govern the distribution of the parties in Chak No. 3b till the end of the Rabi crop of the year 1973-74, which was standing at that time and further directed that "Gili Sukhi Nakowar Bari" be introduced from the beginning of the kharif crop of 1974 i.e. from April 15, 1974. The respondents No. 4 to 30 filed an appeal against the aforesaid order passed by the Divisional Irrigation Officer before the

Superintending Irrigation Officer, Bikaner Irrigation Circle, Sri Ganganagar, who allowed the appeal by his order dated December, 14, 1973 and modified the order passed by the Divisional Irrigation Officer to the effect that "Gili Sukhi Khatewar Bari" be introduced with effect from April. 15, 1974 instead of Gili Sukhi Nakewar Bari".

2. The petitioners contend that an appeal was not maintainable before the Superintending Irrigation Officer against the order passed by the Divisional Irrigation Officer dated October 17, 1973 and that the Superintending Irrigation Officer had no jurisdiction to interfere with the aforesaid order passed by the Divisional Irrigation Officer. On the other hand, the respondents contest this position and their contention is that an appeal before the Superintending Irrigation Officer was maintainable under Rule 55 of the Rajasthan Irrigation and Drainage Rules, 1957 (hereinafter referred to as "the Rules").

3. The petitioners relied upon the provisions of Section 53 of the Act, which are as under:

Section 53. Settlement of reference as to mutual rights and liabilities of persons interested in water course:(1) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water course, any such person may apply in writing to the Divisional Irrigation Officer stating the matter in dispute; and such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter, and, after such enquiry, he shall pass his order thereon unless he transfers "as he is hereby empowered to do) the matter to the Collector who shall thereupon enquire into and pass his order on the said matter.

(2) Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made and shall there after remain in force until set aside by the decree of a Civil Court.

4. The contention of the learned Counsel for the petitioners is that the order passed by the Divisional Irrigation Officer Under sub Section (1) of Section 53 regarding the use or distribution of water is final and conclusive and although the same could not be disturbed in respect of any crop sown or growing at the time when such order is made by any authority or Court, but after "he growing crop is removed the said order could only be set aside by a decree of a Civil Court and by no other authority. Mr. Bhandari, learned Counsel for the petitioners submitted that in view of the language employed in sub-Section (2) of Section 53, the provisions of Rule 55 could not be made applicable in respect of an order passed by the Divisional Irrigation Officer under sub-Section (1) of Section 53. On the other hand, Mr. Mridul, learned Counsel for the contesting respondents, argued that an appeal was provided by Rule 55 against an order passed by the Divisional Irrigation Officer to the Superintending Irrigation Officer and an order passed u/s 53(1) of the Act was not an exception in that respect.

5. Section 60(1) of the Act empowers the State Government to make rules to regulate various matters and Clause (b) thereof, which is relevant for the present purpose, reads as under:

(b) the cases in which, and the officers to whom, and conditions subject to which, orders and decisions given under any provisions of this Act, and not expressly provided for as regards appeal, shall be appealable;

Sub Section (2) of Section 60 provides that the rules so made by the State Government shall have the force of law on their publication in the official Gazette Rule 55, which has been made by the State Government in pursuance of the powers vested in it u/s 60(1)(b) of the Act provides for an appeal to the Superintending Irrigation Officer from any original order passed by the Divisional Irrigation Officer under the Act or the Rules, except as otherwise provided therein.

6. Sub-section (2) of Section 53 makes two provisions. The first part thereof provides that the order passed by the Divisional Irrigation Officer shall be final regarding the use or distribution of water for any crop sown or growing at the time when such order is made. The second part of the aforesaid sub-section provides that such order made by the Divisional Irrigation Officer shall remain in force until set aside by the decree of a civil court. It is important to notice that the second part of sub-Section (2) does not impart any finality to the order passed by the Divisional Irrigation Officer. The intention of the Legislature is obvious, namely, that in so far as the standing crop is concerned it is envisaged that the order passed by the Divisional Irrigation Officer should not be disturbed during the period such standing crop remains in the fields. This provision has been made so as to ensure regular supply of water for the standing crop in accordance with the system which may be determined by the Divisional Irrigation Officer & such system of distribution of water for irrigation purpose should not be subject matter of frequent changes during the period the crop sown or growing at the time when such order is made continues to remain in the fields. But after the standing crop is removed there is no finality attached to the order passed by the Divisional Irrigation Officer and all that has been provided by sub Section (2) of Section 53 is that such order shall remain in force until set aside by the decree of a civil court. Thus it is amply clear that a decree of a civil court would not have the effect of altering the system of distribution of water in respect of the growing crop but it could affect such system or manner of distribution after the crop is removed from the fields. However, there is nothing in sub-Section (2) of Section 53 to exclude the applicability of Rule 55, which has been made in pursuance of the powers conferred upon the State Government by virtue of the provisions of Section 60(1)(b) of the Act. The State Government is authorised by the aforesaid provision to make rules and therein provide for an appeal in such cases where the provisions of the Act do not expressly provide for an appeal. Section 53 is one such provision which does not expressly provide for an appeal & as such the provisions of Rule 55 would obviously be applicable to the order passed by the

Divisional Irrigation Officer u/s 53(1). I do not find any limitation in Rule 55 barring the applicability of the provisions thereof to the order passed by the Divisional Irrigation Officer u/s 53(1) of the Act, as the only limitation imposed under Rule 55 is "except as is otherwise provided in the Act or in these rules". As Section 53(2) of the Act imparts finality to the order passed by the Divisional Irrigation Officer to a limited extent only, namely, until the crop sown or growing at the time when such order is made continues to remain in the fields, it is not possible to conclude that the said order could not be the subject matter of an appeal before the Superintending Irrigation Officer.

7. learned Counsel for the petitioner argues that under Rule 56 the limitation for filing an appeal was 30 days from the date of the order appealed from & as such if the appeal is to be filed against the order passed by the Divisional Irrigation Officer u/s 53(1) of the Act after the removal of the growing crop, then such appeal may not be within the limitation prescribed under Rule 56 and on that basis he submits that the provisions of Rule 55 should not be held to be applicable to an order passed u/s 53(1) by the Divisional Irrigation Officer. It is not possible to accept this contention of the learned Counsel, in as much as an appeal against an order passed by the Divisional Irrigation Officer u/s 53(1) of the Act may be filed in accordance with the provisions of Rule 55, within the period of 30 days from the date of passing of the said order, as prescribed under Rule 56, yet the order that may be passed by the Superintending Irrigation Officer upon such appeal would not affect the distribution of water in respect of the crop sown or growing at the time when the Divisional Irrigation Officer passed his order. Thus the order that the Superintending Irrigation Officer may pass on appeal under Rule 55 would be given effect to after the removal of the crop growing at the time when the order of the Divisional Irrigation Officer is passed.

8. Another argument advanced by the learned Counsel for the petitioners is that according to the language employed in sub-Section (2) of Section 53 the order passed by the Divisional Irrigation Officer u/s 53(1) of the Act is to remain in force until set aside by a decree of a Civil Court and thus it is only a civil Court which could interfere with an order passed by the Divisional Irrigation Officer and, therefore, the provision of any appeal from such an order of the Divisional Irrigation Officer is excluded. It may be considered in this respect that Sections 52 and 53 of the Act deal with jurisdiction. Section 52 provides that all claims against the Government in respect of anything done under the Act may be tried by a civil Court & the only prohibition is that such Court shall not pass any order in respect of the supply of water to any crop sown or growing at the time when such order is passed. A similar provision imparting limited finality to the order passed by the Divisional Irrigation Officer u/s 53(1) of the Act has been made in sub-Section (2) of Section 53, so far as relating to the use or distribution of water to the growing crop is concerned and it is in this context that sub-Section (2) of Section 53 further provides that the order of Divisional Irrigation Officer shall continue to remain in force till set aside by a decree of a civil Court. All

disputes relating to the use and distribution of water or the construction or maintenance of water course could, of course, be subject matter of a suit in a civil Court and the order passed by the Irrigation Authorities would hold good only until a decree is passed by a competent civil Court finally determining the rights of the parties, but the provisions of sub-Section (2) of Section 53 do not expressly or impliedly prohibit any departmental or internal appeal from one Irrigation Officer to his superior. In this view of the matter, in the present case, the Superintending Irrigation Officer had jurisdiction to entertain the appeal preferred against the order passed by the Divisional Irrigation Officer and the order passed by the Superintending Irrigation Officer does not suffer from any defect of jurisdiction.

9. learned Counsel for the petitioner urges that Sub-section (2) of Section 53 of the Act mentions "such order" while imparting finality to the order of the Divisional Irrigation Officer for the duration of the period when the growing crop remains in the fields and it is that very order which is to remain in force thereafter until set aside by a decree of a civil court. It is argued that "such order" in sub Section (2) of Section 53 of the Act refers to the order passed by the Divisional Irrigation Officer u/s 53(1) of the Act and in this manner it is suggested that the provision of appeal made in Rule 55 could not be applied to the order passed u/s 53(1). I do not find any force in this contention as the words "such order" in Sub-section (2) of Section 53 refer to the order passed in respect of matters enumerated in Section 53(1) and "such order" may be either the original order passed by the Divisional Irrigation Officer or the appellate order passed by the superintending Irrigation Officer. In case no appeal is preferred against the order of the Divisional Irrigation Officer, that order shall remain in force until set aside by a decree of a civil court. But in case an appeal is preferred under Rule 55, the order of the Divisional Irrigation Officer shall merge in the appellate order, which may be passed by the Superintending Irrigation Officer and it is only that order which will be the subsisting and binding order for purposes of sub-Section (2) of Section 53 and it shall continue to remain in force till set aside by a decree of a civil Court.

10. learned Counsel for the petitioner also drew my attention to the provisions of Section 68 of the Northern India Canal and Drainage Act, 1873, which are analogous to the provisions of Section 53 of the Act and it is submitted by the learned Counsel that the said provisions were amended so far as Punjab and Haryana are concerned by an, Amendment Act in the year 1963 wherein a provision of an appeal has been made from the order of the Divisional Canal Officer to the Superintending Canal Officer. But the provision now made by the amended Section 68 in force in Punjab and Haryana is widely different from the provision in consideration in the present case, inasmuch as sub-Section (7) thereof completely bars the jurisdiction of a civil Court by providing that no order passed under that section shall be liable to be called in question in any civil Court. I fail to see as to how the amended provisions of Section 68, as applicable to Punjab and Haryana, have any bearing upon the controversy in the present

case.

11. No other point was argued before me.

12. In the result there is to substance in the writ petition and the Same is dismissed. However in the circumstances of the case the parties are left to bear their own costs.