
(1982) 10 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : R.O.R. No. 11 of 1981-82

Rajinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 05-10-1982

Acts Referred:

Citation : (1983) PLJ 144 : (1985) RRR 287

Hon'ble Judges : K.S.Narang, F.C.

Advocate : Satya Pal Gupta, Zileadar Irrigation, Faridkot., Ravinder Chopra, Advocate., Advocates for appearing Parties

Judgement

K.S. Narang, F.C.

1. This is a revision petition under Section 35(4) of the Northern India Canal and Drainage Act, against the order dated the 4th May, 1982, dismissing as time barred the appeal of the petitioners against the order dated 18.8.1981 of the Special Collector, Irrigation, Punjab whereby he imposed special charges to the extent of 10 times of the ordinary rates.

2. Facts of the case are that the SubDivisional Officer (Irrigation), Faridkot, reported about the cut in R.D. 18400L of Sappanwali Minor on 7/8.8.1979 by Rajinder Singh and others (petitioner) of Sappanwali, Tehsil Ferozepur. The Special Collector Irrigation imposed ten times penalty (one time being 575.32) on them by his order dated 18.8.1981. Aggrieved by this order, the petitioners filed an appeal before the Commissioner, Ferozepur Division, who rejected it on the point of limitation, by his order dated 4.5.1982. It is against this order that the petitioners have filed this revision petition.

3. I have heard the parties. The points urged by the counsel for petitioners are that there is no material or evidence on record to show that the petitioners used the canal water in an unauthorised manner; that there is no finding about the act or neglect of the petitioners; that Hari Singh and Chet Singh petitioners have been subjected to penalty when even though they do not hold any land in the

village; that the assessment and imposition of 10% penalty was made arbitrarily, without affording the opportunity of being heard. He has stressed the point that no penalty could be imposed on them without holding a detailed enquiry under the Act/Rules by the competent authority and giving his finding on each aspect before fixing any liability on the persons under Section 33 of the Act and Rules framed thereunder, especially on the following points :

(a) that water supplied through a canal had been used in an unauthorised manner by the act or neglect of such person(s); or

(b) if it is not possible to identify the person on account of whose act or neglect the unauthorised supply of water had been made, to find out the person(s) on whose land such water had flowed, if such land had derived benefit therefrom. In the absence of a finding as to the person who is himself responsible for the unauthorised supply of water, a person over whose land the water has flowed, a person not be liable if the flow of such water has not resulted in any benefit to him; or

(c) if neither the person covered by category (a) nor any person covered by category (b) referred to above can be identified, the particulars of the persons chargeable, in respect of the water supplied through the canal in question who are liable to pay the amount of the special charges.

He has stressed that the irrigation authorities should have held a proper enquiry to arrive at a specific conclusion as laid in Section 33 before subjecting the petitioners to any penalty. The learned counsel has cited 1976 P.L.J. 233, Re: Sarupa etc. v. State of Haryana; and 1968 Indian Law Reports (Punjab and Haryana) Volume 1 pages 176184, Re: Lachhman and others v. The Executive Engineer, Sirsa and others. The counsel for the petitioners has also pointed out that the learned Commissioner has failed to exercise his jurisdiction in a judicious manner, in not discussing and dealing with these objections raised before him in the appeal and in dismissing the appeal only on the point of limitation.

4. The representative of the State has stated that the penalty was imposed after hearing the petitioners in response to the notices issued to them and that their appeal was rightly dismissed by the Commissioner on the point of limitation.

5. After hearing the parties and looking into the record, brought by the representative of the State, I find sufficient force in the contentions of the petitioners that no detailed and proper enquiry has been held by the Irrigation Authorities under the provisions of Section 33 of the Act and Rules 32A(2) of the Rules to identify the persons with whose act or neglect the use of the water from the canal had occurred and the persons on whose land such a water was flowed, resulting in the alleged benefit therefrom. The persons cannot be subjected to the penalty or the special charges either individually or jointly unless there is detailed enquiry and report thereon by the competent authority. It was necessary in this case to come to a view that it was not possible to identify persons on account of whose neglect, the unauthorised supply of water had been made and

what benefit had been derived by persons who had been held liable for the use of the water. Also the order of the Special Collector is based only on report of his subordinates showing that he has not exercised his independent judgment in regard to matters under his consideration. In the present case, no such detailed and proper enquiry has been held, and as such the order of the Special Collector Irrigation cannot be sustained.

6. For the reasons given above, the revision petition is accepted and orders of the Commissioner, Ferozepur and the Special Collector, Irrigation Works, Punjab dated 4.5.1982 and 18.8.1981 respectively, are hereby set aside and the case is remanded to the Special Collector, Irrigation Works, Punjab, Chandigarh for proper and detailed enquiry and record his finding after meticulous compliance of the provisions of the Act and the Rules framed thereunder, and then take action against the persons concerned, found liable for such a penalty or special charges.

Announced.