

(1985) 11 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 788 of 1978

Ram Kishan

APPELLANT

Vs

Chief Canal Officer, Haryana

RESPONDENT

Date of Decision : 05-11-1985

Acts Referred:

Citation : (1986) PLJ 249 : (1986) RRR 582

Hon'ble Judges : D.V.Sehgal, J

Advocate : Mr. Bhoop Singh, Advocate., Advocates for appearing Parties

Judgement

D.V. Sehgal, J.

1. Through this writ petition, the order of the Chief Canal Officer, respondent No. 1 (Annexure P.3) dated 28.12.1977, has been impugned by the petitioners.

2. The facts are that a set of shareholders including respondents Nos. 4 to 6 were getting irrigation for the last many years from outlets Nos. RD49500/L and 53500/L of Dharaudi Minor and the petitioners as also some other shareholders were receiving irrigation from RD53500/L of the same minor. It is not disputed by the Canal authorities that irrigation from these outlets to the fields was of high intensity and much higher than the normal percentage of 62%, as would be evident from the following :

(i) Outlet RD40148/L Dharaudi Minor 113 per cent.

(ii) Outlet RD49500/L Dharaudi Minor 101 per cent.

(iii) Outlet RD53500/L Dharaudi Minor 121 per cent.

Respondent Nos. 4 to 6 sought for splitting of chak of outlet No. RD 40148/L, Dharaudi Minor, with the provision of new outlet at RD42800/L and merging of outlets at RD49500/L and RD53500/L into a new outlet at RD 52440/L, transferring blocks of areas shown as ``A''' and ``B''', as depicted by the Superintending Canal Officer, from the existing outlets at RD53500/L and

RD49500/L, respectively to the proposed new outlet and RD42800/L.

3. After hearing the parties, the Divisional Canal Officer, vide his order dated 5.4.1977 (Annexure P.1) held that, keeping in view the high intensity of irrigation of the entire area, the Scheme as sought for by respondents No. 4 to 6, was altogether unnecessary. He further observed that the new outlet as, has been demanded, would be upstream of the fall, which can lead to unauthorised acts of creating daff and, since the irrigation from the present source to the fields of respondents No. 4 to 6 and other shareholders was exceptionally good, the plea that the new outlet as proposed through the Scheme would improve their irrigation supply, was of no avail. He also found that the proposed chaks, as demanded by respondents No. 4 to 6 for new outlets, would be unwieldy and lengthy and a railway crossing would also be involved and that, in spite of the fact that respondents Nos. 4 to 6 were prepared to defray the cost of the syphon to bring the water across the railway crossing, technically there was no need to change the site of the outlet or to transfer the area. He also observed that, but for respondents Nos. 4 to 6, there was not a single factor meriting the change proposed through the Scheme. Thus, he rejected the Scheme.

4. Respondents Nos. 4 to 6 preferred an appeal to the Superintending Canal Officer who, vide his order dated 10.10.1977 (Annexure P.2) affirmed the finding of the Divisional Canal Officer. He added that the provision of a new outlet at RD42800/L which happens to be upstream of the existing fall, could lead to unauthorised acts whereas, with the proposed Scheme, the arrangement of watercourses for all the three outlets is going to be drastically affected which, in turn, may lead to further disputes among the irrigators. He also formed the opinion that irrigation might have to suffer with the proposed change. So far as command is concerned, he was of the view that this was also not going to improve and was rather going to suffer.

5. Respondents No. 4 to 6 preferred further appeal to the Chief Canal Officer who, without discussing the merits of the case, simply observed as under :

``There is a fall at RD42800/L Dharaudi Minor, where the full supply level is 741.15. The outlet RD4014/L and RD42300/L are situated upstream of the fall and will provide maximum possible command. These two outlets should be allowed and the beneficiaries should be given option to get their area served by either of these two outlets. Further downstream of the fall RD42800/L the area can be provided irrigation from two outlets if the CCA can be so adjusted that the discharge of each outlet is not less than one cusecs. In case the discharge of the two outlets works out to be less than one cusecs, the watercourses should be lined at the cost of the beneficiaries. If the beneficiaries, do not come forth to line the watercourses, then only one outlet should be provided downstream of the fall for the entire area.'''

6. The learned counsel for the petitioners has contended that the aforesaid order of the Chief Canal Officer has resulted in utter confusion. Instead of deciding

finally the rights and obligations of the parties and giving a final verdict with regard to the outlets from which they are to receive irrigation, the Chief Canal Officer has provided for alternatives depending on different eventualities. According to the learned counsel, this is not a speaking order. It does not deal with the merits of the dispute as was dealt with by the Divisional Canal Officer and the Superintending Canal Officer. I agree with this submission of the learned counsel. The abovementioned order cannot be said to be a speaking order. It does not take note of the rival contentions of the parties nor discusses the same so as to find out which contention is meritorious. On the other hand, this order provides that outlets at RD40148/L and RD42300/L should be provided and the beneficiaries should be given option to get their areas served from either of these two outlets. It further provides that downstream of the fall at RD42900/L, the area can be provided irrigation from two outlets if the CCA can be so adjusted that the discharge of each outlet is not less than one cusecs. This is certainly a speculative order. The order further proceeds to provide that, in case the discharge of the two outlets works out to be less than one cusecs, the water courses should be lined at the cost of the beneficiaries. No such provision has been made in the Scheme which was under consideration before the Divisional Canal Officer and the higher authorities. The Chief Canal Officer further speculates that if the beneficiaries do not come forth to line the watercourses, then only one outlet should be provided downstream of the fall for the entire area. This conditional order is bound to cause confusion.

7. It appears that the Chief Canal Officer has not applied his mind to the merits of the Scheme as also the orders rejecting the same passed by the Divisional Canal Officer and the Superintending Canal Officer. The order is nonspeaking and speculative in character and, thus, cannot be sustained. I, therefore, allow this petition and quash the order dated 28.12.1977 (Annexure P.3) of the Chief Canal Officer. Since there is no representation from the side of respondents Nos. 4 to 6, there shall be no order as to costs.