
(1968) 03 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 91 of 1967

Ram Rikh	Vs	APPELLANT
State of Haryana and others		RESPONDENT

Date of Decision : 01-03-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) 03 P&H CK 0047

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : B.S. Chawla, for the Appellant; Munishwar Puri for Respondents Nos. 1 to 3 and Mr. R.S. Chaudhari, for the Respondent

Final Decision : Allowed

Judgement

Shamsheer Bahadur, J.—What is challenged in this petition under Article 226 of the Constitution of India is the order passed by the Superintending Canal Officer (Annexure A) in the purported exercise of power under sub-section (3) of section 30-B of the Northern India Canal and Drainage Act (hereinafter called the Act.)

2. The petitioner Ram Rikh shared the use of the outlet RD 19500 from Sukhchain Distributory along with respondents 4 and 5, Birbal and Parbhu-Birbal, the fourth respondent, wanted some change in the alignment of the watercourse and moved the Divisional Canal Officer for that purpose in the year 1966. A scheme was published in accordance with the provisions of section 30-A of the Act and after hearing the parties the Divisional Canal Officer did not accede to the request of Birbal that the alignment should pass through the fields of the petitioner, and the fifth respondent. The Superintending Canal Officer, in the exercise of his revisional powers, however, granted him the relief he had sought. The petitioner feeling aggrieved has moved this Court in certiorari proceedings.

3. Now, under sub-section (2) of section 30-A, every scheme which is prepared under sub-section (1) has to mention the various requirements like the

estimated cost, alignment of the proposed watercourse and the particulars of the share-holders to be benefitted and other persons affected thereby. Under sub-section (1) of section 30-B, objections may be filed to the scheme so framed and sub-section (2) says that:

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.

No scheme seems to have been approved by the Divisional Canal Officer, nor was it in consequence in need of any modification. Sub-section (2) is followed by the important sub-section (sub-section (3)) which gives the Superintending Canal Officer the power either suo moto or on the application by any person aggrieved "by the approved scheme" at any time to "revise the scheme approved by the Divisional Canal Officer". Clearly, the jurisdiction of the Superintending Canal Officer is to revise the scheme. which has been approved by the Divisional Canal Officer, Rejection of a scheme in to cannot be said to be a schema which has been approved by the Divisional Canal Officer and consequently the power of interference by the Superintending Canal Officer does not exist. Plainly, the sub section does not empower or authorise the Superintending Canal Officer to frame a scheme when none has been approved by the Divisional Canal Officer. The scheme has to emanate with the Divisional Canal Officer who has to approve it as it is published or in such modified form as he considers proper after hearing the objections. When the scheme itself does not commend itself to the Divisional Canal Officer who does not submit it to the Superintending Canal Officer for approval, the matter ends there. Mr. Puri, the Learned Counsel for the State, submits that the power of interference with an approved scheme also implies power to make a scheme afresh even though it has not been approved by the Divisional Canal Officer. I am afraid, this power cannot be inferred or derived from sub-section (3) which provides for a revision by the Superintending Canal Officer only of a scheme approved by the Divisional Canal Officer.

4. Nor can I accede to the submission of Mr. Puri that the power of interference by the Superintending Canal Officer can be spelled out from the provisions of section 30-F of the Act which says that:

On execution of the scheme the Divisional Canal Officer shall by, requisition in writing, direct the shareholders to take aver and maintain the watercourse and on failure of the shareholders to comply with this direction, he shall make arrangements for maintenance of the watercourse at the shareholders' cost.

This section deals with a situation where a scheme of the Divisional Canal Officer subject to such revisions as have been made in it by the Superintending Canal Officer under sub-section (3) has to be executed and where the shareholders concerned refuse to comply with its provisions.

5. I am afraid, the Superintending Canal Officer has passed an order which was beyond his jurisdiction to do so and I would accordingly quash the same. The

petition will be allowed with costs.