
(2011) 01 P&H CK 0398
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9056 of 1991

Sharanjit Singh and Others	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Northern India Canal and Drainage Act, 1873 — Section 33, 34, 69
Northern India Canal and Drainage Rules, 1873 — Rule 32, 33, 33A, 79A , 79B

Citation : (2011) 161 PLR 604 : (2011) 2 RCR(Civil) 574

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—The contour of the facts, which needs a necessary mention for a limited purpose of deciding the core controversy involved in the instant writ petition and emanating from the record, is that Sub Divisional Officer of Canal Department sent a telegram bearing No. 273 dated 18.6.1983 to Respondent No. 4 Divisional Canal Officer-cum-Collector (for short "the Respondent-Collector"), with regard to alleged unauthorized irrigation by the Petitioners. In the wake of statement dated 6.6.1988 (Annexure P1) of Piara Singh, Reader/Zildar, the case of unauthorized irrigation was prepared against the Petitioners after a lapse of five years, in view of the provisions of Northern India Canal & Drainage Act and Rules (hereinafter to be referred as "the Act and Rules"). They stoutly denied the charge by means of their joint statement (Annexure P2). The Collector imposed the penalty of eight times of the normal Abiana, by virtue of impugned order dated 3.10.1988 (Annexure P3).

2. Aggrieved by the impugned order, the Petitioners filed the appeal, which was dismissed as well by Commissioner, Jalandhar Division (Respondent No. 3), by way of impugned order dated 3.7.1989 (Annexure P4). The revision petition (Annexure P5) filed by them was also dismissed by the Financial Commissioner (Appeals) (Respondent No. 2), vide impugned order dated 8.10.1990 (Annexure P6).

3. The Petitioners still did not feel satisfied and filed the instant writ petition, challenging the impugned orders (Annexures P3, P4 and P6), by invoking the provisions of Articles 226 and 227 of the Constitution of India, inter-alia on the ground that the same have been passed by the concerned authorities without any legal basis, cogent evidence and are contrary to the Act and Rules in this behalf.

4. The Respondents contested the claim of the Petitioners and filed the written statement, inter-alia pleading that on the basis of information report dated 18.6.1983 of SDO, the case of unauthorized irrigation was prepared and the Petitioners were properly heard. According to the contesting Respondents that there was sufficient material/report on record to prove the unauthorized irrigation by the Petitioners. The authorities have rightly passed the impugned orders and no interference is warranted in this respect. It will not be out of place to mention here that the contesting Respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal. That is how I am seized of the matter.

5. Having heard the learned Counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted in this context.

6. As is evident from the record that Petitioners were charged for alleged unauthorized irrigation. There is not an iota of material on record much less cogent and reliable to prove, as to which land was unauthorizedly irrigated or the Petitioners were its owners and occupiers. How, when and in what manner, they irrigated the land, is deeply lacking. The case of unauthorized irrigation was prepared against the Petitioners after five years, that too, only on the basis of statement (Annexure P1) of Piara Singh, Reader Zildar, who admittedly was not posted there at the relevant time, but even then, no opportunity to cross-examine this witness was provided to them. Therefore, no implicit reliance can be placed on his statement. On the contrary, the Petitioners have stoutly denied the charges alleged against them, by virtue of their joint statement (Annexure P2).

7. Sequelly, Section 33 of the Act postulates that "if water supplied through a Canal is used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified. The person on whose land such water has flowed, if such land has derived benefit therefrom or if such person cannot be identified, or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through such Canal, shall be liable or jointly liable, as the case may be, to the charges made for such use."

8. Likewise, Rule 33 of the Rules further posits that "persons using canal water in an authorized manner or suffering it to run to waste shall be chargeable with a special rate in the same manner and at the same rates as prescribed under Rule

32, provided that in every case the Collector may impose a lower charge, if he thinks fit and provided further that this charge may be made for each distinct and separate occasion on which water is so used."

9. It has been specifically escalated in this Rule that for the purpose of such default, the area shall be measured up as soon as possible and the persons chargeable with the special rate having been determined, notice shall at once be given to them on each such occasion that he will be charged accordingly in the demand statement for the area thus watered.

10. Similarly, Rule 33A envisaged that "the Divisional Canal Officer shall within 48 hours of the receipt of any information that the water supplied through a watercourse is being used in an unauthorized manner u/s 33 or is suffered to run to waste u/s 34, inform the Collector in writing giving the date, time and place of such use or waste of water and all other information relevant hereto. The Collector shall, on receipt of such information, institute a summary inquiry for determining, if possible, the persons responsible for the unauthorized use or waste of water and thereafter proceed to determine under Sections 33 and 34 of the Act the charges to be levied and the person against whom such charges are to be levied. The Collector shall give to the parties concerned due notice of date time and place of hearing, in the manner prescribed under Rule 79A to 79I and then give his decision after recording such evidence as may be produced or such further evidence as he may deem necessary."

11. According to Section 69 of the Act any officer empowered under this Act to conduct any enquiry may exercise all such powers connected with the summoning and examining of witnesses, as are conferred on Civil Courts by the Code of Civil Procedure, and every such enquiry shall be deemed a judicial proceeding.

12. A co-joint reading of these provisions would reveal that before making imposition of penalty u/s 33 of the Act and fixing the liability of any person for meeting the liability created under that provision, an inquiry must be held into the matter. The Divisional Canal Officer is authorized to hold such inquiry and to pass appropriate orders. The provisions of Section 69 make it obligatory that every inquiry to be held would be deemed to be a judicial proceeding and must conform to judicial norms. In order to fix the liability, it was necessary for the authorities under the Act to record a finding, based on cogent evidence, that (i) Petitioners were owners and occupiers of the unauthorized irrigated land; (ii) water supplied through a watercourse had been used in an unauthorized manner by the act or neglect of such person; (iii) the water of unauthorized irrigation had actually flowed their land and (iv) such land had derived benefit therefrom. The same are totally lacking in the instant case. In the absence of all the essential ingredients and proper inquiry, legally no penalty can be imposed on the Petitioners in this relevant connection.

13. An identical question arose before a Division Bench of this Court in case

Nikka Singh and Ors. v. The State of Punjab and Ors. 1988 P.L.J. 508. Having interpreted the relevant provisions of the Act/Rules, it was ruled that there must be some cogent evidence on record, proper inquiry in this behalf and matter cannot be left to the subjective satisfaction of the Divisional Canal Officer, who is required to conduct a due inquiry as the proceedings are judicial in nature.

14. As is clear from the record that the entire matter revolves around the statement (Annexure P1) of Piara Singh, Reader/Zileadar, (who was not even posted there at the relevant time), which cannot possibly be used against the Petitioners as no opportunity to cross-examine him, was ever provided to them. No cogent evidence with regard to identification and demarcation of land is forthcoming on record, so as to fasten the liability on the Petitioners. In this manner, to me, the official Respondents-authorities under the Act slipped into legal error and ignored the statutory provisions of law, while imposing penalty on the Petitioners, without following the proper procedure of inquiry. Therefore, the impugned orders cannot legally be sustained in the obtaining circumstances of the case.

15. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

16. In the light of the aforesaid reasons, the instant writ petition is accepted with costs. Consequently, the impugned orders (Annexures P3, P4 and P6) are hereby quashed in this relevant connection.