
(2011) 09 SC CK 0029

In the Supreme Court Of India

Case No : Interlocutory Application No. 7 of 2011 in Original Suit No. 1 of 2007
(Under Article 131 of the Constitution of India)

State of Punjab

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Constitution of India, 1950 — Article 13, 131

Citation : (2012) 1 RCR(Civil) 36 : (2011) 10 SCALE 718 : (2011) 12 SCC 726

Hon'ble Judges : J.M. Panchal, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Baldev Singh, AG, Harish N. Salve, Rajeev Dhawan, R.S. Suri, Mohan V. Katarki, Jagjit Singh Chabbra, A. Rattan and Vinay K. Shailendra, for the Appellant; H.S. Hooda, AG, H.P. Rawal, ASG, Gopal Subramaniam, Vinod A. Bobde, Manjit Singh, Manish Singhvi, AAG, K.K. Lahiri, Ejaz Maqbool, Sakshi Banga, Sudhir Bisla, S. Wasim A. Qadri, Anando Mukherjee, Rashmi Malhotra, Zaid Ali, D.S. Mahra, Vivekta Singh, Tarjit Singh, Kamal Mohan Gupta, D.K. Devesh and R. Gopalakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—The State of Punjab has filed Suit No. 1 of 2007 on July 11, 2007 in this Court under Article 131 of the Constitution read with Order XLVII of the Supreme Court Rules, 1966 and claimed a decree of perpetual injunction restraining the State of Haryana from further proceeding with the digging of channel and construction of an embankment under the project named Hansi Branch - Bhutana Branch Multipurpose Channel project by puncturing the Bhakra Main Line Canal. The said State has also prayed for a decree of mandatory injunction directing the State of Haryana to dismantle the embankment of the project named Hansi Branch - Bhutana Branch Multipurpose Channel Project between the points X and Y in the map appended to the plaint as Annexure `A'. The State of Punjab has further prayed for a decree of perpetual injunction restraining the Union of India, its agents or departments from granting any

clearance to the project named Hansi Branch - Bhutana Branch Multipurpose Channel Project in the absence of the concurrence of the State of Punjab as contemplated and mandated by Article 13 of the Bhakra Nangal Agreement entered into between the erstwhile State of Punjab and State of Rajasthan.

2. The Original Suit No. 1 of 2007 along with I.A. No. 1 of 2007 was placed before this Court for preliminary hearing on August 17, 2007 and after hearing the learned Counsel for the parties, following order was passed by the Court:

Defendants have appeared.

List the Suit along with this application on 05th September, 2007.

Written statement and the objections to this I.A. may be filed in the meantime.

The Defendant-State is restrained from rupturing the Bhakra Main Line Canal connecting the proposed Hansi Branch - Bhutana Branch Multipurpose Channel till then.

After pleadings were complete, the Court had framed five issues for determination by order dated August 26, 2008. Thereafter, pursuant to directions given by the Court from time to time the evidence is being recorded in the Suit.

3. During the pendency of the above numbered Suit, the State of Punjab has filed present interlocutory application, and prayed to grant ad interim injunction restraining the DefendantState of Haryana from further proceeding with the construction of a concrete toe wall/providing concrete lining on the outer slope of the left embankment between RD 45000 and 57000 of the Hansi Branch - Bhutana Branch Multipurpose Link Channel (MPCL). On service of a copy of the interlocutory application the State of Haryana has filed detailed reply to which the State of Punjab has filed rejoinder.

4. This application was heard at great length and in great detail on different dates as indicated in order-sheets. On August 26, 2011 Mr. Mohan Jain, the learned Additional Solicitor General, had submitted a copy of "Brief Note on BML - Hansi Branch - Bhutana Branch Multipurpose Link Channel (MPCL) Haryana" prepared in July, 2011. A copy of the said Brief Note was taken on record and the Plaintiff as well as Defendants were granted time to enable them to file response to the report submitted by the learned Additional Solicitor General. In order to support oral arguments the learned Counsel for the parties were also permitted to file written submissions and accordingly the learned Counsel for the parties have filed written submissions.

5. The State of Punjab has taken out this I.A. to restrain the construction of a concrete toe-wall providing concrete lining on the outer slope of the left embankment. The case of the PlaintiffState of Punjab is that this strengthening will result into an increased collection of back water and the sheet flow towards the State of Punjab. This assertion is made on the footing that because of heavy rains in July-August, 2010 and flooding of the river Ghaggar, which flows on the

northern since of the stretch RD 45,000 to RD 57,000 of this canal, such water-clogging did take place in Punjab, in spite of a breach of the canal at point RD 53,000, and whereby some 15 villages suffered and severe damage and nuisance of various kinds over an area of around 5000 acres had taken place. The breach has already been attended by the State of Haryana, to which Punjab did not object. It is objecting to this strengthening work which is being done to avoid any such breach in the future. It is stated that the strengthening work undertaken by the Defendant State of Haryana is likely to cause further serious nuisance. According to the Plaintiff State of Punjab, the principle of cooperative federalism and territorial integrity of the State of Punjab do not permit the Government of Haryana to construct a toe- wall/providing concrete lining on the outer slope of left embankment as the proposed construction has propensity of causing serious damage to lives and properties situated within the territory of the State of Punjab. It is also claimed that the construction undertaken by the State of Haryana, if allowed to complete, will cause in the event of heavy rains and flooding of River Ghaggar, in future an adverse impact on the population of Punjab in more than 70 villages and would inevitably result in prolonged and perpetual submergence of thousands of acres of lands in more than 32 villages. The State of Punjab has mentioned that the protective measures sought to be undertaken by the State of Haryana are in the very area in which breach had taken place during the floods of 2010 and but for the breach, the floods would have completely inundated and annihilated 70 villages in Punjab territory if sheer pressure of the waters had not resulted in the canal being breached. Under the circumstances, the State of Punjab has filed the present application and claimed the relief to which reference is made earlier. It may be mentioned that the prayer made by the State of Punjab is supported by the State of Rajasthan.

6. Before this Court deals with the submissions advanced at the Bar by the learned Counsel for the parties, it is absolutely necessary to note and explain the topography of the region where construction of concrete toe wall/providing concrete lining on the outer slope of the left embankment is undertaken by the State of Haryana.

7. The Bhakra Main Line Canal runs from the Bhakra Dam through the State of Punjab and goes to the State of Haryana and then further goes towards the State of Rajasthan. The State of Haryana was carved out from the then bigger State of Punjab and it came into existence on November 1, 1996. There are two rivers which flow in this particular region. One is known as the Patiala Nadi. It runs almost parallel to the Bhakra Main Line Canal from north to south- west. There is another river named Ghaggar which runs from north-east to south-west. The plateau of Punjab and Haryana is a flat plateau, which slopes towards the State of Haryana. There is a Bandh which has been constructed on the south of Ghaggar River. The Bandh runs from north-east to south-west. This Bandh was constructed way back in the year 1950 when the State of Haryana was not even created. The Bandh was constructed so that when the river gets flooded during monsoon, its water would not further overflow towards the southern side. In the

year 1970, the State of Punjab constructed what is known as the Mirapur Drain, which runs from a point to the north-east of river Ghaggar in the State of Punjab and joins into this river somewhere to the west of the point RD 45000. The Court was informed that this drain is 30 feet wide and 10 feet deep. It was basically constructed to drain the excess water.

8. It is pointed out on behalf of State of Haryana in its reply that though the injunction, as prayed for by the State of Punjab in I.A. No. 1 of 2007, was granted, the construction of the canal was not restrained and it was completed by the year 2008 at the risk of State of Haryana. It is also stated in the reply that due to injunction granted by this Court, no water has been flowing in this canal. It is common ground between the parties that at the stretch between point RD 45000 to 57000, the canal and the Ghaggar River run parallel to each other for a distance of about three and a half kilometres within the territory of State of Haryana. The Bandh, however, is towards the Punjab side and it is not disputed that the work which the State of Haryana is presently carrying out is at the bottom of the Bandh and particularly on the northern side, but up to the surface level a little above so that there should be no seepage of water and the Bandh does not get weakened.

9. It is pointed out by the State of Punjab that there was so much heavy rain and overflow of water in July/ August, 2010 that it led to a breach at the point RD 53000 (almost at the centre of this stretch RD 45000 to 57000), yet because of the Bandh and the canal there was huge back water formation in the territory of Punjab, which led to inundation of 15 villages in the State of Punjab. It is claimed by the State of Punjab that the breach has been attended to by the State of Haryana to which the State of Punjab did not object. According to the State of Punjab, what is being objected to is the present work and it is asserted that if that is permitted, in the event of heavy rain fall and excessive water in river Ghaggar, the water will not flow towards the State of Haryana, but the back water will spill into larger territory of the State of Punjab. It is stressed that for protection the population of one State, problem cannot be created in another State.

10. On behalf of the State of Haryana, however, it is pointed out that all the 15 villages, which the State of Punjab has pointed out as having suffered, are to the north of the Mirapur Drain and are quite far off. Only four of those villages are somewhat near on the northern side of this Mirapur Drain. It is, therefore, contended that if there is heavy rain waters from the northern side of Mirapur Drain, it would get collected into that drain and go down into Ghaggar River to a point to the west of RD 45000. According to the State of Haryana, if there are heavy rains, the water in the area between the Mirapur Drain and the Ghaggar River will go into the Ghaggar River or spill over into the Punjab territory because of the Bandh, but that has always been so, and if the Bandh is not strengthened and more breaches take place, water will flow down towards Haryana definitely affecting 19 villages in the immediate vicinity. The State of Haryana has claimed

that this is what had happened in July, 2010 when as against some 5765 acres of land getting submerged in the State of Punjab, more than 12,036 acres of land had got submerged in the State of Haryana affecting the population of some 19 villages. It is pointed out by the Defendant- State of Haryana that earlier way-back in the year 1993 this Bandh had breached and the State of Haryana had attended it at that very point. According to the State of Haryana, the canal did not exist at that point of time and, therefore, the Bandh, which was very much there, had to be repaired. The State of Haryana has asserted that the Bandh was created when the State of Haryana was not in existence and creation of the Bandh was with a view to preventing the damage basically arising out of heavy flow of water towards villages to the south of the Bandh, which are now in Haryana. Explaining further, it is pointed that the State of Haryana had repaired this Bandh in the year 1993 and subsequently in the year 2010 and that the Defendant State of Haryana should be permitted to strengthen the basement of the Bandh to avoid the recurrence of such an event. What is asserted by the State of Haryana is that the breach which had taken place in the year 2010 was attended to, and to avoid the recurrence the foundation of the Bandh is being strengthened to stop the seepage of water. What is mentioned by the State of Haryana is that the work, which is being carried out, is not in the canal but is at the bottom of the Bandh, which is towards the Punjab side. It is further stated that the work is up to the surface level and it is only to avoid the seepage of water therein. Thus, the State of Haryana prays to dismiss the I.A. No. 7 of 2011 filed by the State of Punjab.

11. It is necessary to notice that the State of Haryana has relied upon the report of the Central Water Commission. The State of Punjab has objected to the reliance thereof on the ground that when the engineers of Central Water Commission visited the particular area, the Punjab engineers were not informed and it is a one-sided report. However, it is material to note that the report clearly states that the strengthening of the basement of the canal is not going to cause any serious prejudice as is claimed by the State of Punjab on the Punjab side of the Bandh. It is also mentioned in the report that there are already siphons provided for water to flow under the canal, which is, of course, at a height of ten to twelve feet above the surface level. In the stretch between RD 45000 to 57000, this Court is not much concerned with canal or its height, but with the strengthening of the basement of the Bandh.

12. As noticed earlier, the Bandh was constructed at a time when the State of Haryana was not carved out. The State of Haryana has a duty to protect the lives and property of the citizens residing within its territory and a right to carry out the work within its territory to protect its people. It is true that the State of Punjab has produced photographs and other materials to show the flooding in the area to the north of Ghaggar Bandh at the stretch between RD 45000 to 57000. However, in view of what is stated earlier, it is not possible to hold that the previous flooding except for a limited area in Punjab was caused basically because of Ghaggar Bandh.

13. As against that, this Court finds that the very purpose of the Bandh has been to prevent the flooding of the areas on the southern side of the Bandh, which is in Haryana. The particulars supplied by the State of Haryana to this Court would show that extensive damage was caused to the 19 villages of the State of Haryana, which was obviously due to breach of this Bandh/canal at the point RD 53000.

14. It is relevant to mention that the Professors of IIT, Roorkee, who visited the site, had suggested remedial measures in their report stating that "seepage might be one of the causes of breach of Hansi-Bhutana Branch MPLC... Necessity of proving a barrier on both banks of breached reach of canal and on the left bank only in similar weak reaches of canal to be identified by department. This could be done by way of steel sheet pile or RCC wall or steel sheet pile with RCC cap".

15. In fact the State of Punjab's own expert has also admitted the need to strengthen the Bandh. He had made another suggestion in his report of July 13, 2011. The suggestion made is as under:

It is a well understood knowledge that a deep vertical cut-off or a sheet pile is better suited for seepage control as compared to a toe wall and,... toe walls are generally shallower in comparison and are usually required in order to provide support for slope protection measures such as stone pitching.

Further, paragraph 10.1 of the CWC Report of July, 2011 mentions following relevant facts:

The RCC toe wall/protection wall is being constructed with a RCC CAP whose top has been shown to be flush with NSL. This implies that the top of the toe wall will be at or slightly above or below NSL. Therefore the toe wall will not act as an obstruction for flow of water.

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Construction of the toe wall is a part of the embankment, with its top at NSL, and its construction will not interfere with the existing drainage system in a very significant manner. (NSL = Natural Surface Level)

16. (i) An assertion is made by the State of Haryana that in fact State of Haryana had relied on the principle of cooperative federalism against the State of Punjab during the course of arguments in its Suit No. 6 of 1996 relating to the construction of the Satluj Yamuna Link Canal and other schemes and that the State of Punjab is not entitled to invoke the said principle against the State of Haryana because of its conduct. We do not think it appropriate to go into this issue in the present application. Similarly, the argument advanced on behalf of the State of Punjab that after having repaired the breach in 2010, the current strengthening work by Haryana is nothing but political posturing need not be examined by this Court because in reply to this contention, it is argued by the learned Counsel for the State of Haryana that in fact I.A. No. 7 of 2011 is

nothing but political posturing on the part of State of Punjab and the application has been motivated by internal politics in Punjab just prior to impending elections late this year/early next year. Such an issue cannot be decided on the basis of allegations and counter-allegations made by the parties and appropriate evidence will have to be led by the parties to enable the Court to decide the same.

(ii) The apprehensions expressed by the State of Punjab in paragraph 16 of the I.A. No. 7 of 2011 are based on hypothesis. We are informed by the State of Punjab that the cunnette capacity of Mirapur Drain is 829 cs. after its widening in 2003-2004 and is not sufficient to drain all the flood water. We are also informed that the ground level of the villages varies between 778 to 784 ft. The highest flood level of River Ghaggar is of the order of about 794 ft. as mentioned in the 2008 report of CWC. It was, therefore, submitted that if the water level in the area of the north of the canal goes up by 2 ft., the flooding in the villages will be to the extent of 8 ft. (792.4 - 784). As of now itself, it is difficult to accept that the flooding in the areas to the north of Mirapur Drain was caused due to the flooding in River Ghaggar, where 4 villages are situated somewhat nearby to the north of Mirapur Drain. Assuming to be so, the other 11 villages are much further to the north and nearer to the Patiala Nadi. If there are heavy showers because of monsoon and the rivers and nalas get flooded that will be because of heavy rains all over the areas. Heavy rains will be in those areas also and it is difficult to accept that the areas in the 15 villages got flooded because of the Ghaggar Bandh, despite the breach therein. In any case it is very clear that the damage in the 19 villages in Haryana which are on the southern side of River Ghaggar is clearly attributable to the over flowing waters of River Ghaggar as well as water flowing through the breach. The relief claimed in the interlocutory application cannot, therefore, be granted on the basis of a hypothesis, that the strengthening of the Bandh will cause flooding in 70 villages. The submission made on behalf of the State of Punjab that strengthening of Ghaggar Bandh would cause backwater formation in Punjab and thus, exacerbate the nuisance of submerging of villages in Punjab to the north of the Ghaggar Bandh, is not correct because the Ghaggar Bandh was constructed by the erstwhile State of Punjab in 1950s for the purpose of preventing flood waters, entering and submerging areas to the south of the Bandh. It was constructed neither to guide the course of River Ghaggar nor was it designed to be deliberately weak enough to give way in heavy floods. It was constructed to hold backwaters in the heaviest of floods to prevent flood waters from ever submerging the villages to the south. The Bandh performed the function for which it was designed until the first breach occurred in 1993. Though the breach which had occurred in 1993 was repaired and stone-pitching was applied to the outer slope to make the Bandh stronger, the flood of 2010 resulted into another breach in the same area causing serious and widespread damage. The case of State of Punjab rests on the premise that the breach repaired area should be allowed to remain as it is without strengthening it so that it can breach again if there is flood once again,

and this area can act as a pressure release valve, which would cause less damage to the State of Punjab. This assertion of right is contrary to the rights of the Defendant State of Haryana, which is entitled to protect its inhabitants from floods just as erstwhile State of Punjab was entitled to protect its inhabitants to the south of the Bandh. The State of Haryana is only ensuring that after the two disastrous breaches of 1993 and 2010, a breach does not occur in the future. This Court is of the opinion that the State of Punjab cannot reasonably object to this course of action.

17. As is evident, a concrete toe-wall or a vertical cut-off below the ground from the natural surface level is intended to prevent slippage of the concrete lining and also prevent seepage of water below the ground level because it is such high level of seepage continuing throughout the monsoon that erodes the base of the Bandh/embankment and by a sliding movement makes the Bandh weak and unstable. Such a weak and unstable Bandh is unable to withstand the pressure of the flood water above ground level. The concrete lining proposed on the outer slope is to strengthen the Bandh for withstanding flood water pressure above ground level and to prevent slippage of the lining. Both these measures have only one object, i.e., to prevent a breach of the Bandh. The toe-wall would prevent seepage below ground and also prevent the weakening of the base of the Bandh, whereas the concrete lining of the outer slope of the Bandh above ground level would enable it to withstand the pressure of flood water.

18. Before we conclude, we must note that although both the States are canvassing the principle of inter-State cooperation, yet there is this unfortunate controversy. The Central Government has not taken any stand whatsoever. Whether the dispute should be referred to the Inter-State River Water Disputes Tribunal, is one of the issues to be decided in the suit. We are, however, required to decide the interim application on the basis of data which is made available to us.

19. Hence, in view of the larger damage, which was caused in Haryana in the year 2010, and which is likely to be caused in Haryana, if the Bandh is not properly repaired as undertaken, the balance of convenience is in favour of the Defendant State of Haryana. It is rightly pointed out by the State of Haryana that if the relief, as prayed for, is granted to the State of Punjab, it is State of Haryana, which will suffer greater loss and irreparable injury. It cannot as well be denied that State of Haryana has the right to carry out the necessary work in its territory and also the duty to its citizens.

20. For the foregoing reasons, it is not possible to entertain this Interlocutory Application. The same is, therefore, rejected.