

(1968) 05 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 993 of 1968

Tehel Singh and Others

APPELLANT

Vs

Superintending Canal Officer, Ferozepur and Others

RESPONDENT

Date of Decision : 07-05-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Northern India Canal and Drainage Act, 1873 — Section 30

Citation : AIR 1969 P&H 1

Hon'ble Judges : Gurudev Singh, J

Bench : Single Bench

Advocate : M.M. Punchhi, for the Appellant; P.N. Aggarwal, M.S. Dhillon, for A.G., for the Respondent

Judgement

1. The lands of the 24 petitioners and respondents 6 to 9 are being irrigated from a common outlet RD. 64522-R Daulatpur minor, situate in village Diwan Khera, district Ferozepur. Respondents Nos. 3 to 5, who used to receive water for irrigating their own lands from another outlet (RD. 58230-R) of the same minor, applied for transfer of their 19 acres of land to the outlet from which the petitioners have been irrigating their land, and the Divisional Canal Officer, Abohar Division, accepted their application by this order, dated 18th September, 1967, purporting to have been made under S. 30-B (2) of the Northern India Canal and Drainage Act No. VIII of 1873 (herein after called the Act). Aggrieved by this order, nine of the present petitioners preferred an application for revision before the Superintending Canal Officer, Ferozepur, availing of the provisions of sub-section (3) of Section 30-B of the Act. After hearing the parties, the Superintending Canal Officer, however, dismissed the revision application by this order, dated 10th January, 1968. This is a laconic order, the operative part of which is in these words:

"Both the parties were present and heard in detail. Decision. The appeal is dismissed."

2. It is the validity of this order which is being questioned in these proceedings under Articles 226 and 227 of the Constitution.

3. The sole contention raised by Mr. M. M. Punchhi, who appears for the petitioners, is that the impugned order of the Superintending Canal Officer, which does not mention any reason for rejecting the revision application and is not a speaking order, is no order in the eye of law and cannot be sustained, as it does not even indicate that he had applied his mind to the merits of the case.

4. In opposing the petition, the respondent's learned counsel, Mr. P. N. Aggarwal, besides contending that the impugned order is perfectly valid and it was not incumbent upon the authorities concerned to pass a speaking order, has urged by way of preliminary objection that no relief can be granted to the petitioners as no legal right vesting in them has been infringed, that some of them were not parties to the revisional proceedings before the Superintending Canal Officer and that some of the shareholders, who are interested in the outlet from which the petitioners irrigate their fields, have not been impleaded as parties. The preliminary objections raised, in my opinion, have no substance. Attachment of more land to the outlet from which the petitioners have been irrigating their fields is bound to affect the irrigation of their own lands, and it is futile to say that the impugned order does not operate to their prejudice, especially when it is not denied that they are legally receiving water for irrigation. The mere fact that some of the shareholders have not been impleaded as parties cannot result in the dismissal of this petition as all that is prayed for by Mr. Punchhi is that a direction be issued to the Superintending Canal Officer (respondent No. 1) to rehear the revision application and dispose of it on merits by passing a speaking order.

5. The material question that calls for decision in this case is: Whether the impugned order, which is not a speaking order and contains no indication of the reasons that weighed with the Superintending Canal Officer in rejecting the revision application, is a valid order. It is not disputed that in dealing with an application for revision under sub-section (3) of section 30-B of the Act, the Superintending Canal Officer exercises judicial or at least quasi-judicial powers. In fact, he acts more like a Judge than an executive or administrative officer. The procedure prescribed for hearing the appeals and revisions under the Act and the Rules framed thereunder approximates to that which an appellate or revisional Court has to follow. In these circumstances, it cannot be disputed that in dealing with an application for revision the Superintending Canal Officer acts judicially and the order disposing of such an application is more in the nature of a judicial order than an administrative or executive order.

6. Learned counsel for both the parties have placed reliance upon the recent decision of their Lordships of the Supreme Court in *Bharat Raja Vs. The Union of India (UOI) and Others*, and sought to derive support for their respective contentions from this authority. In that case, their Lordships were dealing with the validity of an order made by the Central Government in exercise of its

revisional powers under rule 55 of the Mineral Concession Rules, 1960, framed under the Mines and Minerals (regulation and development) Act, 1957. In response to a notification issued by the Andhra Pradesh Government, Bhagat, Raja, the appellant before their Lordships, and respondent No. 3 applied for prospecting licences. The Government of Andhra Pradesh preferred the latter and rejected the application of the appellant Bhagat Raja for the mining lease. Bhagat Raja went up in revision u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957, read with rule 54, but without success. The only order of the revisional authority communicated to the appellant was that after careful consideration of the grounds stated by him in his application, the Central Government had come to the conclusion that there was no valid ground for interfering with the decision of the Government of Andhra Pradesh rejecting his application for grant of mining leases. It was contended before their Lordships in appeal by way of special leave that this order was not valid. Their lordships of the Supreme Court, after reviewing the case-law on the subject including earlier decisions of that Court agreed with this contention, observing as follows:

"Let us now examine the question as to whether it was incumbent on the Central Government to give any reasons for its decision on review. It was argued that the very exercise of judicial or quasi-judicial powers in the case of a tribunal entailed upon it an obligation to give reasons for arriving at a decision for or against a party. The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Article 227 of the constitution and of appellate powers of this Court under Article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantages if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected", or, "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal. Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the others, as it must, and the Central Government adopts the reasoning of the State Government, this Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the state Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the state Government this Court, in appeal may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances what is known as a "speaking

order" is called for. In this view of the matter, the order of the Central government was struck down, and it was directed to decide the review application afresh."

7. Mr. M. M. Punchhi, appearing for the petitioners, has argued that his case stands on a better footing than *Bharat Raja Vs. The Union of India (UOI) and Others*, as in this case the Superintending Canal Officer, while disposing of the revision application, has not even referred to the fact that the various grounds of revision urged by the petitioners were considered by him, but has merely dismissed the petition for revision without assigning any reason. He has further pointed out that the Superintending Canal Officer has not even taken the trouble of saying that he agreed with the reasons recorded by the Divisional Canal Officer whose order was being challenged before him, and in this situation, it is difficult to predicate what weighed on the mind of the Superintending Canal Officer in rejecting the petitioners' application for revision.

8. The respondents' learned counsel has, on the other hand, argued that the question whether the orders made by the Superintending Canal Officer in exercise of his powers under sub-section (3) of section 30-B must always be speaking orders, can be adopted, and it would depend, upon the facts and circumstances of each case and the terms of the order passed by such authority to determine whether such an order was valid or not. According to his submission a distinction has to be made between the orders by which the decision of the Divisional Canal Officer, against which a petition for revision is directed is set aside, and an order which confirms that decision. According to him, in the latter type of cases it is not necessary for the Superintending Canal Officer to set out his reasons for rejecting the revision application and maintaining the order of the Divisional Canal Officer as the affirmance of the order of the Divisional Canal officer implies the acceptance of his reasoning and it is only in those cases, as Mr. Aggarwal urged, in which the order of the Divisional Canal Officer is interfered with, set aside or modified that reasons will have to be given in his order by the Superintending Canal Officer. For these contentions, he sought to derive support from an earlier decision of their Lordships of the Supreme Court in *Nandram Hunatram, Calcutta Vs. Union of India (UOI) and Another*, . This authority has been noticed in *Bharat Raja Vs. The Union of India (UOI) and Others*, and was distinguished by their Lordships in these words.

"The last portion of the passage was relied by the counsel for the respondents in support of his argument that as the order in review is merely in confirmation of the action of the State Government reasons need not be given. But the above dictum cannot be considered dissociated from the setting of the circumstances in which it was made. There it was plain as a pike-staff that the State Government had no alternative but to cancel the lease; the absence of any reasons in the order on review could not possibly leave anybody in doubt as to whether what the reasons were. As a matter of fact in the setting of facts, the reasons were so obvious that it was not necessary to set them out. There is nothing In this

decision which is contrary to Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), ."

9. The decision in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), was also noticed in detail Observation from both the minority and the majority judgments were set out by their Lordships in Bharat Raja Vs. The Union of India (UOI) and Others, , and the legal position was summed up in these words:

"As has already been said, when the authority whose decision is to be reviewed gives reasons for its conclusion and the reviewing authority affirms the decision for the reasons given by the lower authority, one can assume that the reviewing authority found the reasons given by the lower authority as acceptable to it, but where the lower authority itself fails to give any reason other than that the successful applicant was an old lessee and the reviewing authority does not even refer to that ground, this Court has to grope in the dark for finding into reasons for upholding or rejecting the decision of the reviewing authority. After all a tribunal which exercise judicial or quasi-judicial powers can certainly indicate its mind as to why it acts in a particular way and when important rights of parties of reaching consequence to them are adjudicated upon in a summary fashion, without giving a personal hearing where proposals and counter-proposals are made and examined, the least can be expected is that the tribunal should tell the party why the decision is going against him in all cases where the law gives a further right of appeal."

10. It is not disputed that the orders passed by the Superintending Canal Officer u/s 30-B (3) of the Act are open to scrutiny by this Court in exercise of its jurisdiction under Arts. 226 and 227 of the Constitution. As such, unless the reasons are indicated in the order, it is impossible for this Court to appreciate what weighed with the Superintending Canal Officer in making the particular order. Though I agree with Mr. Aggarwal that the order of a Superintending Canal Officer may not be as detailed as the order of a judicial officer and his order need not be in the form of a judgment of a Court of law, but at the same time when he disposes of or adjudicate upon valuable rights of the parties and is required to act judicially after hearing the parties and applying sons for which he had taken a particular view. I also agree with Mr. Aggarwal that if the Superintending Canal Officer is in full agreement with the reasons recorded by the Divisional Canal Officer and upholds the latter's order in exercise of his revisional jurisdiction, it may not be necessary for him always to reiterate or set down those reasons but his order must at least indicate that he had adopted the reasoning of the subordinate authority or on consideration of the same accepted them as valid and sufficient to uphold the order. Coming to the case in hand, we find that by the impugned order the Superintending Canal Officer has merely rejected the revision application. He has not only failed to indicate the reasons for such rejection but has also not taken the trouble of recording that he agreed with the reasons given by the Divisional Canal Officer in the order which was the subject

matter of the revision petition.

11. For all these reasons, I am of the opinion that the impugned order of the Superintending Canal Officer is no order in the eye of law, and it appears that he had not applied his mind to the facts of the case. Accordingly, I accept the petition with costs and direct the superintending Canal Officer to re-hear the parties and dispose of the petition for revision in accordance with law. The parties are directed to appear before him on 30th May 1968.

12. Petition allowed.