

CWP-16537-2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-16537-2014

Date of Decision: 30.10.2015

Satbir and others

... Petitioner(s)

Versus

The Superintending Canal Officer and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Baljinder Singh, Advocate,
for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. Shailendra Mohan, Advocate,
for respondent Nos.3 and 4.

Paramjeet Singh, J.(Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 11.12.2013 (Annexure P-5) passed by respondent No.2-Divisional Canal Officer, Hisar whereby he approved the transfer of 256.42/246.17 acres area from outlet RD No.17200-L to newly fixed outlet No.19200-L, Singhwa Distributary and the order dated 18.06.2014 (Annexure P-13) passed by respondent No.1-Superintending Canal Officer whereby appeal preferred

CWP-16537-2014

by the petitioners has been dismissed.

Brief facts of the case are to the effect that an application was moved by the shareholders-Satbir and others for sanction of new outlet at RD 14300-L Singhwa Distributary by transfer of 144.25/81.22 acres area from outlet No.RD-17200-L Singhwa Distributary and further transfer of 56.95 acres area UCA to CCA, 8.78/2.93 acres area from outlet No.RD-11500-L Singhwa Distributary and transfer of 5.85 acres area from UCA to CCA, 45.59 acres area from outlet at RD No.12000-R Singhwa Distributary and further conversion of 44.45 acres area from UCA to CCA 24.81/22.59 acres area from outlet No.RD17000-R Singhwa Distributary and 18.00/x acres from outlet No.RD 6500-L Kharkari Distributary and further its conversion from UCA to CCA in villages Khanpur and Sindhar, Tehsil Hansi, District Hisar. The case was got investigated through Zileadar Rajli and Sub Divisional Canal Officer, Barwala who after investigation and site inspection recommended the case for new outlet at RD 14300-L Singhwa Distributary and transfer of area from outlets No.RD-17200-L, 11600-L, 12000-L, 17000-R Singhwa Distributary and 6500-L Kharkari Distributary to the new outlet and submitted the scheme under Section 17 of the Haryana Canal and Drainage Act, 29 of 1974 (for short, '1974 Act'). On receipt of the case, scheme was published under the provisions of the 1974 Act for inviting objections/suggestions, if any to the proposal. The notices were properly served upon all the concerned through Circle Canal Patwari.

CWP-16537-2014

Respondent No.2-Divisional Canal Officer after hearing the parties approved the demand of the applicants for sanction of new outlet at RD 14300-L Singhwa Distributary for an area of 241.43/170.98 acres. Thereafter, Sushil Kumar and others filed application for transfer of 256.42/246.47 acres of area from outlet No.RD17200-L Singhwa Distributary, 14.83/14.30 acres of area from outlet No.RD 20500/R Singhwa Distributary and transfer of 53.30/53.30 acres of area from outlet No.RD-21000-L Singhwa Distributary and fixing a new outlet at RD 19200-L Singhwa Distributary of village Sindhar, Datta and Musudpur, Tehsil Hansi, District Hisar. The case was got investigated through Zileadar Rajli and Sub Divisional Canal Officer, Barwala who after investigation and site inspection recommended the case for transfer of 256.42/246.47 acres of area from outlet at RD No.20500-R Singhwa Distributary and transfer of 53.50/53.0 acre from outlet RD-21000-L Singhwa Distributary and fixed a new outlet at RD-19200-L Singhwa Distributary and submitted the scheme under Section 17 of the 1974 Act. On receipt of the case, scheme was published for inviting objections/suggestions, if any, to the proposal. The notices were properly served upon all the concerned through Canal Patwari Halqa. Respondent No.2-Divisional Canal Officer after hearing the parties approved the demand of applicants for fixing new outlet at RD-19200-L Singhwa Distributary, vide impugned order dated 11.12.2013 (Annexure P-5). Thereafter, two separate revisions were preferred before

CWP-16537-2014

respondent No.1-Superintending Canal Officer, Bhakra Water Services against the orders dated 29.08.2013 and 11.12.2013 (Annexure P-5) passed by respondent No.2-Divisional Canal Officer and the same were remanded to respondent No.2-Divisional Canal Officer with a direction to rectify the decision, if needed after considering correct area and existence of lined watercourse, vide impugned order dated 12.02.2014 (Annexure P-8). In pursuance of order dated 12.02.2014 conveyed to the Divisional Canal Officer vide Endst. dated 20.02.2014, instead of deciding the matter on merits, the Divisional Canal Officer submitted the report to respondent No.1-Superintending Canal Officer vide letter dated 28.04.2014 (Annexure P-9) which reads as under:

“The above cited case has already been confirmed vide your good office letter No.562/CRC/F dated 27.01.2014 and No.9795/CRC/F Dated 17.10.29013. But now as per your direction B-Form and as well as khakha plan of outlet RD-19200/L and 14300/L Singhwa Disty. Has now been corrected. Fresh B-Form and khakha Plan has also been attached with the case. There is no need to amend the DCO decision dated 11.12.2013 and 29.08.2013 as both the decision have been decided properly under the Canal Act.

As for as position of existing lined watercourse is concerned the shareholders are ready to bear the cost of remodelling of outlet if required any. An affidavit has been submitted by the concerned shareholders in this regard which is attached with the

CWP-16537-2014

case. Report is submitted for the further necessary action and for early approval of the A-Form.”

Feeling aggrieved against the letter dated 28.04.2014 (Annexure P-9), petitioners and others approached respondent No.1-Superintending Canal Officer who proceeded with earlier appeals i.e. Appeal Case No.36/13 and Appeal Case No.3/14 and upheld the orders dated 29.08.2013 and 11.12.2013 (Annexure P-5) by recording the following findings:

“Decision: Revenue Missal, khaka plan, B-form of the chaks and other connected record have been perused. Arguments of the counsel of parties have also been considered at length. The main objections of the appellants is that their fields would not get proper irrigation as watercourse of outlet RD-17200/L Singhwa Distributary has been lined for more area. After splitting of area, command would suffer. The respondents have already given affidavit that they would bear the cost of remodelling if watercourse is required.

Keeping in view the above facts, both appeals are rejected and decisions of the Divisional Canal Officer dated 29.08.2013 and date3d 11.12.2013 are upheld.”

Hence, this writ petition.

In pursuance of notice of motion, respondent Nos.1 and 2 filed reply by taking a preliminary objection that revision lies to the Chief Canal Officer against the order of respondent No.1-Superintending

CWP-16537-2014

Canal Officer. The impugned orders (Annexures P-5 and P-13) and letter (Annexure P-9) have been rightly passed by the canal authorities.

I have heard learned counsel for the parties and perused the record.

Admittedly, vide order dated 12.02.2014 (Annexure P-8), respondent No.1-Superintending Canal Officer remanded the case to respondent No.2-Divisional Canal Officer for rectifying the decision, if needed, after considering correct area and existence of lined water course. However, respondent No.2-Divisional Canal Officer, vide letter dated 28.04.2014 (Annexure P-9), reported that the above cited case has already been confirmed vide SCO's office letter No.562/CRC/F dated 27.01.2014 and there is no need to amend the decisions dated 11.12.2013 and 29.08.2013 as the same have been passed properly in accordance with law. In pursuance of order dated 12.02.2014 (Annexure P-8) passed by respondent No.1-Superintending Canal Officer, respondent No.2-Divisional Canal Officer, being a quasi judicial authority, was required to pass an order after hearing the parties and considering various other aspects including comparative command statement and possibility of irrigation by flow from the outlets wherein transfers were sought. However, respondent No.2-Divisional Canal Officer had not decided the matter on merits, rather decided on the basis of earlier approval dated 27.01.2014 given by the Superintending Canal Officer and submitted the report to the Superintending Canal Officer without hearing the parties.

CWP-16537-2014

The administrative approval and quasi judicial order are two different things. If the affected party challenges the administrative act as per statutory provisions, the quasi judicial authorities must decide the same on merits after affording opportunity of hearing. In the present case, since the case was remanded to the Divisional Canal Officer, he was required to pass an order in accordance with law, not by way of a letter written to respondent No.1-Superintending Canal Officer.

In view of above, the impugned order dated 11.12.2013 (Annexure P-5) and letter dated 28.04.2014 (Annexure P) are set aside being not sustainable in the eyes of law. Since the basic order dated 11.12.2013 (Annexure P-5) passed by respondent No.2-Divisional Canal Officer has been set aside, the impugned order dated 18.06.2014 (Annexure P-13) also stands set aside. The matter is remanded to respondent No.2-Divisional Canal Officer with a direction to decide the matter afresh as early as possible preferably within a period of three months, from the date fixed for appearance of parties, by passing a speaking order on merits in accordance with law. Parties through their counsel are directed to appear before respondent No.2-Divisional Canal Officer on 26.11.2015.

Disposed of.

30.10.2015
parveen kumar

(Paramjeet Singh)
Judge