

CWP-15005-2012

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

**CWP-15005-2012 (O & M)
Date of Decision: 05.04.2016**

Rajinder Singh @ Sonu

... Petitioner(s)

Versus

Superintending Canal Officer and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. H.S.Dhindsa, Advocate,
for the petitioner.

Mr. B.S.Cheema, DAG, Punjab.

Ms. Sunita Punia, Advocate for
Mr. B.S.Bali, Advocate,
for respondent No.3.

Paramjeet Singh Dhaliwal, J.

Instant writ petition filed under Articles 226/227 of the
Constitution of India arises out of a dispute of alleged demolished
watercourse. The proper distribution of water through a watercourse for

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a farmer is very important. Irrigation is considered as lifeline for the farming community. A drop of water is like a drop of blood for the farmers. Often majority of disputes in rural areas resulting into injury cases and some times murder, occur over demolition of watercourse and taking turn of water. In such cases, many a time the canal officers specifically Divisional Canal Officer and the Superintending Canal Officer do not refer to the relevant provisions and instructions, rather decide such sensitive cases in a casual manner merely saying that prayer is allowed in the interest of better irrigation. The canal officers perform quasi-judicial functions and thus when an order is passed, it should contain point for determination and reasons for the decision. It is well settled that in quasi-judicial matters, the Tribunal or authorities concerned are expected to pass a speaking order. The canal officers must decide such sensitive disputes taking into consideration Sections 30-FF and 68 of the Northern India Canal and Drainage Act, 1873 (for brevity, 'the Act') and the Instructions contained in the Punjab Irrigation Manual. They must realize the importance of water for irrigation and its consequences.

In the instant writ, prayer made is for partially quashing the order dated 01.06.2012 (Annexure P-7) passed by respondent No.1-Superintending Canal Officer.

Brief facts of the case are to the effect that respondent No.3-Gajjan Singh moved application for restoration of watercourse to the

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effect that from the time when canal was carved out, his area comprised in killa Nos.13//6. 7, 13, 14/1-2, 15-1, 17 within the revenue limits of village Rawan, Tehsil Phillaur and land comprised in killa No.194//6/1, 6/2, 6/3, situated within the revenue limits of village Bilga, have been irrigated through outlet Burji No.24975-L Talwan Minor. Petitioner-Rajinder Singh @ Sonu allegedly demolished the said watercourse existing in his land comprised in killa Nos.194//11, 12/1, 12/3 and 13 towards northern berm of village Bilga, Tehsil Phillaur. The Divisional Canal Officer referred the matter to the Sub Divisional Officer to inquire into the matter. Thereafter, the same was got done through Zilladar concerned who found the demand of applicant-Gajjan Singh to be unjustified. However, Sub Divisional Officer recommended the restoration of the watercourse to the Divisional Canal Officer. Thereafter, the matter was referred back to the Sub Divisional Officer for visiting the spot and recording the statements of concerned persons in respect of restoration of watercourse. After recording the statements, restoration of watercourse was recommended. After giving notices to the concerned parties and taking into consideration the record, the Divisional Canal Officer rejected the prayer of respondent No.3 vide order dated 26.11.2008 (Annexure P-3). Against that, respondent No.3 preferred appeal before the Superintending Canal Officer, who allowed the same and set aside the order dated 26.11.2008 (Annexure P-3) passed by the Divisional Canal Officer vide order dated 08.04.2009 (Annexure P-5).

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Against that, the petitioner filed CWP No.8451 of 2012 which was disposed of vide order dated 14.03.2012 (Annexure P-6) whereby the order dated 08.04.2009 (Annexure P-5) was set aside and matter was remanded to the Superintending Canal Officer with a direction to pass a fresh speaking order discussing the *naka* taking and *naka* giving points as per the *Wahr-bandi* and to see whether turns of water had ever been fixed on the alleged demolished watercourse. In pursuance of the order of this Court dated 14.03.2012 (Annexure P-6), the Superintending Canal Officer proceeded with the matter and ultimately ordered restoration of the watercourse vide impugned order dated 01.06.2012 (Annexure P-7). A relevant extract of the impugned order dated 01.06.2012 (Annexure P-7) reads as under:

“As per record and as per the khasra girdawaris of Hari 2005-06, Sauni 2006, Hari 2006-07 and Sauni 2007, the watercourse of the respondent for the land situated in village Bilga i.e. 194//7, 8/1 and 8/2, at point 'BC' is hereby ordered to be restored by issuing speaking order under Northern India Canal and Drainage Act (8), 1973 under Section 30FF (4).”

Hence, this writ petition.

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

Learned counsel for the petitioner vehemently contended that there is no *Wahr-bandi* to indicate from which point the petitioner is

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taking his turn of water and at which point giving the turn of water. There is no record with the canal authorities to show that from which outlet, the petitioner was getting irrigation. He further contended that area of respondent No.3-Gajjan Singh falls on Outlet RD No.21900 (new No.21000-L) and report of the concerned Patwari was sought in this regard. In the said report, it is mentioned that area of Gajjan Singh was never connected with Outlet No.RD No.24975-L Talwan Minor and never irrigated from the same outlet. He further contended that *khasra girdawari* only indicates that fields are being irrigated, but it does not indicate as to from which outlet it is being irrigated. The inference drawn by the Superintending Canal Officer is not sustainable in the eyes of law. The report of Zilladar is based on record whereas subsequent report dated 17.06.2008 of the Sub Divisional Officer is not correct at all. In his report, the Sub Divisional Officer has left to the authorities to consider the statements made by the parties.

Per contra, learned State counsel and learned counsel for respondent No.3 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order. Respondent No.3 had been irrigating his land through outlet No.24975-L and watercourse was demolished by the petitioner. The turns of water are run by *bhaichara* (brotherhood) arrangement so no *Wahr-bandi* is available.

I have considered the rival contentions of learned counsel for the parties.

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Admittedly, there is no *Wahr-bandi* annexed with the reply of respondent Nos.1 and 2. With their reply, respondent Nos.1 and 2 have only attached documents i.e. copy of Section 36, Rules 20-A and 77 of the Act as Annexure R-1, copy of *Aks-Sajra* as Annexure R-2 and copy of *khasra girdawaris* as Annexure R-3/T. Respondent No.1 has placed reliance on all these documents while passing the impugned order. The *khasra girdawari* only indicates that land is *Nehri* meaning thereby it is getting irrigation, but it does not indicate that through which watercourse and from which outlet, it is being irrigated. There is no document on record to indicate that watercourse was going through which killa numbers. So far as *Aks-Sajra* (Annexure P-4) is concerned, it also does not show any watercourse existing and emerging from Outlet No.RD No.24975-L Talwan Minor. In the site plan (Annexure R-2), only dotted lines have been shown referring to the alleged demolished watercourse. Further, reliance has been placed upon the payment of '*abyana*'. Once the land is being irrigated, then '*abyana*' is bound to be paid, but receipt of payment of '*abyana*' (Annexure R-3/2) does not mention from which outlet land of applicant is being irrigated, specifically when there is no *Wahr-bandi* and no *naka* taking and giving points are available.

Para No.2.28 of the Punjab Irrigation Manual reads as under:

“2.28. *Registers to be maintained by Zilladar. The Zilladar should maintain the following registers in his own handwriting:*

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- (a) *Gauge and Discharge Register.*
- (b) *Register of Irrigation by outlets, villages and distributaries (Mauzawar Moghawar).*
- (c) *Zilladar's outlet Note-book.*
- (d) *should be in the form prescribed by the Chief Engineers, -vide Appendix K and will be compiled from the forms received from the Patwari.*
- (e) *has been prescribed as a means of ready reference in the field; the Zilladar must carry this in his pocket on all inspections and produce it when called upon to do so by inspecting officers.*

In many Divisions, the Zilladar maintains too many registers; it is not necessary that he should keep copies of his diary (roznamcha) weather reports, breaches reports, monthly irrigation done (shudkar), or report made in file which will come back to him if he is required to supply further information. He will thus be free to keep the important registers up to date.

Viz:-

Gauge and Discharge Register.

Irrigation Register.

Register of Check of initial record of irrigation (Shudkar).

Register of check of final field measurements (khasrah).

Register of Despatch and receipt of correspondence that needs record.

Patwari's Bonus Register.

The Gauge and Discharge Register needs to be written up daily, but in an ordinary section the number of

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entries will not be large. The register of irrigation will need attention only twice a year and is not large. The two registers of check irrigation are needed only to enable the Zilladar to draw out his report of irrigation checked, and when compiled may be submitted as the report, no copy being kept.

The Patwaris' Bonus Register concerns ten or twelve men only and need not be kept in duplicate, but be sent on in original each crop.”

As per para No.2.28(b) of the Punjab Irrigation Manual, register of irrigation by outlets, villages and distributaries (*Mauzawar Moghawar*) is also required to be maintained by the *Zilladar*. Besides this, under Chapter VI of the Punjab Irrigation Manual, duties of Sub Divisional Officer have been defined. Para No.6.15 of the Punjab Irrigation Manual provides that the Sub Divisional Officers should write their final reports in all outlets and *Chakbandi* cases in their own handwriting in English: the Divisional Officer should see that this is done. It means that the canal authorities are required to maintain a register of outlets and there should be a *chakbandi* before assigning outlet from which the irrigation is to be carried out.

Chapter XI Para No.11.3 refers to appointments of *Mirabs*, Para No.11.4 refers to duties of *Mirabs* and Para No.11.8 refers to records of irrigation.

In view of Chapter XIII of the Punjab Irrigation Manual, all

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Chakbandis are required to be prepared and *Chakbandi* schemes must obtain the sanction of the Superintending Engineer. However, in the present case, there is no reference to the *Chakbandi* record which is relevant for this purpose. It is the specific case of the petitioner that area of respondent No.3 falls on outlet No21000-L Talwan Minor. It appears that no efforts have been made by respondent No.1 to look into the provisions and reference has also not been made to Appendix E of Punjab Irrigation Manual which provides that Irrigation Officers should generally interfere as little as possible in the internal distribution of water on water courses. Vide impugned order dated 01.06.2012 (Annexure P-7), no finding has been recorded in respect of *naka* taking and giving though the arrangement is made by the co-sharers at their own level, the turns of water on watercourse are as per the *bhaichara* (brotherhood)

It is surprising that how respondent No.1 has come to conclusion that watercourse was in existence and has been demolished, when the applicant in his application (Annexure R-3/1) has not mentioned the killa numbers through which allegedly demolished watercourse was passing. No reference to the record of *bhaichara* (brotherhood) distribution of water has been made in the impugned order. It has also not been mentioned that with which person, such record is available. Everything appears to be in air. Para No.11.8 of the Punjab Irrigation Manual refers to the appointments of *Mirabs* and their duties and also refers to the maintenance of records of irrigation. The said

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record is also required to be inspected by the canal authorities i.e. Zilladar, Sub Divisional Officer, Divisional Canal Officer etc. The best evidence has not been discussed by respondent No.1-Superintending Canal Officer, nor placed on record of this petition by the respondents. Otherwise also, merely on the basis of khasra girdawaris done by canal authorities, the position of demolished watercourse cannot be determined through which killa number it was passing. Such a decision cannot be taken merely on the statement of contesting party. There must be some documentary evidence to support the same. It needs mention that Section 68 of the Act has been substituted w.e.f. 25.04.1963 and further amended w.e.f. 03.11.1965 with a purpose that there should not be unnecessary disputes. The Punjab Irrigation Manual has not been revised in consonance with the amended provisions. Learned State counsel as well as the officer appearing on behalf of the department could not refer to the provisions of the Punjab Irrigation Manual regarding procedure of *bhaichara* (brotherhood) irrigation. This Court pointed out the relevant Chapter in the Manual, as referred hereinbefore. Time to time amended instructions are also not available on the website of the Irrigation Department, Punjab, updating of the same is an utmost necessity.

In such circumstances, this Court is of the view that material document has not been considered in this case, one of the material documents is *chakbandi* which refers to the *chak* i.e. rectangles and killa/khasra numbers being irrigated from particular outlet. In spite of

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having the knowledge of existence of the Punjab Irrigation Manual, it appears that respondent No.1-Superintending Canal Officer did not try to go through the relevant instructions specifically appointment of *Mirab*, record maintained by him and the *chakbandi* scheme for the particular outlet to which the area of the private respondent has been assigned, as it is the specific case of the petitioner that area of the private respondent falls on outlet No.21000-L (old No.21900-L). No finding has been recorded by respondent No.1 in this regard.

In view of the above discussion, it is apparent that the impugned order dated 01.06.2012 (Annexure P-7) has been passed in a casual manner and no reference has been made to the relevant provisions/instructions and documents such as *chakbandi*, diary of *Mirab* etc. As such, the impugned order dated 01.06.2012 (Annexure P-7) is set aside and matter is remanded to respondent No.1-Superintending Canal Officer with a direction to pass fresh order on or before 01.06.2016 positively because the issue is for providing water to the fields. Parties through their counsel are directed to appear before respondent No.1 on 03.05.2016.

Before parting with the judgment, it would be apposite to note that this Court has noticed in a number of cases that the canal authorities pass orders without making reference to the relevant provisions of the Act and Punjab Irrigation Manual which results into incorrect orders. It appears that Section 68 of the Act has not been

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enforced in some of the villages and still the brotherhood (*baichara*) turns are in force, which results into unnecessary litigation. Due to the *baichara* use and distribution of water, no *Wahr-bandi* is prepared and it becomes difficult to ascertain the existence of watercourse and also *naka* taking and *naka* giving points. The concerned State authorities are directed to enforce Section 68 of the Act in accordance with law, wherever it is not enforced, it will help in reducing canal matter litigation.

This Court in CWP No.17968-2014, titled 'Malkiat Singh vs. Superintending Canal Officer, Ferozepur and others', decided on 22.03.2016 has already observed as under:

“Irrigation is vital component of agriculture production. Water, together with soil are the underpinning assets of land and agriculture business. In the present case, the parties have been litigating since August, 1995 for restoration of watercourse. Almost two decades have lapsed in this litigation. One can imagine the loss as a result of non-irrigation to fields of the concerned petitioner as well as to the nation. So the canal authorities are reminded that they should decide such cases at the earliest in accordance with law so that evidence at the spot may not be destroyed. The canal authorities are further directed that on receipt of an application of demolition of watercourse, they should immediately visit the spot and videography and photography

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should be carried out by the officer/official at the cost of the applicant(s) and annexed with the report.”

A copy of this order be sent to the Chief Engineer, Irrigation, Punjab and Secretary, Department of Irrigation and Power, Punjab for compliance.

05.04.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge