

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18844 of 2016 (O & M)
Date of decision:22.11.2016

Jarnail Singh and others

....Petitioners

v.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MS. JUSTICE LISA GILL

Present: Mr. Jagdish Manchanda, Advocate and
Mr. Gurpreet Jayia, Advocate for the petitioners.

Mr. Randhir Singh, Addl. AG, Haryana with
Mr. N.K. Bhola, Executive Engineer, Ghaggar Water
Services Division, Sirsa.

Mr. Jasminder Singh Thind, Advocate
for the applicants in CM No.14792 of 2016.

S.S.SARON,J.

The petition has been filed by Jarnail Singh and others (petitioners) under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari, mandamus and (sic. - or) any other appropriate writ for quashing the action of the respondents in not taking any action to channelize the 'warabandi' (fixation of turn for irrigation of land) allotted to the petitioners/ inhabitants of village Talwara Khurd, Tehsil Ellenabad, District Sirsa and other villages that fall under the Ellenabad Block, District Sirsa and also for not taking any action on the complaints made by the petitioners and other inhabitants to the effect that the land owners nearby the river were committing theft of water by carving out

illegal outlets (water channels) for their own benefit in connivance with the officials of the Irrigation Department due to which the crops of the inhabitants of the area had been ruined due to lack of water for the last many years. A further direction is sought for directing the respondents to channelize the 'warabandi' for the inhabitants of the village Talwara, whose fields fall in the South Ghaggar Canal ('SGC' Canal - for short) and Bhakra Canal. A still further direction is sought to take action against the persons who were committing water theft by putting illegal water channels in connivance with the officials; besides, direct the respondents to provide water as per provisions of the Haryana Canal and Drainage Act, 1974 ('the Act' - for short) and Rules framed thereunder and also direct the respondents to take action as well as inquire into the matter as the inhabitants of the area had made many representations but no action had been taken.

The petition came up for hearing on 09.09.2016 and a copy of the petition was given to Shri Randhir Singh, Addl. AG, Haryana so as to enable him to seek instructions.

This Court on 20.10.2016 passed the following order:-

"During the course of deliberation, it is agreed between the learned counsel appearing for the parties that the representatives of the petitioners shall appear in the office of Sh. N.K. Bhola, Executive Engineer, Ghaggar Water Services Division, Sirsa on 10.11.2016 at 11.00 am and they shall submit their list of grievances, which shall be examined and an effort shall also

be made to resolve the matter. A responsible representative of Police Station, Ellenabad shall also remain present in the office of Sh. N.K. Bhola, Executive Engineer, Ghaggar Water Services Division, Sirsa.

List for hearing on 22.11.2016.”

In terms of the above order, the representatives of the petitioners were to appear in the office of Shri N.K. Bhola, Executive Engineer, Ghaggar Water Services Division, Sirsa on 10.11.2016 at 11.00 am. They were to submit their list of grievances, which were to be examined; besides, an effort was also to be made to resolve the matter. A responsible representative of Police Station, Ellenabad was asked to be present in the office of Shri N.K. Bhola, Executive Engineer, Ghaggar Water Services Division, Sirsa.

Shri Jagdish Manchanda, Advocate appearing for the petitioners submits that the petitioners went to the office of Shri N.K. Bhola, Executive Engineer, Ghaggar Water Services Division, Sirsa on 07.11.2016 to apprise him of the illegal water channels that had been set up. It is further submitted that they did not go on 10.11.2016 during the entire day as they apprehended that there would be trouble.

Sh. Randhir Singh, Addl. AG, Haryana on instructions from Shri N. K. Bhola, Executive Engineer, Ghaggar Water Services Division, Sirsa, who is present in Court, states that the officers of the Irrigation Department were present in their office from 10.00 am to 5.00 pm on 10.11.2016 to entertain the petitioners in compliance with the order of this Court, but no one came.

Sh. Randhir Singh, Addl. AG, Haryana has also filed short reply by way of affidavit of Shri Satender Kumar Gupta, IPS, Superintendent of Police, Sirsa on behalf of respondents No.7 and 8. It is submitted that the police department had always been taking prompt action whenever any incident of theft of canal water was reported to the concerned police station. It is submitted that Shri Bhoop Singh, SDO approached the Police Station, Ellenabad on 19.07.2013 for getting police aid regarding illegal water channels in villages Talwara and Poharkan. A police party was provided to him vide entry No.16 (Annexure R-1) recorded in the 'rapat roznamcha'. The police party returned to the Police Station, Ellenabad vide entry No.24 (Annexure R-2) recorded in the 'rapat roznamcha'.

In regard to the agreed order passed by this Court, it is submitted that the representatives of the petitioners were to appear in the office of Shri N.K. Bhola, Executive Engineer, Ghaggar Water Services Division, Sirsa on 10.11.2016. SI/SHO Vikas along with his subordinates, it is stated went to the office of the Executive Engineer, Ghaggar Water Services Division, Sirsa on 10.11.2016 at the given time and they remained present in the office for the whole day but neither any of the petitioners nor any representative on their behalf came in the office during working hours.

Shri Jasminder Singh Thind, Advocate has filed CM No.14792 of 2016 on behalf of Rishpal Singh and 161 others of villages Dhani Mojuki, Thobria, Himanyu Khera, Shakhu Khera, Amritsar Khurd and Kalan, Partap Nagar, Mojukhera, Pattikirpal, Ratta etc. Tehsil Ellenabad, District Sirsa and village Kutta Badh, Tehsil Rania, District Sirsa for being impleaded as private

respondents in this petition. It is stated by Shri Thind, Advocate that the allegations as levelled in the petition are totally false and have been made at the back of the affected persons so as to deprive them of their rights. It is submitted that no specific person, who is stated to have committed water theft has been mentioned and there is no specific allegation levelled against any resident or inhabitant of that area, who is stated had committed any act that is alleged in the writ petition. The motive of the petitioners, according to the learned counsel appearing for the applicants - Rishpal Singh and others is to get an order from this Court at their back without impleading them as a party.

A reference has also been made by Shri Thind, Advocate to an order dated 25.06.2015 passed in CWP No.12621 of 2015 titled 'Karanjit Singh v. State of Haryana and others', wherein the said petition filed by Karanjit Singh and others and some of them are now petitioners in the present petition, was disposed of with the direction to the respondents to consider the representation (Annexure P-1) sympathetically and preferably within fifteen days in view of the upcoming paddy season. It is stated that the concerned Superintending Engineer passed an appropriate order regarding that issue. The said fact, it is stated, has also been intentionally suppressed by the petitioners. It is submitted that the petitioners did not appear on the date fixed in terms of order dated 20.10.2016 passed by this Court as they wanted to play hide and seek.

We have given our thoughtful consideration to the matter.

The allegations in the petition are that some persons had made illegal outlets/water channels in the river due to which the water

which is to come the farmers at the tail end of the water channel is not being received. In this matter, the proper course is to file a necessary application under the Act and the Rules framed thereunder before the appropriate forum.

In State of Uttar Pradesh v. Singhara Singh and others, AIR 1964 SC 358, it has been held that the rule adopted in Taylor v. Taylor (1876) 1 Ch D 426 is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than which has been prescribed. Besides, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. Therefore, when a law provides for following a particular procedure, then that procedure alone is to be followed and the other procedures are necessarily forbidden.

The petitioners in the circumstances, may if so advised, avail their remedies under the Act and the Rules framed thereunder; besides, in case water thefts have been committed, they are liable to seek their remedies by lodging complaints with the concerned Station House Officers of the area. It is to be noticed that the petitioners or their representatives despite being granted an opportunity to appear in the office of Shri N.K. Bhola, Executive Engineer, Ghaggar Water Services Division, Sirsa on 10.11.2016 at 11.00 am, did not for reasons best known appear.

Keeping in view the fact that the petitioners have alternative remedies and the applicants of CM No.14792 of 2016 who are seeking their impleadment to the petition as private respondents, have serious objections to the case as has been projected by the petitioners, it would be just and expedient that the matter is considered by the authorities concerned under the Act.

In the circumstances, we find no ground to interfere the matter at this stage.

The writ petition is accordingly dismissed.

However, the petitioners would be at liberty to avail their statutory remedies in accordance with law.

(S.S. SARON)
JUDGE

22.11.2016
A.Kaundal

(LISA GILL)
JUDGE

Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes