

Sr.No.243

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-6724-2015(O&M)

Decided on: 25.02.2016

Telu Ram and othersPetitioners

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. Ajit Sihag, Advocate for the petitioners.
Mr. Rajneesh Chadwal, D.A.G. Haryana.
Mr. Jitender K. Sehrawat, Advocate for respondent no.5.

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Mahesh Grover, J

The petitioners impugn the order dated 21.10.2014 (Annexure P3) passed by the Chief Canal Officer, Panchkula effecting a change in the irrigation boundary of a canal project.

The Chief Canal Officer while effecting a change observed as follows:-

“ Therefore 19.25 acre area in question is transferred from outlet RD 15850-L Garhi Minor to outlet RD 26725-TR restoration Sorkhi Minor. The discharge corresponding to 19.25 acre be deducted from outlet RD 15850 L Garhi Minor and the equivalent amount be increased in restoration of Sorkhi Minor so that the existing shareholders of outlet RD 26725-TR restoration Sorkhi Minor continue to get the same amount of water and their rights are not infringed. Hence appeal is dismissed and the decision of SCO dated 7.3.2014 is upheld.”

The grievance of the petitioner is that Rule 101 of Haryana Canal and Drainage Rules 1976 (hereinafter known as the Rules) which permits the effect in change, has been violated as no prior sanction of the Chief Canal Officer was obtained. Rule 101 of the Rules is extracted here below:-

“101 Change in irrigation boundaries. [Section 65(2)(f)]”

No change shall be made in the irrigation boundary of a canal project without the prior sanction of the Chief Canal Officer, irrespective of whether the change refers to the exclusion of an area already included within the irrigation boundary on to the inclusion of a new area.”

The petitioners with reference to Annexure P3 contend that Rule 101 of the Rules was clearly violated and even admitted by the Chief Canal Officer who chose to waive off this irregularity by stating that he himself being the authority intending to pass the order prior sanction would not be necessary.

Interestingly, this very officer in other related matters which are on record as Annexures P4 and P5 has been remanding the matters back solely on the ground of violation of Rule 101 of the Rules where the DCO had passed the order of transferring some land from one outlet to other without prior sanction of the Chief Canal Officer. Noticing this, the Court had summoned the Chief Canal Officer to Court vide order dated 19.01.2016.

He has absolutely no explanation to offer except to refer to the facts to justify the divergent approach adopted by him while acting as a Chief Canal Officer.

In the considered view of this Court such an approach is unacceptable. If the Rule mandates prior sanction of the Chief Canal Officer then it has to be so and no order can be passed by the competent authority i.e the Chief Canal Officer without adhering to the rule. He cannot circumvent it. The parties

opposing the change would have a right to object to the proposed change. The Chief Canal Officer cannot use his powers arbitrarily and adopt different yardsticks.

Consequently, the impugned order dated 21.10.2014 (Annexure P3) is set aside solely on the ground of violation of Rule 101 of the Rules which has been conceded by the Chief Canal Officer, Panchkula himself. The matter is remanded back to the DCO for decision afresh who shall first take prior sanction of the Chief Canal Officer and then pass an appropriate order in accordance with law.

Disposed of.

The Chief Canal Officer, Panchkula is warned to be careful in future.

25.02.2016

mamta

(MAHESH GROVER)

JUDGE