

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 8556 of 2015
Date of Decision: 22.8.2016

Karnail Singh and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Mahabir Singh Sindhu, Advocate
for the petitioners.

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

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 13.5.2014 (Annexure P-5) issued by the Chief Engineer/BWS, Irrigation & WR Department, Haryana-respondent No.2, whereby reopening of the closed outlet at RD 15000-R BML Barwala Link Channel, was rejected.

Notice of motion was issued and pursuant thereto, reply on behalf of respondents No. 2 to 4 was filed. Petitioners also filed their replication.

Heard learned counsel for the parties.

It has gone undisputed on record that outlet at RD 15000-R BML Barwala Link Channel had been running at the site. It was ordered to be closed vide DCO/Narwana Divison, IB Narwana, decision No. 219/Rev. Case/87 dated 5.11.1987. When the farmers of this outlet were facing great difficulty, while not getting any canal irrigation for their fields, they

approached the canal authorities. The matter was examined from different angles, including the technical aspects, and it was found that grievance raised by the farmers of this outlet at RD 15000-R BML Barwala Link Channel, was a genuine one. After satisfying themselves, canal authorities i.e. Ziladar and Sub Divisional Canal Officer prepared the case for reopening of the abovesaid outlet. The Divisional Canal Officer, Narwana, Water Supply Division, vide letter dated 17.4.2014 (Annexure P-7), wrote to the Superintending Canal Officer, Bhakra Water Services Circle, Kaithal, ('SCO' for short) strongly recommending the case for reopening of the outlet.

The relevant observations made in the communication dated 17.4.2014 which deserve to be noticed here, read as under:-

“Subject:- Administrative Approval in respect of restoring the outlet in RD 15000/-R BML Barwala Link of village Rewar.

In this connection, it is submitted that the irrigators of village Rewar now has demanded to restore the outlet at RD 15000/R BML Barwala Link which was earlier closed by the department. In this regard, a scheme was prepared and the same was published and heard under section 18 of the Canal Act. The statements of the irrigators who came present at the time of hearing were recorded and the same is placed on record.

The area which was earlier irrigated in the chak of old outlet at RD 15000/R BML Barwala Link is not getting any irrigation at site since the outlet was closed at site and whole area is being irrigated at the site with the help of tube-wells and the water of tube-wells in the area is saline and therefore, output of the land in question has decreased year to year. The outlet at RD 15000/R BML Barwala Link Channel was ordered to be closed vide

Amit Kumar
20.08.2015
I attest to the accuracy and
authenticity of this document

An early sanction is requested please”

“The Superintending Canal Officer,
Bhakra Water Services Circle,
Kaithal

Subject:- Administrative Approval in respect of restoring the

Amit Kumar
200700125
I attest to the accuracy and
authenticity of this document

outlet at RD 15000/R BML Barwala Link of village Rewar.

Reference:- Your office letter No. 2752 dated 19.03.2014.

The revenue missal received vide your office letter under reference is resubmitted after compliance as under:-

1. The compliance has been got done accordingly.
2. The compliance has been got done as desired by the office of your good self please.

So, it is therefore, requested that the prior approval of Government may kindly be arranged in the interest of development of canal irrigation, please.

DA/Missal

Divisional Canal Officer,
Narwana, W/S Division,
Narwana

A bare reading of the impugned communication would show that neither the Chief Engineer sought any supplementary or additional report from the subordinate canal authorities to clarify the ambiguity, if any, nor he himself referred to the abovesaid strong basis made out for granting approval for reopening of the outlet, but rejected the proposal, by passing a totally non-speaking and cryptic order, which cannot be sustained.

During the course of hearing, when confronted with the abovesaid cryptic and non-speaking order passed by respondent No.2, learned counsel for the State had no answer and rightly so, it being a matter of record. In fact, merits of the case have not at all been touched, while passing the impugned communication Annexure P-5. It is also pertinent to note here that there was nobody who might be opposing the proposal put forth by the Divisional Canal Officer, because he found grievance raised by the farmers of this outlet, to be a genuine one.

Once the beneficiaries of this outlet were not receiving any proper irrigation for their land because of closure of outlet at RD 15000-R BML Barwala Link Channel, the Divisional Canal Officer-respondent No.4 as well as Superintending Canal Officer-respondent No.3 were well within their jurisdiction and justified on facts, while recommending the case for prior approval of the Government, for reopening of outlet at RD 15000-R BML Barwala Link Channel. Since the Chief Engineer has neither discussed, nor discarded but altogether illegally ignored the merits of the proposal, put forth by the Divisional Canal Officer and duly approved by S.C.O., the impugned order passed by the Chief Engineer, being arbitrary on the face of it, cannot be sustained, for this reason also.

Another aspect showing casual approach of the respondent authorities is reflected from their written statement. Although the preliminary objection at page 35 of the paper book refers to some undated policy decision and last sentence says that copy of policy decision is annexed as Annexure R-1, yet no such policy decision, as a matter of fact, is available on record, with the written statement. In fact, three documents which are attached with the written statement and not even numbered as annexures, from page 40 to 46 of the paper book, are one site plan and copies of two orders dated 5.11.1987 as well as dated 14.7.1997, both passed by Divisional Canal Officer.

These documents and also the misconceived stand taken in the written statement do not advance the case of the respondents in any manner, either on facts or in law. Further, learned counsel for the State also did not show or refer to any such Government policy, even during the course of hearing, despite the fact that it had been so pointed out by the petitioners in

their replication.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, besides being a cryptic and non-speaking order, it cannot be sustained and the same is hereby set aside.

Consequently, the Chief Engineer/BWS, Irrigation & WR Department-respondent No.2 is directed to look into the matter and grant necessary approval to the abovesaid factually correct and legally justified proposal putforth by the Divisional Canal Officer and forwarded by Superintending Canal Officer-respondent No.3 at an early date, so that farmers of outlet at RD 15000-R BML Barwala Link Channel, may get proper irrigation for their fields. Let an appropriate order be passed within a period of six weeks from the date of receipt of certified copy of this order.

With the abovesaid observations made and directions issued, present writ petition stands disposed of.

(RAMESHWAR SINGH MALIK)
JUDGE

22.8.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No