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

CWP-17904-2010

Date of decision : 23.01.2017

Partap Singh and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Darshan Singh Bishnoi, Advocate
for the petitioners.

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

Mr. Shalender Mohan, Advocate
for the Caveator(s)/respondent Nos.5 to 7.

AMIT RAWAL, J. (ORAL)

The petitioners are aggrieved of the impugned orders dated 24.12.2008 and 30.07.2010 (Annexure P-7 & P-8), whereby on application moved by the respondent(s), after hearing the parties at length and perusing the record, it has been found that the average irrigation of the area, in question, for three years is 33% i.e. an area far-away from the existing source. The proposed source i.e. outlet RD 16530/L Balsmand sub minor is nearer. The shareholders were facing great difficulties for irrigating their land and retail outlet RD 16530/L, though, was a lift outlet and water allowance of this outlet is different from the other outlets. This fact has been brought to the notice of this Court during the course of the hearing by showing the *naksha* (map) and as per the same, the water flow to the land of

the respondent(s) from outlet No.48968, whereas the outlet RD 16530/L is very close by.

Mr. Darshan Singh Bishnoi, learned counsel appearing on behalf of the petitioners submits that there is no draft publication of Scheme under Sections 17 and 18 of the Haryana Canal and Drainage Act, 1974 (for short 'the 1974 Act'). The Instructions dated 07.08.2008, thus, have no force of law and cannot be passed nor had been modified. Until and unless the scheme is framed, flow irrigation cannot be transferred to a outlet which irrigates the land by lift irrigation, in essence, the petitioners are getting flow of the water by lift irrigation and therefore, the outlet cannot be shared or transferred to the private respondent(s) having a supply of natural water flow. There are no rules and regulations under the aforementioned Act except the instructions which would not have force of law. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in **“Tara Singh V/s Mithu Singh and others”, 1987 PLJ 1126**, thus, urges this Court for setting aside the impugned orders, under challenge.

Mr. Shalender Mohan, learned counsel appearing on behalf of the Caveator(s)/respondent Nos.5 to 7 submits that this Court while hearing the aforementioned writ petition had called upon the other side to file an affidavit with regard to the instructions and modification of the Scheme. The affidavit to that effect that no direction, rules and instructions with regard to the shifting from lift irrigation to flow irrigation and *vice versa* had been issued by the Government, but vide letter dated 07.08.2008 (Annexure R-1) the transfer of area from flow outlet to lift outlet had been allowed after obtaining the administrative approval from the Financial Commissioner & Principal Secretary to Government, Haryana Irrigation

Department. The contents of which read as under:-

1. *It is verified that no direction, rules or instructions with regard to shifting from lift irrigation to flow irrigation and vice versa have been issued by the Government. Moreover transfer of area from flow outlet to lift outlet was allowed after obtaining the administrative approval from the Financial Commissioner and Principal Secretary to Government, Haryana Irrigation Department vide his memo No.15727/2008-21W dated 07.08.2008 (copy attached) Annexure R-1.*
2. *That irrigation in the area under question is being done by gravity flow water from outlet RD 48968-R Sarsana Minor since the channel came in operation, whereas the outlet at RD 16530-L of balsamand Sub Minor where area has been demanded to be transferred is lift (Jhallari) outlet due to being located above full supply level (FSL) of channel.*
3. *The Revenue Manual (Annexure R-2) is reproduced as Para 13.1 "(in the absence of specific delegation no officer has the power to authorize any change in the water allowance sanctioned by the Government for any tract of country)".*

As per Revenue Manual and Haryana Canal and Drainage Act 1974, there is no bar on transfer of area from gravity outlet to lift outlet without change in the water allowance.

4. *That there are no provisions in the Haryana Canal & Drainage Act, 1974 and Haryana Canal and Drainage Rules, 1976 to create or set up jhallari/lift chak outlet or to create mix, jhallari normal water allowance supply chak of the outlet, but in the interest of better irrigation of any land with canal irrigation the outlet can be created or scheme can be published for mix chak of jhallari and normal allowance irrigation with the prior permission of Financial Commissioner and Principal Secretary to Government of Haryana Irrigation Department.*
5. *That in the present case the mix chak has been allowed with the permission of Financial Commissioner and Principal*

*Secretary to Government of Haryana Irrigation Department
Memo No.15728/2008/21-W dated 7.8.2008 by transferring
46.33/46.33 acres area from normal chak of outlet RD
48968/R Sarsana Minor to lift chak outlet RD 16530/L
Balsamand S/Mr. with the normal allowance for the
development and better irrigation of the land without effecting
the irrigation of remaining chak area.*

- 6. That there is no provision in the rules regarding transfer of
flow irrigation area to lift outlet, but as per demand of the
shareholders normal water allowance was transferred on the
lift outlet with the undertaking of the applicants that they
would not claim extra water allowance. After obtaining the
said undertaking the case was sent to the higher authorities for
the prior approval as it involved two different type of outlets.*
- 7. That as per record of Superintending Canal Officer, BWS
Circle No.1, Hisar tis is 1st permission from the Government in
which permission is granted for the mix chak by the Financial
Commissioner and Principal Secretary to Government of
Haryana Irrigation Department.*

*In this case prior approval from the Government was obtained
even then water allowance has not been changed by the
department and transfer of area is allowed on the normal
water allowance.”*

Mr. Sandeep Singh Mann, Sr. DAG, Haryana has also drawn the attention of this Court to the paragraph 13.1 of the Revenue Manual to indicate that there is no bar on transfer of area from gravity outlet to lift outlet without change in the water allowance. Even there is no provisions in the Act or Rules 1976 to create or set up a lift outlet or create any mix or normal water allowance, but in the interest of better irrigation of the land, the canal irrigation outlet can be created or Scheme can be published for mix chak of jhallari and normal allowance with the prior permission of

Financial Commissioner. In the present case, the mix chak has been allowed with the permission of Financial Commissioner and Principal Secretary to Government of Haryana, thus, there is no illegality and perversity in the impugned orders under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that as per the affidavit furnished by the Divisional Canal Officer, Hisar, Water Services Division, Hisar, no doubt there is no Scheme framed with regard to the shifting from lift irrigation to flow irrigation and *vice versa*, the transfer of area from flow outlet to lift outlet had been allowed after obtaining the administrative approval from the Financial Commissioner & Principal Secretary to Government, Haryana Irrigation Department. The supply of water through natural water flow to the land of the petitioner had been earlier from the outlet 48968 R, but has been shifted vide impugned order to outlet 16530L which is a lift irrigation. Even the Act does not prescribe any provisions of lift irrigation, yet the people, who were having the land at higher level, being provided supply of the canal through lift irrigation. The shifting of the outlet has not caused any loss to the petitioners as it has been shifted to very nearby land of the respondent(s). Their supply would not be taken away as the route also provides the supply of the water through the same very outlet, but the land of private respondent(s) would be irrigated from the aforementioned outlet i.e. RD 16530/L. The provisions of Chapter 13.1 of the Revenue Manual also prescribes the procedure for alteration in the distribution of the canal irrigation which reads as under:-

“CHAPTER XIII

REVENUE AND WATER SUPPLY

Procedure for alteration in the distribution of Canal Irrigation.

13.1 In the absence of specific delegation, no office has the power to authorize any change in the water allowance sanctioned by Government for any tract of country.”

The *ratio decidendi* culled out by the judgment rendered in **Tara Singh's case (supra)** does not apply to the facts and circumstances of the present case as the same does not deal with the Revenue Manual which prescribes the procedure for alteration in the distribution of the canal irrigation.

In view of the aforementioned facts and circumstances, the order dated 07.08.2008 (Annexure R-1) granting the administrative approval for transfer of the outlet from 46.33/46.33 acres area from outlet RD 48968/R Sarsana Minor to outlet RD-16530/L Balsmand Sub Minor (Lift outlet) with normal water allowance under the Act cannot be found to be against the provisions of the Act. The order is, thus, inconsonance with the administrative approval and as well as the Revenue Manual.

For the foregoing reasons, no ground is made out for interference and accordingly, the present writ petition is dismissed.

23.01.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**