

215

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19429-2013

Date of decision : 23.03.2017

Satbir Singh

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shailender Mohan, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Ajit Sihag, Advocate
for respondent Nos.6 to 8.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned orders dated 25.06.2012 (Annexure P-4) rendered by the Deputy Collector, Adampur, Water Service Division, Hisar and order dated 26.11.2012 (Annexure P-5) passed by the Divisional Canal Officer dismissing the appeal and as well as the order dated 07.05.2013 (Annexure P-6) of the Superintendent Canal Officer dismissing the revision petition and order dated 05.08.2013 (Annexure P-8) passed by the Chief Canal Officer.

Mr. Shailender Mohan, learned counsel appearing on behalf of the petitioner submits that the private respondent(s) moved an application before the Divisional Canal Officer, for exclusion of an area for the purpose of distribution and use of the water i.e. closer of the *naka*. The same was

erroneously accepted by the Divisional Canal Officer. The matter was taken up by Superintending Canal Officer, who remanded back the matter to the Deputy Collector. The Deputy Collector did not have the power to decide the controversy of such nature as the power prescribed under Section 55 of the Haryana Canal and Drainage Act, 1974 (for short 'the Act') only deals with the use and distribution and that to by holding an inquiry, whereas for exclusion of an area, adherence has to be made to the provisions of Section 17 of the Act, yet the Deputy Collector entertained the request and passed the impugned order. The matter was taken up by Superintending Canal Officer, who dismissed the appeal and the Chief Canal Officer rejected the appeal being not maintainable, whereas as per the provisions of sub-Section 3 of Section 20 of the Act, Chief Canal Officer has the powers to entertain the application, thus, the impugned orders under challenge are not sustainable in the eyes of law.

Per contra, Mr. Ajit Sihag, learned counsel appearing on behalf of the respondent Nos.6 to 8 submits that the Deputy Collector has the power in view of the provisions of Section 55 of the Act. The use and distribution would also envisage the exclusion of an area and therefore, there is no illegality and perversity in the orders. *Naka*/exclusion of area was sought to be unauthorized and it is, in this aspect of the matter, the authorities have accepted the application, thus, urges this Court for upholding the orders under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

For appreciating the aforementioned controversy, it would be apt to reproduce the provisions of Sections 17, 20 and 55 of the Act, which

read as under:-

17. Preparation of Draft Scheme: (1) Notwithstanding anything contained to the contrary in this Act but subject to the rules prescribed, Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters namely:-

(a) the construction, alteration, extension and alignment of any watercourse or realignment of any existing watercourse;

(b) allotment of any new areas to a watercourse or an outlet or reallocation of areas served by one watercourse to another or from one outlet to another, or for exclusion of an area, from an outlet or a watercourse;

(c) construction of a new outlet, shifting or modification of an existing outlet. Explanation:- Any change in the design or size or both of an outlet, whose design or size or both have been changed in an unauthorized manner, for restoring the same to its authorized discharge shall not be deemed to be a modification;

(d) the lining of any watercourse;

(e) the occupation of land for the deposit of soil from watercourse clearances;

(f) Any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse or an outlet.

(2) Every scheme prepared under sub-section (1) shall, amongst other matters, set out the estimated cost thereof, the alignment of proposed watercourse or realignment of the existing watercourse, as the case may be, the site of the outlet, the particulars of the share-holders to be benefited and a sketch plan of the area proposed to be covered by the scheme.

Section 20 Appeal & Revision

20. (1) An appeal against the decision of the Divisional Canal Officer under sub-section (2) of section 18 shall lie to the

Superintending Canal Officer within thirty days of the publication of the scheme under section 19.

(2) An appeal shall lie against the decision of the Superintending Canal Officer passed under sub-section (1) in regard to any of the matters covered under clauses (a), (b) and (c) of subsection (1) of section 17, to the Chief Canal Officer within thirty days of the date of such decision.

(3) The Chief Canal Officer or the Superintending Canal Officer may suo motu, call for the record of any case pending before, or disposed of by any subordinate authority, for the purpose of satisfying himself as to the legality or propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit:

Provided that no such order shall be made without affording the person affected an opportunity of being heard.

Section 55 Powers of Deputy Collector to order, use or distribution of water and settlement of difference

(1) The Deputy Collector may, if in his opinions it is necessary so to do, pass as to the use or distribution of water from a watercourse amongst persons in any estate or a group of estates or in any holding or group of holdings in such estate or estates: Provided that no such order shall be passed by the Deputy Collector without making any inquiry into the matter and without giving a notice to all the persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter.

(2) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a watercourse, any such person may apply in writing to the Deputy Collector stating the matter in dispute.

(3) On receipt of an application under sub-section (2) the Deputy Collector shall give notice to the other persons

interested that, on a day to be named in such notice, he shall proceed to enquire into the said matter, and after the inquiry he shall pass an order thereon.

(4) An order passed under sub-section (1) or sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of a watercourse shall, subject to an order passed on appeal or revision under sub-sections (5) and (6), be final.

(5) An appeal shall lie to the Divisional Canal Officer against an order referred to in sub-section (4) within a period of thirty days from the date of such order.

(6) The Superintending Canal Officer within whose jurisdiction the watercourse is situated, may suo motu or on an application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under subsection (5): Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.

(7) No order passed under this section shall be liable to be called in question in any civil court."

On reading of the aforementioned provisions, there is a clear cut expression 'exclusion of an area' in Section 17 of the Act. Exclusion of an area would tantamount to closure of the *naka*, whereas the expression 'use and distribution' would not have been there. Had there been a similarity between the two expressions, the legislature in the wisdom would have also introduced the word 'exclusion of an area' in Section 55 of the Act, thus, I am of the view that the Deputy Collector did not have the jurisdiction to deal with the matter. The order of the Superintending Canal Officer remanding the matter back was wholly erroneous and dismissal of the

appeal preferred against the order of Deputy Collector and acceptance of the same by the Chief Canal Officer qua non-maintainability is, in my view, wholly misconceived. The Chief Canal Officer can always exercise the *suo motu* powers under sub-Section 3 of Section 20 of the Act within reasonable period.

Keeping in view the aforementioned facts, the impugned orders, under challenge, are not sustainable on the touchstone of reasonability and falling within the parameters of 'judicial review' and accordingly, the same are hereby set aside. The matter is remanded back to the Superintending Canal Officer, Bhakra Water Service Division, Circle-I, Hisar, to decide the controversy afresh in terms of the observations given hereinabove, in essence, without noticing the fact that the Deputy Collector had no jurisdiction to deal with the request of the private respondent(s) for the exclusion of an area.

Learned counsel for the parties and as well as the parties are directed to appear before the Superintending Canal Officer, Bhakra Water Service Division, Circle-I, Hisar on 18.04.2017.

With the aforesaid observations, the present writ petition stands disposed of.

23.03.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No