

In the High Court of Punjab and Haryana at Chandigarh

- 1.** **CWP No. 7803 of 2020**
Reserved on: 29.8.2022
Date of Decision: 02.9.2022

Sushil KumarPetitioner

Versus

The State of Punjab and othersRespondents
- 2.** **CWP No. 7809 of 2020**

SadanandPetitioner

Versus

The State of Punjab and othersRespondents
- 3.** **CWP No. 7838 of 2020**

Amrik SinghPetitioner

Versus

The State of Punjab and othersRespondents
- 4.** **CWP No. 8121 of 2020**

Om Sons Marketing Pvt. LimitedPetitioner

Versus

The State of Punjab and othersRespondents
- 5.** **CWP No. 8123 of 2020**

Malbros International Pvt. Ltd.Petitioner

Versus

The State of Punjab and othersRespondents
- 6.** **CWP No. 8129 of 2020**

B.C.L. Industries LimitedPetitioner

Versus

The State of Punjab and othersRespondents

7. CWP No. 10682 of 2020

Amara Breweries Private LimitedPetitioner

Versus

The State of Punjab and othersRespondents

8. CWP No. 14911 of 2020

Chirag Satia and anotherPetitioners

Versus

State of Punjab and othersRespondents

9. CWP No. 9181 of 2021

Sumat Kumar GuptaPetitioner

Versus

State of Punjab and othersRespondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present: Mr. Peeush Gagneja, Advocate for the petitioners
(in CWP Nos. 7803, 7809, 7838 and 10682 of 2020).

Mr. Sandeep Khunger, Advocate for the petitioners
(in CWP Nos. 8121, 8123 and, 8129 of 2020).

Mr. Jagatvir Dhanda, Advocate for the petitioner
(in CWP No. 14911-2020).

Dr. Rajansh Thukral, Advocate with
Dr. Surekha Thukral, Advocate for the petitioner
(in CWP No. 9181-2021).

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab.

Mr. S.S.Bedi, Advocate for respondent No. 2
(in CWP Nos. 7803, 7809 and 7838 of 2020).

SURESHWAR THAKUR, J.

1. Since in all the writ petitions, a challenge is laid, to a notification bearing No. 10/110/2012-1W(2/88/1), drawn on 23.1.2020, and,

which notification is carried as Annexure P-1 in CWP-7803-2020, as Annexure P-1 in CWP-7809-2020, as Annexure P-1 in CWP-7838-2020, as Annexure P-6 in CWP-8121-2020, as Annexure P-8 in CWP-8123-2020, as Annexure P-7 in CWP-8129-2020, as Annexure P-1 in CWP-10682-2020, as Annexure P-1 in CWP-14911-2020, and, as Annexure P-1 in CWP-9181-2021. Therefore, all the writ petitions (supra) become amenable for a common verdict becoming made thereons.

Factual Background

2. The impugned notification, as carried in the writ petitions (supra), are drawn by the competent authority, through the exercisings of power(s) conferred by Section 75 read with Section 36 of the Northern India Canal, and, Drainage Act, 1873 (for short 'the Act'). The writ petitioners are evidently not consuming the canal water for irrigating their fields but are engaged in industrial activities. The impugned notification(s) increase the levies, qua the user(s) of canal water by each industrial unit, rather from the earlier covenanted apposite levies, and, as become carried in the appositely contracts drawn amongst the concerned, for the relevant purpose.

Statutory Provisions

3. Since in pursuance to the statutory provisions (supra), as become referred in the impugned notification(s), and, wherethroughs increases of the apposite levies, are made, qua consumption of canal water by the respective industrial units, therefore, the apposite statutory provisions, are extracted hereinafter.

“Section 36. Levy of water cess for Maintenance and Development of Irrigation Infrastructure- The State Government may levy a water cess on the occupiers of land, who use canal water for the purposes of irrigation at the rate

to be determined by the State Government from time to time and such occupiers, as accept the water, shall pay for water cess accordingly. Such water cess shall be payable within such time and in such manner, as may be prescribed. The water cess so collected, shall be used by the State Government for maintenance and development of irrigation infrastructure.

The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section and may also determine the several liabilities, in respect of the payment of water cess of tenants and of persons to whom tenants may have sublet their lands or of proprietors and of persons to whom proprietors may have let the lands held by them in cultivating occupancy.”

“Section 75. Power to make, alter and cancel rules.- *The State Government may, from time to time make rules to regulate the following matters:--*

- (1) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;*
- (2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;*
- (3) the persons by whom, and the time, place or manner at or in which anything for the doing of which provision is made under this Act, shall be done;*
- (4) the amount of any charge made under this Act; and;*
- (5) generally to carry out the provisions of this Act.*

The State Government may from time to time alter or cancel any rules so made.”

Submission of the learned State counsel

4. The learned State counsel has argued, that any reference in the impugned notification(s) to Section 36 of the Act, makes them to be completely covered by the said statutory provisions, but this Court disagrees with the afore submission.

Analysis of statutory provisions by the Court

5. From a reading of the above extracted provisions, it emerges (a) that Section 36 of the Act though, empowers the State Government to levy a water cess on the occupiers of the land, who use canal water for the purposes of irrigation, and, also though authorizes the competent authority to determine from time to time, the rates of the water cess. Moreover, the water cess so collected, has been prescribed in Section 36 of the Act, to be used by the State Government for the maintenance, and, development of irrigation infrastructure. In addition, Section 36 of the Act also speaks about the empowerment of the competent authority to, in consonance with the relevant rules, hence prescribe, and, determine as to what persons or classes of persons are deemed to be occupiers for the purposes of Section 36 of the Act. Therefore, the above statutory provisions appertain only to user, and, the consequent therewith imposition of levies/cess(s), by the competent authority, upon the occupiers of the apposite land, who make their user for cultivating crops thereons, conspicuously given the second segment of Section 36 of the Act, ending with the phrase “cultivating occupancy”, resultantly hence the entire mandate, as carried therein, appertains only to users rather of canal water by the persons detailed therein, only for farming purposes.

Analysis of submission of the learned State counsel

6. The reason for this Court, doing so, is embodied in the factum, that a deep reading of Section 36 of the Act, though does reveal, that though the statutory empowerment vested in the competent authority is exercisable, rather for the relevant purposes, but can only be exercised in respect of the lands, which are in the cultivating occupancy of the farmers concerned, and, the said statutory empowerment, is never available to be depended, upon, by the competent authority, when the canal water is released, and, thereafter becomes consumed by the industrial units concerned. If so, the impugned notification, as issued by the competent authority in exercise of powers, as comprised in Section 36 of the Act, does not become protected by the said provision, neither also any increases of levies, as made thereunders, qua the industrial units, become either validated, nor becomes clothed with any legal sanctity.

7. Though, Section 75 of the Act, is also referred in the impugned notification, but the said Section only authorizes the Government, to make rules to regulate the matters, as detailed therein, and, when the substantive provision aforesaid, as referred in the impugned notification, rather does not, authorize the apposite levies, as made, upon the industrial units concerned. Consequently any rule contrary to the substantive provisions (supra), if any, formulated by the competent authority, cannot also validate the impugned notification.

8. Be that as it may, any mis-mentioning of any statutory provision in the relevant notification, would not yet invalidate the impugned notification, but only if, apart from the statutory provisions, referred in the impugned notification, rather there were some other statutory provisions,

which could well merit/validate the impugned notification, but yet this Court, on traversing through all the provisions of the Act, rather has not been able to discover any valid statutory provision, upon which, the respondent could make any valid dependence, and/or, could well source the authorization to yet make the impugned notification. In consequence, the source of drawing of power/authorization(s), inasmuch, as its becoming grooved in the above statutory provisions, becomes, for reasons (supra), completely misplaced, and/or becomes misfounded, resultantly, the impugned notification(s) deserves its being quashed, and, set aside.

Relevance of contracts drawn amongst the concerned

9. In the reply, filed to CWP No. 7803-2020, to CWP-7809-2020, to CWP-7838-2020, to CWP-8121-2020, to CWP-8123-2020, and, to CWP-8129-2020, the respondents do not deny the entering into a contract inter se all concerned, with respect to the supplies, and, thereafter consumption(s) of canal water, rather by the industrial units concerned. Therefore, the contracts for the relevant purposes, as became entered into amongst the concerned, and, which are appended with CWP No. 7803-2020, CWP-8121-2020, CWP-8123-2020, CWP-8129-2020, and, CWP-10682-2020, do obviously become established, to be validly drawn. If so, the above drawn valid contracts amongst the concerned, and, as appertaining to the relevant purposes, inasmuch as qua supplies, and, thereafter consumption(s) of canal water by the industrial units concerned, do fall, within the ambit of Section 31 of the Act, provisions whereof becomes extracted hereinafter.

“31. In absence of written contract, water- supply to be subject to rules.- In the absence of a written contract, or so far as any such contract does not extend, every supply of canal

water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the State Government.”

10. The above extracted provision of the Act, though well authorizes the competent authority to draw contracts for supply of canal water to the concerned, and, if such a contract is entered into, resultantly, the empowerment to levy the water cess, and/or, to increase the levies, upon the concerned, rather through references, being made to the statutory provisions, rather would not become well anchored thereons. Contrarily, the contractual levies, as carried in the validly entered into contracts, as became drawn for the relevant purposes, amongst the concerned, rather to the considered mind of this Court, would become the solitary relevant strata, for determining as well as for imposing the relevant levies, upon the industrial units concerned. In consequence, the covenanted contractual levies, as occur in the apposite contracts, drawn amongst the concerned, cannot be undone through any unilaterally made notification. In sequel, the validly drawn contracts amongst the concerned qua the relevant purpose, is to be assigned sanctity, and, in case the respondent concerned, wishes to increase the contractual levies, it cannot do so, except, upon its drawing a fresh contract with the petitioners-industrial units concerned, as, permitting the respondent, to in any other mode do so would cause breach to the contractual terms, especially when a reading of the contractual terms, does not make any contemplation, that yet the respondent concerned, can in detraction thereof, proceed to make reliance, upon any statutory provisions, which may well authorize the levies rather beyond the contractual terms.

11. There is merit in all the petitions, and, the same are hereby allowed. The impugned notification dated 23.1.2020, is quashed, and, set

aside qua the petitioner(s).

12. However, liberty is reserved to the respondents, to through entering into a fresh contract(s) with the industrial units concerned, make covenants therein, qua increase of the apposite levies concerned.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

September 2nd, 2022
Gurpreet

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