



CWP-783-2022

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

CWP-783-2022**Reserved on 10.05.2024****Pronounced on : 29.05.2024**

Kuldeep Malik and others

..... Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashwani Bhardwaj, Advocate, for the petitioners.

Mr. Rajneesh Chadwal, Assistant Advocate General, Haryana.

Mr. Ajit Sihag, Advocate, for respondents No.6 to 8.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of order dated 18.11.2020 (Annexure P-4) passed by Divisional Canal officer, order dated 26.07.2021 (Annexure P-8) Passed by Superintending Canal Officer and order dated 08.12.2021 (Annexure P-10) passed by Chief Canal Officer, whereby the L- Section of New Sultanpur Minor From RD- 24243 to Tail RD-35335 has been Revised by the official Respondents just to facilitate the private respondents and new outlet RD-31815-L has been approved and 149 Acer land of RD-27400 has been transferred to New outlet RD-31815-L which is on downstream, without considering the fact that vide order dated 24.05.2013 (Annexure P-5) passed by Superintending Canal Officer outlet 30665- L was shifted to Rd-29615-L since Rd- 30665-L was on downstream and land cannot irrigated properly which is on upstream and that order was affirmed by the Ld. Chief Canal Officer vide order dated 30.12.2013 (Annexure P-6) and by the Hon'ble High Court vide order dated 03.03.2017



(Annexure P-7) and also decreased the Full Supply Level (FSL) of Tail Outlet RD-35335 from 3.081cs to 1.74cs without considering the fact that more than 300 Acre Land of the petitioners will not get the proper water for irrigation.

2. The facts as emanated from the present case are that after remand order dated 16.09.2019 passed by learned Superintending Canal Officer, the Divisional Canal Officer issued notice under Section 18(2) of the Haryana Canal and Drainage Act, 1974 (for short, 'the Act') for providing of 230.58/228.61 acres area from chak new outlet No.RD31815-L New Sulatanpur Minor after splitting the chak of O/L RD 27400-R, 29615-L and 33640-L New Sulatanpur Minor. Notices were issued to the co-shares on 08.03.2020 and scheme was published on 10.07.2020. Necessary investigation per the mandate of the Act was conducted and the relevant reports were sought including the report of inter-se command of the existing outlet and that of the proposed new outlet. On the basis of the same, the aforesaid application filed by the private respondents was accepted by learned Divisional Canal Officer subject to confirmation/modification by the Superintending Canal Officer vide his order dater 18.11.2020. This order passed by the Divisional Canal Officer was assailed by the petitioners by way of filing an appeal before the Superintending Canal Officer. After hearing both the sides, learned Superintending Canal Officer, finding no merit in the same, dismissed the appeal vide his order dated 26.07.2021. Still aggrieved by the same, the petitioners approached the Chief Canal Officer by way of filing an appeal under Section 20(2) of the Act, however, he also found no infirmity in the order impugned and thus, rejected the



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appeal vide his order dated 08.12.2021. Hence, the petitioners have approached this Court by way of filing the present petition.

3. Learned counsel for the petitioners has submitted that the grievances of the petitioners are that L-Section of New Sultanpur Minor from RD-24243 to tail RD-35335 were revised vide sanction dated 22.11.2017 in order to facilitate the private respondents and new outlet RD-31815-L was approved and 149 acres land of RD-27400-L which was on downstream without considering the fact that vide order dated 24.05.2013 passed by the Superintending Canal Officer outlet 30665-L was shifted to RD-29615-L as RD-30665-L was on downstream and hence, the land could not be irrigated properly which was on the up stream. This order was confirmed by this Hon'ble Court vide order dated 03.03.2017. He has submitted that just to facilitate the private respondents, new outlet RD-31815-L was approved by decreasing the Full Supply Level (FSL) of tail RD-35335 from 3.081cs to 1.74cs. It is submitted that after publishing the scheme, the statements of both the parties were recorded and new outlet 31815-L was approved by learned Divisional Canal Officer vide order dated 22.04.2019. Thereafter, some of the aggrieved persons filed an appeal against the order dated 22.04.2019, which was allowed by the Superintending Canal Officer by remanding the case to the Divisional Canal Officer to decide it afresh, vide order dated 16.09.2019. He has submitted that thereafter, learned Divisional Canal Officer passed a fresh order dated 18.11.2020. He submits that neither the scheme was published nor notices were issued to the concerned shareholders. He submits that the petitioners were the most aggrieved person by the proposed channel as their land would



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be deprived of the right of irrigation. He submits that no notices were served upon the concerned persons, thus, aggrieved by the same, the petitioners filed an appeal before the Superintending Canal Officer, who without considering the grievances raised by the petitioners, dismissed the appeal vide his order dated 26.07.2021. He submits that learned Divisional Canal Officer passed the order dated 18.11.2020 in violation of the order dated 16.07.2019 passed by the Superintending Canal Officer, hence, it is apparent that learned Superintending Canal Officer illegally dismissed the appeal filed by the petitioners vide his order dated 26.07.2021 without considering the fact that vide order dated 24.05.2013 passed by Superintending Canal Officer outlet 30665-L was shifted to RD-29615-L since RD-30665-L was on downstream and hence, the land could not be irrigated, properly, which is on upstream. Hence, again aggrieved the petitioners filed an appeal before the Chief Canal Officer, however, he also had fallen in error in not appreciating the facts and circumstances of the case and thus, dismissed the same vide his impugned order dated 08.12.2021. He has submitted that precise issue involved in the present case is that outlets were shifted from down to upstream in order to increase the irrigation. It is submitted that no scheme as required under Section 16 of the Act, was ever framed or published as required under Section 18(i) of the Act and no notice or opportunity of hearing was given to the concerned parties. He submits that respondent-authorities had no power to review their own orders and thus, action of the respondent-authorities is hit by settled principles of *res judicata*. It is submitted that capacity of minor prior to remodeling was 3.81cs and thereafter, it was reduced to 1.73cs as its size



was reduced, resultantly, FSL was also reduced. It is submitted that minor cannot contain water more than its capacity and thus, the same would be overflowing on the banks of the minor. He submits that as per mandatory provisions of Rules 9, 6 (4) (5) of the Haryana Canal and Drainage Rules, 1976, no notice was issued to the shareholders. It is submitted that there is no compliance of Sections 18 and 19 of the Act. Thus, it has been submitted that respondents authorities have passed the impugned orders in violation of the evidence on record and the law settled and hence, the same deserves to be set aside by allowing the present petition.

5. The Court issued notices and the Divisional Canal Officer was summoned. In pursuance to the same, Mr. Sandeep Mathur, Divisional Canal Officer, Hansi appeared on 19.10.2023 and the Court had interacted with the officer, who explained the details of the scheme implemented, which has been impugned in the present petition. The officer was directed to file an affidavit and in pursuance to the same, he filed his affidavit dated 11.12.2023. Respondents No.6 to 8 filed their reply.

6. Learned counsel for respondents No.6 to 8 has submitted that petitioners No.1 to 20 have no *locus standi* at all to file the present petition as they were not shareholders of any of the outlets involved in the scheme. It is submitted that L-Section of any channels are revised to redesign the same as per the existing volume of water due to change of circumstances to maintain proper level and velocity of water in it. He submits that thus, earlier orders passed as contended by learned counsel by the petitioners, have no relevancy to the order passed by the Canal authorities. It is submitted that prior to the publication, the matter was investigated through



Zileadar concerned and also endorsed to the Sub Divisional Canal Officer. He has submitted that on the remand by the Superintending Canal Officer, learned Divisional Canal Officer fully complied with the directions given by the Superintending Canal Officer. He has submitted that as the case was remanded by the Superintending Canal Officer, hence, contention raised by counsel for the petitioners regarding publication, is totally misconceived, as the scheme was already published. The parties were duly aware as notices were already issued, though no publication was required, even then fresh draft scheme was prepared and published for the date of hearing i.e. 05.08.2020. It is submitted that the contentions raised by counsel for petitioners regarding decrease of FSL from 3.18cs to 1.74cs, is actually discharge of water in channel and not FSL. It is further submitted that before the orders dated 22.04.2019 and 18.01.2020 draft scheme was duly published. He has submitted that it is totally misconceived that capacity was reduced due to remodeling, but it was done as per existing area on the channel. He has submitted that there being no infirmity in the impugned orders, which have been passed for the better irrigation, the petition being devoid of any merit, deserves to be dismissed.

7. Learned State counsel has drawn the attention of this Court to the affidavit dated 11.12.2023 filed and has submitted that number of shareholders of outlets RD-27400-R, 29615-L and 33640-L of new Sultanpur Minor filed an application before learned Divisional Canal Officer and made a request for transferring their area from aforesaid outlets with creation of new outlet at RD-31815-L, New Sultanpur Minor for the better irrigation. On being verified by the concerned field staff, the request



made was found to be genuine and the same was recommended by the Zileadar in his report dated 17.04.2018, which was further recommended by the Sub Divisional Canal Officer, Hisar. He has submitted that after hearing the parties and evaluating the reports submitted by the field staff, it was found that after splitting of three outlets i.e. RD-27400-R, 29615-L and 33640-L a New Sultanpur Minor, new outlet at RD-31815-L was created, because the area under transfer i.e. 230.58/228.61 acres would get better irrigation i.e. 120% irrigation which would be far better than the irrigation on the existing sources which were as less as **91% on RD-27400-L, 104% on RD-29615-L and 85% on RD-33640-L**. He has submitted that on the remand order passed by learned Superintending Canal Officer, directions were duly followed and fresh notices were issued and in pursuance to the same, all the parties concerned were duly heard. It is submitted that as per reports submitted by the field staff even though New Sultanpur Minor was narrow in downstream reach from RD-29650 to RD-25335-T, yet it could easily accommodate a discharge of 0.54cs. He has submitted that as per the affidavit filed, 2.04cs is sufficient to meet out the discharge of new outlet, hence, based on arithmetic comparison as mentioned above, the apprehension of the petitioners about lack of discharge was found to be without any basis. He further invites the attention of this Court to the affidavit wherein, it has been mentioned that working head would be lower at RD-31815-L than that of existing source yet command of area would still remain positive. Moreover, length of watercourse for the area in question would be considerably reduced from the proposed site which would nullify the loss of head and hence, revision of L-Section was done for the better



irrigation which cause no adverse effect on the feeding of any of the outlets and thus, there was no prejudice whatsoever caused to the petitioners as apprehended. It is also submitted that out of 29 petitioners, 25 petitioners are the tail-enders of RD-35335-T which would mean that their fields are situated in the chak of the outlet RD-35335-T at the tail-end. However, in the scheme for the transfer of area from existing outlets for creation of new outlet, no area of tail-enders i.e. shareholders of RD-35335-T was taken at all and hence, the tail-enders cannot claim to be prejudiced by the scheme in any manner, to any extent. He thus, submits that the impugned orders have been passed keeping in view the investigation conducted by the field staff and on the basis of the statistics collected. He submits that there being no perversity in the impugned orders, the present petition deserves to be dismissed.

8. Heard learned counsel for the parties and perused the record with their able assistance. It is apparent that a number of shareholders of outlets RD-27400-R, 29615-L and 33640-L of New Sultanpur Minor filed an application before learned Divisional Canal Officer and made a request for transferring their area from aforesaid outlets with creation of new outlet at RD-31815-L, New Sultanpur Minor for the better irrigation. On filing of the same, necessary procedure was followed. Reports were received from the field staff. In the first round of litigation, learned Superintending Canal Officer remanded the case to the Divisional Canal Officer and thereafter, notices were issued to the concerned shareholders and all the sides were duly heard. As is evident from the affidavit dated 11.12.2023, which has been discussed above that the channel was found to be fully capable to carry

the additional discharge of new outlet RD-31815-L New Sultanpur Minor and sufficient free board is available in the channel to accommodate the discharge of new proposed outlet RD-31815-L and no extra discharge was required to be released from the head of the channel for the new proposed outlet. It was observed by the Chief Canal Officer that permission for allowing the new outlet with discharge less than 0.75cs had already been accorded by the Chief Canal Officer on 29.03.2019. Thus, it was evident from the investigation conducted for approving new outlet by taking out the area from the existing outlet the same stands test of the better irrigation without adversely affecting the petitioners. Even otherwise as submitted in the affidavit by the Divisional Canal Officer, majority of the petitioners are tail-enders on the outlet RD-35335-T and no area of the tail-enders i.e. the shareholder of RD-35335-T was taken.

10. Thus, on the appreciation of the overall facts and circumstances of the present case, this Court finds the submissions made by counsel for the petitioners to be misconceived and thus, there being no infirmity in the impugned orders, the present petition is hereby dismissed.

29.05.2024			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No