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

CWP-8280-1999 (O&M)
Date of Decision: 18.07.2024

Hakam Singh

....Petitioner

Versus

Superintending Canal Officer and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. P.S. Brar, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Sr. DAG, Punjab.

HARSH BUNGER, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of certiorari for quashing the order dated 13.05.1999 (Annexure P-1), passed by respondent No.1 (Superintending Canal Officer, Sirhind Canal Circle, Ludhiana).

2. Briefly, the petitioner has moved an application for transfer of 10.87 acres land from outlet No.12125 L Ramgarh minor to 13696 L Ramgarh minor on the plea that the level of watercourse of 12125 L is lower than the fields of the petitioner and the water does not irrigate his land properly.

3. It appears that the said application filed by the petitioner was opposed by respondents No.2 and 3 herein, however, learned Divisional



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Canal Officer, Faridkot vide its order dated 04.03.1999, accepted the application submitted by the petitioner and allowed the transfer of his area from outlet No.12125 L to 13696 L Ramgarh minor.

3.1 It transpires that respondents No.2 and 3 went in appeal against the order dated 04.03.1999, passed by Divisional Canal Officer, Faridkot (Annexure P-2) before respondent No.1 (Superintending Canal Officer, Sirhind Canal Circle, Ludhiana), which came to be allowed by him vide order dated 13.05.1999 (Annexure P-1).

4. Being dissatisfied with the aforesaid order dated 13.05.1999, the petitioner has filed the instant Writ Petition before this Court.

5. Learned counsel for the petitioner submits that respondent No.1 (Superintending Canal Officer, Sirhind Canal Circle, Ludhiana) has set aside the well reasoned order dated 04.03.1999, passed by the Divisional Canal Officer, Faridkot by passing a totally non-speaking order dated 13.05.1999, accordingly, it is prayed that impugned order dated 13.05.1999 may be set aside and the matter may be remitted to the Superintending Canal Officer, Sirhind Canal Circle, Ludhiana for deciding the case afresh, by passing a well reasoned/speaking order, after affording due opportunity of hearing to the petitioner as well as all the concerned parties/stakeholders.

6. A perusal of the order sheets reveals that respondent No.3 has already been proceeded against *ex parte* vide order dated 15.01.2001.

7. I have heard learned counsel for the petitioner and perused the paper book.

8. The petitioner challenges the order dated 13.05.1999 (Annexure P-1), the operative part of which reads as under:

“Both the parties came present in the Court. They



have been heard at length and relevant record was perused. After hearing both the parties and perusing the relevant record, the undersigned has come to the conclusion that the decision which the Divisional Canal Officer had given on 4.3.1999 that is not in order. So this appeal under Section 30-B (3) of Canal and Drainage Act 8 of 1873 is accepted. Opposite party is irrigating its land properly. Hence the order dated 4.3.99 of the Divisional Canal Officer, Faridkot is set aside.”

9. A perusal of the above extracted order passed by respondent No.1 (Superintending Canal Officer, Sirhind Canal Circle, Ludhiana) would manifest that no reasons are forthcoming therein, as to what has weighed in the mind of the authority. Apparently, the order is without any reason and reflects total non-application of the judicious mind in the matter. It is well settled that every order passed by a public authority/quasi judicial authority should be reasoned order. It is also well settled that reasons are the heart and soul of an order. Hon'ble the Supreme Court in the case of ***Commissioner of Police, Bombay Versus Gordhandas Bhanji***, reported as 1952 AIR (Supreme Court) 16, has observed as under :-

“9. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

10. Further, Hon'ble the Supreme Court in the case of ***M/s Steel Authority of India Ltd. Versus Sales Tax Officer, Rourkela-1 Circle and***



others, reported as 2009 (Sup) AIR (Supreme Court) 561 has observed as under :-

“10. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar 2003 (11) SCC 519).

11. Even in respect of administrative orders Lord Denning, M.R. in Bree v. Amalgamated Engg. Union (1971) 1 All ER 1148, observed: “The giving of reasons is one of the fundamentals of good administration.” In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120 (NIRC) it was observed: “Failure to give reasons amounts to denial of justice.” “Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”

11. In view of the aforementioned facts and circumstances, the impugned order dated 13.05.1999 (Annexure P-1), passed by Superintending

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Canal Officer, Sirhind Canal Circle, Ludhiana is unsustainable in the eyes of law and the same is accordingly set aside and the matter is remitted to the Superintending Canal Officer, Sirhind Canal Circle, Ludhiana for deciding the appeal filed by the respondents No.2 and 3 afresh after giving due opportunity of hearing to the petitioner as well as the respondents along with all other stake holders, by passing a well reasoned and speaking order.

12. In view of the above, the present petition is disposed of, accordingly.

13. All pending application(s), if any, shall also stand closed.

18.07.2024*Himani***(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No