

117

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16389-2024 (O/M)

Date of decision : 18.07.2024

Kaptan Singh

..... Petitioner

Versus

The Chief Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Saurav Arora, Advocate
for the petitioner.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Kaptan Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking setting aside of order dated 24.03.2023 (Annexure P-3), passed by the Divisional Canal Officer (respondent No. 3) and also order dated 05.03.2024 (Annexure P-5), passed by the Chief Canal Officer (respondent No. 1).

2. Briefly, respondent No. 4 (Rajbir s/o Abhey Ram) alongwith other shareholders of outlet No. RD-1800/L, Lakaria Minor, filed an application under Section 18 (2) of the Haryana Canal and Drainage Act, 1974 (in short '1974 Act') for splitting of the existing outlet RD-1800/L, Lakaria Minor into two chaks i.e. one outlet at the existing site at RD-1800/L, Lakaria Minor and the other outlet at outlet RD-4000/L on the plea that due to non smooth flowing of water through the existing syphon, their fields were not being irrigated properly and further plea was taken that the existing syphon is chocked as the same is not being cleaned by the department regularly.

2.1 It appears that the petitioner alongwith some of the co-sharers of existing outlet RD-1800/L, Lakaria Minor, opposed the scheme of splitting of outlet before the Divisional Canal Officer by submitting that the total area of the chak of outlet RD-1800/L is only 350/277 acres, out of which some of the area has been converted into residential area and all the shareholders of the outlet were getting full authorized discharge through the sanctioned lined water course of existing outlet RD-1800/L and, therefore, there was no necessity of splitting of this small outlet into two further smaller outlets.

2.2 It transpires that the application submitted by respondent No. 4 and other shareholders for splitting of outlet was allowed by the Divisional Canal Officer, however, decision was kept pending as the approval for outlets having discharge of less than 0.75 cusecs is required to be accorded by the competent authority, which was apparently granted, vide letter dated 02.02.2023 (Annexure P-2). After the receipt of the aforesaid approval dated 02.02.2023 (Annexure P-2), Divisional Canal Officer allowed the application for splitting of outlet, submitted by respondent No. 4 and other shareholders, vide order dated 24.03.2023 (Annexure P-3).

2.3. Feeling aggrieved against the aforesaid order dated 24.03.2023 (Annexure P-3), the present petitioner preferred an appeal before respondent No. 2 (Superintending Canal Officer), who set aside the order dated 24.03.2023 (Annexure P-3), vide order dated 11.09.2023 (Annexure P-4). The aforesaid order dated 11.09.2023 (Annexure P-4) was challenged by respondent No. 4 (Rajbir) by preferring an appeal before the Chief Canal Officer, which was allowed, vide order dated 05.03.2024 (Annexure P-5) and the order dated 11.09.2023 (Annexure P-4) was set aside.

3. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court, seeking relief, as noticed above.

4. Learned counsel for petitioner submits that the Chief Canal Officer (respondent No. 1) has wrongly and illegally passed the impugned order without appreciating the fact that it was the duty of every shareholders of outlet to ensure maintenance of the water course of an outlet and to further ensure clearance of every syphon/culvert falling in the alignment of any water course. It is further submitted that the objections raised by the petitioner and other shareholders were not considered by the authorities below and a totally non-speaking order dated 24.03.2023 (Annexure P-3) was passed by the Divisional Canal Officer, which was although set aside by the Superintending Canal Officer, vide order dated 11.09.2023 (Annexure P-4), however, the Chief Canal Officer has wrongly set aside the order passed by the Superintending Canal Officer, vide impugned order dated 05.03.2024 (Annexure P-5).

4.1 Learned counsel for petitioner further submits that with the splitting of the outlet, its capacity has been considerably reduced to 0.35 and 0.32 cusecs respectively, which cannot maintain full supply level to irrigate the fields satisfactorily. It is next submitted that the existing water course and its branches are fully lined and have been irrigating the entire chak area properly and there is no obstruction in the free flow of water, therefore, there was absolutely no necessity of splitting the outlet into two smaller outlets. It is also submitted that the splitting of a small outlet into two smaller outlets is against the basic rules.

4.2 With the aforesaid submissions, learned counsel for petitioner

prayed that the impugned order be set aside.

5. I have heard learned counsel for petitioner and have also perused the paper book with his able assistance.

6. In the instant case, respondent No. 4 (Rajbir) and other shareholders of outlet RD-1800/L, Lakaria Minor requested the Canal authorities that due to passing of by-pass road through their fields and on account of non smooth flow of water through the existing syphon, their fields are not being properly irrigated. It was further stated that the clearance of the existing syphon was not being done properly, therefore, a new outlet at RD 4000/L, Lakaria Minor may be sanctioned separately for their area by transferring the same from outlet RD-1800/L, Lakaria Minor. They further added that the cost of the installation of the new outlet as well as adjustment of outlet involved will be borne by them and required water course will be arranged by them at their own level.

6.1 The aforesaid request of respondent No. 4 and other shareholders of outlet RD-1800/L, Lakaria Minor was opposed by the petitioner and few others by submitting that only a small area was being served by outlet RD-1800/L, Lakaria Minor and a 6 inch dia syphon already exists at site from where the irrigation of area of respondent No. 4 and others was being done properly. It was stated on behalf of petitioner that the clearance of syphon was being done by farmers at their own level and the existing water courses of outlet RD-1800/L, Lakaria Minor are lined and, therefore, there was no necessity to sanction a new outlet at RD-4000/L, Lakaria Minor. The Divisional Canal Officer, vide order dated 24.03.2023 (Annexure P-3), allowed the request of respondent No. 4 and other shareholders by observing as under :-

“Decision:- Revenue Missal, site sketch and all the relevant record produced in the court were examined. The arguments of the applicants as well as respondents were heard and properly considered. From the close perusal of the site sketch and over all view of the proposed scheme, it is appears that the demand of the applicants as proposed by S.D.C.O. Beri is genuine in the interest of better irrigation and so as to avoid the disturbance in irrigation due to low flow of water through the syphon. But before going into the final decision, the prior approval from worthy Chief Canal Officer/LCU, Irr. And W.R. Department Haryana Panchkula having discharge less than 0.75 Cs of outlet R.D. 1800-L as well as newly proposed outlet R.D. 4000-L Lakaria Mr. is essential under the provisions of the Haryana Canal and Drainage Act 29 of 1974.

In view of the facts stated above, said scheme regarding splitting the chak of outlet R.D. 1800-L Lakaria Mr. by providing a new outlet at R.D. 4000-L Lakaria Mr. Village Lakaria and Dhandhlan Tehsil Beri, District Jhajjar is hereby approved in the interest of better irrigation subject to the condition that the aid prior approval from worthy C.C.O/LCU Irr. and Water Resources Department Haryana, Panchkula is granted and subject to the condition to that the cost of the installation as well as adjustment of outlet is borne by the beneficiaries and remodelling of lined watercourses if any and arrangement of required watercourse will be arranged by the beneficiaries at their own level. Till the required sanction is granted, said decision will be held in abeyance.

Said decision was given by the undersigned vide this office letter No. 313/HRC dated 20.02.2023 and was submitted to worthy C.C.O./LCU, Irr. and Water

Resources Department Haryana, Panchkula through proper channel for obtaining necessary approval. Now worthy C.C.O./LCU vide his letter No. 1260/3LCU/2023 dated 02.03.2023 and endorsed by S.C.O.Y.W.S. Circle, Rohtak vide letter No. 4121/56-P/7-M dated 15.03.2023, has accorded the sanction having discharge less than 0.75 Cs of outlet R.D. 1800-L Lakaria Mr. as well as new outlet R.D. 4000-L Lakaria Mr. subject to the condition that arrangement of watercourse in the proposed chak be made by the beneficiaries. Simultaneously, expenditure involved in the adjustment of outlets will be recovered from the beneficiaries. In view of the facts stated above the scheme regarding splitting the chak of outlet R.D. 1800-L Lakaria Mr. by providing a new outlet at R.D. 4000-L Lakaria Mr. Village Lakaria and Dhandhlan Tehsil Beri, Distt. Jhajjar is hereby sanctioned, in the interest of better irrigation subject to the conditions already explained above.

B-Form showing the existing as well as proposed G.A/CCA as per said decision will be as under :-

S.No.	Name of Channel	O/L R.D.	Village	Existing		Proposed		Remarks
				GA	CCA	GA	CCA	
1.	Lakaria Mr.	1800-L	Lakaria	206	180	49	47	(-) 157/133
			Dhandhlan	<u>144</u>	<u>97</u>	<u>144</u>	<u>97</u>	
			Total	<u>350</u>	<u>277</u>	<u>193</u>	<u>144</u>	
2.	-do-	4000-L	Lakaria	--	--	<u>157</u>	<u>133</u>	(+) 157/133
			Grand Total	<u>350</u>	<u>277</u>	<u>350</u>	<u>277</u>	

Decision given on 24.03.2023 at Rohtak and the same may be conveyed among the concerned shareholders under the rules.

Sd/-
Divisional Canal Officer,
Sampla Water Services Division,
Rohtak.”

7. Since the petitioner was not satisfied with the aforesaid order dated 24.03.2023 (Annexure P-3), accordingly, he preferred an appeal before the Superintending Canal Officer, who vide its order dated 11.09.2023 (Annexure P-4), set aside the order dated 24.03.2023 (Annexure P-3), passed by the Divisional Canal Officer by observing that outlet RD-1800/L, Lakaria Minor was already a small outlet, comprising only 227 acres CCA (Culturable Commanded Area) and vide order passed by the Divisional Canal Officer, it was splitted into two outlets, thereby resulting into extra ordinary low/slow flow of water in the water course of both the outlets, which was not in the interest of better irrigation.

7.1 Being aggrieved against the aforesaid order dated 11.09.2023 (Annexure P-4), respondent No. 4 preferred an appeal before the Chief Canal Officer (respondent No. 1), which has been allowed, vide impugned order dated 05.03.2024 (Annexure P-5), the extract whereof reads as under :-

“Decision:-

I have heard the arguments of the appellants as well as of respondents who came present in the court at the time of hearing of this appeal case. The decision dated 11.09.2023 given by the Superintending Canal Officer, Yamuna Water Services Circle, Rohtak, Khaka Plan and other relevant record, placed before the court has been perused. It has been observed that the National Highway No. 71 passes through the chak of existing outlet at RD 1800/L Lakaria Minor. The area for which a new outlet at RD 4000/L Lakaria Minor is being demanded is getting irrigation at site through the syphon constructed beneath the National Highway. The syphon constructed beneath the National Highway road gets filled with sand and it is not easy for the appellants to clear the syphon again and again. Apart from this, every irrigator

has right to choose the source of irrigation where the better chances of irrigation are available at site. So, the demand of the appellants to sanction a new outlet at RD 4000/L Lakaria Minor after splitting the chak of existing outlet at RD 1800/L Lakaria Minor is justified in the interest of better irrigation. Moreover, the sanction to allow outlets at RD 1800/L and new outlet at RD 4000/L Lakaria Minor with discharge less than 0.75 Cs had already been accorded vide this office letter No. 1260/3-LCU/2023 dated 02.03.2023 and both the outlets are running at site.

In view of the facts as explained above, the appeal of the appellants is hereby allowed. The decision dated 11.09.2023 given by the Superintending Canal Officer, Yamuna Water Services Circle, Rohtak is hereby set-aside in the interest of development of canal irrigation. The decision is conveyed to all concerned accordingly.”

8. A perusal of the orders passed by the Divisional Canal Officer as well as Chief Canal Officer would show that although the splitting of outlet has been permitted and discharge has been reduced to less than 0.75 cusecs, however, it appears that before permitting the splitting of outlet, necessary sanction of the competent authority in the Department of Irrigation and Water Resources, Haryana, was obtained. It is only upon receipt of the required sanction by the competent authority, the splitting of the outlet, having discharge less than 0.75 cusecs, was permitted, subject to the condition that the arrangement of the water course in the proposed chak was to be made by the beneficiaries and expenditure involved in the adjustment of outlets is also to be recovered from the beneficiaries. Apparently, the splitting of the chak of outlet RD-1800/L, Lakaria Minor by providing a new outlet at RD-4000/L in village Lakaria and Dhandhilan, Tehsil Beri, District Jhajjar, was sanctioned in

the interest of better irrigation, subject to the condition, as noticed above. The Chief Canal Officer, while passing the impugned order dated 05.03.2024 (Annexure P-5), also observed that the National Highway No. 71 passes through the chak of existing outlet at RD-1800/L, Lakaria Minor and the area for which new outlet at RD-4000/L Lakaria Minor is being demanded; is getting irrigation at site through the syphon constructed beneath the National Highway. It is further observed that the said syphon constructed beneath the National Highway gets filled with sand and it is not easy to clear the syphon again and again. Therefore, the demand of respondent No. 4 and other shareholders for sanctioning of new outlet at RD-4000/L, after splitting the chak of existing outlet at RD-1800/L, is justified and in the interest of better irrigation. It has also been observed that sanction to allow outlets with discharge less than 0.75 cusecs has already been accorded and both the outlets are running at site.

9. Learned counsel for petitioner has been unable to controvert the aforesaid observations made by the canal authorities in permitting the splitting of the outlet after due sanction from the competent authority as regards the discharge being less than 0.75 cusecs. Evidently, keeping in view the factual position existing at the spot, the splitting of the outlet has been permitted in the interest of better irrigation and also to obviate the difficulties being faced by respondent No. 4 and other shareholders of outlet RD-1800/L, Lakaria Minor.

10. In my considered view, the orders passed by the Divisional Canal Officer as well as the Chief Canal Officer (respondents No. 3 and 1, respectively) appear to be justified and there is no scope of any interference in the same.

11. In view of the above discussion, the instant civil writ petition fails and the same is accordingly dismissed.
12. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

18.07.2024
sjks

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