

sent a list of 20 candidates. The Government approved a part of that list. Their Lordships of the Supreme Court held that the Government cannot pick and choose candidates out of the list except in a case where the antecedents of the candidates are found to be bad. However, even then the Supreme Court did not give relief to the petitioner because the candidate whose name was included at a higher position in the waiting list did not get relief from the Court.

(20) In view of the above discussion, the writ petition is dismissed. The parties are left to bear their own Costs.

J.S.T.

Before Hon'ble N. C. Jain & S. S. Sudhalkar, JJ.

GULAB SINGH,—*Petitioner.*

versus

DIVISIONAL CANAL OFFICER & OTHERS,—*Respondents.*

C.W.P. No. 6204 of 1995

4th October, 1995

Haryana Canal and Drainage Act, 1974—S. 24—Restoration of dismantled water course—Scope of powers under section 24—Whether a fresh water course can be ordered.

Held, that while dealing with the application under section 24 of the Act, the authorities under the Act cannot provide another water course. The scope of Section 24 of the Act is limited. Under this provision, the authorities are called upon to determine whether a water course was dismantled and whether the applicant is entitled to the restoration of water course. If the authorities dealing with an application under Section 24 of the Act are of the view that no water course was dismantled by a particular party and that the applicant by filing an application under Section 24 of the Act was not entitled to its restoration, the application could certainly be dismissed but under no circumstance, another water course can be provided in the interest of better irrigation. If the lands of particular land owners can be irrigated by another water course, the process of preparation a fresh scheme has to be gone into.

(Para 5)

R. M. Singh, Advocate, *for the Petitioner.*

A. S. Gulia, Advocate, J. V. Yadav, Advocate, *for the Respondents.*

Jagdev Sharma, Addl. A.G. Haryana, with Gulab Singh, AAG, Haryana.

ORDER

N. C. Jain, J.

(1) This writ petition has been directed against the order of the Divisional Canal Officer, Bhiwani (Annexure P-2) reversing the order of the Sub Divisional Canal Officer, Bhiwani. The question involved herein being short one, we have thought it appropriate to dispose of the writ petition at the stage of motion hearing.

(2) In order to appreciate the question in controversy it is necessary to have a look on the facts of the case. The petitioner filed an application under Section 24 of the Hayana Canal and Drainage Act, 1974 (for short 'the Act') for restoration of the water course on the ground that respondent No. 3 has dismantled the same. The application was allowed by the Sub Divisional Officer. The operative part of the aforementioned order is as under :—

“After hearing both the parties, site inspection and consulting records of irrigation, it has been found that the irrigation done by Shri Gulab Singh, son of Shri Mehar Chand Singh through existing water course is only 3 acres in the wari of 2 hrs. 20 minutes during the crop season Rabi 93-94 whereas the irrigation of Shri Sukhbir Singh, son of Shri Jugla done through W/C No. A-8 at point 212/23-24 during the Rabi crop 93-94 in a period of wari 1 hrs. 42 minutes is 8 acres which shows that better irrigation can be done through W/C. at point 212/2-9-3-8 which was dismantalled by Shri Sukhbir Singh, son of Shri Gugla Singh of village Tigrana.

So keeping in view the above facts and in the interest of better irrigation it is hereby ordered to restore the dismantalled water course to its original condition within a week. If Shri Sukhbir Singh, son of Shri Gugla Singh of village Tigrana fails to restore the water course within the specific period then water course will be restored with the help of police and cost of restoration will be recovered from the defaulter.”

(3) Against the aforesaid order, respondent No. 3 filed an appeal before the Divisional Canal Officer who has passed the following order :—

“Share-holders who attended the Court were heard and their recorded statements were considered. Record produced

before the Court was consulted. Site was also inspected. From perusal of the record and site inspection, it has been revealed that lined/unlined water-course runs through holding of the respondent and as such he can irrigate his area with this running water course without difficulty. Besides by the disputed water course holding of appellant bisects into two parts sowing of fields are very difficult. As there is no adverse effect of irrigation to the respondent by the present system of water course and as such there is no necessity to restore the water course in dispute.

Keeping in view of above facts the appeal is accepted and decision of Sub Divisional Canal Officer, Gujrani water service Sub Divisional Bhiwani is set-aside."

(4) Counsel for the petitioner has argued that the Divisional Canal Officer could not and should not have decided the question as to whether the petitioner's land can be irrigated from the Lined water course or not and that the short question which arose before the authority was whether the water course was dismantled by respondent No. 3 or not and whether the petitioner was entitled to the restoration of the same or not. He has argued that Section 24 of the Haryana Canal and Drainage Act, 1974 pertains to the restoration of demolished water course and that it is nowhere being provided therein that in the interest of irrigation, another water course can be provided. In order to appreciate the argument of the counsel for the petitioner it is necessary to see the scope of Section 24 of the Act which reads as under :—

"24. Restoration of demolished or altered etc. Watercourse

(1) If a person demolishes, alters, enlarges or obstructs a water course or a temporary water-course or causes any damage thereto, any person affected thereby may apply to the Sub-Divisional Canal Officer for directing the restoration of the same to its original condition.

(2) On receiving an application under sub-section (1) the Sub-Divisional Canal Officer may after making such enquiry as he may deem fit, require by notice in writing served on the person found to be responsible for so demolishing, altering, enlarging; obstructing or causing damage, to restore at his own cost, the water course or temporary water course to its original condition within such period not exceeding twenty-one days, as may be specified in the notice :

Provided that in case of a temporary watercourse its restoration shall not be for a period exceeding one year.

- (3) If such person fails to the satisfaction of the Sub-Divisional Canal Officer, to restore the watercourse or temporary watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Sub-Divisional Canal Officer may cause the watercourse or temporary watercourse to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person. The Sub-Divisional Canal Officer may order recovery of a sum not exceeding Rs. 500 from the defaulting person by way of penalty. Out of this sum so recovered the Sub-Divisional Canal Officer may order any amount to be paid to the aggrieved person for the damage caused to him. In case the penalty is not paid the same shall be recoverable as arrears of land revenue.
- (4) Any person aggrieved by the order of the Sub-Divisional Canal Officer, may prefer an appeal within fifteen days of the passing of such order to the Divisional Canal Officer, whose decision on such appeal shall be final.
- (5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered as arrears of land revenue."

(5) After hearing the counsel for the parties, we are of the firm view that while dealing with the application under Section 24 of the Act, the authorities under the Act cannot provide another water course. The scope of Section 24 of the Act is limited. Under this provision, the authorities are called upon to determine whether a water course was dismantled and whether the applicant is entitled to the restoration of water course. If the authorities dealing with an application under Section 24 of the Act are of the view that no water course was dismantled by a particular party and that the applicant by filing an application under Section 24 of the Act was not entitled to its restoration, the application could certainly be dismissed but under no circumstance, another water course can be provided in the interest of better irrigation. If the lands of particular land owners can be irrigated by another water course, the process of preparation of a fresh scheme has to be gone into.

(6) Since the Appellate Authority has not decided the question of dismantling of the water course by respondent No. 3 and about the entitlement of the petitioner to the restoration of the water course, no other option is left to us except to remand the case to the Appellate Authority for a fresh decision.

(7) The writ petition is, therefore, allowed, the order Annexure P-2 is quashed. As a necessary consequence of the acceptance of the writ petition, the case has to be remanded back to the appellate authority for taking a fresh decision and to determine the question involved in the case in the light of the observations made by us. The parties through their counsel are directed to appear before the Appellate Authority on October 16, 1995 who would pass necessary order at an early date and preferably within three months from the date of receipt of a copy of this order. No costs. A copy of the order be given *dasti* on payment.

(8) In the meanwhile, status-quo would continue at the spot.

J.S.T.

Bejore Hon'ble G. S. Singhvi & T. H. B. Chalapathi, JJ.

SURESH KUMAR & ANOTHER,—*Petitioners.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 6226 of 1995

9th October, 1995

Haryana Municipal Act, 1973—S. 9(3)—Haryana Municipal (Amendment) Act, 1994—Constitution of India, 1950—73rd Amendment—Art. 243-R—Nomination to the office of Municipal Commissioner—Government empowered to nominate upto 3 persons to Municipal Committee from amongst persons having special knowledge and experience of municipal administration—In the absence of material showing nominees fulfil conditions of S. 9(3). the nominations are liable to be quashed.