

Dalip Singh, etc. *v.* The Superintending Canal Officer, West Circle Rohtak,  
etc. (Mehar Singh, C.J.)

(9) In the result, the second appeal of the defendants-appellants is dismissed, but, in the circumstances of the case, there is no order in regard to costs.

R. S. NARULA, J.—I agree.

R. N. M.

CIVIL MISCELLANEOUS

*Before Mehar Singh, C. J. and Shamsheer Bahadur, J.*

DALIP SINGH AND OTHERS,—*Petitioner*

*versus*

THE SUPERINTENDING CANAL OFFICER, WEST CIRCLE, ROHTAK,  
AND OTHERS,—*Respondents*

Civil Writ No. 408 of 1967

April 8, 1968

*Northern India Canal and Drainage Act (VIII of 1873)—Ss. 30-A, 30-B and 30-C—Divisional Canal Officer not approving a scheme—Revision against such order—Whether maintainable—Jurisdiction with regard to revision—Whether to be conferred by a statute.*

*Held*, that under section 30-C of Northern India Canal and Drainage Act what has to be published by the Divisional Canal Officer is the particulars of the scheme approved by him and the object is to call upon the shareholders to implement the same. A scheme not approved or rejected cannot be published nor implemented. A revision is only permitted under section (3) of section 30-B in regard to a scheme published under section 30-C, and if the conclusion is that a scheme disapproved or rejected cannot be published under section 30-C, there is no power of revision given by sub-section (3) of section 30-B to the Superintending Canal Officer against the disapproval or rejection of a draft scheme. The condition laid down in section 30-C for publication is with regard to an approval scheme with the object of calling upon the shareholders to implement it. It is when the shareholders are thus under the statute called upon to implement an approved scheme, that someone of them, may have grievance against such an approved scheme, and, when he has that, he has been given a right of approach

by way of revision under sub-section (3) of section 30-B against the approved scheme to the Superintending Canal Officer. The power in this officer to interfere on his own is also for an approved scheme published according to section 30-C. So that neither in section 30-C nor in sub-section (3) of section 30-B can the word 'approved' be read to include the word 'disapproved'. The Superintending Canal Officer has, therefore, no jurisdiction under sub-section (3) of section 30-B of the Act to interfere with the orders of the Divisional Canal Officer disapproving the scheme. (Para 7)

*Held*, that jurisdiction in regard to revision, as much as right of appeal, is by conferment in a statute and not otherwise and has thus to be limited to the conditions laid down in respect to the same in the statute. (Para 7)

*Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order of the Superintending Canal Officer, dated 9th February, 1967.*

S. P. GOYAL, ADVOCATE, for the Petitioners.

G. C. MITTAL, ADVOCATE for ADVOCATE-GENERAL, HARYANA AND A. S. NEHRA, ADVOCATE, for the Respondents.

#### JUDGMENT

MEHAR, SINGH, C.J.—This will dispose of two petitions No. 537 and 408 of 1967 under Articles 226 and 227 of the Constitution by ten petitioners in the first petition and nine petitioners in the second petition, both the sets of petitioners belonging to village Sisai Bola, in Tehsil Hansi of Hisar District. In the first petition there are six respondents of whom the first two are the State of Haryana, and the Superintending Canal Officer, W.J.C., West Circle, Rohtak, and respondents 3 to 6 are Rameshwar, Bir Singh, Ujala and Badlu; and in the second petition there are five respondents of whom the first is the Superintending Canal Officer, W.J.C., West Circle, Rohtak, and respondents 2 to 5 are Pahlad. Baru, Hawa and Harnarain.

(2) On an approach by respondents 3 to 6 in the first petition, and respondents 2 to 5 in the second petition, to the Divisional Canal Officer for shifting of two outlets, from the present location of the same, draft schemes in that connection were prepared by the Divisional Canal Officer under section 30-A(1)(d) of the Northern India Canal and Drainage Act, 1873 (Act 8 of 1873). Respondents 3 to 6 in the first petition had asked for shifting the outlet RD 19000-R

Dalip Singh, etc. v. The Superintending Canal Officer, West Circle Rohtak, etc. (Mehar Singh, C.J.)

to RD 17985-R on Sisai minor. In his order of October 11, 1966, Annexure 'B', the Divisional Canal Officer rejected this demand pointing out that in thus shifting the outlet interests of irrigation will not be served as the outlet will be situated in one corner of the Chak if so shifted. He had inspected the site on September 30, 1966, and found that the site of the existing outlet RD 19000-R was most suitable. Respondents 2 to 5 in the second petition had asked for shifting of outlet RD 10000-R to RD 12000-R on Sisai Minor, but by pointing out that on an inspection of the site on September 30, 1966, the same order the Divisional Canal Officer rejected that demand he had found that the shifting of outlet RD 10000-R to RD 12000-R on the same minor was not in the interests of irrigation. Against this order of the Divisional Canal Officer there were revision applications to the Superintending Canal Officer by both the sets of respondents. This officer disposed of those revision applications by his order of February 2, 1967, and accepting both the revision applications shifted both the outlets as had been demanded by both the sets of respondents. In these two petitions the order of the Superintending Canal Officer has been challenged as not according to law and thus invalid.

(3) The two petitions being directed against the same order of the Superintending Canal Officer have been considered together. The first petition first came before Grover, J., who made an order, dated August 4, 1967, referring petition No. 537 of 1967 to a larger Bench, and of course the second petition No. 408 of 1967 has come before this Bench with the first. In petition No. 537 of 1967, Grover, J., found that there was no material which supported the allegation of *mala fide* against the Superintending Canal Officer that he has made his order on extraneous considerations. He was also of the opinion that the merit of the order made by the Superintending Canal Officer was not open to argument on the side of the petitioners in a petition like this. Both these considerations of course also apply to similar allegations in the second petition No. 408 of 1967. On such considerations the learned Judge was of the opinion that there could not be interference with the order of the Superintending Canal Officer and that was, in my opinion, the correct approach.

(4) The learned Judge, however, has referred a question of law to a larger Bench, it having been urged before him on behalf of the petitioners in the first petition that no revision application under

the provisions of Act 8 of 1873 was competent from the order of the Divisional Canal Officer to the Superintending Canal Officer. The position is in this respect exactly the same in the second petition. It is for the decision of this question that these petitions are before this Bench.

(5) In Act 8 of 1873 the relevant part of section 30-A, for the present purpose, is—

“30-A(1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf, the Divisional Canal Officer, may, on his own motion or on the application of a share-holder, prepare a draft scheme to provide for all or any of the matters, namely,—

\* \* \* \* \*

(d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a water course.

(2) Every scheme prepared under sub-section (1) shall, amongst other matters, set out the estimated cost thereof, the alignment of the proposed water course or realignment of the existing water-course, as the case may be, the site of the outlet, the particulars of the share-holders to be benefited and other persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme.”

Then sections 30-B and 30-C read—

“30-B. (1) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions with respect thereof within twenty-one days of the publication.

(2) After considering such objections and suggestions, if any, the Divisional Canal Officer shall approve the scheme either as it was originally prepared or in such modified form as he may consider fit.

(3) The Superintending Canal Officer may, *suo motu* at any time or on an application by any person aggrieved by the approved scheme made within a period of thirty days from the date of publication of the particulars of the scheme

Dalip Singh, etc. v. The Superintending Canal Officer, West Circle Rohtak,  
etc. (Mehar Singh, C.J.)

under section 30-C, revise the scheme approved by the  
Divisional Canal Officer:

Provided that such revision shall not be made without afford-  
ing to the person affected an opportunity of being heard.

30-C. The Divisional Canal Officer shall, as soon as may be,  
publish the particulars of the scheme approved by him  
under sub-section (2) of section 30-B in the prescribed  
manner and call upon the shareholders to implement it at  
their own cost within the period to be specified by him."

(6) The argument of the learned counsel for the petitioners is quite simple that under section 30-C of the Act a Divisional Canal Officer is enjoined to publish the scheme approved by him under sub-section (2) of section 30-B calling upon the shareholders to implement the same. It is a scheme thus published under section 30-C of this Act that can be revised by the Superintending Canal Officer under section 30-B (3) either *suo motu* at any time or on an application by any aggrieved person, but when there is no scheme approved by the Divisional Canal Officer, nothing can be published under section 30-C and there is nothing against which a revision application can be made to the Superintending Canal Officer under section 30-B(3). The learned counsel for the petitioners refers to *Ohene moore v. Akesseh Tayee* (1) in which their Lordships of the Privy Council held that all appeals exist merely by statute and, unless the statutory conditions are fulfilled, no jurisdiction is given to any Court of Justice to entertain them, and the learned counsel urges that in law the position is exactly the same in so far as the question of a right to file a revision application is concerned. This has not been denied, and indeed cannot possibly be denied, on the side of the respondents. But the position taken on their side is that the word 'approved' appearing either in section 30-B or in section 30-C of this Act should be read to include also the word 'disapproved', otherwise it is pointed out that once a draft scheme is prepared by the Divisional Canal Officer under section 30-A, then under sub-section (2) of section 30-B he can only approve the scheme either as originally prepared or as modified. So that once a draft scheme is prepared by him he must not disapprove it but must only approve it in the manner provided in sub-section (2) of section 30-B, a conclusion, it has been urged on behalf of the respondents as it was urged before Grover, J., not satisfactory and

(1) A.I.R. 1935 P.C. 5.

leading to anomalous results, so that the construction of sections 30-A, 30-B and 30-C of the Act should be so as not to lead to such anomalous results. It is further pointed out that if the word 'approved' in section 30-B and section 30-C is not to be read as including the word 'disapproved', in the present cases the Divisional Canal Officer having prepared the draft schemes, he could not reject those schemes outright, and thus his orders would be against this statutory provision. However, nobody has come forward to challenge the orders of the Divisional Canal Officer before this Court and this consideration cannot thus prevail. The validity or legality of the orders of the Divisional Canal Officer can only be seen when a challenge is made to the same which is not what is claimed by the petitioners in these petitions.

(7) The contention on the side of the respondents cannot prevail because of the language used in section 30-C and sub-section (3) of section 30-B of the Act. Under section 30-C what has to be published by the Divisional Canal Officer is the particulars of the scheme approved by him and the object is to call upon the share-holders to implement the same. A scheme not approved or rejected cannot be implemented and if this argument on the side of the respondents was accepted, a part of section 30-C would become redundant. Redundancy is not to be imputed to the legislature. Once this is the conclusion a revision is only permitted under section (3) of section 30-B in regard to a scheme published under section 30-C, and if the conclusion is that a scheme disapproved or rejected cannot be published under section 30-C, there is no power of revision given by sub-section (3) of section 30-B to the Superintending Canal Officer against the disapproval or rejection of a draft scheme. The jurisdiction in regard to revision, as much as a right of appeal, is by conferment in a statute and not otherwise, and has thus to be limited to the conditions laid down in respect to the same in the statute. The condition laid down in section 30-C for publication is with regard to an approved scheme with, as stated, the object of calling upon the share-holders to implement it. It is when the share-holders are thus under the statute called upon to implement an approved scheme that someone of them may have a grievance against such an approved scheme, and, when he has that, he has been given a right of approach by way of revision under sub-section (3) of section 30-B against the approved scheme to the Superintending Canal Officer. The power in this officer to interfere on his own is also for an approved scheme published according to section 30-C.

Dalip Singh, etc. v. The Superintending Canal Officer, West Circle Rohtak,  
etc. (Shamsher Bahadur, J.)

So that neither in section 30-C nor in sub-section (3) of section 30-B can the word 'approved' be read to include the word 'dis-approved'. On this approach it is immediately apparent that the Superintending Canal Officer, respondent, had no jurisdiction under sub-section (3) of section 30-B of the Act to interfere with the orders of the Divisional Canal Officer refusing to shift the outlets. So the impugned orders of the Superintending Canal Officer in both the petitions are quashed, but, in the circumstances of the case, there is no order in regard to costs in these petitions.

SHAMSHER BAHADUR, J.—(8) While agreeing with my Lord the Chief Justice that the statutory provisions with regard to revisions, like those of appeals, are to be confined and contained within their statutory limits, it may be mentioned that a similar question arose before me in *Ram Rikh v. State of Haryana, etc* (2). In that case also, a scheme for a change in the alignment of the water-course was put in motion by its publication under section 30-A of the Northern India Canal and Drainage Act. After hearing the objections, the Divisional Canal Officer, who was considering this matter, did not recommend a change. The aggrieved right-holder moved the Superintending Canal Officer, in exercise of his revisional powers under sub-section (3) of section 30-B, who granted the relief sought. It was argued before me in the writ petition that the scheme may be revised by the Superintending Canal Officer when it has been approved by the Divisional Canal Officer. I reached the conclusion independently of any authority that the language of the provisions, to which my Lord, the Chief Justice has adverted in detail, made it plain that a scheme under the Act has to emanate with the Divisional Canal Officer who has to approve it as it is published or in such modified form as he considers proper after hearing the objections; and when the scheme itself does not commend itself to the Divisional Canal Officer, who does not submit it to the Superintending Canal Officer for approval the matter ends there. There is no scheme, in other words, which needs to be revised.

(9) I have no hesitation in agreeing to the proposed order that the impugned orders of the Superintending Canal Officer in both cases have to be quashed, there being no order as to costs.

---

R. N. M.

---

(2) I.L.R. (1968 2 Punj. and Haryana, 446.