

CIVIL MISCELLANEOUS

*Before Shamsheer Bahadur, J.*SHIB DHAN AND OTHERS,—*Petitioners**versus*

SUPERINTENDING ENGINEER, WESTERN JAMMUNA CANAL,

ROHTAK, AND OTHERS,—*Respondents.*

Civil Writ No. 711 of 1967.

February, 29, 1967

Northern India Canal and Drainage Act (VIII of 1873)—S. 30-A(1), 30-B(3) and 30-C—Preparation of draft scheme by the Divisional Canal Officer—Assistance obtained from subordinates—Whether irregular—Power of revision of the scheme by the Superintending Canal Officer—Whether confined to changes in a particular alignment—Revision effected in the scheme—Whether should again be published.

Held, that all that sub-section (1) of section 30-A of Northern India Canal and Drainage Act, 1873 requires is that the Divisional Canal Officer has to prepare a draft scheme. It does not exclude the assistance which he may obtain from a subordinate functionary. The scheme is under the signatures of the Divisional Canal Officer. The objection that the scheme was not framed by the Divisional Canal Officer as some assistance had been obtained from his subordinates cannot be sustained. Such a procedure not being violative of the requirement of sub-section (1) of section 30-A of the Act.

Held that clause (a) of section 30-A(1) of the Act gives a free hand to the Divisional Canal Officer to frame a scheme regarding construction, alteration, extension and alignment of any watercourse or realignment of any existing watercourse. The Superintending Canal Officer under the powers given to him under sub-section (3) of section 30-B is free to revise a scheme. In other words, the Superintending Canal Officer may change the construction, alteration, extension and alignment of any watercourse. It cannot be contended that the word "revise" should be confined to changes in the particular alignment proposed by the Divisional Canal Officer. If that were the intention of the legislation, the Superintending Canal Officer would have been authorised only to confirm the scheme as submitted to him by the Divisional Canal Officer. The word "revision", is much wider and more comprehensive than a mere confirmation of the scheme. It cannot be said, therefore, that the Superintending Canal Officer could either reject the scheme or confirm it and not make any alteration in it.

Held, that all that is envisaged is that the scheme under section 30-A of the Act should be duly published. It is not necessary that every revision effected

in the scheme by the Superintending Canal Officer should again be published under the provisions of section 30-C of the Act.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of Respondent No. 1, dated 25th February, 1967, (Copy Annexure 'D') and that of respondent No. 2, dated 20th December 1966 (Copy Annexure 'B').

R. S. MITTAL, ADVOCATE, for the Petitioner.

J. C. VERMA, ADVOCATE FOR ADVOCATE-GENERAL AND B. S. MALIK, ADVOCATE, for Respondents 3 and 4.

ORDER

SHAMSHER BHADUR, J.—In this petition under Article 226/227 of the Constitution, Shib Dhan and 9 other right-holders have challenged the validity of the order passed by the Superintending Canal Officer on 21st of March, 1967 in the exercise of his revisional jurisdiction under sub-section (3) of section 30-B of the Northern India Canal and Drainage Act, 1873 (hereinafter called "the Act").

The petitioners, who are residents of Mandhana, Tehsil Hansi, desired that on account of enmity with Ram Chand and Tara Chand, respondents 3 and 4, respectively of the same village some separate arrangement should be made for the supply of water to their fields. They did not want that their fields and those of respondents 3 and 4 should continue to be served by the same distributary described as R.D. 26660-R. There was another distributary described as R.D. 28125-R and the petitioners desired that their fields should be served through this channel. In the proposal which was sent by the Divisional Canal Officer under the provisions of the Act, the petitioners and respondents 3 and 4 were to receive water for their fields from R.D. 26660-R. In revision, the Superintending Canal Officer revised the scheme submitted to him for approval by the Divisional Canal Officer to change the course of distributary R.D. 28125-R from the point "C" described in the plan filed with the petition. From point "C" the channel was to take a somewhat circuitous route to serve the fields of the various right-holders including the petitioner.

The petitioners in these proceedings have challenged the legality and propriety of the order which has been made by the Superintending Canal Officer. It is first contended by Mr. Mittal, the learned counsel for the petitioners, that the scheme submitted by the Divisional Canal Officer actually emanated from the subordinate functionaries of the

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Department and this is in contravention of the provisions of the Act. Under section 30-A it is the Divisional Canal Officer, who "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:—

- “(a) the construction, alteration, extension and alignment of any watercourse or realignment of any existing watercourse;
- (b) Reallotment of areas served by one watercourse to another;
- (c) * * * * * _____
- (cc) * * * * * _____
- (d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a water-course.”

It may be mentioned that the Divisional Canal Officer has been substituted in Punjab Act No. 23 of 1965 for the "Sub-Divisional Canal Officer". Counsel for the petitioners submits that in the second paragraph of this draft scheme it is mentioned that "the case may be got investigated by the Sub-Divisional Officer, Sunder through Zileadar Bapora", and has asked me to make an inference therefrom that the Sub-Divisional Officer and not the Divisional Canal Officer had framed the scheme. Now, all that sub-section (1) of section 30-A requires is that the Divisional Canal Officer has to prepare a draft scheme. It does not exclude the assistance which he may obtain from a subordinate functionary. The scheme is under the signatures of the Divisional Canal Officer and is given in elaborate detail in Annexure "B". The objection that the scheme was not framed by the Divisional Canal Officer as some assistance had been obtained from his subordinates cannot be sustained, such a procedure not being violative of the requirement of sub-section (1) of section 30-A of the Act.

The next objection of the learned counsel for the petitioners is that the Superintending Canal Officer is not free to make another alignment as he had done in the impugned order. Sub-section (3) of section 30-B says that "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 under section 30-C, revise the scheme approved by the Divisional Canal Officer." It is not disputed that the scheme had been published in accordance with the

provisions of section 30-C. What has been objected to is that the Superintending Canal Officer was not free to make a revision in the scheme to alter the alignment. It would be noted that clause (a) of section 30-A(1) of the Act gives a free hand to the Divisional Canal Officer to frame a scheme regarding construction, alteration, extension and alignment of any watercourse or realignment of any existing watercourse. The scheme falls within the scope of clause (a) being concerned with "construction, alteration extension and alignment of any water course or realignment of any existing watercourse." The Superintending Canal Officer under the powers given to him under sub-section (3) of section 30-B is free to revise a scheme. In other words, the Superintending Canal Officer may change the construction, alteration, extension and alignment of any watercourse. Nothing more has been done by him. It cannot be contended that the word "revise" should be confined to changes in the particular alignment proposed by the Divisional Canal Officer. If that were the intention of the legislation, the Superintending Canal Officer would have been authorised only to confirm the scheme as submitted to him by the Divisional Canal Officer. The word "revision", in my opinion, is much wider and more comprehensive than a mere confirmation of the scheme. It cannot be said, therefore that the Superintending Canal Officer could either reject the scheme or confirm it and not make any alteration in it.

Finally, it is submitted by Mr. Mittal, that the new alignment proposed by the Superintending Canal Officer would effect the interest of the petitioners adversely. Reference may be made to paragraph 16 of the petition which says that "the proposed realignment runs through a depression of about 12 feet depth between the length of the realignment proposed shown by letter YZL and it is impossible to take any water through this depression without incurring a substantial expense of thousands of rupees, to the lands of the petitioners." In reply to this allegation it is stated in the written statement filed on behalf of the State that the impugned order was passed after hearing the objections and suggestions of the concerned shareholders of the outlet and every opportunity to explain the difficulties in the alignment of watercourse was given to the petitioners. It was not necessary, in my opinion, for the Superintending Canal Officer to explain to the petitioners, who were present before him at the time of hearing as to what he was doing and to invite further objections. All that is envisaged is that the scheme under section 30-A should be duly published and that admittedly was done. It is not

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necessary that every revision effected in the scheme by the Superintending Canal Officer should again be published under the provisions of section 30-C. The petitioners being present at the time of hearing before the Superintending Canal Officer must be taken to have pressed their objections which are now the subject-matter of paragraph 15 of the petition. At any rate, these objections cannot be entertained now at this stage in writ proceedings.

This petition, in my opinion, is without force and must, therefore, be dismissed with costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

THE WORKMEN OF M/S BALI SINGH-BHAGWAN SINGH,—*Petitioners*

versus

THE MANAGEMENT OF M/S BALI SINGH-BHAGWAN SINGH,—
Respondents

Civil Reference No. 4 of 1967

February 29, 1968.

Punjab Reorganisation Act (XXXI of 1966)—S. 93—Industrial Disputes Act (XIV of 1947)—S. 10—References to Labour Courts and Industrial Tribunals under—Whether “proceedings”—Such proceedings—Whether automatically transferred to the respective States on 1st November, 1966, under section 93 of Punjab Reorganisation Act—Labour Court, Rohtak—Whether a “Corresponding Court” to Labour Court, Jullundur.

Held, that the Industrial Disputes Act, 1947, was enacted when the eventuality of the type resulting from bifurcation of a State into two or more States or territories was not contemplated. The Industrial Disputes Act was not intended to provide for such extraordinary exigencies. Hence, a special provision was necessary in the Punjab Reorganisation Act to provide for a contingency arising out of Reorganisation of a State. It is for this reason that in section 93, sub-section (3), proceeding has been given a comprehensive and inclusive definition so as to include “any suit, case or appeal”. In this sense, a case is to be given a wide meaning of a circumstance, situation of happening which is the subject-matter of an investigation or enquiry calling for a decision. References of industrial disputes to the Labour Court or to the