

Bant Singh and ors. Vs. Man Singh and ors.

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Court : Punjab and Haryana

Decided On : Sep-03-1975

Reported in : AIR1976P& H102

Judge : S.S. Sandhawalia and; Prem Chand Jain, JJ.

Acts : [Constitution of India](#) - Articles 13 and 226; [Northern India Canal and Drainage Act, 1873](#)

Appeal No. : Civil Writ No. 1413 of 1971

Appellant : Bant Singh and ors.

Respondent : Man Singh and ors.

Advocate for Def. : J.N. Kaushal,; Ashok Bhan and; Maluk Singh Thakur, A

Advocate for Pet/Ap. : Nand Lal Dhingra, Adv.

Disposition : Petition allowed

Judgement :

Prem Chand Jain, J.

1. Bant Singh and others have filed this petition under Articles 226 and 227 of the [Constitution of India](#) for the issuance of an appropriate writ, order or direction, quashing the orders of the Deputy Collector, Abohar, Divisional Canal Officer, and

the Superintending Canal Officer, dated 19th February, 1970, 30th July, 1970, and 9th February, 1971 (copies Annexures 'B', 'C' and 'E' to the petition respectively), and also the order of the Superintending Engineer, dated 6th November, 1969 which had been approved earlier by the Chief Engineer, on 27th October, 1969, as contained in Annexure 'A' to the petition. The facts of this case as given in the petition may briefly be stated thus:--

2. The petitioners and respondents 1 to 3 are co-sharers in outlet at RD No. 31970/Tail Right. This outlet is on Khunan Minor which is 7 miles in length. Formerly the irrigation at Khunan Minor was 40% and later it was raised to 60%. Under the new scheme which has now been sanctioned, the irrigation has to be raised to 90% by remodelling the channel, that is, the Khunan Minor. Its banks will be raised 2 1/2 feet and its bed will also be widened to raw 50% more water. This remodelling of the outlet has not been done so far.

3. It is further stated that Bant Singh, petitioner No. 1, applied for enhanced supply for seven acres of his garden area on 23rd January, 1965. The case was duly examined by the Horticulture Department and the Canal Department and was recommended by the authorities for enhanced supply to the Superintending Canal Officer within six months. The Superintending Canal Officer kept the case pending and told Bant Singh, petitioner No. 1, that till the Khunan Minor was remodelled, enhanced supply of water could not be sanctioned for a garden which was at the tail.

4. It is further stated that Man Singh, respondent No. 1, applied for enhanced supply of water for his 10 acres of garden area, while Atma Singh and Nachhattar Singh sons of Man Singh applied for enhanced supply of water for 5 acres of garden area on 24th March, 1966. The petitioner Bant Singh also again applied for sanction of enhanced supply of water for his 7 acres of garden area. All the three cases were again examined by the Horticulture Department and the canal authorities and a recommendation was made that enhanced supply of water should be given to all the three gar-dens. The Superintending Canal Officer again refused to give enhanced supply of water for any of the gardens saying that A policy had been framed by the Government that enhanced supply should not be

given on any outlet which was at the tail unless the tail was remodelled by increasing its supply from the existing 60% to 90%.

5. It is further alleged in the petition that Map Singh, respondent No, 1, is married with the daughter of Jang Singh son of Sunder Singh, resident of Muktsar. Jang Singh is a close friend of Shri Gurmit Singh, M.L.A., who is now a Minister. Shri Kailash Chand, Superintending Canal Officer, was posted at Ferozepur and the Khunan Minor was in his circle. On the asking of Shri Gurmit Singh, Shri Kailash Chand Superintending Canal Officer, recommended enhanced supply of water for the two gardens of respondents 1 to 3 and did not pass any order on the application of petitioner No 1. On coming to know of the enhanced supply of water to respondents 1 to 3, petitioner No. 1 made several applications to the authorities to sanction enhanced supply of water for his garden also, but did not succeed.

6. It is further alleged that MAN Singh, etc., respondents 1 to 3, made an application for amendment of Warabandi at outlet 31970 Tail right distributary Khunan Minor. The petitioners and other rightholders of village Tarkhanwala opposed the amendment of this Warabandi on the ground that the outlet of the petitioners was At the tail that remodelling of the minor had not been done, that water was already short and that amendment should not be made. The Deputy Collector, without smug any reasons, passed a telegraphic order sanctioning the amended Warabandi and directing that it should be enforced from the beginning of Kharif, 1970. A copy of the order of the Deputy Collector, dated 19th February, 1970, is Annexure 'B' to the petition Feeling aggrieved from the aider of the Deputy Collector, the petitioners preferred an appeal but the same was dismissed by the Divisional Canal Officer on 30th July, 1970 (copy Annexure 'C' to the petition). Still dissatisfied a revision was filed before the Suerintending Canal Officer but it also met the same fate and was rejected on 9th February, 1971, (copy Annexure 'E' to the petition). It is in these circumstances that the present petition has been filed fay the petitioners calling is question the legality and propriety of the orders of the Canal authorities.

7. Separate written statements have been filed on behalf of respondents 1 to 3, 4 and 8, in which the material allegations made in the petition have been

controverted. The petitioners have filed replication reiterating their stand taken in the petition.

8. It is vehemently contended by Mr. Dhingra, learned counsel for the petitioners, that without following the procedure laid down in Rule 9 of the Rules for the extra supply of canal water for gardens and orchards, enhanced supply of water could not legally be sanctioned in favour of respondents 1 to 3. Rule 9, on which reliance was placed by the learned counsel, reads as under:--

'Procedure regarding new applications--Superintending Engineers will work out every year the discharge that can be made available on every distributary for planting of gardens in accordance with Rule 1 supra. He will then invite applications for extra supply for big and small gardens to reach him by end of September by advertising in papers through the Public Relations Officer and also by sending notices to be posted at District and Tehsil Headquarters as also through the panchayats of all villages concerned. These applications shall then be passed on to the Fruit Specialist who will examine the suitability of the areas for which garden supply is demanded by the applicants. After the Fruit Specialist has examined the various cases himself or through the joint report of Canal Deputy Collectors and the District Agricultural Officer, he will send his recommendations to the Superintending Engineer concerned. The Superintending Engineer will then fix up a date not later than end of December to decide as to which applications should be accepted. In case the total demand for extra supply for gardens is less than the discharge available on the distributary, all the applications recommended by the Fruit Specialist will be accepted. In case the demand as per recommendations of the Fruit Specialist is more than the supply available, decision will be taken by a system of lots to be drawn by the Superintending Engineer in the aforesaid meeting in the presence of the Fruit Specialists and of the applicants who may choose to be present. After this the Superintending Engineer will straightway proceed to sanction supplies in various outlets concerned and make sure that the adjustments of outlets are completed in all cases during the following month of April.

The applications for extra supply for gardens already existing will be sorted out and a lottery will be drawn among such of those applicants whose gardens have been verified by the Fruit Specialist as genuine. If any supply is left over as available after the demand for existing gardens has been met, a second lottery for applications for supply for newly proposed gardens will be drawn.'

On the other hand, it was contended by Shri J.N. Kaushal, Senior Advocate, learned counsel for the private respondents, that Rule 9 has no statutory force as rules for the extra supply of canal water for gardens and orchards have not been framed in exercise of any power given under the Northern India Canal and Drainage Act 1873. It was also contended by the learned counsel that under Section 75, the rules have the force of law only after their publication in the Official Gazette and as the alleged rules have not been published in any Official Gazette, the same do not have any force of law and the petitioners on the basis of Rule 9, are not entitled to any relief,

9. After giving my thoughtful consideration to the entire matter, I am of the view that the point raised before me is of considerable importance, and is likely to arise quite often. This Court has given a good number of decisions relying on the rules for the extra supply of canal water for gardens and orchards. If I accept the contention of Mr. J.n. Kaushal, learned counsel then my decision is likely to go contra to the earlier decisions of this Court. There is no gainsaying that for quite long even the Department has been placing reliance on these rules and taking action in accordance with these rules. At the time of hearing, the learned counsel for the petitioners, could not satisfy me that these rules had been framed under any provision of the Act. The learned counsel for the petitioners also failed to show that these rules had been published in any Gazette. As I have already said, the point raised before me is of considerable importance and accordingly I refer the following question for decision to a larger Bench:--

'Have the rules for the extra supply of canal water for gardens and orchards, been duly framed in exercise of power given under any provision of the Act and have these rules a force of law?'

The office is directed to place the papers of this case before my Lord, the Chief Justice, for appropriate orders. In the interest of justice, it would be proper if this case could be listed for hearing on some actual date in the month of July, 1973.

10. This judgment of ours may be read as a part of the referring order, dated May 23, 1973. The question that has been referred for decision is in the following terms:--

'Have the rules for the extra supply of canal water for gardens and orchards, been duly framed in exercise of powers given under any provision of the Act and have these rules a force of law?'

11. At the outset, it may be observed that there was no controversy between the learned counsel for the parties that the so called rules for extra supply of canal water for gardens and orchards have not been framed in exercise of the power under Section 75 of the Act. Hence, the question whether these rules were published in the official Gazette or not, does not arise. In view of the admitted stand of the learned counsel for the parties, the first part of the question referred to has to be answered thus-- that the rules for the extra supply of canal water for gardens and orchards have not been framed in exercise of the powers given under any provision of the Act.

12. This brings me to the other aspect of the question, i.e, whether those rules have the force of law.

13. What was sought to be argued by Mr. Dhingra, was that the rules (hereinafter referred to as the Executive instructions) framed for the extra supply of canal water to the gardens and orchards, have been issued by the Chief Engineer, Irrigation Works, Punjab, as Head of the Department, for enforcing a uniform practice in the method of allowing extra supply of canal water for gardens and orchards and that these instructions have the force of law and the petitioners can certainly base their claim on those instructions. On the other hand, Mr. Kaushal, Senior Advocate, learned counsel for respondents Nos. 1 to 3, submitted that the Executive Instructions have been issued by the Chief Engineer for the guidance of the department and the same do not confer any right on anybody nor can any claim be

founded on the basis of those Executive Instructions,

14. After giving my thoughtful consideration to the entire matter I am of the view that there is considerable force in the contention of Mr. Dhingra, learned counsel for the petitioners.

15. Admittedly, there are no rules which may regulate the supply of canal water for gardens and orchards. The rules which are in existence make a provision for regulating the supply of canal water to lands only, The Government in its wisdom thought of issuing some instructions for the purpose of regulating extra supply of canal water for gardens and orchards and those instructions with suitable amendments made off and on, hold the field till today. Obviously, these instructions were issued to supplement the rules in existence, which were silent on the question of supply of canal water to the gardens and orchards. By issuing these instructions, a complete and detailed procedure has been prescribed for the supply of canal water for the gardens and orchards. These instructions do in no way amend, supersede or alter the existing rules; rather the same have the effect of filling the gap and supplementing the existing rules. Such a course is legally permissible, as has been observed by their Lordships of the Supreme Court in *Sant Ram Sharma v. State of Rajasthan*, AIR 1967 SC 1910. The relevant observations are at p- 1914 of the report, and read as under:--

'We proceed to consider the next contention of Mr. N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory Rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules

and issue instructions not inconsistent with the rules already framed.'

The aforesaid view in Sant Ram Sharma's case was reaffirmed later on by their Lordships of the Supreme Court in *Union of India v. K.P. Joseph*, (1973) 1 SCC 194 = (AIR 1973 SC 303), wherein it has been observed thus:--

'The appellant, however, contended that the order being an administrative direction conferred no justiciable right upon the first respondent which could be enforced in a Court by a writ or order in the nature of mandamus. The appellant submitted that the very foundation for the issue of a writ or an order in the nature of mandamus is the existence of a legal right and as an administrative order could confer no justiciable right, the High Court was wrong in issuing the order directing the second respondent to fix the pay of the first respondent in accordance with the Order.

Generally speaking an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in *Sant Ram Sharma v. State of Rajasthan* that although Government cannot supersede statutory rules by administrative instructions, yet if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.'

At this stage, it would be appropriate to notice a decision of their Lordships of the Supreme Court in *G.J. Fernandez v. State of Mysore*, AIR 1967 SC 1753, on which great reliance was placed by Shri J.N. Kaushal. After going through that decision, I find that the same is distinguishable and has no applicability to the facts of the case in hand. In that case, it was found as a fact by the High Court that the so-called Rules were not framed either under any statutory enactment or under any provision of the Constitution and that they were merely in the nature of administrative instructions for the guidance of the department and had been issued under the executive powers of the State. Further, before their Lordships of the Supreme Court, it was admitted by the learned counsel that the so-called Rules were administrative instructions issued by the Government to its servants relating

to the Public Works Department; but in the case in hand there are Rules in existence and the Executive Instructions have been issued to supplement those rules, which, as earlier observed, is legally permissible in view of the authoritative pronouncement of their Lordships of the Supreme Court in Sant Ram's case,

16. The Executive Instructions had to be issued for enforcing a uniform practice in the matter of allowing extra supply of canal water for gardens and orchards. If such instructions had not been issued then in the absence of any rule for regulating the supply of canal water for gardens and orchards, a great confusion could have prevailed and the action of the canal Authorities in matters of supply of water for gardens and orchards in a given case could tend to be arbitrary. In order to avoid any such situation, the State Government issued the Instructions, which have held the field till today and on the basis of which, for more than three decades, the citizens of the State have been basing their claims and getting extra supply of water for gardens and orchards by strictly following the procedure laid down in the instructions. So also the authorities dealing with such matters are required to strictly comply with the procedure laid down in the instructions and wherever the authorities have not followed the Instructions, then their action has always been quashed when questioned in this Court. The consistent view of this Court has been that the procedure laid down in these Instructions has to be strictly followed and any non-compliance with these Instructions would make the order of the Authority illegal and without jurisdiction. See in this connection, a Division Bench decision of this Court, reported in *Mool Chand v. State of Haryana* 1970 Pun LJ 701, In this view of the matter, the only view that is possible is that these Instructions have the force of law, and any non-compliance with the same would be justiciable. Accordingly, the second part of the question is answered in the affirmative and it is held that the Executive Instructions have the force of law.

17. After the aforesaid decision, the matter should have gone for decision on merits before the learned Single Judge, but the learned counsel for the parties submitted at the Bar that the matter has already been delayed and it would be in the interest of justice if the merits of the controversy were also decided by the Bench. Finding considerable force in the prayer made by the learned counsel at the Bar, we decided to bear the petition on merits also.

18. The only contention advanced by Mr. Dhingra, learned counsel for the petitioners, was that without following the procedure laid down in Rules 1 and 9, enhanced supply of water could not legally be sanctioned in favour of respondents 1 to 3, Our attention was drawn to the specific plea taken in the petition, which reads as under:--

The Superintending Canal Officer who did not keep in view the limits prescribed by Rule 1 as mentioned above and went out of the way to favour respondents Nos. 1 to 3, at the instance of Shri Gurmit Singh, aforesaid. The Superintending Engineer did not work out the discharge that could be made available on this Khunan Minor as is required in Rule 9. He also did not invite applications for extra supply for big and small gardens. The Superintending Engineer did not fix up a date to decide as to which applications should be accepted and did not take his decision by the system or lots which should have been drawn by him in the presence of the Fruit Specialist and in the presence of the petitioners and respondents.'

After examining the entire matter, I find considerable force in this contention of the learned counsel. Admittedly, the application of the petitioners was filed in 1965 for the supply of water for their garden and that application had been duly recommended by the Horticulture Department Surprisingly enough, till today no extra supply of water has been granted in favour of the petitioners, though on the applications which were filed by the respondents in the year 1966, extra supply of canal water has been sanctioned in their favour. The requirements of the mandatory provisions of Rule 9 have been enumerated in a Single Bench decision of this Court in Hira Singh v. Superintending Canal Officer-cum-Superintending Engineer, Ferozepore 1970 Pun LJ 685, where at p. 686 it has been observed thus:--

'Perusal of the above provisions of Rule 9 (supra) shows that before an order of the nature of the impugned order can be passed it is incumbent upon the canal authorities to first assess the amount of water that can be released for garden area and thereafter invite applications from the garden owners which are required' to be submitted by the end of September and thereafter required to be transmitted to the Fruit Specialist who after examining the stability of the area for the garden will

submit his recommendations to the Superintending; Engineer concerned and thereafter he is to fix a date not later than the end of December so as to decide which applicant is to be given enhanced supply of water and which is not to be given. Not only this, the rule leaves a little discretion to the Superintending Engineer in this matter because in case of demand for enhanced supply of water being equal or less to the supply of water available then he has no option but to sanction enhanced supply of water to every applicant. And in a situation where the demand for enhanced supply of water exceeds the supply available, then he has to take a decision by drawing lots in the presence of the Fruit Specialist and the applicants who may choose to be present.'

The facts of the present case when judged in the light of the observations reproduced above, do not leave any manner of doubt that the procedure laid down in Rule 9 was completely disregarded; inasmuch as applications from the garden owners' were not invited, nor was any date fixed for deciding the applications of the applicants for the enhanced supply of water nor was any notice issued to the petitioners when the claim of respondents 1 to 3 was determined. It is surprising that the application filed by the petitioners, though earlier in point of time, still remains undecided, while on the applications of respondents 1 to 3, which were filed subsequent to the application of the petitioners, enhanced supply of water was sanctioned. Thus, respondents 1 to 3 were granted water supply of canal water in an arbitrary manner without adhering to the mandatory procedure of Rule 9. Such an action of the authorities cannot legally be sustained,

19. Faced with this situation, it was sought to be argued on behalf of respondents 1 to 3 that even if any illegality had been committed while giving enhanced supply of canal water to respondents 1 to 3, still no effective relief could be granted in favour of the petitioners in exercise of the extraordinary jurisdiction of this Court. I am afraid, there is no merit in this contention of the learned counsel. The order by which respondents 1 to 3 got enhanced supply of canal water for their gardens, has to be set aside as it does not conform with the mandatory provisions of Rule 9, and once that order is set aside then the authorities would be duty bound to decide the application of the petitioners and that of the respondents at one and the same time in accordance with the mandatory provisions of Rule 9. The effective relief

prayed for by the petitioners is for the setting aside of the order by which enhanced supply of water has been sanctioned in favour of respondents 1 to 3 and a plausible case has been made out for quashing the impugned order.

20. It was next contended by way of preliminary objection that this petition suffers from laches, inasmuch as the order sanctioning enhanced supply of canal water was passed in October, 1969, while the present writ petition has been filed in April, 1971. I am afraid, there is no merit in this preliminary objection. Admittedly the order sanctioning enhanced supply of canal water in favour of respondents 1 to 3, was passed without notice to the petitioners. On the basis of the impugned order, respondents 1 to 3 made an application for amendment of warabandi. During those proceedings, the petitioners opposed the amendment in the warabandi before the Deputy Collector, but did not succeed. Thereafter, they filed an appeal before the Divisional Canal Officer, against the order of the Deputy Collector, but the same was dismissed. The petitioners' revision before the Superintending Canal Officer, too, did not succeed. Thereafter the present petition was filed calling in question the orders of the Deputy Collector, Abohar, the Divisional Canal Officer and the Superintending Canal Officer, dated 19th February, 1970, 30th July, 1970 and 9th February 1971 (copies Annexures 'B', 'C' and 'E' to this petition respectively) and the order of the Superintending Engineer, dated 6th November, 1969, (copy Annexure 'A'). Thus, it is clear that after the completion of warabandi proceedings under Section 68 of the Northern India Canal and Drainage Act, the petitioners approached this Court without any delay. Therefore, the objection, as earlier observed, has no merit, more so, when a very good case has been made out for interference in exercise of this Court's extraordinary jurisdiction under Articles 226 and 227 of the [Constitution of India](#).

21. No other point was urged on either side.

22. For the reasons recorded above, I allow this petition with costs, set aside the orders of the Deputy Collector, Divisional Canal Officer and the Superintending Canal Officer, dated 19th February, 1970, 30th July, 1970, and 9th February, 1971 (copies Annexures 'B', 'C' and 'E' to this petition respectively) and also the order of the Superintending Engineer dated 6th November, 1969 (copy Annexure 'A'), and

direct the authorities to decide the case of enhanced supply of water afresh on merits after affording full opportunity of hearing to the petitioners and respondents 1 to 3 or any other interested person.

S.S. Sandhawalia, J.

23. I agree.

24. Petition allowed.

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