

Jarnail Singh Vs. the Superintending Engineer and anr.

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SooperKanoon Citation : sooperkanoon.com/772590

Court : Rajasthan

Decided On : Mar-21-2001

Reported in : 2001(3)WLC117; 2007(3)WLN219

Judge : N.N. Mathur and; Jagat Singh, JJ.

Appeal No. : D.B. Civil Spl. Appeal No. 1164 of 1998

Appellant : Jarnail Singh

Respondent : The Superintending Engineer and anr.

Disposition : Appeal allowed

Judgement :

N.N. Mathur, J.

1. In view of the short controversy involved, on the request of the learned Counsel for the parties, this special appeal is taken up for final disposal.

2. The appellant-writ petitioner submitted an application before the Divisional Irrigation Officer (Executive Engineer), Irrigation Division-II, Hanumangarh (hereinafter referred to as 'D.I.O.') under the provisions of Rajasthan Irrigation and Drainage Rules, 1957 for shifting of outlet 22 MOD from stone No. 15.08/267.6 to stone No. 19/267.8 with a view to get a proper water supply for their fields. The D.I.O. sought technical report from the concerned Patwari, Zileadar and Assistant

Engineer and made a recommendation to Superintendent Irrigation Officer, Irrigation Circle, Hanumangarh Junction (hereinafter referred to as 'S.I.O.'). It appears that some objections were filed before the S.I.O. In view of this the S.I.O. send the matter back to the D.I.O. by order dated 29.07.1997 to hear all the persons concerned and proceed in the matter keeping in view the technical aspects of the case. The Executive Engineer again made a recommendation under communication dated 04.10.1997 for shifting of the outlet. The S.I.O. by order dated 15.01.1998 rejected the recommendation and denied the request of shifting the outlet.

3. The writ petitioner challenged the order of the S.I.O. dated 15.01.1998 (Annexure P-9) on various grounds, including that the order of S.I.O. is without jurisdiction inasmuch as it being the appellate authority under the Rajasthan Irrigation and Drainage Rules, 1957 (hereinafter referred to as 'Drainage Rules, 1957') could not have passed the original order for change of the outlet. The learned Single Judge while accepting the legal position that such an order could be passed only by D.I.O. did not find any illegality in the order of S.I.O. as in his opinion S.I.O. being a higher authority could passed such order. The view of the learned Single Judge is extracted as follows:

It is true that Divisional Irrigation Officer can pass such orders and if the parties are aggrieved against such order then it can be carried in appeal before the Superintending Engineer, who is a higher authority. In my opinion, no error was committed by the Superintending Engineer in passing the impugned order. It would have been multiplicity of litigation if the Divisional Irrigation Officer first pass the order then it was carried in appeal. The higher authority can always pass order if it is satisfied on the facts of the case. Hence first submission of Mr. Sidhu is rejected.

4. We are unable to subscribe the view of the learned Single Judge. The view taken by the learned Single Judge is contrary to the binding decisions of the Apex Court and the Division Bench of this Court. An identical controversy was raised before this Court in *Bagaram v. State of Rajasthan* and Ors. reported in . The Division Bench after examining the provisions of Drainage Rules, 1957 particularly

Rules 11(2) and (3) disapproved the action of S.I.O. deciding the original application with respect to change in outlet. The court observed:

In this connection, we may also point out that the S.I.O. by converting himself into an original authority has deprived the aggrieved party of a right of appeal. The argument that because the S.I.O. is the appellate authority to whom the case would have ultimately come and therefore, his orders, passed, even though as an original authority, are valid, is in our opinion not tenable. The Rules on the subject are quite clear that the D.I.O. is the original authority, who, after following the procedure prescribed by law, will decide the question of material change in the outlet and if any person is aggrieved by that order, he may file appeal within the prescribed time before the S.I.O. In our opinion, there has been a violation of Sub-Rules (2) and (3) in this case and consequently, the orders passed by the S.I.O. as an original authority on the recommendation of the D.I.O. cannot be sustained.

5. In *Purtabpur Company Ltd. v. Cane Commissioner of Bihar and Ors.* reported in : [1969]2SCR807 the identical controversy was raised. Purtabpur Company established in the State of U.P. used to draw sugarcane mainly from the neighbouring areas in the State of Bihar. 208 villages of the State of Bihar were the principle source of its supply of sugarcane and the Bihar authorities used to reserve those villages for it. A representation made by New Siwan Mill for reserving the 208 villages was rejected by the Cane Commissioner. The Central Government delegated to the several States and the Cane Commissioners its powers Under Clauses 6,7, 8 and 9 of the Sugar Cane (Control) Order, 1966. The Chief Minister of State of Bihar revoked the reservation made in favour of Purtabpur Company. There was a correspondence between the Cane Commissioner and the Chief Minister with respect to the reservation of village for supply of sugarcane. Ultimately, on the basis of directions of the Chief Minister, the Cane Commissioner passed the order leaving 99 villages for New Siwan Mill and 109 villages to Purtabpur Mill. The Apex Court struck down the subsequent order of the Cane Commissionr passed on the directions of the Chief Minister held that the power exercised by the Cane Commissioner Under Clause 6(1) is statutory powers and such powers cannot be abdicated in favour of anyone. The relevant observations are extracted as follows:

The power exercised by the Cane Commissioner Under Clause 6(1) is statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone - not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power exercised by the Chief Minister, an authority not recognised by Clause (6) read with Clause (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

6. The Apex Court supported its view by its earlier decision in *Commissioner of Police, Bombay v. Gordhandas Bhanji* reported in : [1952]1SCR135 . The court also relied upon its earlier decision in *State of Punjab v. Hari Kishan Sharma* reported in : [1966]2SCR982 , Thus, it is well established that a quasi-judicial order can be made only by the prescribed authority under the statute and none else.

7. Thus, this special appeal is allowed and the matter is required to be send back to the D.I.O. to pass appropriate order on the application filed by the petitioner in accordance with law.

8. Consequently, this special appeal is allowed. The order of the learned Single Judge dated 13.11.1998 is set aside. The writ petition No.3967/1998 *Jarnail Singh v. The Superintending Engineer* and another is also allowed and the order of the S.I.O. (Annexure-9) dated 15.08.1998 is quashed and set aside. The D.I.O. is directed to dispose of the petitioner's application in accordance with law within a period of three months from the date of the receipt of this order.