

for the first time in a replication and whether it would be appropriate on the facts of a given case to permit a new point to be raised by being put in for the first time in a rejoinder. The second objection of Sardar Partap Singh is of a consequential nature. He says that though an advance copy of the replication in question was served on him by the counsel for the petitioner, he was not informed of the *ex-parte* order of the Court whereby the filing of the replication was allowed subject to just exceptions. In the view I have taken of the first and the third points raised by Sardar Abnasha Singh in this case, it does not appear to me to be necessary to go into the allegations of *mala fides* and bias which the second respondent has had no opportunity to rebut as those allegations were not contained in the writ petition of which alone a copy was served on him. *Prima facie*, I have not been impressed by the allegations of *mala fides*.

Learned counsel for the petitioner also prays that restrictions, if any, imposed against the petitioner's promotion be removed. It has been categorically stated by the respondents that no such restrictions have been imposed and that the juniors of the petitioner were promoted because of the recommendation made to that effect by the Public Service Commission. This may indeed be due to the fact that against the name of the petitioner in the record sent to the Public Service Commission, there must have been made a mention of the disciplinary action taken against him. The said order is being removed by me and as it is stated that no restrictions have otherwise been placed against the promotion of the petitioner by the competent authorities, it is needless to go into that matter.

For the foregoing reasons, this petition is allowed and the impugned order of the second respondent imposing the penalty in question on the petitioner, is set aside and quashed. The costs of the petition will be payable by respondent No. 1.

R.N.M.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

MOHAN SINGH AND OTHERS,—*Petitioners*

versus

THE DIVISIONAL CANAL OFFICER AND OTHERS,—*Respondents*

Civil Writ No. 1294 of 1966

November 25, 1966

Northern India Canal and Drainage Act (VIII of 1873)—S. 30-A—Scheme under—Whether covers the change of site of an outlet from a canal.

Mohan Singh, etc. *v.* The Divisional Canal Officer, etc. (Grover, J.)

Held, that section 30-A of the Northern India Canal and Drainage Act has to be read as a whole and sub-clause (d) of sub-section (1) of the section, when read with sub-section (2), indicates that the site of the outlet has to be covered by the scheme which is to be prepared under sub-section (1). Hence the site of the outlet can be changed in any scheme framed under the section. A scheme relating to irrigation through a watercourse is bound, in the very nature of things, to include the outlet from which the watercourse is to receive water and it is difficult to conceive that the Legislature should have made no provision in that behalf.

Petition under Articles 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of respondent No. 1, dated 26th April, 1966.

GURPREM SINGH DHILLON, ADVOCATE, for the Petitioners.

M. S. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL, B. S. BINDRA AND NAROTAM SINGH, ADVOCATES, for the Respondents.

ORDER

GROVER, J.—The petitioners, who are three in number, are land-owners and cultivators of village Bhaman Kalan, tehsil Mansa. According to them, their agricultural land measuring about 600 killas was irrigated by watercourse from *mogha* in the area of village Kot Dharmu, the adjoining village on Bhikhi Rajbaha Uddat Branch. This *mogha* failed to irrigate quite a sizable area. Respondent No. 3 and his co-villagers had about 83 killas of land irrigated by a separate outlet and the Department prepared a scheme to set up a *mogha* at R.D. 73440/L in the area of village Bhaman Kalan. The scheme was duly prepared and sanctioned and worked satisfactorily for three years. In the year 1962-63 there was consolidation of holdings and a scheme of *chakbandi* of the two villages was prepared afresh by the Canal Department under the provisions of the Northern India Canal and Drainage Act. By common agreement R.D. 73440/L was decided upon as the outlet at the common boundary mark of the two villages. Respondent Chetan Singh later on obtained an order from the Divisional Canal Officer on 24th/26th April, 1966, that the *mogha* be shifted from R.D. 73440/L to R.D. 71152/L which was nearer his land. This order has been impugned on various grounds which *inter alia* are that the petitioners had had no opportunity to raise any objections on account of the procedure laid down by sections 30-A and 30-B of the Act not having been followed, and that neither service nor proclamation by beat of drum or due publication of the proposed

scheme was ever made and further that the new scheme was neither agreed to by the aggrieved parties nor referred to the Divisional Canal Officer for approval. It is unnecessary to mention the matter relating to the merits with regard to the position of the old *mogha* and the new one which has been fixed at R.D. 71152/L by the Divisional Canal Officer.

In the return which has been filed, it has been stated that the *Chakbandi* scheme was prepared after completion of consolidation of holdings operation in the village. Due to the *chakbandi* scheme the outlet was fixed at R.D. 73440/L of Uddat Branch in October, 1964 on the boundary of the two villages. This outlet did not work satisfactorily (the manner in which it did not work satisfactorily has been duly stated). It is admitted that at first outlet at R.D. 73440/L was fixed but since it did not work satisfactorily, several irrigators of village Kot Dharmu including Chetan Singh respondent No. 3 applied for the necessary change. After preliminary investigation notice under section 30A-FF of the Act was issued and served under the rules. Six irrigators of village Kot Dharmu and thirteen irrigators of village Bhaman Kalan attended the Court of the Divisional Canal Officer and their statements were recorded. The decision was then announced for shifting the outlet from R.D. 73440/L to R.D. 71152/L of Uddat Branch. It has been emphasised that the notice when issued under rule 79 of the rules framed under the Act was served on fifteen irrigators of village Bhaman Kalan including Shri Nikka Singh, Sarpanch who had been served personally and a copy of the notice was affixed on the thoroughfare of the village as reported by the Irrigation Booking Clerk. Later on the Superintending Engineer also approved of the scheme. An appeal was also filed before him and in that appeal the decision of the Divisional Canal Officer was upheld.

The records were sent for in order to verify the correct position because counsel on both sides were not agreed about the manner in which the proceedings had been held. It appears that an application was made by Chetan Singh, etc., of village Kot Dharmu complaining that their area of 50 acres which had been amalgamated in the area of outlet RD 73440/L in the new *Chakbandi* scheme was not getting proper irrigation as this area was on a higher level and a request was made for a separate outlet. The Sub-Divisional Officer made a report that a separate outlet be given at RD 70540/L. On that appropriate proceedings were taken and on 4th September, 1965, the statements of two of the petitioners, namely, Mohan Singh and Bachan

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Singh were recorded. They were not agreeable to the proposed change in the outlet. A notice was duly issued presumably in November, 1965, under section 30-A of the Act to the effect that certain changes in the *mogha* would be necessary and that if any one had any objections to prefer, they should be filed within thirty days. This notice was addressed to the villagers of Bhaman Kalan also. It is not denied that it was personally served on Bachan Singh, petitioner No. 2. There is also a notice on the record which was issued by the Divisional Canal Officer, dated 1st April, 1966, fixing the hearing at Khara on 24th April, 1966. This notice bears the signatures or thumb-impressions of the villagers of Kot Dharmu and Bhaman Kalan. From the latter village Nikka Singh, Sarpanch signed the notice as also 14 other villagers of Bhaman Kalan either affixed their signatures or thumb-impressions. On the date of hearing also on 24th April, 1966, 13 persons of village Bhaman Kalan were present. The notice had, therefore, been served on the villagers of both villages and the very fact that quite a few of them were present shows that in both the villages it must have been a well-known fact that hearing was to take place before the Divisional Canal Officer on 24th April, 1966 at Khara. It is difficult to believe that the petitioners who must have been greatly interested in the proceedings and who had been participating in them at prior stages as was established from their statements recorded or signatures obtained as mentioned before did not know the date of the hearing or the proceedings.

The learned counsel for the petitioners has, however, referred to rule 79-A to rule 79-I of the rules relating to service of a public notice or proclamation which is to be issued under the Act. Rule 79-D provides that every summons, notice, order or requisition which is required to be served on or delivered or communicated to any person shall, whenever possible, be so served, delivered or communicated personally on or to the person to whom it is addressed, or failing him, on or to his recognized agent, etc. Rule 79-E provides that if service, delivery or communication cannot be so effected, the summons, etc., may be served, delivered or communicated by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed. Rule 79-F says that if the summons, notice, order or requisition relates to a case in which persons having the same interest are so numerous that personal service on each one of them is not reasonably practicable, it may be served, delivered or communicated by delivery of a copy thereof to such of those persons as the officer authorised to issue or make the same, specially nominates in this behalf, and by proclamation of the contents thereof for

the information of the other persons interested. Rule 79-I provides that in every case in which service of any process is not effected personally, the officer authorised to issue the same shall satisfy himself, by examining the process-server or otherwise, that such service has been duly effected in the manner required by these rules. It is not disputed that the number of persons who were to be served was very large and as stated in the written statement, those villagers of village Bhaman Kalan including the Sarpanch who were present were served personally and a copy of the said notice was affixed on the thoroughfare of the village. Even if it be assumed that there were some technical infirmities in the mode of service, I am satisfied that the villagers of Bhaman Kalan who were going to be affected by the proposed change of the *mogha* were certainly aware of the proceedings and of the hearing which was to take place before the Divisional Canal Officer and that the petitioners were bound to have learnt of the date of hearing from the village where such matters are discussed by all those who have a common interest in the irrigation of their lands and that no prejudice was caused to the petitioners by the mode or the manner in which the notices were served.

The next contention that has been raised on behalf of the petitioners is that an outlet could not be changed under section 30-A of the Act. That section provides that the Divisional Canal Officer may prepare a draft scheme to provide for all or any of the following matters:—

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

Further every scheme prepared shall, amongst other matters, set out the estimated cost thereof, the alignment of the proposed watercourse or realignment of the existing watercourse, as the case may be, the site of the outlet, the particulars of the shareholders 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. The submission which has been made is that a change of outlet is not covered by the said section as that relates only to watercourse and a watercourse according to the definition given in section 3 means any channel which is supplied with water from a canal, but which is not maintained at

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the cost of the Government, and all subsidiary works belonging to any such channel. In *Manjit Singh and others v. The Superintending Engineer, Uppar Bari Doab Canal, and others* (1), Shamsher Bahadur, J., held that section 20 of the Act did not vest authority in the Divisional Canal Officer to shut an existing outlet and shift it to another position on the canal. Such a course was perhaps possible with the assent of the right-holders whose fields were irrigated through the existing outlet. In *Piyare Lal and others v. The State of Punjab and others* (2), Narula, J., expressed the view that clause (d) of section 30-A(1) of the Act was wide enough to cover "any other matter" not specified in clauses (a), (b) and (c) of sub-section (1) of section 30-A which might be considered to be necessary for the proper maintenance and distribution of supply of water. The closure or the opening or the shifting of an existing outlet would certainly be such a matter in appropriate cases. The learned Judge considered the judgment of Shamsher Bahadur, J., and distinguished it by saying that it related to the power of the Canal authorities under section 20. Another judgment which was cited before him of D. K. Mahajan, J., reported as *Kishan Singh and others v. The State of Punjab and another* (3) contained certain observations that there was no specific provision in the Act which permitted the reduction in the size of an outlet but Mahajan, J., himself observed that such an action could possibly be taken under section 30-A of the Act. He struck down the impugned order in that case on the ground that action had been taken without following the procedure prescribed by sections 30-B to 30-D. In my opinion, section 30-A has to be read as a whole and sub-clause (d), of sub-section (1), when read with sub-section (2), would indicate that the site of the outlet has to be covered by the scheme which is to be prepared under sub-section (1), and, therefore, it would be futile to argue that the site of the outlet cannot be changed in any scheme framed under that section. A scheme relating to irrigation through a watercourse is bound, in the very nature of things, to include the outlet from which the watercourse is to receive water and it is difficult to conceive that the Legislature should have made no provision in that behalf which would be the result if the argument of the learned counsel for the petitioners is to be accepted.

Lastly, it is quite clear from the order passed in revision by the Superintending Canal Officer (Annexure "R/2") that he took care

- (1) I.L.R. (1964) 2 Punj 1=A.I.R. 1964 Punj. 464.
- (2) I.L.R. (1967) 1 Punj. 1=1966 Cur. L.J. (Pb.) 3:
- (3) I.L.R. (1965) 1 Punj. 564=1965 Cur. L.J. (Pb.) 39.

to see that no prejudice was caused to any one of the land-owners whose lands were being irrigated and he made a direction which according to the learned counsel for the respondents fully safeguards the interests of the petitioners. This has not been denied by the counsel for the petitioners. In these circumstances there would hardly be any justification for interference.

For all the reasons given above, the petition is dismissed but in the circumstances I leave the parties to bear their own costs.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

BALBIR SINGH,—*Petitioner*

versus

SIKH GURDWARAS JUDICIAL COMMISSION, AMRITSAR AND
OTHERS,—*Respondents.*

Civil Writ No. 2115 of 1966

November 25, 1966

Punjab Sikh Gurdwaras Act (VIII of 1925)— Ss. 76 and 142—Sikh Gurdwaras Judicial Commission—Whether can grant temporary injunction or appoint a receiver under Order 39 Rules 1 and 2 and Order 40 Rule 1 C.P.C.—Constitution of India (1950)—Article 226— Petition for a writ of certiorari—Objection as to lack of jurisdiction not taken before inferior tribunal—Whether can be allowed and to be raised in writ petition.

Held that the Sikh Gurdwaras Judicial Commission is a Tribunal of special jurisdiction and cannot generally pass any order which is not authorised by one or the other provision of the Punjab Sikh Gurdwaras Act, 1925. Under section 142 of the Act any person having interest in the Gurdwaras controlled by the Committee can make a petition against any member of the Committee complaining of any alleged malfeasance, misfeasance, breach of trust, neglect of duty or abuse of power conferred on that member by the Act or even in respect of any alleged expenditure by such member for a purpose not authorised by the Act. The relief which can be granted by the Commission under that provision includes issuing a directive to such a member to do any specific act or to forbear from doing the same so long as such direction is consistent with the provisions of the Act and other laws for the time being in force. The Commission can also