

Karam Singh v. Superintending Canal Officer and others  
(G. R. Majithia, J).

(2) The writ petition is allowed accordingly. However, there will be no order as to costs.

S.C.K.

FULL BENCH

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

KARAM SINGH,—Petitioner.

versus

SUPERINTENDING CANAL OFFICER AND OTHERS,  
—Respondents.

Civil Writ Petition No. 5126 of 1986

June 1, 1988.

*Northern India Canal and Drainage Act (VIII of 1873)—Section 30 FF(2)—Application for restoration of dismantled water course—Enquiry on such application—Divisional Canal Officer not making complete enquiry himself—Instead of calling for report from Subordinate Officer—Passing order after such enquiry—Opportunities to parties before passing the order—Grant of such opportunity—Validity of the order passed.*

*Held*, that if he chooses to call for a report to facilitate a detailed enquiry, that cannot be said to vitiate the order. Calling for such a report is a part of the enquiry. However, it does not flow from the statute that the Divisional Canal Officer himself could not call for a report from his subordinates. He has to satisfy himself on the basis of some material, that there existed a watercourse which has been demolished or enlarged or obstructed to. Even the Courts whose procedures is regulated by Code of Civil Procedure have been getting the enquiries made by Local Commissioner subject to limitations prescribed by law, and based their judgments on the report of the Local Commissioner. After the enquiry, if the Divisional Canal Officer is prima facie satisfied that the watercourse has been demolished, he issues a notice to the concerned party or parties, and after hearing him/them passes such an order as envisaged by sub-section (2) of section 30-FF of the Northern India Canal and Drainage Act, 1873.

(Para 11).

*Held*, that the action taken by respondent No. 2 is strictly in conformity with the mandatory provisions of sub-section (2) of Section 30-FF of the Act and no fault can be found with it.

(Para 14).

*Held*, of course, he cannot conclude the case with the report of the Sub Divisional Canal Officer but has to give an opportunity to the parties to put forward their cases, hear them and decide the matter on the basis of the evidence.

(Para 11).

*Held*, that the notice was issued to respondent No. 3 after the enquiry. The petitioner and respondent No. 3 had ample opportunity to lead evidence to prove their respective contentions. The enquiry which has been got conducted by the Divisional Canal Officer through the Sub Divisional Canal Officer for satisfying himself that a water-course has been demolished can be rebutted. Even otherwise, sufficient safeguard is provided in the statute to rebut the basis of primary satisfaction of the Divisional Canal Officer. This is what has been precisely done by the Divisional Canal Officer in the instant case.

(Para 13).

*Kheta Ram vs. State of Haryana* 1975 PLJ 294.

*Zora Singh and another vs. Superintending Canal Officer and others* 1982 PLJ 240.

*Bakhtawar Singh vs. Superintending Canal Officer* 1973 PLJ 622.  
(Over-ruled).

*Case referred to Full Bench by Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice D. V. Sehgal on 24th September, 1986 as an important question of law was involved in the case. The case was finally decided by Full Bench consisting of Hon'ble the Chief Justice Mr. V. Ramaswami, Hon'ble Mr. Justice Ujagar Singh and Hon'ble Mr. Justice G. R. Majithia on 1st June, 1988.*

*Petition under Articles 226/227 of the Constitution of India praying that:—*

- (a) *a writ petition in the nature of certiorari quashing the impugned orders annexure P-2 and P-3 dated 12th March, 1986 and 12th August, 1986 respectively be issued;*
- (b) *With a further prayer that during the pendency of the writ petition the Respondents be directed not to use Police Force or the other measures against the petitioner to get the water course restored, be also issued;*
- (c) *Any other writ order or directions as this Hon'ble Court may deem fit in the circumstances of the case, be also issued.*

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(d) *The service of advance notice to the respondents in the circumstances of the case may also be dispensed with.*

(e) *Attaching of original/certified copies of the Annexures.*

*It is, therefore, prayed that the writ petition may kindly be accepted and during the pendency of the writ petition, the operation of impugned orders Annexure P-2 and P-3 may be stayed.*

I. S. Sidhu, Advocate, for the Petitioner.

D. S. Brar, DAG(Pb.), for Respondent Nos. 1 & 2.

Gur Rattan Pal Singh, Advocate, for Respondent No. 3.

JUDGMENT

G. R. Majithia, J.

(1) The facts lie in a narrow compass. The petitioner, by mutual agreement with Mukhtiar Singh, dug a private watercourse passing through the land of the latter and compensated him by giving him 5 Karams of land. The arrangement continued for quite some time. Respondent No. 3 got the *Warabandi* sanctioned, showing the private watercourse. The *Warabandi* was sanctioned on the basis of a watercourse which was allowed by mutual consent. The petitioner objected to the running of the watercourse through his land on the ground that he never approved the watercourse, and he dismantled it.

(2) Respondent No. 3 filed an application before the Canal Authorities, alleging that the petitioner had dismantled the sanctioned watercourse which may be restored.

(3) The Divisional Canal Officer got the spot inspected through Zileadar, Jaitu, who, in turn, submitted the report to the Sub-Divisional Officer, Dhapai. On receipt of the report, the Divisional Canal Officer issued notices to the parties for hearing, recorded the oral evidence produced, heard the arguments, and finally passed a speaking order dated March 12, 1986 (Annexure P2). It is this order which has been challenged through this writ petition.

(4) It is pleaded that section 30-FF of the Northern India Canal & Drainage Act, 1874 (for short, the Act) imposes an obligation on

the Divisional Canal Officer to make an enquiry himself on an application filed by any affected person who alleges demolition, alteration or enlargement of a watercourse. But in the instant case, the spot enquiry was conducted by the Divisional Canal Officer through the Zileदार who, in turn, submitted the report to the Sub-Divisional Canal Officer, and the latter recommended to the Divisional Canal Officer for the restoration of the watercourse. It is also averred that Section 30-FF of the Act does not empower the Divisional Canal Officer to get the matter enquired through his subordinates. He has to make the enquiry himself.

(5) It was further alleged that the watercourse was a private one which came into existence under an oral agreement between the petitioner and Mukhitar Singh. Respondent No. 3 was not a party to the agreement. The *warabandi* which was sanctioned by the Canal Authorities somewhere in 1974-75 would not regularise the watercourse. The Divisional Canal Officer can order the restoration of a watercourse which is either sanctioned by law or an agreement between the parties, or which has been prescribed by way of easement. An unauthorised watercourse cannot be allowed to exist.

(6) The Divisional Canal Officer (respondent No. 2) has, in his reply, controverted the allegations made by the petitioner. It is, *inter alia*, pleaded that the watercourse which was demolished had been running for about 20 years; that the land of respondent No. 3 was receiving irrigation through the dismantled watercourse. It is further pleaded that respondent No. 2 afforded ample opportunity to the parties to plead that case and that after a proper enquiry he ordered the restoration. It is also pleaded by him that the case was only prepared by the Zileदार and the Sub-Divisional Canal Officer while he himself thoroughly enquired into the matter at the time of hearing.

(7) The case came up for motion hearing before S. P. Goyal and D. V. Sehgal, JJ., on September 24, 1986, and the following order was passed:—

“Relying on *Kheta Ram v. The State of Haryana* 1974 PLJ 294 and *Zora Singh and another v. Superintending Canal Officer and others* 1982 PLJ 240, it is contended that under Section 30-FF (2) of the Northern India Canal and Drainage Act it is the Divisional Canal Officer who has

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to personally conduct the enquiry and any decision based on the enquiry got conducted from the junior officers would be without jurisdiction. The provisions of the section do not warrant any such conclusion. We, therefore, feel that the above-noted two decisions require reconsideration by a larger Bench. This petition is, accordingly, admitted and ordered to be placed before the learned Chief Justice for referring the matter to a larger Bench.

It is in this manner that the matter has been placed before us. Section 30-FF of the Act reads as under:—

- (1) If a person demolishes, alters, enlarges or obstructs a watercourse or causes any damage thereto, any person affected thereby may apply to the Divisional Canal Officer for directing the restoration of the watercourse to its original condition.
  
- (2) On receiving an application under sub-section (1) the Divisional Canal Officer may, after making such enquiry as he may deem fit, require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore at his own cost, the watercourse to its original condition within such period as may be specified in the notice.

(8) Interpreting sub-section 2 of section 30-FF of the Act, Tuli J., in *Bakhtawar Singh vs. Superintending Canal Officer* (1), observed as under:—

“The impugned notice issued is, therefore, without jurisdiction because the Divisional Canal Officer could not delegate the power to any subordinate officer.”

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The learned Judge opined that since the enquiry had been got conducted by the Divisional Canal Officer through the Zileदार and the Sub-Divisional Canal Officer, the order based upon such an enquiry was without jurisdiction. This judgment was followed by R. N. Mittal, J., in *Kheta Ram vs. State of Haryana* (2), with the following observations: —

“The enquiry is to be made by the Divisional Canal Officer himself and not through any other agency. If he enquires into the matter through any other officer the notice issued on the basis of that enquiry will be illegal and void”.

(9) These two judgments were following by Punchhi, J., in *Zora Singh vs. Superintending Canal Officer* (3), who held as under: —

“The enquiry conceived of an enquiry to be conducted by the Divisional Canal Officer himself. Concededly, he did not conduct any such enquiry but resorted to the convenient method of getting it done from the Sub-Divisional Officer and relying on his report issued the impugned notice..... Thus, the impugned action, notice and orders are void *ab initio*.”

10. Section 30-FF of the Act provides that if a person demolishes, alters and enlarges, or obstructs a watercourse or causes any damage thereto, any person affected thereby may apply to the Divisional Canal Officer for directing the restoration of the watercourse to its original condition. Sub-section (2) of section 30-FF postulates that on receiving an application under sub-section (1), the Divisional Canal Officer may, *after making such enquiry as he deem fit*, require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore at his own cost, the watercourse to its original condition within such period as may be specified in the notice.

11. The notice to the person responsible for the demolition has to be issued after a thorough enquiry, and after giving a definite finding. If he chooses to call for a report to facilitate a detailed enquiry, that can not be said to vitiate the order. Calling for

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(2) 1974 PLJ 294.

(3) 1982 PLJ 240

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such a report is a part of the enquiry. However, it does not flow from the statute that the Divisional Canal Officer himself could not call for a report from his subordinates. He has to satisfy himself, on the basis of some material, that there existed a watercourse which has been demolished or enlarged or obstructed to. Even the Courts whose procedure is regulated by Code of Civil Procedure have been getting the enquiries made by Local Commissioners subject to limitations prescribed by law, and based their judgments on the report of the Local Commissioner. After the enquiry, if the Divisional Canal Officer is *prima facie* satisfied that the watercourse has been demolished, he issues a notice to the concerned party or parties, and after hearing him/them passes such an order as envisaged by sub-section (2) of section 30-FF of the Act. Of course, he can not conclude the case with the report of the Sub Divisional Canal Officer but has to give an opportunity to the parties to put forward their cases, hear them and decide the matter on the basis of the evidence. Sub-section (4) of section 30-FF of the Act provides a right of appeal to the party who is aggrieved by an order passed by the Divisional Canal Officer.

12. The view taken by Tuli, J., in *Bakhtawar Singh's* case (supra) does not lay down the correct law. The interoretation placed on sub-section (2) of section 30-FF does not flow from it. The other two judgments reported as *Khata Ram* (supra) and *Zora Singh* (supra) are based upon *Bakhtawar Singh's case* (supra), and for the same reasons have to be over ruled. With respect, the view taken by the learned judge in *Bakhtawar Singh's case* (supra) does not emanate from sub-section (2) of section 30-FF. We accordingly overrule all the three decisions being not in accordance with law.

13. In the present case, the notice was issued to respondent No. 3 after the enquiry. The petitioner and respondent No. 3 had ample opportunity to lead evidence to prove their respective contentions. The enquiry which has been got conducted by the Divisional Canal Officer through the Sub Divisional Canal Officer for satisfying himself that a watercourse has been demolished can be rebutted. Even otherwise, sufficient safeguard is provided in the statute to rebut the basis of primary satisfaction of the Divisional Canal Officer. This is what has been precisely done by the Divisional Canal Officer in the instant case. In the impugned order, the Divisional Canal Officer observed as under :—

“The enquiry of this application was got conducted through Zileadar Jaito. The file was sent to Sub Divisional Canal

Officer Dhapai by Ziledar after enquiring into the matter. The Sub Divisional Canal Officer, Dhapai, sent the file after a spot verification with the recommendation that the watercourse may be reinstated. *After having received the file, a notice was issued for 12th March, 1986 for hearing.*"

After the service of the notice, the Divisional Canal Officer heard the parties and passed the following order:—

"After serving the notice, the acknowledgement was filed in the file (case) and the following persons came persent on 12th March, 1986:—

1. Shri Roop Singh Applicant.
2. Shri Joginder Singh son of Bant Singh.
3. Shri Bant Singh son of Natha Singh.
4. Shri Karam Singh son of Puran Singh.

Shri Rup Singh, etc. at Sr. No. 1, 2, 3 stated that the watercourse which was given to their field has been destroyed by Shri Karam Singh son of Shri Puran Singh, and the same may be restarted. This watercourse was in existence since 20 years.

Sr. No. 4 Shri Karam Singh stated that the watercourse which was told to be fallen was neither destroyed by him nor there was any water course as stated by Shri Roop Singh etc. The watercourse is far off one Acre from his field.

#### *Decision*

The case was perused, and the map was seen. The applicant and the other party were heard in detail and argued. The applicant demanded that the watercourse which was given to his field for irrigation and fallen by Shri Karam Singh may be started (reinstated). The demand of the applicant has been found correct as per detail below:—

1. The Ziledar Jaitu after spot verification (Visit) reported that the watercourse demolished, is sanctioned watercourse given to the field of the applicant.



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2. Sub Divisional Officer Dhupai after spot visit on 3rd January, 1986 reported that the watercourse at ABCD has been demolished. Watercourse ABFG is sanctioned one in *warabandi*. Watercourse may be restored as recommended by SDO.
3. It is established in arguments that the watercourse which is demolished was running one.
4. The argument of Shri Karam Singh is not acceptable that the watercourse was not destroyed by him. The *warabandi* made under section 68 shows that the watercourse was in existence in running stage.

Keeping in view the above circumstances and irrigation purpose, the watercourse ABCD demolished by Shri Karam Singh is restored under Section 30-FF of the Northern India Canal and Drainage Act 8 of 1873 as amended. Decision announced in Canal Rest House Jaitu."

(14) The action taken by respondent No. 2 is strictly in conformity with the mandatory provisions of sub-section (2) of section 30-FF of the Act, and no fault can be found with it.

(15) There is yet another aspect of the matter which deserves to be noticed. Para No. 4 of the writ petition reads as under:—

"That although the petitioner had made arrangements for irrigating his land by entering into an agreement with Mukhtiar Singh for digging up the private watercourse in the manner mentioned above, Respondent No. 3 in connivance with the canal authorities is alleged to have got *Warabandi* sanctioned showing the above-mentioned private watercourse to be extending from points A to R in the year 1974-75."

The corresponding para of the written statement is in the following terms:—

"Not admitted. The *Warabandi* was sanctioned under Section 68 of the Northern India Canal & Drainage Act 8 of 1873 (As amended) and *Nakkas* were fixed after hearing the

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concerned shareholders. As per record there is no *wari* of Mukhtiar Singh on the disputed watercourse."

(16) Once *Warabandi* has been sanctioned in accordance with the procedure prescribed after hearing the concerned shareholders, the remedy, if any, lay under section 68 of the Act, and that can not be allowed to be urged in a collateral proceeding that the watercourse on the basis of which *Warabandi* has been fixed is not authorised.

(17) In view of the finding recorded above, the writ petition is dismissed. However, we leave the parties to bear their own costs.

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S.C.K.

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

KESAR CHAND,—*Petitioner.*

*versus*

STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ Petition No. 2864 of 1983

June 2, 1988.

*Constitution of India, 1950—Article 14—Punjab Civil Service Rules, Volume II—Rule 3.17(ii)—Pensionary benefits and gratuity—Eligibility—Services of work charged employees regularised by award of Industrial Tribunal—Period of service prior to regularisation—Such period—Whether to be counted in determining qualifying service—Rule 3.17(ii) excluding period of service in work charged establishments—Rule—Whether unjust, arbitrary and violative of Article 14—Regularised employees—Whether entitled to benefit of Rule 3.17.*

*Held*, that once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Punjab Civil Service Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 of the Constitution of India, 1950 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating