

## APPELLATE CIVIL.

Before Harbans Singh, C. J. and Gurdev Singh, J.

THE SUPERINTENDING CANAL OFFICER.—Appellant.

versus.

Hukam Chand etc.—Respondents.

**Letter Patent Appeal No. 201 of 1969.**

May 19, 1971

*Northern India Canal and Drainage Act (VIII of 1873)—Section 30-B (3)—Power of revision—Scope of—Superintending Canal Officer exercising such power—Whether can substitute his own opinion for that of the Divisional Canal Officer—Information available from the departmental records or otherwise—Whether can be considered by the Superintending Canal Officer while deciding to amend the scheme under revision—Addition of area to an existing out-let—Size of the out-let not changed—Persons already receiving irrigation from such out-let—Whether “persons aggrieved” within the meaning of section 30-B(3).*

*Held*, that the powers of revision given to a Superintending Canal Officer under sub-section (3) of Section 30-B of the Northern India Canal and Drainage Act, 1873, are not of a limited type, as the sub-section is worded in a wider manner. The only restriction placed on him is in the proviso and that relates only to an opportunity being given to the person affected before making any change in a revision. The Superintending Canal Officer is a superior officer who has been given powers to send for the scheme sanctioned by the Divisional Canal Officer and to revise it. The word ‘revise’ has a very wide connotation as used in this section and is not hedged round by the words that the Superintending Canal Officer can only see whether it is in accordance with the rules or law. The word ‘revise’ means to correct or amend, or to examine, with a view to making a change or changes. In view of this wide meaning, the Superintending Canal Officer is apparently invested with the jurisdiction to substitute his own opinion for that of the Divisional Canal Officer if he finds good reasons coming to a contrary conclusion. (Paras 9 and 12)

*Held*, that sub-section (3) of section 30-B of the Act places no restriction on the Superintending Canal Officer that before taking a decision to amend the scheme sanctioned by the Divisional Canal Officer, he cannot look into any information that may be available to him from the departmental record or even otherwise unless it can be reasonably established that the information was such that it was not known to the affected party and that that party was not given an opportunity to meet that evidence. (Para 17)

*Held*, that if an additional area is added to the area already receiving irrigation from an out-let and the size of the out-let is not changed, the existing landowners on that out-let are bound to suffer some damage, however, little this damage may be and consequently such landowners would be persons aggrieved within the meaning of section 30-B(3) of the Act.

(Para 13)

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice Bal Raj Tuli passed in Civil Writ No. 3474 of 1968 on 20th December, 1968.*

S. C. GOYAL, ADVOCATE, FOR ADVOCATE GENERAL, PUNJAB, for the appellant.

R. S. MITTAL AND ANAND SWAROOP, M. M. PUNCHHI, ADVOCATE, for the respondents.

### Judgment

Harbans Singh, C.J.—The facts, so far as they are necessary for the decision of this appeal under Clause 10 of the Letters Patent, may briefly be stated as under :

(2) Three persons, namely, Hukam Chand, Faqir Chand and Mst. Jiwandi, widow of Karam Chand, moved the Divisional Canal Officer under section 30-A of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as the Act), for preparation of a scheme and sanction thereof for transferring their 19 acres of land which was receiving irrigation from outlet R.D. 58230/R Daulatpura minor (hereinafter referred to as the existing source) to another outlet R.D. 64522/R Daulatpura minor (hereinafter referred to as the proposed source). The reason given by them for this transfer was that their area cannot be irrigated properly from the existing source. Some of the persons, who appeared before the Divisional Canal Officer at the hearing, after the publication of the scheme, supported the case of the abovementioned three persons, who are now respondents before us and who were amongst the petitioners before the learned Single Judge (hereinafter referred to as the petitioners), while a large number of other persons “stated jointly that this 19 acre area may not be transferred ——— as the same is being irrigated from the existing source properly. There is already short supply on their outlet. If this area be included, then there will be decrease in their irrigation.” After mentioning these rival contentions in the order (copy Annexure ‘B’ to the writ petition), the following order was passed:—

“Request of ——— Sarvshri Hukam Chand, Fakir Chand—  
——— and Jandi Bai (Jiwandi) ——— is accepted and  
transfer of area is approved in the interest of irrigation.

The Superintending Canal Officer v. Hukam Chand etc. (Harbans Singh, C.J.)

Sh. Hukam Chand is justified in asking for transfer as outlet R.D. 64522/R is situated in his tak and other two shareholders are also justified in asking for transfer as their holdings fall on the other side of the village path on which side rest of the area on outlet R.D.64522/R falls.”

This is all the discussion or the reasoning given by the Divisional Canal Officer for his decision to direct the transfer of 19 acres of land.

(3) Tehal Singh, who was one of the persons who had opposed the request for transfer, filed a revision under section 30-B of the Act, which was dismissed by the Superintending Canal Officer. That order was set aside by this Court in Civil Writ No. 993 of 1968, **Tahal Singh and others v. The Superintending Canal Officer and others**, on the ground that no reasons were given in the order.

(4) Thereafter, the matter was heard by another officer who had succeeded as Superintending Canal Officer. Some 26 persons appeared before him. In his order, copy Annexure ‘D’ to the writ petition, after mentioning that the case had been earlier adjourned for obtaining records from the High Court, he stated as under :—

“..... Ziledar concerned was directed to —produce irrigation figures of the 19 acres area proposed to be transferred from outlet R.D. 58230/R to 64522/R Daulatpura minor during the last 5 years in this Court.

The Ziledar concerned produced the irrigation figures of the said 19 acres area for the last 3 years, i.e., 1965-66, 1966-67 and 1967-68, as per statement appended at Annexure A. It shall be seen that the irrigation from the existing source to this area is cent per cent, i.e., more than permissible of 62 per cent. There is as such no justification for the transfer of this 19 acres area to any other source and the order of the Divisional Canal Officer, dated 18th September, 1967, proposing transfer of this area from outlet R.D. 58230-R to 64522-R is hereby set aside. If such requests are entertained and this 19 acres is transferred to outlet R.D. 64522-R there would be no end to similar requests of transferring adjoining areas to the

nearest source as every one would naturally like to be as near the outlet as possible.”

However, he went on further as under :—

“It would, however, be desirable to shift the outlet R.D. 64522-R to lower down of village path so as to be away from the land of respondents. There was no objection to this from any source. Scheme to this effect may be published and further action taken accordingly under the rules.”

(5) Being aggrieved by this order, a writ petition was filed by Hukam Chand, Faqir Chand, Smt. Jiwandi and two other persons, out of which the present appeal has arisen.

(6) Before the learned Single Judge nobody seriously objected to the last part of the order suggesting shifting of outlet RD. 64522-R being deleted. In fact this is only a suggestion and the normal procedure would be as directed by the Superintending Canal Officer that proper scheme be published and action taken in accordance with the rules. Consequently, this direction regarding shifting of the outlet forms an integral part of the order and was not dealt with before the learned Single Judge, and this matter was not referred to by the parties' counsel before us.

(7) The learned Single Judge accepted the writ petition and quashed the order of the Superintending Canal Officer mainly on the following grounds :—

(1) That the Superintending Canal Officer has no jurisdiction to alter the scheme sanctioned by the Divisional Canal Officer, unless he comes to the conclusion that the petitioner in the revision has a genuine grievance and that the Superintending Canal Officer could not substitute his own opinion for that of the Divisional Canal Officer, whether the transfer was in the interest of irrigation or not, and inasmuch as the scheme approved by the Divisional Canal Officer in no way adversely affected the other shareholders, the Superintending Canal Officer had no jurisdiction to reverse the order of the Divisional Canal Officer if that was beneficial to the petitioners.

The Superintending Canal Officer v. Hukam Chand etc. (Harbans Singh, C.J.)

---

(2) That the Superintending Canal Officer has no jurisdiction to take into consideration any new material while dealing with a revision under section 30-B of the Act, as has been done in this case by obtaining the irrigation figures from the Zileदार.

(3) That the mere fact, that the petitioners were receiving more than 62 per cent irrigation, which is considered by the Department to be the normal percentage, is no ground for interfering with the scheme approved by the Divisional Canal Officer, because the petitioners were entitled to get more irrigation if that was possible, provided it did not interfere with the rights of the other persons.

(8) The Superintending Canal Officer has filed this appeal. On behalf of the appellant it was urged that the Department is not worried about this particular case so much as about the restrictions on the powers of the Superintending Canal Officer, while considering a scheme prepared by the Divisional Canal Officer under section 30-B of the Act, that flow from the observations made by the learned Single Judge.

(9) It was vehemently contended that the powers of revision given to a Superintending Canal Officer under sub-section (3) of section 30-B of the Act are not of a limited type as are contemplated in cases of revision under section 115, Civil Procedure Code, (hereinafter referred to as the Code), or the powers of revision that are available to a High Court under section 35 of the Delhi and Ajmer Rent (Control) Act, 1952, (hereinafter referred to as the Delhi Rent Act).

(10) Under section 115 of the Code "the High Court's powers are limited to see whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. (see headnote in *Hari Shankar and others v. Rao Girdhari Lal Chowdhury*, (1). This case was also relied upon by the learned Single Judge in bringing

---

(1) A.I.R. 1963 S.C. 698.

out a distinction between a revision and an appeal. The said case was under the Delhi Rent Act and the observations, which have been relied upon by the learned Single Judge, related to section 35(1) of the Delhi Rent Act. That section reads as follows :—

“The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit.”

(11) The learned counsel urged that the powers of revision given by the aforesaid section, though much wider than those conferred on the High Court under section 115 of the Code, yet are not so wide as the powers of a Superintending Canal Officer under sub-section (3) of section 30-B of the Act. The Delhi Rent Act confined the powers of the High Court to send for the record only for the limited purpose of “satisfying itself that a decision made therein is according to law”.

(12) Sub-section (3) of section 30-B of the Act runs as follows :

“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-A, revise the scheme approved by the Divisional Canal Officer :”

The only restriction placed on the Superintending Canal Officer is in the proviso and that relates only to an opportunity being given to the person affected before making any change in a revision.

(13) Before going into the question as to what is meant by ‘revise’ and how wide powers have been given by this section by the use of the word ‘revise’, it may be stated here that an application under sub-section (3) of section 30-B of the Act can be given by a person aggrieved by the approved scheme. The observations made by the learned Single Judge apparently go to indicate that probably nobody was aggrieved by the order of the Divisional Canal Officer directing the transfer of 19 acres from the existing source to the proposed source. The facts, already detailed above, do

The Superintending Canal Officer v. Hukam Chand etc. (Harbans Singh, C.J.)

---

indicate that even before the Divisional Canal Officer the transfer was opposed by a large number of persons, who were receiving irrigation from the proposed source. The reason given by them was that by the addition of 19 acres of land the water, which was already in short supply in that outlet for the purpose of their irrigation, would be further decreased. Tehal Singh was one of them and not only he filed an application under section 30-B(3) of the Act to the Superintending Canal Officer, but on the dismissal of the same he also came to the High Court and successfully challenged the order. This conduct of Tehal Singh does indicate that he did, in fact, genuinely feel aggrieved. In any case, one thing is obvious that if an area of 19 acres is added to the proposed source and the size of the outlet is not changed, for which there is no suggestion or mention, then the existing landowners on that outlet are bound to suffer some damage, however little this damage may be. It cannot, therefore, be said that Tehal Singh and other landowners, who were already receiving irrigation from the proposed source, were not aggrieved by the transfer of 19 acres to that source.

, (14) Sub-section (3) of section 30-B of the Act is worded in a wider manner. A divisional Canal Officer is the Authority under the Act, who, after framing the scheme, has to publish it under the Act and then has to hear the objections of those who oppose the scheme, and he can then sanction the scheme either as published by him or in an amended form or he can altogether reject the scheme (see Ss. 30 & 7 30 B). In this case, he sanctioned the scheme of the transfer of 19 acres to the proposed source. The only reason given by him was that it was "in the interest of irrigation" and the second reason given by him was that Hukam Chand was justified in asking for the transfer, because the other outlet R.D. 64522/R passed through his land. One of the grievances made before the learned Single Judge was that the Superintending Canal Officer substituted his own opinion for that of the Divisional Canal Officer without giving any reasons. I am afraid this grievance was not justified. As already stated, there was hardly any discussion in the order of the Divisional Canal Officer and the only ground given by him was that it was in the interest of irrigation. That being the case, the Superintending Canal Officer was fully entitled to check up whether the reason given by the Divisional Canal Officer was justified or not.

(15) The Superintending Canal Officer is the superior Officer who has been given powers under section 30-B of the Act to send for the scheme sanctioned by the Divisional Canal Officer and to revise it. The word 'revise' has a very wide connotation as used in this section and is not hedged round by the words that the Superintending Canal Officer can only see whether it is in accordance with the rules or law. In Volume 37A of the Words and Phrases published by West Published Co, *interalia*, the word 'revise' is stated as under :—

“ 'revise' ..... means to correct or amend, or to examine, with a view to making a change or changes.”

In Corpus Juris Secundum, Volume LXXVII, it is mentioned as follows :—

“The word 'revise' is defined as meaning to review; to correct; to amend; to change; to re-examine, to examine with a view to making a change or changes;

'Revise' has been held to be interchangeable with 'amend'.”

(16) In view of this wide meaning, the superintending Canal Officer is apparently invested with the jurisdiction to substitute his own opinion for that of the Divisional Canal Officer if he finds good reasons for coming to a contrary conclusion. The only reason given by the Divisional Canal Officer being that it was in the interest of irrigation to transfer this area to the proposed source, the Superintending Canal Officer was fully justified in saying that it was not in the interest of irrigation to transfer this area. From the record he could find, and we had sent for the original record and a copy of the statement showing annual permissible irrigation, marked 'A', has also been filed here, that as against 62 per cent sanctioned, Faqir Chand received 116 per cent irrigation in the year 1965-66, 112 per cent in the year 1966-67 and 97.8 per cent in the year 1967-68, Hukam Chand had 100 per cent, 106 per cent and 86.4 per cent irrigation respectively for these years and Mst. Jiwandi had 89 per cent, 100.4 per cent and 106.9 per cent irrigation respectively for the said years. I feel that the Superintending Canal Officer was fully entitled to say from this statement that from the existing source the irrigation received by these persons is more than satisfactory and that there was no good reason for making a



The Superintending Canal Officer *v.* Hukam Chand etc. (Harbans Singh, C.J.)

---

change. The only other reason given by the Divisional Canal Officer was also dealt with by the Superintending Canal Officer, namely, that the mere fact, that an outlet passes through the land of a person, is no ground that he should get irrigation from that outlet and not from another. The Department has to take all the matters, including the administrative reasons, into consideration and the Superintending Canal Officer apparently felt that if a transfer is made simply on the ground of nearness of a particular land, it might create difficulty for the Department. We are of the view that these reasons cannot be said to be extraneous.

(17) We may now take up another point, whether while revising the scheme under sub-section (3) of section 30-B of the Act, the Superintending Canal Officer was justified in looking at the departmental record to ascertain whether the allegations made by the petitioners that they are not receiving satisfactory irrigation, were correct or not. By sending for the irrigation record from his Zileदार for the last five years, all the Superintending Canal Officer was doing was sending for the departmental record having bearing on the question of irrigation. It would not be correct to say that he was looking into any additional evidence. Sub-section (3) of section 30-B of the Act places no restriction on the Superintending Canal Officer that before taking a decision whether he would amend the scheme sanctioned by the Divisional Canal Officer, he cannot look into any information that may be available to him from the departmental record or even otherwise unless it can be reasonably established that the information was such that it was not known to the other party and that the other party was not given an opportunity to meet that evidence. There was no suggestion whatever that the figures supplied to the Superintending Canal Officer and taken into consideration by him, were not the correct figures of the irrigation that was received by the petitioners. We are therefore, of the view that in this case the application for revision was filed by a person, who felt aggrieved by the order of the Divisional Canal Officer, and that the Superintending Canal Officer had given good reasons and he is entitled under sub-section (3) of section 30-B of the Act, while revising the scheme, for good reasons to substitute his opinion for that of the Divisional Canal Officer and that in this case the reasons given by him cannot be said to be extraneous. We are also of the view that the powers

under sub-section (3) of section 30-B of the Act are not of a limited type like those which are given under section 35(1) of the Delhi Rent Act or under section 115 of the Code.

(18) For the reasons given above, we accept this appeal, set aside the order of the learned Single Judge and dismiss the writ petition, with no order as to costs.

Gurdev Singh, J.—I agree.

B.S.G.

CIVIL MISCELLANEOUS.

Before D. K. Mahajan and Gopal Singh, JJ.

THE KARNAL DISTILLERY COMPANY LIMITED, KARNAL.—*Petitioner*  
versus.

THE STATE OF PUNJAB ETC.—*Respondents*.

**Civil Writ No. 3060 of 1965.**

May 20, 1971.

PUNJAB Excise Act (I of 1914)—Sections 20, 21, 36 and 41—*Punjab Distillery Rules (1952)—Rule 7 and Form D-2—Distillery licence issued under section 20(2) in Form D-2—Financial Commissioner—Whether competent to discontinue the licensed distillery—Condition 9 of such licence—Whether arbitrary or unreasonable—Restrictions imposed by section 36-G, rule 7 and condition 9 of the licence—Whether inconsistent with sections 20(2) and 21(c) and (d)—Financial Commissioner while issuing notice for determination of a distillery licence—Whether acts in a quasi-judicial manner—Rules of natural justice—Whether apply to the issue of notice terminating a distillery licence—Compliance with rules or natural justice—When arises—Constitution of India (1950)—Articles 19 and 226—Violation of the fundamental rights of property—Whether can be urged by a limited company in a writ petition—Determination of a distillery licence—Whether infringes the right of the licensee to carry on business.*

*Held*, that cumulative reading of Sections 20 and 21 of Punjab Excise Act, 1914, leaves no doubt that the authority, which is competent to discontinue distillery, in respect of which licence has been granted, is the Financial Commissioner. Clause (b) of Section 21 confers power in general upon the Financial Commissioner to discontinue any distillery