

The Indian Law Reports

Before : G. R. Majithia, J.

DARYAO SINGH AND OTHERS,—Petitioners.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 9687 of 1990.

19th March, 1991

Haryana Canals & Drainage Act, 1974—S. 17—Outlet—Granting of—Rice shoot—Whether outlet within the meaning of the Act—Rice shoot policy—Validity of such policy.

Held, that a rice shoot is purely a temporary contract shoot for a single crop only. Rice shoots are sanctioned for delivering extra water supply over and above the normal water allowance. No new area is permanently allotted for irrigation through these rice shoots. Areas receive irrigation in the same manner as was allowed before the sanction of rice shoots. The rice shoots are only sanctioned for delivery of extra water supply which will in no manner diminish or curtail the existing water supply. The rice shoots may be loosely termed as outlets, but in fact a rice shoot is not an outlet within the meaning of clause (b) of Section 1 of the Act.

(Para 8)

Held, that the purpose for which the rice shoot policy has been framed is in the interests of the nation so that more rice is grown in an area which is more suitable for rice cultivation. I am not inclined to interfere with the policy in extraordinary jurisdiction which has principally to be invoked for preventing injustice and not for curbing the right actions of the State for the advancement of public good. The policy is additionally upheld for the reason that the Government in its wisdom thought of issuing instructions for the purpose of regulating extra supply of canal water for rice cultivation.

(Para 8)

Held further, that there are no guidelines for Superintending Canal Officers who are competent to sanction such rice shoots. It is possible that number of eligible applicants asking for rice shoots may be much more than permissible in accordance with the policy approved by the Government. To avoid hardship to the eligible applicants, the procedure prescribed in this judgment should be adopted by the Superintending Canal Officers.

(Para 9)

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court be pleased to:—

- (i) *issue an appropriate writ, order or direction summoning the records of the case and for quashing the order sanctioning rice shoots 9100 L, 4500 R and 1560 R on Koel Minor and for cancelling their installation on site; and*
- (ii) *issue a writ by way of Mandamus or any other appropriate writ, direction or order restraining the respondents to install rice shoots on Koel Minor in violation of government policy and rules Annexure 'P2'; and*
- (iii) *any other appropriate writ, direction and order that may be necessary and expedient for redressing the grievance of petitioners; and*
- (iv) *exempt the petitioners from serving advanced copies of notices of motion; and*
- (v) *exempt the petitioners from filing up certified copies of Annexures 'P1' to 'P3'; and*
- (vi) *grant an ad interim stay of operation of abovesaid rice shoots Koel Minor during the pendency of writ petition; and*
- (vii) *allow costs of the writ petition to the petitioners.*

Randeep Surjewala, Advocate, for the Petitioner.

Rameshwar Malik, Advocate and Rajesh Chaudhary, Advocate, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) The petitioners have challenged the policy for rice shoots for Kharif, 1990 as approved by Respondent No. 1,—*vide* Memo No. 9/1/RS-IE(3), dated May 28, 1990, in this writ petition under Articles 226/227 of the Constitution of India.

Facts first:—

(2) Petitioners No. 1 and 2 are the rightholders of village Koel and are share-holders in the outlets installed on Koel Minor, Petitioner No. 3 is the Gram Panchayat of village Koel. In the State of Haryana, there are two main canal systems, namely (i) Bhakra Canal System

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and (ii) Western Jamuna Canal System, Land of petitioners No. 1 and 2 is irrigated through Koel Minor which flows from Dhamtan Distributory of Bhakra Canal System. Village Koel has about 9,500 acres of cultivable area. It had two outlets (mogas) common with village Kurar in which their share was barely 8 hours out of 24 hours. Koel Minor was sanctioned (out of Dhamtan Distributory) which started operating about 28 to 30 years. It has its tail in village Koel and three outlets were sanctioned to the landowners of village Koel for proper irrigation. After about five years, another outlet was sanctioned for village Kurar and thus Koel Minor had four outlets. Maximum capacity of Koel Minor is 5.79 Cusecs.

(3) Respondent No. 1 has framed a policy for grant of rice shoots. Respondent No. 5 has some supporters in village Kurar and he got installed rice shoot on Koel Minor in 1989 during paddy season. This resulted in acute shortage of water on the tail and the residents of village Koel could not even get minimum water for irrigation as the rice shoots were installed upstream while they are on the tail. Respondent No. 3 sanctioned two rice shoots 9100-L, and 4500-R on Koel Minor for use of landowners of village Kurar in total contravention of the terms of the policy decision allegedly at the behest of respondent No. 5. Rice shoot is "an outlet in irrigation channel with the aim of delivering discharge over and about the normal water allowance of the area especially for rice cultivation". A new outlet can only be provided by preparing a draft scheme under Section 17 of the Haryana Canals and Drainage Act, 1974 (for short, the Act), which is to be finalised under Section 18 of the Act. The procedure prescribed in Sections 17 and 18 of the Act has not been followed. Resultantly, the policy for sanctioning rice shoots in violation of the statutory provisions of the Act is thus void *ab initio*.

(4) Written statements have been filed on behalf of respondents No. 2 to 4, respondent No. 5 and respondents No. 6 to 9. Respondents No. 2 to 4 have denied the material allegations made in the petition and stated that there are three outlets at RD 10200 TR, 10200 TR and 10200 TC which irrigate area of 1919/1812 acres of village Koel and one separate outlet RD 9415-R Koel minor for village Kurar for an area of 881/872 GA/CCA, whenever Koel Minor runs, all the three outlets of village Koel get full authorised supply of canal water. The authorised discharge of Koel Minor is 5.79 cusecs for Rabi crop. The channel is modernised, lined and has a capacity to carry extra discharge up to even 12.81 cusecs (including that in free board) when

indented supply runs in parent channel, i.e. Dhamtam Sub-Branch. The tail of Koel Minor does not suffer even after sanction/installation of rice shoots. The tail of Koel Minor has been running up to or more than authorised supply of 1-0'. While sanctioning rice shoots, it has been ensured that with the installation of rice shoot, no shortage is caused at tail which is one of the most important criterion as per para 3 rule (i) of Rice Shoot policy. As such, the rights of tail irrigators in receiving authorised canal water are in no way affected with the installation of three rice shoots on Koel minor. The Superintending Engineer can sanction rice shoots on channels which have already been modernised in conformity with the corollary of para 3 rule (xiv) of the Rice Shoot policy. In the instant case, Koel minor is a modernised channel for carrying higher discharge and has been meeting the requirement of rice shoots without affecting the rights of tail irrigators. Tail irrigators are still being supplied authorised canal water with tail not less than 1.0 feet when the parent channel, i.e. Dhamtan Sub-Branch receives indented supply from its head (Chandana Regulation Complex). It was vehemently denied that after the installation of rice shoots tail of the minor is disturbed. It was highlighted that the rice shoots have been spread from head to tail in order to avoid heavy concentration in a particular area. The rice shoots have been sanctioned at RD-1560-R, 4500-R and 9100-R, whereas the tail of the minor is at RD-10200. It was denied that rice shoot is an outlet as covered under Section 17(C) of the Act. The following are distinguishing features of an 'outlet' provided under the Act and temporary seasonal outlet provided under the Rice Shoot Policy:—

Outlet provided under the Act.	Temporary seasonal outlet provided under Rice Shoot Policy.
(a) The outlet is of a permanent nature.	(a) The rice shoot is purely temporary contract shoot for a single crop only.
(b) Superintending Canal Officer cannot sanction any outlet of discharge less than 0.75 Cusecs, that is, for an area less than 312 acres.	(b) Rice shoot can be sanctioned by Superintending Engineer of a Circle for any discharge against any block of land in size more than 20 acres only

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Outlet provided under the Act.	Temporary seasonal outlet provided under Rice Shoot Policy
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| <p>(c) The water charges are assessed as per Section 31 of the Act and Rules 27-39, 41, 42 and 44 to 48.</p> <p>(d) The outlet under Sec. 17(c) of the Act can be granted even to a piece of land involved in a case of unauthorised irrigation.</p> <p>(e) There is no application fee in the case of an outlet demanded under Sec. 17 of the Act except relevant Court fee.</p> <p>(f) No written agreement for contract is normally required before installation of an outlet.</p> <p>(g) An outlet is usually sanctioned at a normal water allowance of 2.4 cusecs per 1000 acres in case of Bhakra Canal System in question.</p> | <p>(c) The water rates are charged as per para 3 rule (xix) of Rice Shoot policy.</p> <p>(d) No rice shoot, though temporary, can be sanctioned to the person who is found guilty of unauthorised irrigation during previous year as per para 3 rule (iv).</p> <p>(e) Application fee of Rs. 200 is required. The fee once deposited is not to be refunded as per para 3 rule (viii) of Rice Shoot Policy.</p> <p>(f) Sanction of a rice shoot is essentially subject to the execution of contract agreement between the Government and consumer.</p> <p>(g) Rice Shoots are sanctioned with the aim of delivering discharge over and above the normal water allowance applicable exclusively for rice cultivation. These are sanctioned with a water allowance of 7.5 Cusecs per 1000 acres in Bhakra Canal command.</p> |
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It was also stated that petitioners are still getting their authorised share of canal water after installation of these rice shoots.

(5) Respondent No. 5 in his written statement denied the allegations made against him. He stated that the allegations have been made only to malign him.

(6) Respondents No. 6 to 9 in their written statement have almost reiterated the same averments as given in the written statement filed on behalf of respondents No. 2 to 4. It is stated that 1919/1812 acres of agricultural land of village Koel is being commanded by the Koel Minor and there are three outlets at R.D. 10200 TL, 10200 TR and 10200 TC and there is one outlet for village Kurar at R.D. No. 9415-R. Koel Minor which commands 881/872 acres area and the three outlets which are at the tail get full supply of canal water. Koel Minor runs through the revenue estate of village Kurar dividing the agricultural holdings of the villagers of Kurar and simply if the name of the Minor is Koel Minor, it does not mean that it is exclusively meant for village Koel. The authorised discharge of the Koel Minor is 5.79 Cusecs for Rabi Crop and during Kharif season 10 per cent extra supply is added to every minor as the water is available in plenty. The Koel Minor's modernisation has raised its capacity to carry extra discharge upto 12.81 Cusecs (including that in free board) when the Dhamtam Distributory gets indented supply. The three outlets at the tail do not suffer after sanction/installation of the rice shoots. The policy for rice shoots for Kharif 1990 amply ensures the full supply at the tail and the discharge available at the tail is more than the sanctioned discharge of one foot. It is stated that rice shoots at R.D. No. 4500R and R.D. No. 9100-R are being sanctioned since the year 1979 and new rice shoots at R.D. No. 1560-R has been sanctioned keeping in view the efficient performance of the Minor and requirement of the villagers to grow more rice under the Government Scheme. Location of the three rice shoots itself proves fair spread of rice shoots to avoid heavy concentration of the canal supplies. The rice shoots have been sanctioned strictly under the Rice Shoot policy and the petitioners are not suffering in any manner as they are getting more supplies at the tail.

(7) The petitioners did not controvert the factual averments made in the written statement filed by the official respondents by filing a replication. Those averments have to be accepted as correct. Official respondents in unmistakable terms have stated thus :—

- (i) The petitioners are still getting their authorised share of canal water even after installation of rice shoots;

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- (ii) Before sanctioning the rice shoots, it is ensured that an outlet in the irrigation channel is provided only after ensuring that the discharge of the normal water allowance of the area is not disturbed;
- (iii) No rice shoot is to be installed on a channel upto the capacity of 10 Cusecs and care is also to be taken that additional 10 per cent capacity F.S. Line is not to be transgressed except where the channel has already been modernised and lined to carry higher full capacity more than 10 per cent during Kharif;
- (iv) Temporary outlet in irrigation channel is sanctioned with the aim of delivering discharge over and above the normal water allowance of the area exclusively for rice cultivation.

These averments belie the allegations of the petitioners that their water supply has been affected by providing rice shoots on the Koei minor. To me, it appears that the purpose of sanctioning rice shoots is to provide additional water supply for rice cultivation. The purpose for which the policy has been framed deserves to be applauded.

(8) Learned counsel for the petitioners has highlighted that temporary rice shoots as provided in the policy fall within the meaning of the definition of 'outlet' as provided in clause (b) of Section 1 of the Act and a new outlet can only be provided after preparing a new draft scheme under Section 17 of the Act. Since the outlet has been provided in violation of these statutory provisions, the same is rendered invalid. The submission is devoid of merit. "A rice shoot is purely a temporary contract shoot for a single crop only. Rice shoots are sanctioned for delivering extra water supply over and above the normal water allowance. No new area is permanently allotted for irrigation through these rice shoots. Areas receive irrigation in the same manner as was allowed before the sanction of rice shoots. The rice shoots are only sanctioned for delivery of extra water supply which will in no manner diminish or curtail the existing water supply. The rice shoots may be loosely termed as outlets, but in fact a rice shoot is not an outlet within the meaning of clause (b) of Section 1 of the Act." If the definition of the term 'rice shoot' as given in the policy is read with the conditions on which it is to be sanctioned, it will in unmistakable terms establish that it is not an outlet within the meaning of Section 1(b) of the Act. As observed by me earlier, the purpose of providing rice shoots is with the aim of delivering discharge of water over and above the normal water allowance of the

area exclusively for rice cultivation. The rightholders/landowners are not going to be prejudiced by sanction of rice shoots. "The purpose for which this policy has been framed is in the interests of the nation so that more rice is grown in an area which is more suitable for rice cultivation. I am not inclined to interfere with the policy in extraordinary jurisdiction which has principally to be invoked for preventing injustice and not for curbing the right actions of the State for the advancement of public good. The policy is additionally upheld for the reason that the Government in its wisdom thought of issuing instructions for the purpose of regulating extra supply of canal water for rice cultivation." Similar instructions were issued to regulate the supply of canal water for gardens and orchards and this Court in *Bant Singh and others v. Man Singh and others* (1), upheld it with the following observations :—

"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, held 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 had 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. The executive instructions have the force of law."

The situation in the instant case appears to be *pari materia* with the facts of the instant case.

(9) However, before parting with this judgment, it deserves to be highlighted that in the policy approved by the Government for installation of rice shoots (temporary outlets) during Kharif, 1990, there are no guidelines for Superintending Canal Officers who are

(1) 1975 P.L.R. 761.

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competent to sanction such rice shoots. It is possible that number of eligible applicants asking for rice shoots may be much more than permissible in accordance with the policy approved by the Government. In order to avoid hardship to the eligible applicants, the following procedure should be adopted by the Superintending Canal Officers :—

- (i) The concerned Divisional Canal Officer will scrutinise and decide the applications of the eligible persons in accordance with the policy approved by the Government in a particular year. He will send all these cases along with the cases which are not considered eligible by him to the Superintending Canal Officer for sanction of a new outlet. He will also send report specifying reasons why these cases are not eligible;
- (ii) If some of the applicants are not satisfied with the decision of the Divisional Canal Officer about the eligibility of his application, then he will have a right to approach the Superintending Canal Officer at least two days before the actual date of draw and the Superintending Canal Officer will decide his case before the date of the draw and take necessary action;
- (iii) After receipt of the recommendations of the Divisional Canal Officer, the Superintending Canal Officer will take a decision about the number of temporary new outlets which can be sanctioned by him on that channel in accordance with the policy approved by the Government. In case the number of eligible applicants is more than the number of the permissible outlets, then he will arrange to decide the cases on the basis of a draw of lots to be held on a day and a time to be decided at least 10 days in advance;
- (iv) The list of the eligible applicants will be notified and given wide publicity. The draw should be held in the presence of at least three gazetted officers to be appointed by the Superintending Canal Officer under whose chairmanship the draw will be held. At least one officer out of these should not be connected with the operation and maintenance of the concerned channel. The applicants should also be allowed to be present during draw time, if they so desire. On the basis of the draw, the new outlet should be sanctioned by the Superintending Canal Officer and an intimation sent to the Chief Canal Officer.

- (v) Any person aggrieved by the decision of the Superintending Canal Officer can challenge the same by filing representation before the Chief Canal Officer within one week of the decision who will dispose of the same expeditiously.
- (10) For the reasons aforementioned, the writ petition is devoid of merit and is dismissed but with no order as to costs. However, it is directed that the guidelines laid down in the preceding paragraph of this judgment will be implemented by the competent authority while sanctioning rice shoots.

S.C.K.

Before : N. K. Sodhi, J.

SADHU SINGH,—Petitioner.

versus

THE LABOUR COMMISSIONER, PUNJAB, CHANDIGARH AND ANOTHER,—Respondents.

Civil Writ Petition No. 3246 of 1985

30th April, 1991.

Industrial Disputes Act, 1947—S. 10—State Government declined to refer dispute in January, 1977 and workman duly informed—Workman kept silent for eight years—Cannot now in 1985, at this belated stage challenge order of Government declining reference.

Held, that by now almost 15 years have passed since the services of the petitioner were allegedly terminated in July, 1976 and he kept mum for eight years after the State Government had declined to refer the industrial dispute which he raised through a demand notice. It would not be in the interest of industrial peace to direct the State Government to reconsider the matter afresh and involve the parties in a bout of litigation at this late stage. The writ petition, thus, merits dismissal on the ground of inordinate delay.

(Para 4)

RAM AVTAR SHARMA AND OTHERS V. STATE OF HARYANA AND ANOTHER A.I.R. 1985 S.C. 915

(DISTINGUISHED)

Petition under Articles 226/227 of the Constitution of India praying that the petition may kindly be accepted, and

- (i) *the respondents may be directed to produce the entire record of the case;*