RAJASTHAN HIGH COURT

Prem Singh

Vs.

State of Rajasthan

Civil Writ Petns. Nos. 4337, 4344, 4333, 4334 and etc. etc. of 2000
(B.S. Chandra, J.)

04.04.2001

ORDER

B.S. Chandra, J.

1. In these petitions, the common questions of facts and law are involved and the common impugned order dated 18-10-2000 passed by the Superintending Engineer, respondent No. 2, is under challenge. By the said impugned order, respondent No. 2 has passed certain directions to respondent No. 1 to readjust/remodel certain outlets.

2. The facts and circumstances giving rise to these cases are that in all these petitions, petitioners are the agriculture tenure-holders having irrigation facilities and they are aggrieved by the impugned order dated 18-10-2000. The writ petitions have been filed on the grounds that under the garb of issuing the rectification orders, the Appellate Authority has interfered with the irrigation outlets and the order stands vitiated for the reason that he is the Appellate Authority under the Act and the same could not have been passed by him as it deprived the petitioners from the right of appeal. It has further been contended that no notice under Rule 11 of the Rajasthan Drainage Rules, 1957 (for short, "the Rules, 1957") had been given to the petitioners.

3. On the contrary, learned counsel for the respondents have submitted that it is only rectification, re-fixation, re-designing or readjusting the outlets to repair them properly as during the course of time, the same resulted in deviation and the same are discharging more or lesser quantity of water than as it should be as per their original respective designs. Thus, it is not an order which is likely to adversely affect the petitioners and for doing so, no notice under Rule 11(3) of the Rules, 1957 is required. Petitions are liable to be dismissed.

4. It is settled proposition of law that when Statute confers power on a particular Authority or person to perform certain functions, it cannot be exercised by any other person. (Vide *Toda Ram v. State of Rajasthan,*[1] *Anirudhsinghji Karansinghji Jadeja v. State of Gujarat,* [2] *State of U. P. v. Ram Naresh Lal,* [3] *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguli* [4] *Board of High School and Intermediate Education, U. P., Allahabad v. Ghanshyam Das Gupta,*[5] *Maneka Gandhi v. Union of India,* [6] and *Chandrika Jha v. State of Bihar,*). [7]

5. In *Purtabpur Company Ltd. v. Cane Commissioner of Bihar,* [8] the Hon'ble Supreme Court has observed as under (Paras 13 and 14) :-

> "The power exercisable by the Cane Commissioner under Clause 6(1) is statutory power. He alone could have exercised that power. While exercising that power, he cannot obligate his responsibilities in favour of any one; not even in favor 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. . . . . The Executive Officers, entrusted with statutory discretion, may, in some cases, be obliged to take into account consideration of public policy and in some context the policy of a Minister or the Government as the whole when it is relevant factor in weighing the policy but this will not absolve them from the duty to exercise the personal judgment in individual case unless explicit statutory provisions have been made for them to be given binding instructions by a superior."

6. Similar view has been reiterated by the Division Bench of this Court in *Jarnail Singh v. The Superintending Engineer and others,* [9]

7. A Division Bench of this Court in *Baga Ram v. State of Rajasthan,* [10] interpreted the provisions of Rule 11(2) and (3) of the Rules, 1957, observing as under (at P. 34 of AIR) :-

> "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."

8. The said judgment has also been approved and followed by a Division Bench of this Court in Jarnail Singh (supra). Similar view has been taken by this Court in *Amar v. State of Rajasthan,* [11]

9. A Constitution Bench of the Supreme Court in *University of Mysore v. C. D. Govinda Rao,* [12] has held that where the decision under challenge has been taken by the Committee of Expert, "normally the Courts should be slow to interfere with the opinion expressed by the experts" unless there are allegations of *mala fide* against any of the Members of the Expert Committee. The Court further observed as under :-

> ". . . . .It would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than Courts. . . . ."

10. Similar view has been taken by the Apex Court in *State of Bihar v. Dr. Asis Kumar Mukherjee,* [14] *M. C. Gupta v. A. K. Gupta,* [14] *Rajendra Prasad Mathur v. Karnataka University,* [15] *Dr. Umakant v. Dr. Bhikha Lal Jain,* [16] *Chancellor v. Dr. Bijayananda Kar*[17] Chairman, J. and *K. State Board of Education v. Fayaz Ahmed*[18] and *Nashik Diocesan Council Trust v. Sunita Yogesh Pandit,* [19]

11. Thus, it is settled law that when a decision is taken by the Committee of Expert having high academic qualifications and long experience in the specialized field, the Courts should not normally probe the matters unless there are compelling circumstances for doing so, i.e. allegations of mala fides against the members of the Expert Committee, rejection of candidature on extraneous consideration etc.

12. Thus, from the above, it is evident that the Court should not ordinarily interfere with the order passed by an expert committee. Secondly, the order should be passed

only by the statutory authority and it should not be guided by any higher authority and in case the higher authority, which is Appellate Authority under the statute also, passes the order, the order stands vitiated as the party loses its right of appeal. Thirdly, if it is evident from the order that the party is adversely affected, notice under Rule 11(3) is mandatory and no order can be passed without giving notice to the persons aggrieved.

13. The instant petitions require to be examined in the light of the aforesaid settled legal propositions.

14. In all these cases, there are orders of certain correction and modification but it does not show anywhere that the order impugned is going to affect the petitioners adversely. In fact, it appears from the record that vide order dated 29-2-2000, the Chief Engineer had directed the Superintending Engineer to have the hydro-survey and/or complete survey of all the canals and minor canals after having the inquiry regarding discharge of water and if any outlet is drawing excess or lesser quantity of water than required one, the same should be redesigned or remodeled.

15. The impugned order has been passed in response of such direction after holding the complete survey of the distributaries. Therefore, the question does arise; whether the rectification of this nature can be directed by the higher authority having the supervisory and administrative control and can be brought within the ambit of the order adversely affecting the parties and requiring notice under Rule 11(3) or whether such an order can be said to have been passed by a superior authority depriving the petitioners from their right of appeal?

16. In the instant cases, the order impugned simply provides for redesigning and remodeling the outlets which may be necessary in the fact-situation and may be required for the reason of settling down the sand-silt, bringing the surface of the minor or canal to the level where the outlet has been installed, as it may reduce the volume of water-discharged. Moreso, by the changed circumstances, the angle of the outlet may also change the volume of discharged water. If the angle of an outlet goes up, there will be lesser discharge, if it comes down, there may be more discharge of water than required. Thus, after a regular interval of period, such technical exercise is required to rectify the outlets. Such orders are necessary to be passed on the administrative side. The order which can be passed under Rule 11 etc. are quasi

judicial orders and are entirely different from this kind of orders.

17. The quasi-judicial order must contain the following conditions: (a) the body of persons must have legal authority; (b) the authority should be given to determine question affecting the rights of subjects; and (c) they should have a duty to act judicially. (Vide *Rex v. Electricity Commissioner, ex parte, London Electricity Joint Committee Co., [20] Rex v. London Countsy Council. Ex parte Entertainments Production Association Ltd[21] Province of Bombay v. Khushaldas S. Advani, [22] Gullapalli Nageswara Rao v. A. P. State Road Transport Corporation, [23]* and *State of Orissa v. M/s. Chakobhai Ghelabhai and Co., [24]*

18. In *State of Himachal Pradesh v. Raja Mahendrapal Singh [25]* the Hon'ble Supreme Court held that the test to determine whether the proceedings are quasi judicial or not, is as under (as P. 1791 of AIR):-

> "Quasi judicial acts are such acts which mandate an officer the duty of looking into certain facts not in a way which it specially directs but after a discretion, in its nature, judicial. The exercise of power by such Tribunal or Authority contemplates the adjudication of rival claim of persons by an act of mind or judgment upon the proposed course of official action as to an object of the corporate power, for the consequence of which the official will not be liable, although his act was not well judged. A quasi judicial function has been termed to be one which stands midway on judicial and administrative functions. The primary test is as: whether the authority alleged to be a quasi judicial, has any special judicial duty to act judicially in arriving at the decision in question. If the reply is in affirmative, the Authority would be deemed to be quasi-judicial and if the reply is in negative, it would not be. The dictionary meaning of the word quasi judicial is 'not exactly.' "

19. In *Lt. Col., P. R. Chaudhary v. Municipal Corporation, Delhi, [26]* the Hon'ble Supreme Court held that when an authority acts in quasi judicial capacity, it cannot arbitrarily ignore principles of law or the principles of natural justice. Similar view has been reiterated by the Hon'ble Apex Court in *Rakesh Kumar Jain v. State, [27]* and *Union of India v. H. C. Goel, [28]*

20. Fixing the hours of irrigation as per the requirement of a tenure-holder definitely

amounts to quasi judicial. The aforesaid ingredients of a quasi judicial order are not available in the impugned order and notice under Rule 11(3) of the Rules, 1957 is not required in this case as the impugned order does not provide for reduction of the volume of water available to the petitioners as per the original share designs.

21. In fact, the Superintendent Engineer passed the order of a general nature for repairing of outlets etc. after having proper survey. The Superintending Engineer passed the order in compliance of the aforesaid order by readjusting and remodeling of outlets. If the impugned order is examined analytically, there is nothing on record to show that the order is likely to adversely affect the petitioners. The order is nothing but a technical advice of the Superintending Engineer to its junior officers to carry out the rectification/correction of the outlets by readjusting and remodeling so that there may be only required discharge of water and it should neither be lesser nor more than required amount. There is no cause of concern at this stage for the petitioners. If after remodeling and readjustment petitioners feel that they are adversely affected or not getting the volume of water which they are entitled for in accordance with law as per the original design share, they may approach the appropriate forum for redressal of their grievances and at that time the same would be considered as per the law.

22. The impugned order is based on the Hydrological Survey or Complete Survey Report which makes it evident that in certain cases there was difference in the design datas and the existing datas so far as the lands of the petitioners are concerned. It cannot be said to be a general order for every Chak or outlet as the impugned order shows that the Superintending Engineer himself had held in large number of cases that there was no difference in the said datas, therefore, no change or adjustment was required. The reply filed by the respondents makes it evident that the volume of discharge of water from the said outlets which have been directed to be remodeled, was either more or less than required as per their designs. The order had been passed in public interest so that the tenure-holders may get their due shares in water and the persons having their lands on the tale of the minor or canal, may also get sufficient supply of water for irrigating their lands. The respondents have given an undertaking that neither the due share of the tenure-holders would be curtailed nor the irrigation facilities would, by any means, be adversely affected in response to due design-share of water. Undoubtedly, the State Government is under an obligation to provide water for irrigation facilities as per the actual need or as per the design-share of water and not beyond that and if the cultivators are getting the excess water, the respondents are

under the legal obligation to control and administer the system by either readjusting or remodeling the outlets. Respondents filed the reply on 21st January, 2001. Petitioners did not consider it appropriate to file rejoinder- affidavit, rebutting the contents thereof. Therefore, the stand taken by the respondents cannot be doubted as it goes unrebutted.

23. In view of these facts, I find no force in these petitions and the same are hereby dismissed. There shall be no order as to costs.
Petitions dismissed.

Cases Referred.
1. 1998 Raj LW 1603
2. (1995) 6 JT (SC) 146
3. AIR 1970 SC 1263
4. AIR 1986 SC 1571
5. AIR 1962 SC 1110
6. AIR 1978 SC 597
7. AIR 1984 SC 322
8. AIR 1970 SC 1896
9. DBCSA No. 1164/1998, decided on 21-3-2001
10. AIR 1980 Raj 31
11. (1995) 1 WLC 744
12. AIR 1965 SC 491
13. AIR 1975 SC 192
14. (1979) 2 SCC 339: (1979 Lab IC 296)
15. AIR 1986 SC 1448
16. AIR 1991 SC 2272
17. (1994) 1 SCC 169
18. (2000) 3 SCC 59
19. (2000) 10 SCC 280
20. (1924) 1 KB 171
21. (1931) 2 KB 215
22. AIR 1950 SC 222
23. AIR 1959 SC 308
24. AIR 1961 SC 284
25. AIR 1999 SC 1786

26. (2000) 4 SCC 577
27. (2000) 7 SCC 656