PEPSU HIGH COURT

Mukandi Ram Sant Ram

Vs

Executive Engineer

Letters Patent Appeal (F.A.O.) No. 58 of 1954

(Passey, C.J. and Chopra, J.)

06.01.1956

JUDGMENT

Chopra, J.

1. This appeal is directed against the order of a Single Bench of this Court dismissing appellants' petition under Article 226 of the Constitution.

2. On the night between 23rd/24th September, 1952, there occurred a cut in the Usa branch of Sirhind canal. The water flowed into lands occupied by the appellants, situate within the boundaries of village Kishangarh-Pharwahi. The canal authorities institute proceedings against the appellants for recovery of charges for unauthorised use of canal water. On the recommendation of the S.D.O. concerned, Executive Engineer, Sangrur, passed an order levying six times extra water rate, over and above the ordinary water rate, purporting to act under Sections 31 and 33, Northern Indian Canal and Drainage Act, 8 of 1873 (hereinafter to be referred to as the Canal Act), read with Rule 32 of the Rules framed by the Punjab Government under that Act.
As the lands were uncultivated the charge was directed to be calculated at six times the highest rate prescribed in the schedule of occupiers' rates for any one crop. This order of the Executive Engineer is dated 14-11-1952. The persons affected filed an appeal against this order. This appeal was dismissed by the Chief Engineer. The appellants then presented the petition giving rise to this appeal, under Article 226 of the Constitution, praying for issue of a writ of certiorari quashing the order of the Executive Engineer (respondent 1) and a writ of prohibition restraining the Tehsildar, Mansa, (respondent 2) from realizing the amounts levied against them or for any other appropriate order or direction.

3. In the petition, the appellants averred that it was not a deliberate cut but an accidental breach through no fault of theirs, that the Executive Engineer illegally and without authority assessed them to a penal water-rate at six times over and above the ordinary rate, that not only the penalty was illegal, ultra vires and contrary to the provisions of the Canal Act but also the Executive Engineer was not competent to direct the imposition as he was not a duly appointed Divisional Canal Officer, that no inquiry as required by Section 34 of the Canal Act was held and no notice

was given to the appellants affording opportunity to contest their liability, that since the Pepsu Government had framed no rules under the Canal Act no penalty could possibly be imposed and that the Tahsildar Mansa was not competent to realize the amounts levied against the appellants, for that could only be done by the Collector as provided by the Canal Act. The respondents in their reply denied the allegations and asserted that it was a case of a deliberate cut, that due notices were given to the appellants before and after the order of the Executive Engineer, that the order was the result of a thorough inquiry by the canal officers and that the Executive Engineer was well within his rights to impose the charge according to the provisions of the Canal Act read with the rules framed thereunder.

4. The canal Act was no doubt in force in this State but no rules for carrying the Act into operation and effect were ever framed, though in practice the rules framed by the Punjab Government were being followed. It was only during the pendency of the appellants' petition that the Pepsu Sirhind Canal and Western Jamna Canal (Enforcement and Validation) Act, 4 of 1954, (hereinafter to be referred to as the Validation Act) was enacted and published in the issue of the Pepsu Government Gazette dated 24-7-1954. Section 2 of this Act defines "the Sirhind Canal Rules" and "the Western Jamna Canal Rules" as the rules framed and amended upto date by the Punjab Government in exercise of the powers conferred by Section 75 or by any other provision of the Canal Act.

5. Sections 3 and 4 enforced the Sirhind Canal Rules and the Western Jamna Canal Rules in the State with retrospective effect and validated anything done or any action taken under and in accordance with these rules. The two sections read as follows :

> "3. Notwithstanding anything contained in the Act but subject always to any rules made and notified under the Act by the State Government, and until corresponding rules in respect of any canal or branches thereof are made by the State Government under the provisions of the Act,
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> (a) the Sirhind Canal Rules, in relation to the Sirhind and Banur Canals and branches thereof in the State, and
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> (b) the Western Jamna Canal Rules, in relation to the Western Jamna Canal and branches thereof in the State, are hereby made and enforced 'mutatis mutandis' in the State and shall be deemed always to have been so made and enforced as from the appointed day.
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> "4. Notwithstanding anything contained in the Act, as from the appointed day anything done or any action taken (including any penalty imposed) under and in accordance with the Sirhind Canal Rules or the Western Jamna Canal Rules shall not be called in question in any proceedings, whether pending on the 6th day of June, 1954 or not, before any court or other authority merely on the ground that the Sirhind Canal Rules or the Western Jamna Canal Rules had not been validly made or were not in force on the day on which such thing was done or such action was taken."
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> 'Appointed day' means the twentieth day oil August, 1948, when the Patiala and East Punjab States Union came into existence.

6. Objections based on the ground that formally approved rules did not exist fell through on account of this enactment with retrospective effect. On all other points, the learned Judge found

against the appellants and dismissed the petition. In view of the general importance of the questions involved, he granted a certificate and hence this appeal.
7. On behalf of the respondents, a preliminary objection is raised that the appeal was not presented within the prescribed time. Notification No. 25 dated 13-3-1952, lays down that an appeal from the judgment or order of a Single Bench of this Court shall be filed within thirty days of the judgment or order, excluding the time spent in obtaining the necessary certificate. It further provides that a copy of the judgment or order appealed from need not be filed with the memorandum of appeal. Since the certificate of fitness for appeal was granted, on an oral application of the petitioners, by the order itself, no time on that account was to be excluded in the present case. The appellants did obtain a copy of the order and filed it with the memorandum of appeal. If the time for obtaining this copy were to be excluded, admittedly the appeal was presented within time. The respondents contend that Section 12, Limitation Act has no application because limitation for such an appeal is not provided by the Act itself, and that even if it applies, since copy of the order was not required to be filed with the memorandum of appeal the time for obtaining it could not be excluded under the section.

8. Section 29, Limitation Act makes the provision of Section 12 applicable to a case where the special or local law prescribing a different period of limitation from the one prescribed by the first schedule does not expressly exclude their application. The exclusion must be by express words, i.e. by express reference to the section and not exclusion as a result of a logical process of reasoning. No such exclusion is made by the special law in this case. Respondents' contention that the special law impliedly excludes the application of Section 12 is, therefore, not tenable.

9. Sub-Section (2) of Section 12 provides that the time requisite for obtaining a copy of the order appealed from shall be excluded in computing the period of limitation. Shri Verma, learned counsel for the respondents, urges that since copy of the order was not required to be filed with the memorandum of appeal, the appellants need not have applied for and obtained the copy before filing the appeal, and hence the time spent in obtaining the copy cannot be regarded as "requisite" and excluded under the section. The conflict of authorities as to whether time spent for obtaining copy of the decree or order, which is not required by law to be filed with appeal, is or is not to be excluded under Section 12 was set at rest by the Privy Council in - *'Jijibhoy N. Surty v. T.S. Chettyar Firm[1]',* and it was held that the time spent in obtaining copies of judgment and decree must be excluded in computing the period of limitation for an appeal, even though such copies need not, according to the rules of the Court, accompany the memorandum of appeal. The reason for exclusion of time spent in obtaining copy of the judgment or decree is to enable the appellant to have sufficient opportunity to study the terms of the judgment, decree or order and decide as to the advisability of further proceedings in respect of it.

10. In *'Keshar Sugar Works Bombay v. E.C. Sharma[2]',* Section 12 was held to be applicable to an application for leave to appeal to the Privy Council and the time requisite for obtaining copy of the order appealed from was excluded, though under the rules it was not necessary to file a copy of the decree along with the application.
In *'Punjab Co-operative Bank Ltd., Lahore v. Punjab Cotton Press Co. Ltd.[3]',* appeal was filed under Section 202, Indian Companies Act, from an order of the Single Bench exercising original jurisdiction. The appellant was held to be entitled to exclude the time requisite for obtaining copy of the judgment appealed against even though, under the Rules and Orders of the High Court, no copy of judgment was required to be filed with the memorandum of appeal.

11. The reasoning of their Lordships of Privy Council in the case referred to above was applied, in a number of decisions, to a review application and it was observed that the fact that a review application need not be accompanied by a copy of the judgment will not deprive the applicant of his right to exclude the time spent in obtaining the copy in computing the limitation for such application : (C.F. - *Kashi Nath v. Gauri Shankar*[4]*',* - *Kanshi Ram v. Karam Narain*[5]*',* - '*Gangadhar Karmarkar v. Shekharbasini Dasya*[6]*',* and - *'Chokkalingam Chetty v. Lakshmanan Chetty'*[7]*,*

12. The decision in - *'Neki Kishen v. Rupchand*[8]*',* the only authority relied upon by Mr. Verma, has no application to the present case. That was a case of an application for leave to appeal to the Supreme Court, which is expressly dealt with in Sub-Section (2) of Section 12 and to which Sub-Section (3) does not apply. Time for obtaining copy of the decree alone could, therefore, be excluded, and since the decree was not appealed from or reviewed and Sub-Section (3) did not apply the time requisite for obtaining copy of the judgment could not be excluded.

13. The appeal must, therefore, be held to have been filed within time.

14. Shri Ram Karan Das Bhandari, learned counsel for the appellants, contends that Section 3 of the Validation Act is ultra vires the powers of the Legislature inasmuch as it authorises the State Government to modify or alter the rules adopted by the Legislature or to frame new rules in their place. It is argued that by virtue of Section 3 "the Sirhind Canal Rules" and "the Western Jamna Canal Rules" became cart of the Act itself and they should be taken to have been enacted by the Legislature. Having been so enacted these Rules can be amended, modified or annulled by the Legislature alone. Power to repeal or amend law is a power which can only be exercised by authority that has power to enact laws. Since abdication of its legislative powers by the Legislature in favour of the Executive is unconstitutional, the said, provision in the section is ultra vires the Constitution. It is further contended that the whole section becomes bad because this portion of it cannot be singled out or separated. The points; sought to be made out in the contention are misconceived and without substance.

15. It is correct that Legislature cannot delegate its legislative functions to the Executive and must normally discharge its primary functions itself. It is equally well recognized, that while the Legislature has power to lay down the policy and principles
governing the rules of conduct it can, as a part of its legislative functions confer on the Executive power to make rules and regulations for carrying the enactment into operation and effect. This is exactly what was done in the present case, as is evident from the history and object of the piece of legislation in question. The Canal Act was enforced in the erstwhile Patiala State in 1935. It became law for the Patiala and East Punjab States Union, on its, formation on 20-8-1948, by virtue of Section 3 of Ordinance 16 of 2005 Bk. Neither the Government of the erstwhile Patiala State nor that of Patiala and East Punjab States Union, after its formation, did frame any rules to carry out the provisions of the Canal Act and for putting it into effect. In practice, however, the Patiala State Government and so also the Patiala and East Punjab States Union Government, in relation to the Sirhind and Banur Canals and the Western Jamna Canal and branches thereof, virtually acted upon the "Sirhind Canal Rules" and the "Western Jamna Canal Rules" respectively as framed and amended upto date by the Punjab Government. The irregularity came to light when the present petition, and certain other petitions involving the same question, were

pending before the Single Bench. The matter was taken up on the legislative side and since Legislature of the State was not in session a solution was sought through an. Ordinance promulgated by the Raj Pramukh in exercise of the powers conferred by Clause (1) of Article 213 read with Article 238 of the Constitution. The Ordinance was published in the Pepsu Government Gazette, on 7-6-1954. It was repealed by the Validation Act (4 of 1954), which came into force on 24-7-1954. The Ordinance and thereafter the Validation Act, which are identical in terms, were meant to remove the lacuna and validate things done and actions taken under and in accordance with the Punjab Rules, on the assumption that they were in force in the State. The object was gained by formally enforcing these rules in the State and further declaring that they shall be deemed to have been so made and Unforced as from 20-8-1948.

16. Section 31 of the Canal Act leaves it to the State to frame rules to settle the rates and Conditions for the supply of canal water. There are some other similar provisions in the Act for framing of the rules. Section 75 authorizes the State Government generally to make rules to carry out the provisions of the Act. The rule-making power is thus given by the Canal Act itself and that was simply recognized or reiterated, by the Validation Act. While enforcing the Punjab Rules in the State the Legislature enjoined that these rules shall be subject to any rules made and notified toy the State Government under the Canal Act and also that they shall remain in force till such time as corresponding rules in respect of any canal or its branches are made by the State Government. The unauthorized observance and application of the Punjab Rules was legalized and the Punjab Rules were formally adopted for the interim period, i.e. till the State Government, in supersession or modification of those rules, frames its own rules under the Canal Act. This can, in no sense, be regarded as abdication of its power by the Legislature in favor of the Executive. The Legislature would be within its powers in authorizing the State Government to decide as to when a particular statute, or any part of it, may come into operation or cease to operate in the State or any part of the State. The Legislature cannot be said to have done anything more than this in the present case and the legislation, therefore, cannot be regarded as unconstitutional.

17. Shri Bhandari relies upon certain observations of Mahajan, J. in his dissenting judgment in In re. Article 143 Constitution of India and Delhi Laws Act, (1912) etc., AIR 1951 S.C. 332(1). There, the enactments in question conferred and "carte blanche" upon the Central Government authorizing it to enforce in certain Provinces and States any of the laws enacted by Legislatures incompetent to make laws for those Provinces or States. Section 2, Part C States (Laws) Act, 1950, to which the observations relied upon by the learned counsel relate, says-

> "The Central Government may by notification in the official gazette extend to any Part C State (other than Coorg and the Andaman and Nicobar Islands) or to any part of such State with such restrictions or modifications as it thinks fit any enactment which is in force in a Part A State at the date of the notification and provisions may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State." In view of these facts, at page 393 his Lordship observed-
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> "It might, however, be observed that in this case express power to repeal or amend laws already applicable in Part C States has been conferred on the Central Government. Power

> to repeal or amend laws is a power which can only be exercised by an authority that has the power to enact laws. It is a power co-ordinate and co-extensive with the power of the legislature itself. In bestowing on the Central Government and clothing it with the same capacity as is possessed by the legislature itself the Parliament has acted unconstitutionally."

Obviously, the observations are in no way applicable to the facts of the present case. The contention has no force and is, therefore, repelled.

18. Assuming, but not holding, that this portion of Section 3 of the Validation Act is ultra vires the powers of the Legislature, I see no reason to accept the contention that it is so inseparably inter-mingled with the rest of the section that the section should be declared invalid and inoperative in its entirety. The first part of the section enforces the Punjab Rules in the State and the second authorizes the State Government to modify those rules or make fresh rules of its own. Even if the latter be bad the former stands as valid and unimpeachable. It is common ground between the parties that so far the State Government has not exercised the authority conferred by second part of the section and no rule framed by virtue of that authority is in question in the present appeal.

19. One of the rules (R. 33), to which retrospective effect is given by the Validation Act, relates to charge leviable for canal water used in an unauthorized manner or suffered to run to waste. Rule 33 says-

> "Persons using canal water in an unauthorized manner or suffering it to run to waste shall be chargeable with a special rate in the same manner and at the same rates as prescribed in Rule 32.
> Provided that in every case the Divisional Canal Officer may impose a lower charge, if he thinks fit, and, provided further, that this charge may be made for each distinct and separate occasion on which water is so used.

If the person or persons using water in an unauthorized manner or suffering it to run to waste cannot be identified, the persons chargeable shall be determined in accordance with the provisions of Section 33 or 34 of the Act, as the case may be.
For the purposes of this as well as the preceding rule, the area shall be measured up as soon as possible, and the persons chargeable with the special rate having been determined notice shall at once be given to them on each occasion that they will be charged accordingly in the demand statement for the area thus watered. The special rate shall be in addition to such penalties as may be imposed under Section 70 of the Act." Authority of the Legislature to give retrospective effect to this rule is questioned on the basis of inhibition laid down by Article 20 of the Constitution. Article 20(1) enjoins that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The general rule is that a statute can be made to operate retrospectively by express enactment to that effect or by necessary implication, for the Legislature is always free to legislate with its sphere and in the way which appears to it the best

to give effect to its intentions and policy in making a particular law. Article 20 places certain restrictions on the powers of the Legislature in this respect. Except as provided by this article, the State Legislature has plenary power of legislation on the subjects within its jurisdiction and can make laws which are retroactive in erect.

20. Now, the first part of the sub-article provides that no one should be held guilty of an offence for any act unless such act constituted an offence according to the law then in force. In other words, when a certain act is not an offence according to the law in force at the time the act is committed, the person committing that act must not be held guilty of the offence merely because subsequently a law is passed making such act an offence. The second part of the article provides that an offender must not be made to suffer higher punishment for an offence than the one prescribed by law in force at the time the offence was committed, because enhanced punishment for that offence has been provided by subsequent legislation. In other words, the imposition of a higher punishment for a certain offence by subsequent legislation must not affect an individual who committed that offence before the passage of such legislation.

21. With the first part of Article 20(1) we are not here concerned. The second part of it prohibits the passing of any law that seeks to aggravate the crime or enhance the punishment for any offence in case of a person who committed the crime before the passing of such law. It is obvious that what the article prevents is the infliction of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The article contemplates criminal proceedings for an offence before a Court of law or judicial Tribunal. This is abundantly clear from the language of the article and use of the words "convicted", "Commission of the acts charged as an offence", "be subject to penalty", and "Commission of the offence". "Penalty" envisages the idea of punishment for an offence. The article thus provides a safeguard for personal security of the subject. It is meant to protect the subject against punishment by ex post facto laws. But it has no application to his rights or liabilities with respect to property or contracts.

22. In *'Pralhad Krishna v. State of Bombay[9]',* the prohibition contained in part of Article 20(1) was held to be inapplicable to a case of preventive detention, observing.

> "It is obvious that what Sub-art. (1) of Article 20 prevents is the infliction of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the same offence. The sub-article has, therefore, reference to a penalty to be imposed in respect of an offence, and where the question is one of the preventive detention, the article has no application."

23. In *'Fatima Bi v. State of Madras[10]',* it was held that summary eviction under the provisions of a Rent Control Law is not a penalty within the meaning of this article and does not come within the prohibition of Clause (1), although the provision for such summary eviction is the result of a subsequent enactment and did not exist at the time when the act resulting in eviction was committed. It was argued that the effect of the amendment in law was that for an offence-non-compliance with the order to vacate the premises committed prior to the passing of the Act, a person could not only be convicted but could also be evicted summarily and, therefore, the penalty was greater than that could be inflicted on him at the time when he committed the

offence. The contention was repelled on the ground that power of summary eviction conferred by the retroactive Act could not be equated to the infliction of a penalty for the commission of an offence.

24. Section 70 of the Canal Act enumerates the offences which fall within the Act and states the punishment therefor. Use of canal water in an unauthorized manner or neglect to take proper precautions for prevention of waste of the water, by certain persons and under the given circumstances, is made punishable by Clause (4) of this section. Sections 33 and 34 provide for levy of charge when water supplied through a watercourse is used in an unauthorized manner or suffered to run to waste. Rule 33, to which retrospective effect is given by the Validation Act, specifies the charge leviable for canal water used in an unauthorized manner or suffered to run waste. The rule simply creates a civil liability in addition to the criminal liability, if any, under the Act. Liability to pay charge at enhanced rate, in case of an unauthorized use of water or for allowing it to run to waste, cannot be regarded as penalty for an offence. The additional charge is not a punishment for an offence but a liability for the benefit derived or loss occasioned by the unauthorized act. The fact that the act may also be an offence under Section 70 is immaterial, for the charge is something different from and in addition to any punishment incurred for the offence. This is made clear by Section 35 of the Canal Act, which provides that all charges for the unauthorized use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste. It cannot, therefore, be said that the impugned provision offends the inhibition laid down by Article 20(1) of the Constitution.

25. It is next urged that the Canal Act and also the Validation Act are bad and inoperative since they were not reserved for and did not receive the assent of the President as required by Article 288 of the Constitution Leaving aside other essential requirements for the application of Article 288, it is necessary that the legislation, to fall within the article, must be one which imposes, or authorizes the imposition of, a tax. The objection is based on the assumption, that levy of water rate is a tax for the purpose of the article. Charge for the water supplied, made use of in an unauthorized manner or suffered to run to waste can, by no stretch of reasoning, be regarded as a tax. It is neither a compulsory exaction of money nor an imposition for public purpose, the two essential ingredients of a "tax" as laid down by the Supreme Court in *'Commr. Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar'*[11], Their Lordships quoted with approval the following definition of "tax" given by Latham, C.J. of the High Court of Australia in *"Mathews v. Chicory Marketing Board*[12]*',*

> "A 'tax', according to the learned Chief Justice is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment 'for services rendered",

and observed –

> "This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law, vide - *'Lower Mainland Dairy v. Crystal Dairy Ltd*[13]*',*

> "The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State.

As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of 'quid pro quo' between the tax-payer and the public authorities, see Findlay Shirras on 'Science of Public Finance', Col. I, p. 203. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition of the tax-payer depends generally upon his capacity to pay."

None of the characteristics of a tax are found in the charge of water-rate for supply or use of canal water. It is levied with consent of the person using the water, or for his unauthorized use of it, and is a payment for the ply of water. The contention must, therefore, fail.

26. It is next urged that R. 33 of the Sirhind Canal Rules framed by the Punjab Government is bad because it is not referable to any of the substantive provisions of the Canal Act, nor does it fall within the rule-making power of the government under
Section 75 of the Act, The question, however, does not arise in the present case.

Here, in this State, R. 33 has not been framed or adopted by the State Government. "The Sirhind Canal Rules", including R. 33, were adopted and enacted as law for the State by the State Legislature. This was well within its powers under entry 17 of the State list. The rule owes its source to the Legislature and therefore the question whether it could or could not be framed under the Act, does not arise.

27. On merits, the order levying special rates on the appellants is attacked on the ground (1) that the order could not be made by the Executive Engineer, Sangrur, (2) that due notice had not been given to the appellants, and (3) that neither Sections 33 and 34 nor R. 33, under which the order is said to have been made, applied to the facts of the case.

28. On the first point, it is urged that under Rule 33, an order levying charge for water used in an unauthorized manner can only be levied (sic, passed ?) by a Divisional Canal Officer designated as such by notification in the official gazette. According to Section 3(7) of the Canal Act, "Divisional Canal Officer" means an officer exercising control over the division of a canal. "Canal" as defined by Clause (1) of Section 3, includes all canals, channels and reservoirs constructed, maintained or controlled by the State Government for the supply or storage of water. It is a matter of common knowledge that the State is divided into several divisions and each division is placed in the charge of an Executive Engineer. Executive Engineer, Sangrur, exercises control over the Sangrur Division. He should, therefore, be regarded as the Divisional Canal Officer of the territory within his jurisdiction for purposes of the Canal Act.

The appellants in their affidavit nowhere alleged that the Executive Engineer, Sangrur, was not a duly appointed Divisional Canal Officer for the Sangrur Division, nor was any such, objection raised in the memorandum of appeal. The contention is, therefore, overruled.

29. It is not correct to say that no notice of the proposed imposition of charge was given to the appellants. Order of the Executive Engineer imposing the charge and report of the Sub-divisional Officer, on which the order is based, clearly show that notice inviting objections was given to and

duly served upon the petitioners, and that none of them appeared to oppose the proceedings. The allegation in the petition, not even supported by any affidavit, was emphatically denied in their reply by the respondents and if was affirmed that notices were given to and served upon the petitioners before as well as after the imposition of the special water rate.

30. The finding of the canal authorities that there was a deliberate cut and not a breach in the canal bank has to be regarded as final for purposes of the petition and consequently this appeal. Sections 33 and 34 of the Canal Act I apply to cases where water supplied through a water-course is used in an unauthorised manner or suffered to run to waste.

> "Water-course" as defined by Section 3(2) of the Act, means any channel which is supplied with water from a canal, but which is not maintained at the cost of the State Government, and all subsidiary works belonging to any such channel. Evidently, this does not include a canal, which is separately denned by Clause (1) of the section. Sections 33 and 34 of the Canal Act would, therefore, have no application to the present case.

31. Section 31 of the Canal Act says –

> "In the absence of a written contract, or so far as any such contract does not extend, every supply of canal-water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the State Government in respect thereof."

Rules 32 and 33, framed under Section 31 and some ether provisions of the Canal Act, respectively relate to charge leviable for taking water from a canal without permission and for using canal-water in an unauthorized manner. Rule 33 has been reproduced above, and R. 32 reads :

> "Persons taking water from a canal with out permission or at times prohibited by proper authority shall be chargeable with a special rate as below, in respect of all lands on which water has flowed :-
> (i) Cultivated land the special rate in this case will be equal to six times and in addition to the ordinary occupier's rate leviable on the crop standing at the time in the area.
> (ii) Uncultivated land equal to six times the highest rate prescribed by Local Government in the Schedule of Occupier's rates for any one crop;
> (iii) Ponds, etc.- equal to six times the bulk rate sanctioned for the time being by the Local Government.
> Provided that in each case the Divisional Canal Officer may impose a lower charge if he thinks fit, and provided further, that this charge may be made for each distinct and separate occasion on which water is so taken.

If the person or persons taking water from a canal in an unauthorised manner cannot be identified, the persons chargeable shall be determined in accordance with the provisions of

Section 33 of the Canal Act provided the water is conveyed through a water-course."

32. As already observed, appellants are persons into whose uncultivated lands water was found to have flowed as a result of the deliberate cut in the canal bank. That decision of canal authorities is not open to question in these proceedings. The water may thus be said to have been taken from the canal without permission and that would make R. 32 applicable. In any case, the canal water was found, by competent authority, to have been used in an unauthorized manner by the appellants and that surely brings their case within the ambit of R. 33. The present being not a case where the person or persons using water in an unauthorized manner or suffering it to run to waste cannot be identified, reference need not be made to Section 33 or 34 of the Canal Act. Extra water-rate (six times the highest rate prescribed for any one crop) was levied because the lands were uncultivated, and that was within the authority of the Divisional Canal Officer as provided by R. 32. The amount of the extra water-rate is a matter that solely rests with the canal authorities and is not one that can be questioned in a Court of law or, at any rate, by a petition under Article 226 of the Constitution.

33. Section 45 of the Canal Act lays down that any sum lawfully due under Part V of the Act, and certified by a Divisional Canal Officer to be so due, which remains unpaid after the day which it becomes due, shall be recoverable by the Collector from the persons liable for the same as if it were an arrear of land revenue. Sections 33 and 34 of the Canal Act fall under Chap. V. Placing reliance on this provision of law, Shri Bhandari contends that charges in the present case are recoverable only by the Collector and that the Collector could not entrust their realization to any of his subordinates, including the Tahsildar, for no such delegation was permissible under the Act. Section 45 only provides for recovery of the charge by the Collector as if it were an arrear of land-revenue. It gives authority to the Collector to recover the charge, but does not lay down the manner in which the charge is to be realised. Power of Revenue Officers in the matter of realization of land-revenue and the mode of realizing it are defined and settled by the Punjab Land Revenue Act which is in force in the State. It is not denied that under that law the Collector, in this connection, acts through his subordinates and that in fact the duty of realizing arrears of land-revenue primarily rests with the Tahsildar. Section 5(2) of the Patiala Recovery of State Dues Act, 2002 Bk. expressly makes the provisions of Chap. VI, with the exception of Section 78 of the Punjab Land Revenue Act applicable to recovery of State dues by the Collector. Chapter VI of the Punjab Land Revenue Act relates to "collection of Land Revenue" and lays down the procedure therefor. There is, therefore, nothing wrong about recovery being made by the Tahsildar.

34. In the result the appeal fails and is dismissed with costs. Counsel fee shall be Rs. 100/-.

Passey, C.J.

35.I concur.

Appeal dismissed.

Cases Referred.

[1] AIR 1928 PC 103
[2] AIR 1951 All 122
[3] AIR 1941 Lah 257 (FB)
[4] AIR 1934 All 267
[5] AIR 1921 Lah 124
[6] AIR 1917 Cal 320
[7] AIR 1920 Mad 633
[8] AIR 1952 Pun 367
[9] AIR 1952 Bom 1
[10] AIR 1953 Mad 257
[11] AIR 1954 S.C. 282
[12]60 CLR 263
[13]1933 A C 168 (N)