

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-80 of 2015.

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Adnan-ul-Karim Memon

Abdul Jalil & others ----- Petitioners

VERSUS

Province of Sindh & others ----- Respondents

Date of hearing & decision: 17.09.2020

Mian Taj Muhammad Keerio advocate for petitioners

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh

ORDER

ADNAN-UL-KARIM MEMON, J.- Through instant petition, the petitioners seek declaration to the effect that the act of official respondents sanctioning and transferring of watercourse from Ex-Juria Sar Distry to main East Jamrao Canal, having its direct outlet in between RD 534 and 535 is discriminatory, illegal and void ab-initio. Petitioners seek further directions to the official respondents to stop / remove illegal water courses / pipes outlets on East Jamrao Canal; to stop excavation of water course from RD No.534 and 535; to repair and maintain the modules / frames / regulators of watercourses / minors of East Jamrao Canal as per their sanction design; they also seek direction to the competent authority not to sanction any further direct watercourse on East Jamrao Canal and stop theft of water.

2. Mian Taj Muhammad Keerio learned counsel for the petitioners argued that threats by the respondents to stop water supply to the lands of petitioners are illegal, against the law and equity; that official respondents are bound to supply water to the lands of petitioners in accordance with share list; that the people have right to have access to safe drinking water and to irrigate their lands; that supply of water to the petitioners is either illegally denied or is disturbed by the official respondents arbitrarily and at their whims in exercise of authority not vested in them and even without providing an opportunity of hearing to the khatedars; that due to mismanagement of irrigation authorities

the tail enders are seriously affected. They also raised their voice of concern with regard to their other water related issues, which are not being addressed by the irrigation authorities. Having explained their grievances, they prayed for allowing the instant petition.

3. Learned A.A.G while referring to para-wise comments has assailed the maintainability of instant petition. He prayed that the petitioners have no case; the same may be rejected in the interest of justice. However, he agreed to the extent of equitable distribution of water supply amongst all khatedars; that `Bagi Minor` has been handed over to the Farmer organization for its management and restoration of water supply under Section 45 of Sindh Water Management Ordinance 2002 and mostly the water courses are over designed at site. In this connection Mr. Imam Bux Rind Advocate, submits that the khatedars of Bagi Minor had complained about tempering of outlet before this court but managing committee of F.O Bagi Minor did not take steps for rectification of modules at site. There is hue and cry regarding short supply at the tail end; that in case of any hardship with the khatedars separate outlet have been sanctioned by the competent authority; That Bagi Minor is drawing excessive discharge at site beyond its designed discharge. The cultivation raised along Bagi Minor for Kharif during the year 2014-15 shows more than the designed intensity of 28% at its tail which proves itself that there is adequate water supply in Bagi Minor. It is further submitted that the petitioners may be directed to remove irregularities / tempering of outlets along Bagi Minor, so that there will be no hue and cry regarding shortage of water supply ; that there are no un-authorized pipes along Jamrao Canal; that there is no shortage of water in Bagi Minor. That there is no any grievances of the petitioners, as the water supply has already been restored to the Bagi Minor at its head beyond the designed supply and raised cultivation during the year 2014-15 in Kharif season which is quite satisfactory.

4. We have heard learned Counsel for the parties and perused the material available on record. Before discussing the issue at hand, it must be kept in mind that Article 9 of the Constitution provides right to life and right to receive water to irrigate agricultural land is indeed a fundamental right, however, such right is subject to irrigation laws and rules.

5. Prima-facie, the basic issue involved in the present proceedings is distribution of water to the lands of lawful Khatedars of the concerned area in accordance with Sindh Irrigation Act. The official respondents along with

others have allegedly attempted to obstruct the water supply to the petitioners' lands and in some of the cases have allegedly closed or blocked the source of water supply to them and / or threatened to close the water source through force, in order to accommodate khatedars of their choice irrespective of their entitlement and created bottlenecks for their water related issues involved in the present proceedings.

6. It appears from the record that the issue as raised in the present proceedings has already been set at rest by Honorable Supreme Court in the case of Suo-Moto Action Against Giving of Direct outlets from Naseer Branch Rohri Canal by Chief Minister Sindh reported as 2014 SCMR 353. A perusal of said judgment shows that certain outlets were either sanctioned in violation of law or in relaxation of ban, imposed by the Government of Sindh vide letter No.2/687-S.O. (OP)/70-Vol-III, dated 02-01-1999, in favour of influential and interested persons and consequently, the lands of Khatedars situated at tail end were not getting water according to their share, as before reaching the tail, the entire water was consumed by upper riparian's. The Khatedars raised their voice of concern to protect their rights. The Honorable Supreme Court took Suo-Moto notice in the above-cited case. An excerpt whereof is reproduced below:

“In such view of the matter, we direct the Secretary, Irrigation that immediately he should take action to protect their interest. Here we deem it appropriate to reproduce operative part of the report of the learned District and Sessions Judge Badin dated 27-11-2013:- "It is further submitted that frames of the outlets were tampered and some were having repaired freshly. The type of the frames as sanctioned was 2" x 2" inches but after tampering; the same were found up to 1 to 2 feet width. It is further submitted that on 25-11-2013 the most of the outlets were closed and the Irrigation Officers informed that the same have been closed due to rotation; hence, the flow of water was found up to the sanctioned level and reached at the tail of Sangi Pharho / Regulator. It is further submitted that the outlet of Kamal Khan Chang crossed Pir Sakhi Minor. It is further submitted that again on 26-11-2013 the undersigned conducted the surprise visit of the site without accompanying the Irrigation Officers and found that most of the outlets were opened, hence, there was no pressure of flow of the water at the tail and it was not flowing at sanctioned level at the tail of Sangi Phraho. It is further submitted that if all the outlets remain opened, then the flow of the water will not reach at the tail of Naseer Branch. In this situation, the Zamindars of tail of Naseer Canal Branch cannot get the Irrigation water for cultivating their lands."

7. As regards the issue involved in the present proceedings, this Court vide judgment dated 18.4.2019 passed in C.P. No. 1375-D of 2017 directed the competent authority of Irrigation Department to ensure supply of water to the khatedars in accordance with share list. The aforesaid judgment was

assailed before Honorable Supreme Court in Civil Petition No. 410-K of 2019 which was disposed of in the following terms:

“Learned counsel for the petitioners has impugned the judgment dated 18.4.2019, whereby the issue as to the supply of water to the petitioners’ land, which, according to the learned counsel, is being curtailed. Learned Additional Advocate General along-with Secretary Irrigation Department, Government of Sindh have filed their comments, duly signed by Secretary Irrigation and Managing Director, SIDA, Hyderabad, which read as under:- “As permanent relief relocation of head regular of Bilori Minor has been provided in ADP 2019-20, at Sr.No.1113 which is in process and will facilitate restoration of original source of irrigation water supply to the petitioner and others in due course of time”.

Learned Bench of the High Court, already seized of the matter, in terms of para No.23 of the impugned judgment has directed for compliance report before the Assistant Registrar of High Court. Since High Court itself is regulating and supervising the issue as urged in the petition, we are not inclined to interfere in the matter which is purely between the two departments and as stated by the learned Additional Advocate General same will be resolved on permanent basis no sooner the scheme allocated to ADB is executed for which funds are allocated it is expected that such scheme is materialized. The High Court will ensure that its orders are complied with in letter and spirit. The authority shall ensure to supply water from either of the available source of supply in accordance with share list. In this view of matter, we are not inclined to interfere in the impugned judgment. Petition disposed of.”

8. The above orders passed by Honorable Supreme Court resolve the issue, which is also subject matter of these petitions. Learned counsel for the petitioners took us through various provisions of Sindh Irrigation Act, and demonstrated that sanctioned watercourses were personal properties of individual landowners, who were required to construct and maintain them from their own resources in terms of Sindh Irrigation Act. Be that as it may, no authority has been conferred upon the khatedars to utilize water more than their sanctioned share as per the prescribed share list and the Irrigation Department is bound to ensure this.

9. This court vide common order dated 10.12.2019 passed in C.P. No.D-721 of 2010 (Umer Din Mehar v. Province of Sindh and others) has resolved the controversy, which is also subject matter of this petition in the following terms:

“14. In view of the main grievance of the petitioners discussed above, we hold that Irrigation Department shall ensure supply of water to every khatedars per his share prescribed in the share list; and shall take action forthwith according to law against such khatedars who have violated or violate the law by tampering with the sanctioned modules and/or by changing

the watercourse and/or by creating obstruction in the water supply of other khatedars.

15. The Irrigation Act provides a complete mechanism for equitable distribution of water amongst khatedars and remedies for redressal of their other water related grievances, which exercise cannot be undertaken by this Court under Article 199 of the Constitution and it is for the official respondents to take prompt action to redress the genuine grievances of the khatedars.

16. In all these petitions allegations have been made by the petitioners against Irrigation Department regarding unfair distribution or stoppage of water supply at the instance of influential persons private parties, illegal change / cancellation of the watercourse or refusal to change the watercourse. According to the petitioners, they were constrained to file these petitions as the Government functionaries had failed to discharge their functions according to law. However, it may be observed that in all the cases / situations discussed above, an aggrieved person has to first avail the remedy provided to him by law before the competent authority of Irrigation Department and he must exhaust such remedy before approaching this Court instead of bypassing the appellate forum. Office is, therefore, directed to entertain only such petitions in future wherein all remedies, including remedies provided under the Irrigation Act and/or litigation before any forum, have been fully exhausted by the person before approaching this Court.

17. In view of the above discussion, the competent authority of the respondent-department is directed to ensure regular of supply of water to the lands of the petitioners and khatedars / land owners in the Province of Sindh according to the Irrigation Act, and grievances / complaints, if any, placed before them by the aggrieved khatedars shall be addressed / decided promptly within a period not exceeding thirty (30) days from the date of complaints strictly in accordance with law after providing opportunity of hearing to all concerned. Issue notice to the Chief Secretary Sindh and the Secretary Irrigation Department, Government of Sindh, to ensure compliance of the above directions in letter and spirit.

18. All these petitions and applications pending therein stand disposed of in the above terms with no order as to costs.”

10. This petition along with pending applications stand disposed of in the terms of common order dated 10.12.2019 as discussed in the preceding paragraph.

JUDGE

JUDGE