

## CHAPTER V

### SETTLEMENT OF DISPUTES AMONG IRRIGATORS

The main areas where disputes among irrigators occur relate to the distribution of water, the obligation to construct, repair or maintain water courses and field channels and the ownership and transfer of the right to water from water courses and field channels. Whenever the liability or responsibility is shared jointly, the incidence of such disputes is higher.

Under the Northern India Canal and Drainage Act, as applicable to the States of Uttar Pradesh, and Haryana and the Union Territory of Delhi, in case of any difference among the cultivators regarding their mutual rights and liabilities in respect of use, construction or maintenance of a water course, any person may apply in writing to the Divisional Canal Officer (D.C.O.) giving the details of the dispute. The officer is required to give notice to other persons interested and proceed to enquire into the matter on the date notified.<sup>1</sup> If the D.C.O. omits to serve notice on any of the parties interested in the enquiry, his proceedings would be vitiated on account of that defect. Thus the provision of notice is mandatory. However, the D.C.O. may pass an order after following the prescribed procedure.<sup>2</sup> Under section 68, the D.C.O. has jurisdiction to decide each difference as it arises and the decision can still be given though a *wara-bandi* was already in existence and had been fixed by him sometime earlier.<sup>3</sup> The officer has a discretion to pass any order of his choice or to forward the case after enquiry to the collector who can pass any order of his choice. Such an order regarding the use or distribution of water for any crop sown or growing at the time when the order was passed would be final unless set aside by a decree of any civil court.<sup>4</sup> It may be pointed out here that provision of appeal in a civil court is very cumbersome and time consuming and needs to be modified. Thus, appeals should lie only to the officials of the irrigation department and the jurisdiction of the civil courts should be barred. For the purposes of enquiry, the officer concerned is vested with the powers of civil courts regarding summoning and examining of witnesses.<sup>5</sup>

1. The Northern India Canal and Drainage Act 1873, s. 68.

2. *Bura Mal v. Nur Ilahi*, A.I.R. 1933 Lah. 76.

3. *Faqir Mohd. v. Ganda Singh*, A.I.R. 1929 Lah. 260.

4. The Northern India Canal and Drainage Act, s. 68.

5. S. 69.

The Act also makes provisions regarding adjustment of claims between persons jointly using the water courses. Such claims relate to neglect or refusal to pay the share of the cost of the construction or maintenance of a water course when one is jointly responsible with others for the construction or maintenance of a water course or jointly making use of a water course with others. The powers of enquiry and decision are vested in the divisional or sub-divisional officer whose decision is appealable to the commissioner.<sup>6</sup> Likewise, provisions are also made under the Act regarding transfer of existing water courses. It is provided that a person desiring a transfer of an existing water course from the present owner to himself has to apply in writing to the D.C.O. mentioning that (i) he was unsuccessful to procure such transfer from existing owner (ii) he desires the D.C.O. to procure such transfer on his behalf and on his cost and (iii) he is able to defray the cost of such transfer. If the D.C.O. considers the statements in the application to be correct and the transfer is necessary for better management of water course, he may call upon the applicant to deposit the estimated cost of preliminary proceedings and compensation for the transfer of water course. Thereafter, the D.C.O. has to publish a notice in the village after the deposit of money and send a copy to the collector. The objectors may apply to the collector who shall pass any order on the application.<sup>7</sup> It may be stated that section 68 warrants the bringing of a suit in a civil court to set aside any order passed by executive engineer under that section. Thus a suit can be brought to set aside an order on the ground that the order is unjust and inequitable or otherwise improper. But in such a suit, the courts have cast a heavy duty on the plaintiff to prove these factors.<sup>8</sup> The jurisdiction of civil courts extends to all claims against the state government in respect of anything done under the Act except regarding an order as to the supply of canal water to any crop sown or growing at the time of such order.<sup>9</sup> Thus, where the respondents suffered a loss arising out of negligence of canal authorities, the claim was entertained by a civil court under the Act for compensation.<sup>10</sup>

No doubt, the civil courts can set aside the order of the D.C.O. under section 68 on good ground being shown, but the civil courts cannot take it upon themselves to draw up a new order of rotation and if it is done by a civil court it would be necessary to implead all other land owners concerned. The civil courts are only concerned with the legal rights of the parties and if because of some order another person's rights are affected, the order may be set aside by the decree of a civil court. But a civil court

6. S. 19.

7. Ss. 23-29.

8. *Balwant Singh v. Basant Kaur*, A.I.R. 1937 Lah. 448.

9. The Northern India Canal and Drainage Act, s. 67.

10. *Secretary of State v. Alladin*, A.I.R. 1928 All. 735.

cannot go into the difficult question of allocation of turns as if it were a canal officer and this can be done only if all other land owners are impleaded.<sup>11</sup> The provisions of the Jammu and Kashmir Canal and Drainage Act<sup>12</sup> and the Rajasthan Irrigation and Drainage Act<sup>13</sup> are similar to these provisions.

But the above provisions of the Northern India Canal and Drainage Act, as applicable to Punjab, were amended by the Punjab State Legislature.<sup>14</sup> The amendment has empowered the deputy collector in his discretion to pass an order regarding the use or distribution of water from a water course among cultivators of any estate or holding. But before

11. *Ramji Lal v. Local Government, Punjab* (1945)47 Punj. L.R. 73.
12. The Jammu and Kashmir Canal and Drainage Act 1963, s. 64.
13. The Rajasthan Irrigation and Drainage Act 1954, ss. 19 and 53.
14. Section 68 of the Northern India Canal and Drainage Act 1873 was substituted in Punjab by section 4 of the Punjab Act 21 of 1963. Now the present section 68 as applicable in Punjab provides as follows :

Power of Deputy Collector to order use or distribution of water :

- (1) The Deputy Collector may, if in his opinion it is necessary so to do pass an order as to the use or distribution of water from a water course amongst persons in any estate or a group of estates or in any holding or group of holdings in such estate or estates ;  
Provided that no such order shall be passed by the Deputy Collector without making an inquiry into the matter and without giving a notice to all the persons interested that on a day to be named in such notice, he shall proceed to inquire into the said matter.
- (2) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water course, any such person may apply in writing to the Deputy Collector stating the matter in dispute.
- (3) On receipt of an application under sub-section (2), the Deputy Collector shall give notice to the other persons interested, on a day to be named in such notice, he shall proceed to inquire into the said matter, and after the inquiry he shall pass an order thereon.
- (4) An order passed under sub-section (1) or sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of a water course shall, subject to an order passed on appeal or revision under sub sections (5) and (6), be final.
- (5) An appeal shall lie to the Divisional Canal Officer against an order referred to in sub-section (4) within a period of thirty days from the date of such order.
- (6) The Superintending Canal Officer within whose jurisdiction the water course is situated, may, *suo motu* or on an application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under sub-section (5) :  
Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.
- (7) No order passed under this section shall be liable to be called in question in any civil court.

making any such order, the deputy collector has to make an enquiry after giving a fair hearing to all interested persons. This provision enables the deputy collector *suo motu* to determine the use or distribution of water among interested persons with a view to avoid disputes. If any dispute arises among cultivators regarding the use, construction or maintenance of a water course, any such person may apply to the deputy collector in writing stating the matter in dispute. After making enquiry into the matter, of which notice is to be given to the interested persons, deputy collector may pass any order. The order regarding use or distribution of water for any crop grown or growing on the date of order, would be final unless set aside in appeal or revision. An appeal lies to the D.C.O. within thirty days of the order of the D.C.O. The Superintending Canal Officer (S.C.O.) has the power to review the decision of the D.C.O. *suo motu* or on application of the aggrieved party made within thirty days of the decision. The order cannot be called in question in any civil court. The order of the deputy collector passed under section 68 regarding *warabandi* is quasi-judicial and can be questioned only in appeal or revision under the provisions of that section. Thus, where by a telegram, the Minister for Irrigation and Power ordered the stay of the order of deputy collector, it was held by the court to be grossly improper and manifest abuse of power which was not vested in him. Under the statute, the Minister had no jurisdiction to interfere with the orders of the deputy collector.<sup>15</sup>

Under the Bombay Irrigation Act, in case of any dispute among two or more persons regarding their mutual rights and liabilities in respect of the use, construction or maintenance of a water course or as to their respective shares of the expenses incurred in the construction or maintenance of such water course, any person interested in the matter in dispute may apply in writing to canal officer duly empowered to receive such application stating the matter in dispute. After giving notice, the officer is required to enquire into the matter and if all the interested persons consent in writing to his being an arbitrator, he may pass his order thereon ; but if all the persons do not consent, he shall transfer the matter to the collector for enquiry and final order. The order can be set aside by decree of civil court. With regard to supply of water from, or ownership of, a water course, on the application of persons interested, the canal officer is required to enquire into the matter after notice to the persons interested and, subject to the approval of the collector, canal officer is empowered to authorise the applicant to use the water course or declare him to be a joint owner thereof subject to the condition of payment of equitable compensation.<sup>16</sup>

15. *Dalip Singh v. Mani Ram* (1968)70 Punj. L.R. 424.

16. The Bombay Irrigation Act 1876, s. 26.

Under the Orissa Irrigation Act, in case of dispute between persons regarding use, construction or maintenance of a water course or regarding sharing of the expenses of construction or maintenance of such water course or as to the failure of any person to contribute his share, any person interested may apply in writing to the irrigation officer stating the matter in dispute. The irrigation officer is required to make summary enquiry and pass orders. An appeal against the order lies within thirty days thereof to the collector whose decision shall be final unless set aside by a civil court to which appeal is provided under the Act.<sup>17</sup>

Similar provisions exist under the Andhra Pradesh (Telangana Area) Irrigation Act except that the mode of enquiry by the irrigation officer should be one prescribed in the Andhra Pradesh (Telangana Area) Land Revenue Act 1317 F.<sup>18</sup>

Under the Bengal Irrigation Act, in case of any dispute between persons regarding mutual rights and liabilities in respect of use, construction or maintenance of a village channel or regarding apportionment of costs incurred in the construction and maintenance of a village channel or regarding the failure of persons to pay their share of expenses, any person interested may apply in writing to the canal officer who is required to enquire into the matter after giving notice, and if he so likes, pass any order or refer the matter to the collector who may pass any order. The order remains in force till set aside by the decree of a civil court. Within thirty days of the order of canal officer, an appeal against his order can be preferred to the collector but proceedings before collector shall be subject to the supervision and control of the commissioner and board of revenue. Officers entrusted with the above powers have the powers of civil court to summon witnesses and call for evidence.<sup>19</sup>

Under the Mysore Irrigation Act, in case any dispute arises between persons regarding their rights and liabilities in respect of the use, construction and maintenance of a field channel or as to their respective shares of the expenses of constructing such field channel or as to their failure to contribute, the irrigation officer is empowered to make enquiry on the application of the persons interested and pass orders. The order is appealable by the aggrieved person within thirty days to the deputy commissioner whose decision is final unless set aside by the decree of a civil court.<sup>20</sup>

The Madhya Pradesh Irrigation Act 1931 and the Travancore-

17. The Orissa Irrigation Act 1959, s. 16. The provisions of the Bihar Lift Irrigation Act 1956 are almost similar.

18. The Andhra Pradesh (Telangana Area) Irrigation Act 1357 F., s. 18.

19. The Bengal Irrigation Act 1876, ss. 87-89.

20. The Mysore Irrigation Act 1965, s. 25.

Cochin Irrigation Act 1956 do not contain provisions regarding settlement of disputes and mutual rights and liabilities among cultivators.

The study of the statutes reveals that the provisions of the Northern India Canal and Drainage Act as applicable to the State of Punjab concerning dispute settlement machinery are an improvement over the provisions found in other statutes. Firstly, the deputy collector on his own is empowered to pass orders about the use or distribution of water among the cultivators. The timely exercise of this power might prevent disputes and consequently avoid delay in the utilization of waters. Secondly, when disputes do occur among the irrigators in regard to their mutual rights or liabilities in respect of the use or construction or maintenance of water courses, the Act has set up an administrative machinery with powers of original decision subject to appeal and revision, barring judicial review.

In Uttar Pradesh, Haryana, Delhi, Orissa, Mysore and Andhra Pradesh there is dual control exercised by the irrigation department and revenue department in the settlement of disputes. In Bombay, Bihar and Bengal the revenue department disposes of disputes subject to judicial review of civil courts. It may be suggested that the irrigation department should, in the first instance, be empowered to settle disputes. The dual control by the irrigation department and revenue department is not desirable as it would entail considerable delay in the disposal of disputes. Further, it may be suggested that an official of the irrigation department, canal officer, should be empowered to bring about a compromise between the parties. In the event of his failure to bring about reconciliation between the parties, he should forward the dispute to the D.C.O. who will decide the dispute on merits after giving a hearing to the parties. An appeal should lie to the S.C.O. The scheme will have the advantage of creating an integrated machinery for the settlement of disputes within the irrigation department itself and it will give powers to canal officers to arrive at a compromise between the parties.

The law as obtaining in Punjab regarding disputes leads to expeditious settlement. It may be suggested that all states should enact laws on the lines of the Northern India Canal and Drainage Act as amended in Punjab.

Appeals should lie only to departmental officers and in such disputes the jurisdiction of the civil court should be barred,

## T A B L E

*Settlement of Disputes among Irrigators*

<i>S. No.</i>	<i>Statutes</i>	<i>Reference</i>	<i>Application</i>
1.	Andhra Pradesh (Telangana Area) Irrigation Act 1357 F.	Part II, s. 18	Telangana area of State of Andhra Pradesh
2.	Bengal Irrigation Act 1876	Part VIII, ss. 87-92	States of West Bengal and Bihar
3.	Bihar Lift Irrigation Act 1956	Part VIII, ss. 30-34	State of Bihar
4.	Bombay Irrigation Act 1879	Part III, ss. 21-26	States of Maharashtra and Gujarat.
5.	Jammu and Kashmir Canal and Drainage Act 1963	Part IX, s. 64	State of Jammu and Kashmir
6.	Mysore Irrigation Act 1965	Chapter III, s. 25	State of Mysore
7.	Northern India Canal and Drainage Act 1873	Part IX, s. 68 and Part III, ss. 19-30	State of Punjab
8.	Northern India Canal and Drainage Act 1873	Part IX, s. 68, and Part III, ss. 19-30	States of Uttar Pradesh and Haryana and Union Territory of Delhi
9.	Orissa Irrigation Act 1959	Chapter III, s. 16	State of Orissa
10.	Rajasthan Irrigation and Drainage Act 1954.	Part III, s. 19 and Part VIII, s. 53	State of Rajasthan