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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CWP No.24235 of 2014**
Date of decision:17.10.2016

Bharat Petroleum Corp. Ltd. ...Petitioner

Versus

State of Punjab and others ...Respondents

(2) **CWP No.19732 of 2015**
Date of decision:17.10.2016

Tarlok Singh Mand ...Petitioner

Versus

State of Punjab and others ...Respondents

(3) **CWP No.19693 of 2015**
Date of decision:17.10.2016

Harinder Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Raman Sharma, Advocate,
for the petitioner in CWP No.24235 of 2014.

Ms. Gitanjali Chhabra, Advocate, for
Mr. Raman B. Garg, Advocate, for the petitioner(s)
in CWP Nos.19693 and 19732 of 2015.

Mr. Anant Kataria, DAG, Punjab.

Mr. K.K.Chahal, Advocate,
for respondent No.3.

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Rakesh Kumar Jain, J.

This order shall dispose of three petitions bearing CWP

Nos.24235 of 2014, 19693 and 19732 of 2015 as the issue involved in all these petitions is the same. However, for the sake of convenience, the facts are being extracted from CWP No.24235 of 2014.

In brief, the petitioner purchased land measuring 6112.28 sq. meters vide sale deed dated 04.02.2008 for a sale consideration of ₹39,66,400/- in village Chaklan at Chandigarh-Ropar National Highway No.21 for the purpose of setting up a company owned petrol pump. The requisite drawing of the proposed petrol outlet along with an application dated 24.08.2008 was forwarded through the letter dated 03.10.2008 to the District Magistrate, Roopnagar for granting NOC in terms of Rule 144 of the Petroleum Rules, 2002. The petitioner received the NOC from various departments but the Divisional Forest Officer, Roopnagar (hereinafter referred to as the "DFO") sent the letter dated 17.06.2010 highlighting certain deficiencies found in the proposal. The petitioner sent its reply on 23.06.2010. The Conservator of Forests (Central) wrote a letter dated 23.08.2010 to the Financial Commissioner & Secretary (Forest), Government of Punjab for granting permission for diversion of 0.2570 hectare of forest land subject to certain conditions, which are as under:-

> "(i) Amount of plantation as per scheme be got deposited from user agency;
>
> (ii) Net project value (NPV) of the proposed forest land be got deposited from the user agency in terms of directions of Hon'ble Supreme Court dated 30.10.2002 and 09.05.2008 and letter no.5-1/98-FC(Part-II) dated 11.08.2003 to the Ministry of Environment and Forests, Govt. of India, New Delhi;
>
> (iii) As per directions of Govt. of India contained in letter no.5-2/2006-FC dated 20.05.2006 deposit was required to be

> made in other deposit head with respect to plantation, management and planning authority account no.CA-1589 with Corporation Bank, Govt. of India, Enterprise, Block II, Basement CGO, Complex, Phase-1, Lodhi Road, New Delhi-110003 and account no.344901010070128 Union Bank of India Sunder Nagar, New Delhi and intimation given to this office."

The petitioner accordingly deposited ₹2,16,093/- and informed the DFO on 03.09.2010 that out of the aforesaid amount, ₹2,16,093/- is on account of compensatory plantation and ₹55,121/- for Net Project Value. After the said deposit by the DFO, he wrote the letter dated 06.09.2010 to the Nodal Officer (FCA) and Chief Forest Conservator (FC), Punjab, to recommend to the Government of India for final approval. The Conservator of Forests (Central), through letter No.9-PBB448/2010-CHA dated 24.09.2010, granted final approval but it was stated therein that the amount received from the petitioner to the tune of ₹55,211/- be incurred for forestation which should be done within a period of one year over a land measuring 0.3570 hectare. It is further submitted that the final approval was also given by the Government of India through its Forest Conservator (Central) vide its letter dated 24.09.2010. However, the petitioner was asked to pay the revised rates of forests at the collector rate plus 30% and the said demand was calculated vide letter dated 24.12.2012 to the tune of ₹27,23,250/-. The petitioner represented on 11.01.2013 to the DFO that the total area of forest land is 0.2570 hectare, whereas the actual area to be used is 0.0954 as D-portion area measuring 0.1615 hectare is to be reduced. It is alleged that the representation made by the petitioner was not considered and vide letter dated 28.01.2013 issued by the DFO, the petitioner was informed that because the Government of India has granted approval including the area of `D' portion, therefore, the same cannot be deviated. Thereafter, the petitioner demanded the copy of instructions issued by the Punjab Government by which provision has been made for charging the amount at the collector rate plus 30% in case the prevailing rate in the area was more than ₹13,00,000/- per acre. The petitioner also made representation to the higher authorities of the Forest Department but to no avail and ultimately, the petitioner on 05.11.2013 received the notice that in case the amount demanded is not paid, reference would be made to the District Magistrate, Roopnagar for cancellation of the NOC. The petitioner filed CWP No.26904 of 2013, which was though withdrawn on 09.12.2013 to make a representation at the first instance and accordingly, a legal notice of demand was served by the petitioner upon the respondents on 15.12.2013. However, the respondents have maintained their stand for recovery of the amount as per the instructions dated 20.12.2011. The present petition has, thus, been filed to declare the impugned demand and consequent issuance of notice dated 05.11.2013 (Annexure P-17) raised by the respondents based upon the impugned instructions dated 20.12.2011 as unreasonable and arbitrary.

Counsel for the petitioner has submitted that the respondents cannot make unreasonable demands based upon the instructions dated 20.12.2011 by applying these instructions retrospectively to the applications, for which the NOCs have already been issued by the District Magistrate while exercising his statutory powers vested with him in terms of Rule 144 of the Petroleum Rules, 2002.

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Basically, the petitioner has challenged the action initiated on the part of the respondents on the ground that the instructions dated 20.12.2011 cannot be applied retrospectively.

On the other hand, counsel for the respondents has submitted that though the NOC was granted to the petitioner but the amount of ₹27,23,250/- is being demanded in terms of the Punjab Government instructions issued vide Memo No.46/103/2010-Forest-3/9978 dated 20.12.2011, which were under consideration at the time of final approval of the case of the petitioner and because of that an undertaking/affidavit was given by the petitioner to the department. The respondents have also referred to the affidavit dated 23.06.2010 (Annexure R-4) in this regard.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Since the issue involved in these cases is in a narrow campass as it has to be decided as to whether the instructions dated 20.12.2011 can be applied retrospectively, it would be relevant to refer to the said instructions, which are as under:-

> Subject: Regarding the recovery of value of non-forest area which is forwarded in FCA cases for approval and which was divert in cases.
>
> Reference. Your U.O.No.PA/PCCF/453 dated 21.11.2011-P 24.
>
> Orders has been taken as per below written conditions on your proposal forwarded under above referred letter of Single File System after consideration by appropriate authority.
>
> (a) FCA cases forwarded from 20.11.2009 regarding domain of forest area Rs.13 Lac per acre or D.C. Rate + 30% regarding adjoining domain area of distt. which is maximum is recovered from user agencies. And a undertaking get from

user agencies that if cost of non forest land actual cost of purchase Rs.13 Lac per acre or extra from domain adjoining area from D.C. Rate + 30% deference is paid by user agency to forest department.

(b) That above provisions are applicable from 20-11-2009 to orders issued regarding same to cases forwarded to Govt. of India.

(c) In future Rs.13 lac per acre + 30% or DC Rate +30% of adjoining area is recovered from user agencies regarding domain area from cases who is forwarded to govt.

(d) As per above AB and C funds collected from user agencies by concerned forest divisional officers and deposited with Punjab State Forest Development Corporation. Before receiving this funds concerned Forest Officer consider the correct DC Rate from Distt. Revenue Department and fixed the amount of funds.

(e) In any case user agency have provided non forest land and take the responsibility if its plantation above provisions are not applied on the same. Suitability of non-forest land is certified by Forest Divisional Officer after its inspection.

3. As per orders of Para-1, kindly take necessary action."

The respondents have relied upon the affidavit of the petitioner dated 23.06.2010. The averments made in this affidavit are also reproduced as under:-

"1. That I am authorized signatory for Bharat Petroleum Corp. Limited, Jalandhar Territory.

2. That we undertake to provide the non-forest land for compensatory afforestation or its cost equivalent to the forest land being diversified as fixed by the Government/Department, after receipt of the in principal approval from MOEF (Government of India) or as and when asked by the department/Government."

According to the stand taken by the respondents with reference to the affidavit, which was sworn in by the petitioner on 23.06.2010, it is mentioned therein that it would be from the date of receipt of the in principal approval from MOEF (Government of India), whereas the final approval was received by the petitioner on 24.09.2010.

Thus, the instructions, which were not available on that date, were not applicable as the same have come into existence w.e.f. 20.12.2011 and are essentially prospective in nature as there is nothing provided in these instructions to apply to the cases in which final approval has already been given.

Thus, keeping in view the aforesaid facts and circumstances, the demand raised by the respondents vide notice dated 05.11.2012 (Annexure P-17) on the basis of the instructions dated 20.12.2011 (Annexure P-15) is patently erroneous, illegal and deserves to be set aside.

Consequently, all these three petitions are hereby allowed and the impugned notice(s)/demand raised by the respondents is set aside.

October 17, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No