

(103+235)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 10547 of 2016 (O&M)

Date of decision : 24.01.2017.

Sewa Singh and others

.....Petitioners.

Versus

Union of India and others

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Gurminder Singh, Senior Advocate, with
Mr. Aman Sharma, Advocate for petitioners.

Mr. Virender Soni, Advocate, Standing Counsel for
respondent No.1 - Union of India.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for respondents No.2 and 3.

None for respondent No.4.

Mr. Tribhawan Singla, Advocate for respondent No.5 and for
applicant in CM No.8120 of 2016 and CM No.8141 of 2016 .

Mr. Jasbir Singh, Advocate for respondent No.6.

S.S. SARON J.

CM No.16624 of 2016

The civil miscellaneous application has been filed by the
applicant/respondent No.6-Peacock Environment and Wild Life Protection
Society ('Society' - for short) for placing on record its written statement
along with resolution (Annexure R-6/1) of the Society authorizing Sh.
Jasbir Singh, Chairman of the Society to defend the writ petition, and also
seeking exemption from filing the certified copy of the resolution

(Annexure R-6/1) of the Society.

The written statement on behalf of Peacock Environment and Wild Life Protection Society (respondent No.6) and resolution (Annexure R-6/1) of the Society attached with the civil miscellaneous application are taken on record subject to just exceptions. The filing of certified copy of the resolution (Annexure R-6/1) is dispensed with.

The civil miscellaneous application stands disposed of.

CWP No.10547 of 2016

Civil writ petition has been filed by the petitioners Sewa Singh and others under Article 226/227 of the Constitution of India seeking quashing of the order dated 19.05.2016 (Annexure P-5) whereby the learned National Green Tribunal, New Delhi (respondent No.4) ('Tribunal' - for short) has passed a blanket order restraining the entire State of Punjab for felling and cutting any trees. It is submitted that the said order dated 19.05.2016 (Annexure P-5) has been passed without taking into account the officially cleared projects, which have the requisite sanctions like the present one. A further prayer has been made for directing the Secretary to Government of Punjab, Department of Irrigation (respondent No.3) to complete the rehabilitation work of the Bist Doab Canal before the monsoons and further commencement of the 'kharif' crop season and also for directing them to release the water to the fields for irrigation purposes.

The petitioners, it is submitted, are agriculturists and owners of agriculture land within Hadbast No. 33, 25, 55 and 58 in the revenue estate of Nawanshahar and Jalandhar measuring approximately 350 acres, which is near the Bist Doab Canal system. The petitioners irrigate their lands from the said

Bist Doab Canal.

The Irrigation Department of the Punjab Government (respondent No.3) in terms of letter dated 12.09.2014 (Annexure P-1) gave approval for the renovation and modification of the canals being fed from the Satluj river. The Bist Doab Canal, it is submitted, has its source of water from river Satluj. Accordingly, the rehabilitation work of the Bist Doab Canal for its concrete lining was sanctioned and its execution started in October, 2015. The objective of the rehabilitation of the said canal was in public interest at large. It is highlighted the carrying capacity of the canal had decreased from its authorised capacity of 1450 cusecs to 900 cusecs. Therefore, it was important to rehabilitate the said canal and by its rehabilitation the Doaba region would be able to recharge its ground water which had been depleting in the said area.

The Principal Chief Conservator of Forests (Head of Forest Force), SAS Nagar Mohali (respondent No.2) addressed a letter dated 22.01.2016 (Annexure P-2) to the Conservator of Forests as well as to the Divisional Forest Officer stating that 22725 number trees abutting the canal were not falling in the Forest Protected Land. Therefore, it was submitted that it was clear that the trees that were surrounding the aforesaid canal did not fall within the Forest Protected Area. As such, there would be no environmental damage and no further damage would be caused if the trees were cut and the canal was rehabilitated.

The Director, Regional Office, Headquarters addressed a letter dated 11.04.2016 (Annexure P-3) to the Additional Principal Chief Conservator of Forest (Central), Chandigarh, Government of India, Ministry of Environment, Forest and Climate Change stating that felling of trees planted by

the Forest Department on the land which had not been notified/ recorded as 'Forest' in any of the Government record or had not been categorized as 'Forest' by Hon'ble the Supreme Court or any other Court of law would not require approval of the Central Government under the Forest (Conservation) Act, 1980. The felling of such trees, it was mentioned would be governed by the provisions of the Indian Forest Act, 1927; Local Forests Acts and the Rules/guidelines framed thereunder. The said clarification it was mentioned would be applicable in case of felling of green trees from the Bist Doab Canal for its widening/strengthening only.

Therefore, it is submitted that from a perusal of the said letters it would transpire that the Secretary to Government of Punjab, Department of Irrigation (respondent No.3) after obtaining the necessary approvals/permissions from the Forest Department, started the process of rehabilitation of the Bist Doab Canal. The trees which were surrounding the aforementioned canal, it was submitted do not fall within the Forest Protected Area, therefore, there would be no environmental damage. The photographs taken on 18.05.2016 depicting the dismantalling/repair/ constructions of the Canal have been placed on record as Annexure P-4 (colly.).

In short, the position is that the Bist Doab Canal was to be renovated and modified so as to increase its capacity to carry water to its authorized capacity of 1450 cusecs. However, the said work could not be carried out as number of trees were to be cut and a complete ban on cutting and felling of trees had been imposed by the learned Tribunal (respondent No.4) in terms of its order dated 19.05.2016 (Annexure P-5).

At the time of motion hearing on 25.05.2016, it was submitted on

behalf of the petitioners that the impugned order dated 19.05.2016 (Annexure P-5) passed by the learned Tribunal was assailed due to extreme exigencies and emergency as it affected the construction of the Bist Doab Canal, which was to be completed by 30.06.2016 and the failure to complete it would affect the agriculture 'kharif' sowing, besides, resulting in floods in the area. It was also submitted that a perusal of the petitions (Annexures P-7 and P-8) filed by Dr. Amandeep Aggarwal and Peacock Environment and Wild Life Protection Society (respondents No.5 and 6)¹ did not relate to the area in the upper Bist Doab Canal and these related to the green cover along the Zirakpur-Bathinda Expressway and protection of lakhs of trees and wild animals in 120 acres of land occupied by the Satluj-Yamuna link canal. However, the learned Tribunal (respondent No.4) had passed a blanket and an omnibus order restraining the State of Punjab from felling and cutting of any tree in the entire State without its specific permission.

Reply has been filed by way of affidavit of Sh. Som Datt Sharma, Conservator of Forests (Central) on behalf of respondent No.1 i.e. Additional Principal, Chief Conservator of Forests (Central), Northern Regional Office, Chandigarh. It is submitted that as per records available in their office, no project proposal for construction and rehabilitation of Bist Doab Canal had been received in its office for approval under the Forests Control Act, 1980. However, the Principal, Chief Conservator of Forests (Head of Forest Force), SAS Nagar Mohali (respondent No.2) vide letter dated 10.02.2016 (Annexure R-1) informed that the State had decided to fell 24544 green trees growing along the Bist Doab Canal for the restoration of original canal width as per the

1 Impleaded as respondents vide order dated 25.05.2016 passed in CM No.6852 of 2016.

State Policy. The matter was referred vide Annexure R-II to the Ministry of Environment, Forests and Climate Change, New Delhi for guidance. The latter vide letter dated 11.04.2016 (Annexure R-III) opined that felling of tress planted by Forest Department on the land which had not been notified/recorded as 'Forest' in any of the Government record or had not been categorized as 'Forest' by Hon'ble the Supreme Court or any other Court of law would not require approval of the Central Government under the Forest (Conservation) Act, 1980. The felling of such trees would be governed by the Indian Forest Act, 1927; Local Forest Acts and the rules and guidelines framed thereunder.

Notice of motion was issued on 25.05.2016 for 19.07.2016 and in the meantime the operation of the impugned order dated 19.05.2016 (Annexure P-5) passed by the learned Tribunal (respondent No.4) was stayed.

Reply has also been filed by way of affidavit of Shri Kuldeep Kumar, IFS, Principal Chief Conservator of Forest (Head of Forest Force), Punjab, SAS Nagar on behalf of respondent No.2 - Principal Chief Conservator of Forest. It is submitted that respondent No.2 i.e. Principal Chief Conservator of Forest (Head of Forest Force) is bound to comply with the order dated 19.05.2016 (Annexure P-5) passed by the learned Tribunal (respondent No.4). It is further submitted that this Court stayed the order on 25.05.2016 and 01.06.2016. Accordingly, the order of this Court was implemented. Felling of trees on the Bist Doab Canal and its system was carried out upto last week of June. To supply water for the 'kharif' crop, it was released in the Bist Doab Canal and its system. Therefore, no felling of trees is now possible at the Bist Doab Canal and its system. It is also submitted that O.A. No.276 of 2016 titled

Nishant Kumar Alag v. Union of India and others has been filed in the learned Tribunal (respondent No.4) for deciding the status of Bist Doab Canal and its system. It is admitted as correct that letter dated 22.01.2016 (Annexure p-2) was sent by the Principal Conservator of Forest (respondent No.2) to the Conservator of Forests, Shivalik Circle, Punjab, Hoshiarpur and the Divisional Forest Officer, Nawanshahar at Garhshankar. It is also stated as correct that letter dated 20.05.2016 (Annexure P-6) was issued by the Principal Conservator of Forest (respondent No.2).

Nishant Kumar Alag has filed C.M. No.8141 of 2016 for impleading him as a party in the present case and also CM No.8120 of 2016 for vacation of the stay order dated 25.05.2016 passed in the present petition. Notices in both the C.Ms. were issued to non-applicant/petitioner on 19.07.2016.

It is stated that the applicant-Nishan Kumar Alag has filed O.A. No.276 of 2016 which is pending before the learned Tribunal (respondent No.4). The said petition relates to violation of the provisions of the Forest (Conservation) Act, 1980 as felling of trees is going on within the forest area of around 107.25 hectares along the Bist Doab Canal where around 24742 trees are being felled along this canal and its distributaries in Nawanshehar and Jalandhar district of Punjab which is in violation of Section 2 of the said Forest (Conservation) Act, 1980 and also orders passed by the Supreme Court in T.N. Godavarman Thirumulpad v. Union of India, AIR 1997 SC 1228. It is submitted that the learned Tribunal (respondent No.4) issued noticed in the matter and it was listed for hearing on 04.07.2016. It is also submitted that the applicant had also filed M.A. No.512 of 2016 for stay but it was not pressed by

the counsel since stay on felling of trees had already been granted by the learned Tribunal (respondent No.4) vide order dated 19.05.2016 (Annexure P-5). Subsequently from media and other sources, the applicant came to know that this Court had vacated the stay on felling of trees in the Bist Doab Canal area which area is subject matter of the Original Application filed by the applicant before the learned Tribunal (respondent No.4). It is submitted that the writ petition filed by the petitioners is based on premises and conjectures. Besides, a perusal of the same would bring out that the petitioners have no cause of action whatsoever to invoke the writ jurisdiction of this Court. The present petition according to the applicant has been filed as forum shopping and only to circumvent the legal procedure as given in Section 22 of the National Green Tribunal Act, 2010 ('NGT Act' – for short) which provides for filing of an appeal in the Supreme Court of India and that would be the only remedy available to the petitioners against an order of the learned Tribunal (respondent No.4). No other Court has the jurisdiction to entertain an appeal arising out of the orders passed by the learned Tribunal (respondent No.4). It is submitted that the remedy of Article 226/227 of the Constitution of India is not available to correct orders of a statutory Tribunal and in case the petitioners were aggrieved of the order dated 19.05.2016 (Annexure P-5), they ought to have joined the jurisdiction of the learned Tribunal (respondent No.4) in O.A. Nos. 161 and 162 of 2016 which are pending. The petitioners, however, rushed to this Court by invoking the writ jurisdiction which is nothing but an abuse of the legal process. It is submitted that the petitioners instead of going to the Hon'ble Supreme Court have chosen this Court to challenge the order dated 19.05.2016 (Annexure P-5) passed by the learned Tribunal (respondent No.4).

According to the applicant-Nishan Kumar Alag, there is no explanation on the part of the petitioners to file the present petition and by doing so, they are trying to resort to multiplicity of proceedings which may result into conflicting judgments between the two forums.

In terms of the written statement filed on behalf of the Society (respondent No.6) through its Chairman Sh. Jasbir Singh, it is submitted that the Society filed petition No.162 before the learned Tribunal (respondent No.4) for issuing direction to the State of Punjab for preservation and protection of lakhs of trees and wild animals in 120 acres of land occupied by the Satluj Yamuna Link (SYL) Canal Project. Thousands of wild animals such as neel gai, rabbits, monkeys, deer, and birds such as peacocks, parrots, owls, sparrows had taken shelter in the aforesaid area. The plants and the aforesaid wild animals had proved to be assets to the environment and wildlife. It is stated that recently a dispute had arisen between the Govt. of Punjab and Govt. of Haryana regarding completion of the SYL Canal Project. The farmers in active connivance with Government agencies started filling up the canal and started hunting wild animals ruthlessly. The Minister concerned for Forest and Wildlife reported the matter to the Punjab Chief Minister, besides, the 'Indian Express Chandigarh' also highlighted the fate of plants and wildlife animals. The Hon'ble Supreme Court, it is stated, had taken notice of the threats given by the farmers and other mischievous persons in the State of Punjab about filling the SYL Canal and removal of the trees standing therein. It is stated that the Supreme Court categorically directed the Chief Secretary to Govt. of Punjab and the Director General of Police, Punjab to ensure that no tree/plant was removed from the SYL Canal.

It is submitted that the learned Tribunal (respondent No.4) after taking notice of the petition filed by Dr. Amandeep Aggarwal (respondent No.5) and the Society (respondent No.6), restrained the State of Punjab, any project proponent, various authorities and departments of the State of Punjab from felling and cutting any tree in the entire State of Punjab without specific permission of the learned Tribunal. The authorities meant for renovating the Bist Doab Canal in Ropar, Nawanshahar and Jalandhar districts of Punjab have proceeded to remove 22725 trees without getting permission from the competent authority and without taking effective steps for maintaining green cover after removal of such a large number of trees. No concrete approval of the State Forest Board/Wildlife Board was taken before resorting to the drastic action of removal of 22725 number of trees from the area. The Forest (Conservation) Act, 1980 imposes restrictions on de-reservation of forest or use of forest land for non-forest purposes. The removal of trees would result in displacement of birds and wildlife animals. According to the Society (respondent No.6), large number of trees have been uprooted ruthlessly which has affected the environment of the area and caused ecological imbalance. The petitioners, it is submitted, have no locus standi to file the petition and the stay was rightly granted.

We have given our thoughtful consideration to the matter and perused the record of the case.

An objection has been raised by the applicant-Nishant Kumar Alag with regard to the maintainability of the present petition in view of the provisions of Section 22 of the Act. As already noticed, the said applicant seeks his impleadment as a respondent in the present petition by way of C.M.

No.8141 of 2016 and also seeks vacation of the stay granted by this Court on 25.5.2016 by way of CM No.8120 of 2016. According to him, this Court does not have the jurisdiction to entertain the petition against orders passed by the learned Tribunal in view of the provisions of Section 22 of the NGT Act.

In this regard, it is to be noticed that at the time of motion hearing, a decision of a Division Bench of the Madras High Court (Madurai Bench) in Kollidam Aaru Pathukappu Nala Sangam v. Union of India, 2014 (5) CTC 397 was cited wherein it has been held that a petition against an order of the learned Tribunal (respondent No.4) is maintainable by way of a writ petition under Article 226 of the Constitution of India. A reference was made in the said case to Sections 22 and 29 of the NGT Act and it has been held that it is quite clear that the power of judicial review conferred upon the High Court under Articles 226/227 of the Constitution, is part of the basic structure of the Constitution, which cannot be taken away even by a law enacted by the Parliament. As a matter of fact, the NGT Act does not expressly exclude the jurisdiction of the High Court under Articles 226/227 of the Constitution though it excludes the jurisdiction of the normal Civil Courts under Section 29 of the NGT Act. The NGT Act it was held contains two provisions, one in Section 22 and the other in Section 29, with the former providing for a remedy of appeal and the latter barring the jurisdiction of the Civil Courts but not the Constitutional Courts.

Therefore, the question of maintainability of a petition against an order passed by the learned Tribunal cannot be said to be *res integra* and a petition against an order of the learned Tribunal would be maintainable under Articles 226/227 of the Constitution and the same would not be barred in terms of Sections 22 and 29 of the NGT Act.

In any case, we propose to dispose of the petition in terms of the order passed by the Hon'ble Supreme Court in State of Punjab and others v. Mandeep Aggarwal and others Civil Appeal D No.33942 of 2016 decided on 28.10.2016. In the said case, the State of Punjab filed an appeal against the same order dated 19.05.2016 (Annexure P-5) passed by the learned Tribunal (respondent No.4). It was contended on behalf of the State of Punjab that the order passed by the National Green Tribunal was wholly unjustified having regard to the fact that the State had obtained from the competent authority all permissions required for felling of trees in connection of various ongoing projects. It was submitted that without taking note of such permissions the National Green Tribunal was not liable to have issued a blanket ban on cutting of forest trees which would seriously hamper the ongoing developmental projects in connection with widening of the highway in the said case. It was further submitted that the petitioner State of Punjab before the Hon'ble Supreme Court was ready and willing to furnish whatever information is required by the National Green Tribunal. However, the project of national importance like widening of highway ought not to be hampered by the reasons of the impugned order. It was submitted that the Hon'ble Supreme Court while permitting the petitioner - State to approach the National Green Tribunal for vacation of the impugned order stay part of the said order qua NH-71 so that the ongoing project is not adversely affected. The Hon'ble Supreme Court on the basis of said contentions passed the orders as follows:-

“There is in our opinion considerable merit in the submission made by Mr.Rohatgi. It is true that the State has been directed to secure certain information including

the trees removed and those planted as also the scheme under which such plantation has been undertaken yet the the blanket ban on felling of trees placed by the Tribunal cannot be allowed to adversely affect the ongoing works on the highway mentioned earlier. In the circumstances therefore we deem it proper to suspend the impugned order for a period of four months from today to enable the State Government to not only execute the ongoing project mentioned above but also the other projects which are likely to be affected by the impugned order. We make it clear that the Tribunal shall be at liberty to pass any fresh order qua the projects that are already approved upon consideration of the materials that the State of Punjab may place on record. We are conscious of the fact that we are not issuing any notice to the respondent while we are suspending a part of the impugned order concerning NH-71. We are doing so only to avoid any delay in service of notice upon the respondent and the final order that may be passed. We however leave it open to the respondent, petitioner before the Tribunal to raise all such contentions as may be open to him in law after the requisite information is received by the Tribunal.

With the aforesaid observation, this appeal is disposed off.”

In the present case as well, the cutting of trees was considered a

project which was to be urgently carried out in view of the approaching monsoon season and also providing water for irrigation of land in the Doaba region of Punjab.

In any case, keeping in view the aforesaid order dated 28.10.2016 passed by Hon'ble the Supreme Court of India, this petition is also disposed of in the same terms and the operation of the impugned order dated 19.05.2016 (Annexure P-5) passed by the learned Tribunal (respondent No.4) shall continue to remain suspended for a period of four months from the date of receipt of copy of this order so as to enable the parties including Nishant Kumar Alag applicant in CM No. 8120 of 2016 and CM No.8141 of 2016 to approach the learned Tribunal for the redress of their grievances in the light of the above order of Hon'ble the Supreme Court and the learned Tribunal (respondent No.4) would be at liberty to pass any fresh order qua the project in the present petition.

(S.S. SARON)
JUDGE

24.01.2017
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No