

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

CWP No. 11335 of 2016 (O&M)

Date of decision: 24.01.2017.

Tanveer Hussain 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 the petitioners.

Mr. Virender Soni, Advocate,
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. Tribhuvan Singla, Advocate, for respondent No. 5.

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

S.S. SARON, J.

CM No. 16625-CWP of 2016

The written statement filed on behalf of respondent No.6 is taken on record and exemption from filing certified copy of Annexure R-6/1 is granted and photocopy thereof is taken on record, subject to just exceptions.

The civil miscellaneous application stands disposed of.

CWP No. 11335 of 2016

The petitioners seek quashing of the order 19.05.2016
(Annexure P8) passed by the National Green Tribunal (respondent No.4)

('Tribunal' - for short) whereby a blanket order has been passed restraining the felling and cutting of trees in the entire State of Punjab. It is submitted that the order has been passed without taking into account the projects that have been cleared officially and also have the requisite sanctions as in the present case. A further direction has been sought for directing the State of Punjab through its Secretary, Department of Irrigation (respondent No.3) to complete the rehabilitation work of the Banur Canal System before the monsoon and further commencement of sowing 'kharif' crop and also direct it to release the water to the fields for irrigation purposes.

The petitioners are agriculturists and it is claimed that they are owners in possession of agricultural land falling within Hadbast No.280, 281, 284, Tehsil and District Mohali; besides, Hadbast No.252, 253 and 258 falling within the revenue estate of Tehsil Rajpura, District Patiala. The said land measures approximately 330 'bighas' and is situated near the Banur Canal. Their agricultural lands are irrigated from the Banur Canal.

The Banur Canal System was constructed more than 100 years ago. Previously, the supply of water in this canal was released in the month of October-November by constructing 'katcha bundh' (temporary embankment) across river Ghaggar near Chhatbir Zoo. The 'katcha bundh' used to get washed away during rainy season in the month of June-July. The Irrigation Department, in the year 2005, prepared a scheme to convert the existing Banur Canal System from non-perennial to perennial by constructing 'pucca' weir (dam) across river Ghaggar; besides, raise its authorized capacity from 102 cusecs to 133.60 cusecs. A scheme was prepared by the government to construct a 'pucca' weir (dam) and rehabilitate the Banur

Canal System. The said scheme was submitted to the National Bank for Agriculture and Rural Development (NABARD) for approval and for release of necessary funds. The NABARD agreed to provide loan assistance for the said project. The work of construction of weir (dam) was initially awarded to M/s D.S. Pannu and Associates in the year 2007. However, the work had remained incomplete and the contract was terminated. The work remained suspended till October, 2015. During this period, neither 'katcha bundh' was constructed nor the weir (dam) was completed. As such, no supply of water could be released in the Banur Canal. The entire area was, thus, denied the benefit of canal irrigation. The farmers of the adjoining areas suffered a great financial loss. The Department of Irrigation, Punjab (respondent No.3), in terms of its letter dated 06.05.2015 (Annexure P1) gave approval for converting the existing Banur Canal System from non-perennial to perennial by constructing a 'pucca' weir (dam) across river Ghaggar. The balance work on this project was resumed from November, 2015 after getting permission as also loan assistance amounting to Rs.7096.20 lacs from NABARD. After completion of the rehabilitation of Banur Canal System, approximately 72 villages comprising a total land of about 39000 acres were to receive water supply during the entire year. The said project has now been held up in view of the order dated 19.05.2016 passed by the learned Tribunal (respondent No.4) whereby a blanket order has been issued restraining the entire State of Punjab from felling and cutting of trees. The said order, as already noticed, is assailed in this petition.

We have given our thoughtful consideration to the case. The rehabilitation of the Banur Canal System is an important issue for supplying

irrigation water to the farmers whose lands are commanded for irrigation from the Banur Canal System. In fact, the Government of Punjab, Department of Irrigation (respondent No.3) issued a letter dated 27.05.2016 (Annexure P9) wherein it is stated as follows:-

“Under the revised project, Banur Canal is meant to supply water to 39000 acres of land of 72 villages of Dera Bassi, Rajpura and Ghanaur Blocks of District SAS Nagar and Patiala. The underground water level in this area has gone so deep that its now technically and economically difficult to draw water from deeper aquifer. In addition, the quality of deep aquifer water is not good for cultivation of crops. Keeping these factors in view, the project for construction of Dam on river Ghaggar and rehabilitation of Banur canal was sanctioned by the Govt. vide letter no.1/170/09-IW(5)/478380/1, dated 06.05.2015 (copy enclosed). NABARD has also sanctioned the project for funding vide its letters No. NB(PB)/SPD/RIDF-2103-A/151th PSC/2015-16/ dated 23rd Sept., 2015 at a cost of Rs.7550.62 lakh (copy enclosed). The work on the project was started in the month of Oct., 2015 with the condition to complete it before 30th June, 2016, so that irrigation water could be supplied to the farmers during Kharif, 2016. However, it was observed that 5032 No. of plants/trees were found to be grown on the Bed and Banks of Banur canal. Department of Irrigation through Executive Engineer BML, Patiala requested Divisional Forest Officer of Patiala, SAS Nagar and Chhatbir Zoo, vide its letter

No.3662-65/12/ BML, No.3554-57/12 BML, and No.3658-61/12 BML dated 27.5.2016 (copy enclosed) for allowing the Department to fell these trees as these are standing in non-forest areas. Department of Forest and Wild Life, Govt. of Punjab vide its letter No. Forest - 2/ Deviation-14/1876, dated 26th May, 2016 issued by the Principal Chief Conservator of Forests (copy enclosed) has allowed the Department of Irrigation to fell the trees with the condition that permission from Hon'ble National Green Tribunal may be obtained before felling the trees, as Hon'ble National Green Tribunal in its order dated 19.5.2016 has restrained the State of Punjab from felling any tree in the State. Since the work of Banur Dam (Weir) is near completion and is likely to be commissioned in the 3rd week of June, 2016, as such, it will be of no use, if it is not matched with the completion of rehabilitation of the canal ensuring irrigation from their weir during coming Kharif season.”

A perusal of the photographs Annexure P-5 (colly) show that the work of construction and widening of the Banur Canal System is being undertaken. In case the work is not completed in a time bound manner, the uncontrolled water would cause floods in the entire area.

A Division Bench of the Hon'ble Madras High Court (Madurai Bench) in Killidam Aaru Pathukappu Nala Versus The Union of India 2014 (5) CTC 397 while dealing with the issue of maintainability of writ petition against an order passed by the Tribunal held that the National Green Tribunal Act, 2010 did not expressly exclude the jurisdiction of the High Court under

Articles 226/227 of the Constitution of India although in terms of Section 29 of the said Act, it expressly excludes the jurisdiction of the Civil Courts. It is further noticed that Section 22 of the said Act relates to an appeal to the Supreme Court from any order passed by the learned Tribunal, but clearly there is no express bar to approach the High Courts.

While issuing notice of motion on 01.06.2016, interim stay was granted by this Court staying operation of the impugned order dated 19.05.2016 (Annexure P8) passed by the learned Tribunal to the extent it related to the construction, widening and rehabilitation of the Banur Canal System.

It may be noticed that the State of Punjab filed Civil Appeal D No.33942 of 2016, titled 'State of Punjab and others v. Amandeep Aggarwal and others' against the aforesaid order dated 19.05.2016 (Annexure P8) passed by the learned Tribunal, in the Supreme Court. It was submitted on behalf of the State that the order passed by the learned Tribunal was wholly unjustified having regard to the fact that the State of Punjab had obtained all permissions required from the competent authority for felling of trees in connection with various ongoing projects and that without taking note of such permissions, the learned Tribunal was not liable to have issued a blanket ban on cutting of forest trees. This, according to the State, would seriously hamper the ongoing developmental projects in connection with widening of the highways and in particular the construction of National Highway No. 71 in the State of Punjab. It was submitted that while the State of Punjab was ready and willing to furnish whatever information that was required by the learned Tribunal; however, the projects of national importance like widening

of the highways mentioned in the said case ought not to be hampered by reason of the said order dated 19.05.2016. It was submitted that Hon'ble the Supreme Court while permitting the petitioner State in the said case to approach the learned Tribunal for vacation of the stay part of the said order qua National Highway No. 71 so that the ongoing project would not be adversely affected.

Hon'ble the Supreme Court, on the basis of the aforesaid submissions, passed the following order on 28.10.2016:-

“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 terms of the aforesaid order dated 28.10.2016 passed by Hon'ble the Supreme Court, the present petition is disposed of with the direction that the operation of the impugned order dated 19.05.2016 passed by the learned Tribunal shall remain suspended for a period of four months from the date of receipt of certified copy of the order to enable the petitioners to execute the ongoing project in the present case and leaving the learned Tribunal with liberty to pass any fresh order for the project in question upon consideration of the facts which are furnished by the parties. The parties would be at liberty to approach the learned Tribunal to raise all such contentions as may be open to them in law.

The writ petition is accordingly disposed of in the aforesaid terms.

(S.S. SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

24.01.2017
Ramesh

Note: 1. Whether reasoned/speaking : Yes
 2. Whether reportable : No