

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

**CWP No. 11939 of 2016 (O&M)
Date of decision: 24.01.2017.**

Dilip Buildcon Ltd.

..... Petitioner.

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 petitioner.

Mr. Virender Soni, Advocate,
for respondents No. 1 and 4 - Union of India.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for respondents No. 2 and 5.

Ms. Anju Arora, Advocate, for respondent No. 3.

None for respondent No. 6.

Mr. Tribhuvan Singla, Advocate, for respondent No. 7.

Mr. Jasbir Singh, Advocate, for respondent No. 8.

S.S. SARON, J.

CM No. 10554-CWP of 2016

Short reply by way of affidavit of Shri Gursewak Singh Sangha, Executive Engineer, Central Works Division, PWD B&R, Jalandhar, on behalf of respondent No.5, attached with the civil miscellaneous application, is taken on record, subject to just exceptions.

The civil miscellaneous application stands disposed of accordingly.

CWP No. 11939 of 2016

The civil writ petition has been filed by Dilip Buildcon Limited under Articles 226/227 of the Constitution of India seeking quashing of the order dated 19.05.2016 (Annexure P10) whereby the learned National Green Tribunal (respondent No.6) ('Tribunal' - for short) has passed a blanket order restraining the entire State of Punjab from felling and cutting any trees. It is submitted that the said order has been passed without taking into account the projects that had been officially cleared and also had the requisite sanctions as in the present case. A further direction has been sought for directing respondents No. 2 and 3 to complete the cutting/axing of trees so as to allow the petitioner - Company to complete the project awarded to it in a timely manner.

It is submitted that the petitioner - Company is a leading private sector road focused Company which is mainly developing infrastructure all over the country in many diverse areas such as roads and bridges, irrigation, industrial, commercial and residential buildings. The petitioner - Company is a successful bidder for a part of the section of the project of development of four lanes which falls on the Jalandhar-Barnala road section of NH-71 from KM 0.00 to 144.720 both sides in the State of Punjab through Public Private Partnership on Design Build Finance Operated and Transferred (DBFOT) Toll under NHDP Phase-IV B/S under Forest Divisions Ferozepur, Sangrur and Jalandhar in the State. The said project was subsequently converted into Engineering Procurement Contract. The cost of the project is approximately Rs.3096.58 crores which has been

awarded in four packages, i.e. three companies have been successful in bidding for this project. The petitioner - Company is one of the firms that has been granted the Letter of Award for completion of the project of four laning of Shahkot-Moga section of NH-71 from existing KM 44.600 to KM 77.200 including construction of Dharamkot bypass in the State of Punjab under the NHDP-IV through Engineering, Procurement and Construction (EPC) contract basis for contract price of Rs.346,50,00,000/- (Rs. Three hundred forty-six crores and fifty lacs only).

The Additional Principal Chief Conservator of Forest (Central) addressed a letter dated 25.08.2015 (Annexure P1) to the Principal Secretary (Forests), Government of Punjab conveying that approval had been given for diversion of 145.9015 hectares (61.7614 hectares in Ferozepur Forest Division + 31.2828 hectares in Sangrur Forest Division + 52.8563 hectares in Jalandhar Forest Division) for the development of four lanes project on the aforesaid Jalandhar-Barnala road. In pursuance of the aforementioned letter (Annexure P1), three demand notices dated 31.08.2015, 01.09.2015 and 31.08.2015 (Annexure P2 - colly) were issued by the Divisional Forest Officer, Phillaur, Sangrur and Ferozepur respectively to the Secretary to Government of India, Department of Road Transport and Highway, New Delhi (respondent No.4). The Government of India, Ministry of Environment, Forest and Climate Change (respondent No.1) issued a circular dated 28.08.2015 (Annexure P3) providing guidelines for diversion of forest land for non-forestry purposes under the Forest (Conservation) Act, 1980. In the said circular, guidelines have been

provided for laying new roads, widening of existing highways, transmission lines, water supply lines, optic fibre cabling, railway lines etc. The petitioner - Company in pursuance to the demand raised by the Forest Department, the office of Secretary to Government of Punjab, Public Works Department (Building and Roads), Punjab, Chandigarh (respondent No.5) deposited the requisite amount amounting to Rs.32,18,92,906/-, as detailed in Annexure P4. The technical approval, administrative approval and financial sanction of the President of India, was conveyed to the petitioner - Company by the Ministry of Road Transport and Highways (respondent No.4) vide letter dated 03.12.2015 (Annexure P5). The same was to the estimate for the project for development of four lanes with paved shoulders of Shahkot-Moga section of NH-71, as mentioned above. The petitioner - Company participated in the bidding process pursuant to the letter dated 03.12.2015 (Annexure P5) and was a successful bidder for the aforesaid project. A letter dated 28.12.2015 (Annexure P6) was addressed by the Ministry of Road Transport and Highways (respondent No.4) to the petitioner - Company.

The ownership of trees in the Jalandhar-Barnala road section NH-71 from 72.120 (Lohara Chowk Moga) to KM 77.640 (Bughipura Bypass Moga) in the State of Punjab was with the Zila Parishad, Moga. The requisite amount was paid to the Secretary, Government of Punjab, Public Works Department (Building and Roads), Punjab, Chandigarh (respondent No.5) amounting to Rs.18,83,674/- to the office of Executive Officer, Zila Parishad, Moga after which permission for cutting the trees on

this section was allowed by the Chief Executive Officer, District Parishad, Moga, vide letter dated 29.01.2016 (Annexure P7). However, in view of the order dated 19.05.2016 (Annexure P10) passed by the learned Tribunal (respondent No.6) the trees cannot be cut and the work of the petitioner - Company has come to a standstill, besides, it is hampering even the development infrastructure where the government invests thousands of crores of rupees every year. A reference has been made to the judgment in Kollidam Aaru Pathukappu Nala v. Union of India, 2014 (5) CTC 397 wherein a Division Bench of the Madras High Court while dealing with the issue of maintainability of writ petition held that the National Green Tribunal Act, 2010 does 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.

In short, the grievance of the petitioner - Company is that in view of the blanket order dated 19.05.2016 (Annexure P10) passed by the learned Tribunal restraining the felling of trees, the project assigned to the petitioner - Company cannot be carried out as trees have to be cut for which permission has also been given by the Chief Executive Officer, District Parishad, Moga, vide letter dated 29.01.2016 (Annexure P7).

Interim stay was granted by this Court vide order dated 06.06.2016 while issuing notice of motion with regard to construction,

widening and rehabilitation of Jalandhar-Barnala road section of NH-71 for 0.00 km to 144.720 km including construction of bypass.

We have given our thoughtful consideration to the matter.

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 P10) 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 petitioner - Company 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