

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

CWP No. 12166 of 2016 (O&M)

Date of decision: 24.01.2017.

Patel Infrastructure Pvt. 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. 16635-CWP of 2016

The written statement filed on behalf of Peacock Environment and Wildlife Protection Society (respondent No.8) is taken on record and exemption from filing certified copy of Annexure R-8/1 is granted and photocopy thereof is taken on record, subject to just exceptions.

The civil miscellaneous application stands disposed of.

CWP No. 12166 of 2016

The petitioner - Patel Infrastructure Pvt. Ltd., Mansa by way of present petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 19.05.2016 (Annexure P9) passed by the learned National Green Tribunal (respondent No.6) ('Tribunal' - for short) whereby a blanket order restraining the entire State of Punjab from felling and cutting any tree has been passed. 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 to complete the project awarded to it in a timely manner.

The petitioner - Company is registered under the Companies Act, 1956. It has its regional office at Mansa. The present petition has been filed through its authorized signatory Shri Mukesh Kumar, who has been duly authorized to file the same by means of a resolution, which is appended. It is stated that the petitioner - Company is a leading private sector road focussed company which is mainly developing infrastructure all over the country in many diverse areas such as roads and bridges. It was one of the successful bidders for two packages of the section of the project of development of four lanes falling on the Jalandhar-Barnala road section of NH-71 from KM 12.00 to 44.60 including construction of Nakodar and Shahkot bypasses as well as section of NH-71 from existing KM 77.200 to KM 114.00 in the State of Punjab through Public Private Partnership on Design Build Finance Operated and Transferred (DBFOT) Toll under the

NHDP Phase-IV B/S under Forest Divisions Ferozepur, Sangrur and Jalandhar in the State of Punjab. The project was subsequently converted into Engineering Procurement Contract. The project is worth 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 them which has been granted the Letter of Award for completion of the project of four laning of Lambra-Shahkot including Nakodar and Shahkot bypasses as well as Moga-Tallewal section of NH-71 in the State of Punjab under the NHDP-IV through Engineering, Procurement and Construction (EPC) contract basis for contract price of Rs.338 crores and Rs. 381 crores respectively.

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 section of NH-71 from KM 0.00 to 144.720 B/S in the State of Punjab. 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 02.11.2015 (Annexure P5). The same was to the estimate for the project for development of four lanes with paved shoulders of Lambra-Shahkot section of NH-71 from existing KM 12.00 to 44.60 including construction of Nakodar and Shahkot bypasses as well as Moga-Tallewal section of NH-71 from existing KM 77.200 to 114.00 in the State of Punjab. The petitioner - Company participated in the bidding process pursuant to the letter dated 02.11.2015 (Annexure P5) and was a successful bidder for the aforesaid project. Letters dated 10.12.2015 as well as 21.12.2015 (Annexure P6 - colly) were addressed by the Ministry of Road Transport and Highways (respondent No.4) to the petitioner - Company.

The grievance of the petitioner - Company is that in view of the order dated 19.05.2016 (Annexure P9) passed by the learned Tribunal (respondent No.6), its work has come to a standstill and this is also affecting

the infrastructure development work of the government which has invested crores of rupees. It is submitted that the learned Tribunal (respondent No. 6) failed to realize that the issue before it pertained to cutting of trees on the Zirakpur-Bathinda Highway as also felling of trees in Rajpura region of the Satluj-Yamuna Link Canal and no material whatsoever was placed before the learned Tribunal to show that there was indiscriminate cutting of trees in the entire State. Besides, the learned Tribunal did not consider that there were projects of public importance which had the necessary permission from the concerned authorities like the present one.

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.

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 P9) 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