

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

**CWP No. 12431 of 2016 (O&M)**

**Date of decision: 24.01.2017.**

National Highway Authority of India

..... Petitioner.

Versus

Union of India and others

..... Respondents.

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

Present: Mr. D.K. Prajapati, Advocate, for  
Mr. R.S. Madan, Advocate, for the petitioner.

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

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,  
for respondent No. 2.

Ms. Anju Arora, Advocate, for respondent No. 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. 13272-CWP of 2016**

Reply by way of affidavit of Mr. Mahavir Singh, IFS,  
Conservator of Shiwalik Circle, Punjab, on behalf of respondent No.2,  
attached with the civil miscellaneous application, is taken on record, subject  
to just exceptions.

The civil miscellaneous application stands disposed of.

**CWP No. 12431 of 2016**

The petitioner - National Highway Authority of India through its Project Director, Project Implementation Unit, Panchkula by way of present petition under Article 226 of the Constitution of India seeks quashing of the order dated 19.05.2016 (Annexure P3) and all subsequent proceedings including letter dated 20.05.2016 (Annexure P3A) whereby the learned National Green Tribunal (respondent No.4) ('Tribunal' - for short) has passed a blanket order restraining 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 as having been passed without taking into consideration that the petitioner had duly adhered to the statutory rules/regulations with respect to cutting and felling of trees. The said order, it is submitted, has stalled several critical and time bound projects of public importance thereby further causing huge loss to the Government exchequer and public inconvenience.

The petitioner is an agency constituted under the National Highways Act, 1956. It is an autonomous government organization and is given the responsibility of development, maintenance, management operations on the National Highways. Dr. Amandeep Aggarwal (respondent No.5) filed a petition (Annexure P1) before the learned Tribunal (respondent No.4) alleging that 9,600 trees in the green cover along the Zirakpur-Bathinda Expressway had been ruthlessly cut for ambitious projects of the government. Therefore, a direction was sought for compensatory plantation along the sides of the road etc. Peacock Environment and Wildlife Protection Society (respondent No.6) also filed an application (Annexure P2)

before the learned Tribunal (respondent No.4) praying for taking *suo motu* notice so that serious threat to environment and wildlife in the said area is protected. The learned Tribunal (respondent No.4) ceased of the above mentioned petition passed the impugned order dated 19.05.2016 (Annexure P3) restraining the State of Punjab, any project proponent, various authorities and Departments of State of Punjab from felling and cutting of any tree in the entire State of Punjab without specific permission of the learned Tribunal (respondent No.4). In pursuance to the said order, the Principal Chief Conservator of Forest (Head of Forest Force), SAS Nagar, Mohali (respondent No.2) has sent letter dated 20.05.2016 (Annexure P3A) informing about the aforesaid order and its strict compliance. It is submitted that in fact the applications (Annexures P1 and P2) were filed with reference to a particular project on the Zirakpur-Bathinda Expressway only; however, an omnibus order applicable to the entire State of Punjab has been passed.

It is submitted that as on date, the petitioner is a project proponent for a number of highways, buildings and allied projects of large public importance in the State of Punjab. A reference is made to the construction of service road and drain on Ambala-Chandigarh section of NH-22, four laning of Kharar-Kurali section, four laning of Chandigarh-Kharar section, six laning of Jalandhar-Amritsar section, Improvement of Amritsar bypass etc. The petitioner has also initiated work for many upcoming projects of public significance. A detailed tabular representation (Annexure P4) of ongoing and upcoming projects has been placed on record.

The petitioner being a statutory body undertakes to execute its projects after obtaining all due permissions and approvals required including

adherence to all statutory rules/regulations/policies. The petitioner has obtained in principle approval from the concerned authorities of the Government of Punjab, Department of Forest for all its ongoing projects. As part of the said in principle approval, the petitioner has already deposited the net present value of the forest land being diverted for non-forestry purpose to the State of Punjab and also the cost of compensatory afforestation in addition to ensuring compliance of other conditions. A representative copy of the aforesaid in principle approval (Annexure P5) of one such project pertaining to four laning of Chandigarh-Kharar section of NH-21 has been placed on record. The petitioner is also carrying out other projects, the details of which are mentioned.

The grievance of the petitioner is that the impugned order dated 19.05.2016 (Annexure P3) passed by the learned Tribunal (respondent No.4) has affected its projects and these cannot be carried out in case the trees wherever required are cut and felled for which it has the necessary permissions.

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 10.06.2016 while issuing notice of motion and operation of the impugned order dated 19.05.2016 (Annexure P3) and consequential letter dated 20.05.2016 (Annexure P3A) were stayed qua the petitioner.

We have given our thoughtful consideration to the matter.

We propose to dispose of the writ petition in terms of the order passed by Hon'ble the Supreme Court of India in an appeal arising out of the same order dated 19.05.2016 (Annexure P3) passed by the learned Tribunal.

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 P3) 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 continue to remain suspended for a period of four months from the date of receipt of certified copy of the order to enable the petitioner to execute the ongoing projects 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:**

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|----|---------------------------|---|-----|
| 1. | Whether reasoned/speaking | : | Yes |
| 2. | Whether reportable        | : | No  |