

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

CWP No. 12437 of 2016 (O&M)

Date of decision: 24.01.2017.

M.G. Contractor Pvt. Ltd. - Arvind Techno Engineers Pvt. Ltd. (JV)

..... Petitioner.

Versus

Union of India and others

..... Respondents.

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

Present: Mr. Kamal Sehgal, Advocate, for the petitioner.

Mr. Virender Soni, Advocate,
for respondents No. 1 and 2 - Union of India.

None 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. 8264-CWP of 2016

Reply affidavit of Shri Som Datt Sharma, Conservator of Forests (Central) on behalf of Additional Principal Chief Conservator of Forests (Central), Ministry of Environment, Forests and Climate Change, Northern Regional Office at Chandigarh (respondent No.1) attached with the civil miscellaneous application, is taken on record, subject to just exceptions.

The civil miscellaneous application stands disposed of.

CWP No. 12437 of 2016

The petitioner M.G. Contractor Pvt. Ltd. - Arvind Techno Engineering Pvt. Ltd. (Joint Venture) through its authorized representative Shri A.K. Garg seeks quashing of the order dated 19.05.2016 (Annexure P8) whereby the learned National Green Tribunal (respondent No.4) ('Tribunal' - for short) has passed a blanket order restraining the entire State of Punjab from felling and cutting any tree. A further direction has been sought for directing respondent No. 3 to allow the petitioner - Company to complete the project awarded to it vide letter dated 24.09.2015 (Annexure P1).

The petitioner is a joint venture company comprising of M/s M.G. Contractor Pvt. Ltd. and Arvind Techno Engineering Pvt. Ltd. The two joint venture companies are registered under the Companies Act, 1956 and the joint venture has its office at Panchkula. The two joint venture companies, i.e. M/s M.G. Contractor Pvt. Ltd. and Arvind Techno Engineering Pvt. Ltd., are leading private sector road focussed companies dealing with the developing infrastructure all over the country in many diverse areas such as roads and bridges, irrigation, industries and railways.

The Government of India along with the State of Punjab has initiated the project of development of four laning of Kharar-Kurali section of NH-21 (New NH-205) from KM 15.765 to KM 29.900 (existing chinages) in the State of Punjab on EPC mode. The joint venture company was a successful bidder for the said project which was given to it by award letter dated 24.09.2015 (Annexure P1). The financial bid quoted by the joint venture, i.e. Rs.212,24,00,000/- (Rs. Two hundred twelve crores and

twenty-four lacs only) was accepted by the National Highways Authority of India (respondent No.3). The construction period for the project is 730 days from the appointed date. A performance guarantee of Rs.15,91,80,000/- was furnished by the joint venture. A contract agreement was entered into between the petitioner joint venture company and National Highways Authority of India (respondent No.3) on 02.11.2015 for execution of the development, maintenance and management of NH-21 (New NH-205), including the section from KM 15.765 to KM 29.900 (Kharar-Kurali) total design length of approximately 14.135 KM.

The Government of India, Ministry of Environment and Forests, Northern Regional Office, Chandigarh (respondent No.1) in response to letters dated 17.03.2015 and 23.04.2015 written by the Government of Punjab, issued letter dated 15.06.2015 (Annexure P2 - colly) granting in principle approval for diversion of 10.667 hectares of forest land for the project which was subject to conditions as mentioned therein. The said decision was conveyed to the Government of Punjab in view of the meeting of the Regional Empowered Committee (REC) which was convened on 29.05.2015 (Annexure P2 - colly). The National Highways Authority of India vide letter dated 22.07.2015 (Annexure P3) deposited an amount of Rs.3,47,72,368/- with the Divisional Forest Officer, SAS Nagar, Mohali in compliance to the demand letter that was issued by the latter. The said amount included the amount of Compensatory Afforestation (CA), Net Present Value (NPV) and the cost of 3670 trees, 13 under girth poles and 43 bamboos. The Ministry of Environment and Forest gave its final approval on 20.08.2015 (Annexure P4) for the diversion of 10.667 hectares

of land in favour of National Highways Authority of India (respondent No.3) for the purpose of four laning of the aforesaid Kharar-Kurali section.

The petitioner joint venture, however, is unable to execute the work in view of the order dated 19.05.2016 (Annexure P8) passed by the learned Tribunal. The said order, according to the petitioner, 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.

We have given our thoughtful consideration to the matter.

The grievance of the petitioner is that despite having made full and complete payments for felling and cutting the trees for which necessary permissions have been granted, it is unable to cut the same due to the order dated 19.05.2016 (Annexure P8) passed by the learned Tribunal whereby it has restrained the felling and cutting of trees in the entire State of Punjab.

Notice of motion was issued in the case on 13.06.2016, which was accepted by Mr. Harsh Goyal, Advocate, on behalf of Dr. Amandeep Aggarwal (respondent No.5). Besides, appearance has been put in on behalf of respondents No.1, 2 and 6.

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 P8) 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 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 and 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 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

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