

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

CWP No. 15738 of 2016 (O&M)

Date of decision: 24.01.2017.

Amanpreet Kaur

..... Petitioner.

Versus

Union of India and others

..... Respondents.

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

Present: Mr. Balbir Singh Jaswal, Advocate, for the petitioner.

Mr. Karan Singh, Advocate,
for respondent No. 1 - Union of India.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for respondents No. 2 and 3.

Ms. Anju Arora, Advocate, for respondent No. 4.

None for respondent No. 5.

Mr. Tribhuvan Singla, Advocate, for respondent No. 6.

S.S. SARON, J.

The petitioner - Amanpreet Kaur is proprietor of M/s Gill Timber Co., which has its head office at Amritsar. The said firm is running business for cutting the trees. By way of present petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order dated 19.05.2016 (Annexure P6) in pursuance of which the National Green Tribunal (respondent No.5) ('Tribunal' - for short) has passed a blanket order restraining the entire State of Punjab from cutting and felling any tree. It is submitted that the said order has been passed without taking into account the projects that had been officially cleared and also have requisite

sanctions given by the State of Punjab. A further prayer has been made for directing the Divisional Forest Officer, Phillaur and the Project Officer of the Punjab State Forest Development Corporation Ltd., Nawanshehar (respondents No.3 and 4 respectively) not to stop the work of cutting the trees allotted to the petitioner so that the contract can be executed.

The work for cutting trees from the Bist Doab Canal was allotted to various contractors by the Punjab State Forest Development Corporation Ltd. ('Corporation' - for short) through e-tendering process. The petitioner was allotted the contract vide allotment letter Annexure P1. The petitioner, accordingly, started the work of cutting well within time and started making payments to the respondents. There was no default on her part. The Government of Punjab in the Department of Irrigation, in terms of memo dated 12.09.2014 (Annexure P2), granted revised administrative approval amount to Rs.918.25 crores for extension, renovation and modernization of the Canal being fed from Satluj-New ERM Project under Departmental Financial Rules 9.3 (2) subject to financial regularities and subject to conditions as mentioned therein.

The Bist Doab Canal also has its source of water from the aforesaid river. Therefore, the rehabilitation work for the said canal for concrete lining was sanctioned and its execution started in October, 2015. The object of the rehabilitation of the said canal, it is submitted, was in public interest at large. The carrying capacity of the canal had decreased from its authorized capacity of 1450 cusecs to 900 cusecs. By rehabilitating the canal, the Doaba region would be able to re-charge its ground water which has been depleting since recently.

The Principal Chief Conservator of Forest (Head of Forest Force), SAS Nagar, Mohali (respondent No.2) addressed a letter dated 22.01.2016 (Annexure P3) to the Forest Conservator, Shivalik Circle, Punjab, Hoshiarpur and the Divisional Forest Officer, Nawanshehar at Garhshankar relating to the identification of trees grown on both the banks of the Bist Doab Canal and for cutting the same. In terms of the said letter, according to the marking list received from the Forest Divisional Officer, Garhshankar in connection to the deviation approval for cutting the trees lying on both the banks of Bist Doab Canal, an offer was sent to the office of Principal Chief Conservator for cutting of 22725 trees. On the said letter, instructions were issued for immediately initiating proceedings as per rules for cutting the trees and for release of the concerned area to the Irrigation Department.

In terms of letter dated 11.04.2016 (Annexure P4) from the Government of India, Ministry of Environment, Forest and Climate Change addressed to the Additional Principal Conservator of Forest (Central) (respondent No.1) on the subject of felling of green trees from Bist Dob Canal for widening/strengthening of canal, it has been stated that felling of trees by the Forest Department on the land which has not been notified/recorded as forest in any government record or has not been categorized as forest by Hon'ble the Supreme Court or any other Court of law would not require approval of the Central Government under the Forest (Conservation) Act, 1980. It is further stated that the felling of such trees would be governed by the provisions of the Indian Forest Act, 1927, Local Forest Acts and the rules/guidelines framed thereunder. The said clarification, it is

mentioned, would be applicable only in case of felling of green trees from the Bist Doab Canal for its widening/strengthening only. Therefore, according to the petitioner, it is clear that the trees which are surrounding the Bist Doab Canal do not fall within the Forest Protected Area. Therefore, there would be no environmental damage if the trees were cut and the canal was rehabilitated. The work, however, cannot be carried out in view of the blanket order dated 19.05.2016 (Annexure P6) passed by the learned Tribunal (respondent No.5). Therefore, a prayer has been made for quashing the same.

We have given our thoughtful consideration to the matter.

The grievance of the petitioner is that despite the necessary permission being granted and even the trees surrounding the Bist Doab Canal not falling in the forest protected area, she is unable to cut the trees due to the order dated 19.05.2016 (Annexure P6) passed by the learned Tribunal whereby it has restrained the felling and cutting of trees in the entire State of Punjab.

Notice in the case is issued and is accepted by learned counsel for the respondents, who are appearing in the connected cases.

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 P6) 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 P6)

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

Note:

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