

(2013) 01 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2691 of 2012 (O and M)

Pooja Dhull

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 01 P&H CK 0019

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : R.S. Dhull, for the Appellant; O.S. Batalvi, Senior Standing Counsel, for the UOI, Mr. T.S. Lehal, Advocate, for the Respondent No. 5, Mr. G.S. Sidhu, Addl. A.G., Punjab, Mr. B.S. Rana, Addl. A.G., Haryana, Mrs. Swatantar Kapoor and Mr. Sanjay Kaushal, for the Respondent

Final Decision : Disposed Off

Judgement

Rakesh Kumar Jain, J.—This petition is filed in public interest drawing attention of the Court to initiate immediate action for conservation of the wetlands available in the States of Punjab, Haryana and U.T. Chandigarh and to implement the Wetlands (Conservation and Management) Rules, 2010 in its true letter and spirit, further to remove the encroachments from the wetlands and to cleanup the hazardous waste from the wetlands posing danger to the flora and fauna of the area.

"Wetland" is defined in the Wetlands (Conservation and Management) Rules, 2010 (hereinafter referred to as the "Rules") as under:-

(g) "Wetland" means an area or of marsh, fen, peat land or water; natural or artificial permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and man made wetland and the zone of direct influence on wetlands that is to say the drainage area or

catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of Environment and Forest, S.O. Number 114(E), dated the 19th February, 1991 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (if) of dated the 20th February, 1991;

As per the pleadings, an international convention was called in Iran way back in 1971, which is popularly known as "Ramsar Convention", to discuss the modalities to conserve the wetlands in which India was one of the participants. The Ramsar Convention maintains a record of the wetlands of international importance which are important for conservation of flora and fauna of the world and a place for protection of migrated birds and wildlife of the area. India has 25 such sites, out of which three Ramsar sites of international importance are existing in the State of Punjab, namely, Harike, Kanjali and Ropar.

2. Harike wetland popularly known as "Harike Pattan" is situated in the Taran district, Punjab and is a man-made wetland which gets inflow of water from Beas and Sutlej rivers and was formed way back in 1953 by constructing the head works across the Sutlej river. It is perhaps the largest wetland of the north India which spreads over 4,100 hectares and is having estimated area of 86 Sq. Kilometers spreading in three districts of Punjab. Keshopur wetland is a community wetland situated in District Gurdaspur, Punjab having a total area of around 850 acres which spread in two villages. Kanjali wetland is situated in District Kapurthala of the State of Punjab which spreads in over 490 hectares. Ropar National wetland is another Ramsar site of international importance and is having an area of around 1365 hectares which is also a man-made wetland of lake and river formed by the 1952 construction of a barrage for diversion of water from the Sutlej river for drinking and irrigation supplies.

3. In the State of Haryana, though there is no wetland of international importance listed in the Ramsar Convention but are of great value. These wetlands Bhindawas (Jhajjar) and Sultanpur (Gurgaon) are of national importance amongst many other small wetlands. Bhindawas wetland is having an area of 432 hectares and Sultanpur is having an area of 145 hectares. Sultanpur wetland is one of the notified bird sanctuaries in Haryana.

4. The petitioner has also given various factors which are posing danger to the wetlands viz. i) weed growth; ii) siltation; iii) encroachments; iv) pollution from industrial; (v) urban and agricultural activities; (vi) fishing and poaching; and vii) grazing.

5. Keeping in view the importance of the wetlands and the reasons causing danger to it, the law was set into motion by issuance of notice to the respondents.

6. Separate replies have been filed by the respondents in which respondent No. 2 has alleged that various programmes have been launched for the protection of

the wetlands. The following water bodies were allegedly considered as wetlands of importance in Punjab:-

7. It is alleged that administrative control of Harike and Nangal wetlands lies with the department of Forests and Wildlife Preservation, whereas Keshopur is community reserve and managed by Management Committee constituted u/s 36D of the Wildlife (Protection) Act, 1972 and all other wetlands are managed by different authorities under supervision of Punjab State Council for Science and Technology.

8. In respect of the various reasons given by the petitioner which are posing danger to the existence of wetlands, the respondent No. 2 has given its reply under the separate heads which reads as under:-

i) Weed growth: The department of Forests and Wildlife launched a Project "Sahyog" through army in the eradication of weed in Harike Wildlife Sanctuary in the year 2000-2002. The Weevils *Neochetina Eichhonia* and *Neochetina bruchi* are being released by the Irrigation and Power Research Institute (IPRI) for the degradation of weeds. IPRI has released 156700 weevils at 13 locations in the catchment drains to eradicate weeds. Now weed is not a major problem as its use for the preparation of handicraft products is also being explored by the department of Forests and Wildlife Preservation in the near future. This shall also enhance the livelihood of local people.

ii) Siltation: Punjab Government is maintaining Shiwalik Hills under Punjab Land Preservation Act, 1900. Plantation and Soil Conservation works are continuously undertaken in catchment areas and adjoining shiwalik hills. Punjab Government has completed major afforestation project with assistance of Japan International Cooperation Agency treating all major watersheds. State of Forest Report published by Forest Survey of India, Dehradun based on satellite data shows increase of 100 Sq. Km. Forest cover in Punjab State which is highest in India (Annexure-R4).

iii) Encroachment: The old encroachers are booked under Wildlife (Protection) Act, 1972 for eviction and their cases are lodged in the respective courts for trial. A list of such cases is appended as Annexure-R1 (Part).

iv) Pollution: Pollution level is continuously monitored with the help of WWF-India. One such report is attached as Annexure-R5.

v) Fishing and Poaching: the department of Forests and Wildlife is actively patrolling the sanctuary area number of cases of illegal poaching and fishing have been filed in the courts for awarding punishment to the offenders (Annexure-R1 (Part)).

vi) Grazing: Grazing has been stopped completely and the local people are made aware about the importance of wetland eco-system by launching awareness campaign.

9. In the reply filed by respondent No. 3, i.e. State of Haryana, it is mentioned that there are four important wetlands of 667 hectares in the State of Haryana, namely, Sultanpur National Park (Gurgaon), Bhindawas Wildlife Sanctuary (Jhajjar), Damdama Lake (Gurgaon) and Brahmsarovar (Kurukshetra). It is further alleged that there are 1441 wetlands of the size of 2.25 hectares and above with an area of 31949 hectares. The administrative control of Sultanpur National Park and Bhindawas Wildlife Sanctuary lies with the Forest Department of Haryana. In regard to the protection of these wetlands, the measures which have been stated to have taken under various heads read as under:-

i. Weed Growth: In Sultanpur National Park, weeds are now under control and are being regularly removed and monitored continuously. In Bhindawas Wildlife Sanctuary/Wetland this problem will be under control after the implementation of comprehensive Management Action Plan which is under consideration of Government of India.

ii. Siltation: In Sultanpur National Park, the desiltation of water body has been carried out in 9.78 ha. During 2011-12. In addition, a Silt Deposit Tank has been made to collect the silt from water which comes through Gurgaon Water Supply Channel. Regarding Bhindawas Wildlife Sanctuary, concrete action will be taken after the approval of Management Action Plan.

iii. Encroachment: There is no problem of encroachment in these wetlands of Haryana state.

iv. Pollution from Industrial area etc.: The testing of water is done regularly from time to time. The copies of test certificates of lake water tested on dated 23.07.2010 & 18.11.2010 & 18.12.2011 are annexed as Annexure R-3 (Colly). After augmentation of Yamuna Water to Sultanpur National Park, the water birds are increasing and there is no adverse impact seen on the birds as well as on the fish species. This fact has been confirmed in the various press reports of the prominent English News Papers like Times of India, Hindustan Times, Indian Express, The Tribune etc. and in some Hindi News Papers as well. Some of such news report clippings are annexed as Annexure R-4 (Colly). In Bhindawas Wildlife Sanctuary, concrete action will be taken after the implementation of Management Action Plan.

a. Fishing & Poaching: No such problem exist in core area of the Sultanpur National park, as being a fenced/walled area, Bhindawas Wildlife Sanctuary which is an open area is protected through regular patrolling of the staff. However, offenders are booked under the Wild Life (Protection) Act, 1972.

b. Grazing: No problem of cattle grazing inside National park except some abandoned cows which are in side of the National Park and have become part of the ecosystem with other related benefits for the ecology of Sultanpur national park through controlling the excess grasses. In Bhindawas Wildlife Sanctuary offenders are booked under Wild Life (Protection) Act, 1972.

10. Respondent No. 4, i.e. U.T. Chandigarh, has submitted that there is no notified wetland in U.T. Chandigarh but all efforts are made to preserve and protect the wetland in the nature of the Sukhna Lake and its surrounding area including its catchment area.

11. The Union of India/respondent No. 1 filed its separate written statement in which it has been alleged that the Central Government used to release huge funds, to achieve the motive of various conservation activities like excavation work, weed control, monitoring the water quality, way side exhibit/board, public awareness and education, publication of brochures, interpretation centre, fencing of boundary wall etc. Apart from this, funds in lacs have been spent over the consultancy work, which have been spent for preparation of comprehensive maps of three wetlands in the State of Punjab, namely, Harike, Kanjli and Ropar during the year 2008-09, which have been revalidated for the year 2010-2011. In respect of the State of Haryana, it is alleged that Rs. 30.35 lacs have been released for Sultanpur wetland and Rs. 36.98 lacs have been released for Bhindawas wetland.

12. During the course of hearing, an order was passed by this Court on 20.09.2012 which is reproduced here as under:-

By filing this writ petition concern has been shown regarding maintenance of Wetlands ear-marked in the States of Punjab, Haryana and UT, Chandigarh.

In the status report placed on record by Union of India (respondent No. 1) through Surendra Kumar, Director, Northern Regional Office, Ministry of Environment and Forests, Union of India, it is stated that crores of rupees have been released in several years to Punjab and Haryana for upkeep and maintenance of ear-marked Wetlands. The details of the amount for Wetlands sent to the State of Punjab is given at Page No. 9-10 of the affidavit/reply (Annexure R-1/1).

So far as the State of Haryana is concerned, it is stated that for Sultanpur Wetland, an amount of Rs. 30.35 lakhs has been released. Similarly, for Bhindawas Wetland, an amount of Rs. 36.98 lakhs has been sanctioned. In all, an amount of Rs. 137.82 lakhs has been released in favour of the State of Haryana for the purpose in question.

Despite release of such huge funds by Union of India, it appears that the ear-marked Wetlands are not being properly maintained, resulting into destruction of birds and amphibians. Reference has been made to the news items placed on record by the petitioner.

Under the circumstances, we issue direction to the Union of India to file a report regarding the following facts:-

(i) what is the mechanism available to ensure that the grants sent by Union of India are being spent properly and for the purpose for which these are being released?

(ii) whether at any time surprise inspection has been made or not to verify the work done, as stated by Punjab and Haryana Governments?

(iii) whether the funds released are subjected to audit or not?

If such like mechanism is not established, same be created now by the Union of India.

The States of Punjab and Haryana, also in the same fashion, are directed to file affidavits on or before the next date of hearing regarding the funds received, spent and whether such funds have been subjected to audit or not?

Adjourned to 07.11.2012.

13. In response to the directions issued in the aforesaid order, affidavits have been filed by the States of Punjab and Haryana explaining as to how the expenditure has been incurred for protection and maintenance of the wetlands. The Union of India has also filed short affidavit with regard to the aspects highlighted in the order dated 20.09.2012, which reads as under:-

(i) Monitoring of works carried out under the management action plans of identified wetlands in the states is done by the state level steering committees constituted by the State of Punjab under the chairmanship of Chief Secretary, Punjab and by the State of Haryana under the chairmanship of Principal Secretary. Deptt. of Forests, Haryana.

(ii) As per condition given in the sanction letters, there is also a provision of evaluation of activities under the Management Action Plans of identified wetlands by independent expert/technical agency engaged by the implementing departments. Further grant is released by the ministry on receipt of Physical Progress Report and Utilization Certificate from the State Govts.

(iii) Regular site visits are also made by the State Govt. officials to verify the works carried out by the implementing agencies.

(iv) As reported by the concerned states, the grants released by the Ministry are subjected to audit by A.G. Office of the concerned state.

14. Keeping in view the aforesaid facts and circumstances, learned counsel for the petitioner has shown his satisfaction about the action being taken by the States of Punjab, Haryana and U.T. Chandigarh with regard to conservation of the wetlands within their jurisdiction and has only prayed that the directions may be issued to the respondents to comply with Rule 4(iv) & (v) of the Rules which pertains to the solid waste dumping and discharge of untreated wastes and effluents from industries, cities or towns and other human settlements.

15. Learned counsel for the respondents have submitted that the respective governments are alive to the alarming situation where the existence of the wetlands have been threatened because of the aforesaid two reasons as well. In view thereof, we dispose of this writ petition with directions to the respondents to

strictly abide by the Rule 4((iv) & (v) of the Rules 2010.