
(2017) 03 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3732 of 2017

Union of India

APPELLANT

Vs

Dr. Amandeep Aggarwal

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 LawHerald 1235 : (2017) 2 RCRCivil 768

Hon'ble Judges : S.S. Saron and Darshan Singh, JJ.

Bench : Division Bench

Advocate : Vivek Singla, Advocate, for the Petitioners

Final Decision : Disposed Off

Judgement

S.S. Saron, J. - The petitioners-Union of India through Secretary, Ministry of Defence, New Delhi and Colonel Q (Wks.-1), Head Quarter, Western Command, Chandimandir by way of the present petition under Article 226 of the Constitution of India seek quashing of the order dated 19.05.2016 (Annexure P-2) with respect to applicability of felling and cutting of trees at Military Stations Patiala and Sangrur.

2. According to the petitioners, the respondents No.1 and 2 Dr. Amandeep Aggarwal and Peacock Environment and Wild Life Protection Society, Chandigarh filed Original Applications (O.As.) before the National Green Tribunal, New Delhi ('Tribunal' - for short) (respondent No.12). The O.A. No.161 of 2016 (Annexure P-1) filed by Dr. Amandeep Aggarwal (respondent No.1) pertains to seeking compensatory green cover along the Zirakpur - Bathinda Expressway in respect of over 96000 trees, which it was alleged had been ruthlessly cut for making the said expressway. The said O.A. along with O.A No.162 of 2016 filed by Peacock Environment and Wildlife Protection Society were listed before the learned Tribunal (respondent No.12). A blanket order dated 19.05.2016 (Annexure P-2) was passed by the learned Tribunal and in pursuance thereof the State of Punjab, any project proponent, various authorities and departments of the State of

Punjab were restrained from felling and cutting any tree in the entire State of Punjab without specific permission of the learned Tribunal (respondent No.12).

3. According to the petitioners the said order dated 19.5.2016 (Annexure P-2) has been passed without ascertaining the implications of the order. It is submitted that petitions (O.As.) of Dr. Amandeep Aggarwal and Peacock Environment and Wild Life Protection Society, Chandigarh (respondents No.1 and 2) relate to a particular project, that is, Zirakpur - Bathinda Expressway. The said respondents No.1 and 2 alleged before the learned Tribunal (respondent No.12) that large number of trees had been ruthlessly cut by the State of Punjab and the Principal Chief Conservator of Forests (Head of Forest Force), S.A.S. Nagar, Mohali (respondent No.4); besides, it is alleged that the trees had been cut for the Rajpura region of the Satluj Yamuna Link Canal. The petitioners were not a party in the said petitions (O.As.), however, they are affected by the order dated 19.05.2016 (Annexure P-2).

4. The details of works, the cost involved and the numbers of trees that are to be cut for the Military Stations at Patiala and Sangrur as also at Jalandhar, Khalsa, Ferozepur, Tibri and Kapurthala has been given in the form of a chart. It is stated that the project has been finalized and the amount has been worked out. Any delay in implementation of the project would adversely affect the project. The financial statement of the project has also been approved by the Ministry. The project, it has been mandated, is to be completed within a time bound frame as approved or else it would get scrapped and the complete exercise would have to be taken again. Besides, the delay in execution would lead to cost escalation of the projects, which typically follows a ballpark figure of 10% increase every year. The total value of these projects is mentioned as about Rs. 110.96 crores and it translates to an annual escalation of about Rs. 12 crores which would be a colossal loss to the State.

5. It is further submitted that considerable effort had been invested by the Army authorities to get these major work listed by the Ministry of Defence which includes painstaking and meticulous work done by Presiding Officers and Works Engineers to complete the labyrinth of documentation involved. Details of the manner by which the projects at Patiala, Sangrur, Kapurthala, Jalandhar, Khalsa and Ferozepur Military Stations would be affected have been given.

6. We have given our thoughtful consideration to the matter.

7. It is to be noticed that the State of Punjab against the order dated 19.05.2016 (Annexure P2) passed by the learned Tribunal (respondent No.12), filed Civil Appeal D No.33942 of 2016, titled "State of Punjab and others v. Amandeep Aggarwal and others" in Hon'ble the Supreme Court. It was submitted on behalf of the State of Punjab 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. It was submitted that without taking

note of such permissions, the learned Tribunal could not have issued a blanket ban on cutting of forest trees which, 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 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 could while permitting the State of Punjab in the said case to approach the learned Tribunal for vacation of the impugned order, stay part of the said order qua National Highway No.71 so that the ongoing project would not be adversely affected.

8. Hon"ble the Supreme Court, on the basis of the aforesaid submissions, passed an order on 28.10.2016. The operative part of the order reads as under:-

"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 blanket ban on felling of trees passed 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."

9. In the present petition, the petitioners seek quashing of the order dated 19.5.2016 (Annexure P-2) passed by the learned Tribunal (respondent No.12) with respect to the felling and cutting of trees at Military Stations Patiala and Sangrur so that the projects at the said Military Stations can be carried out effectively. It is to be noticed that the projects involve substantial amount of expenditure that is to be incurred and is stated to have been sanctioned. The numbers of trees to be felled or cut according to the chart given are 131 at Patiala and 86 at Sangrur.

10. In the facts and circumstances, it would be just and expedient that the

Military Authorities are allowed to carry on their projects at Patiala and Sangrur for which prayer has been made subject to grant of necessary approvals from the competent authorities for the felling and cutting of trees. Besides, in view of the order passed by Hon"ble the Supreme Court, a similar order is liable to be passed in the present case as well as there is considerable merit in the submissions that have been made and the blanket ban on felling of trees passed by the learned Tribunal is not to be allowed to adversely affect the ongoing works of the Military Stations at Patiala and Sangrur as these are defence projects.

11. In the circumstances it would be just and proper to suspend the impugned order for a period of four months from the receipt of copy of the order to enable the petitioners to execute the ongoing projects mentioned above so that the same are not affected by the impugned order. The petitioners, however, within the period of four months from receipt of copy of the order are liable to approach the learned Tribunal for further directions regarding the measures to be adopted for maintaining the green cover in respect of the trees that are to be cut. The learned Tribunal would be at liberty to pass any fresh order in respect of the projects that are already approved after consideration of materials that the petitioners may place on record. As in the order passed by the Hon"ble Supreme Court, no notice is being issued to the respondents while suspending a part of the impugned order dated 19.5.2016 (Annexure P-2) concerning the projects at Military Stations Patiala and Sangrur. This is being done only to avoid any delay in service of notice upon the respondents and the final order that may be passed. However, it is left open to the respondents herein and also the petitioners to raise all such contentions as may be open to them in law before the learned Tribunal and after the requisite information is received.

12. The writ petition is, accordingly, disposed of and the impugned order dated 19.5.2016 (Annexure P-2) passed by the learned Tribunal shall remain suspended for a period of four months from the receipt of copy of the order to enable the petitioners to execute the ongoing projects mentioned above so that the same are not affected by the impugned order and the petitioners are allowed to carry on their projects at Military Stations at Patiala and Sangrur for which prayer has been made subject to grant of necessary approvals from the competent authorities for the felling and cutting of trees. The petitioners shall, however, within the period of four months from receipt of copy of this order approach the learned Tribunal for further directions regarding the measures to be adopted for maintaining the green cover in respect of the trees that are to be cut. It is made clear that the learned Tribunal shall be at liberty to pass any fresh order qua the projects that are already approved upon on the consideration of materials that the petitioners may place on record.