

(2006) 03 KL CK 0059

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30611 of 2004

Animal Welfare Board of India

APPELLANT

Vs

Ombudsman

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Constitution of India, 1950 — Article 141, 21

Prevention of Cruelty to Animals Act, 1960 — Section 11(3), 38(1), 38(2), 9

Citation : AIR 2006 Ker 201 : (2006) 2 ILR (Ker) 233 : (2006) 3 JCR 310 :
(2006) 2 KLT 91

Hon'ble Judges : V.K. Bali, C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : Murali Purushothaman, P.M. Benzir and Deepu Lal Mohan, for the Appellant; K. Lakshmi Narayanan, Government Pleader and John Varghese, Asst. Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, C.J.—The Animal Welfare Board of India and a registered society by name "DAYA" (Society for the Prevention of Cruelty to Animals), the petitioners herein, it appears, are more interested in welfare and preservation of stray dogs, even though suffering from fatal diseases or even rabies and appear to have no concern for human beings who fall victims of bite of stray dogs in the entire length and breadth of Kerala State. Through the present petition filed, the petitioners thus crave indulgence of this Court to issue appropriate directions to preserve stray dogs even though they have become unwanted because of fatal and dangerous diseases with which they are afflicted. Inasmuch as, in the context of the relief as asked for it is essential to seek to set aside Exhibit P2 dated 25th August, 2004 passed by the Ombudsman, they seek this Court to do so.

2. The only question while seeking the reliefs as enumerated above that has been posed for answer of this Court is as to whether the Ombudsman could pass

orders directing the Corporations, the Municipalities and the Panchayats at all levels to take steps for the destruction of the stray dogs with a minimum of suffering on a war footing and save the inhabitants of their respective areas from the fatal health hazards caused by the stray dogs when a Division Bench of this Court in W.P.(C).Nos. 23543, 38843 and 40549 of 2003 directed otherwise by its order dated 10th March, 2004. Before we may answer the question posed for adjudication, it will be relevant to give brief facts of the case.

3. The Ombudsman based on an editorial in the Malayala Manorama dated 7.8.2004 under the caption "Under law who is more important, Man or Dog" and the letter of Dr. Vincent Panikulangara dated 12.8.2004 bringing to focus the predicament of the citizens who are inhabitants of either the Municipal Corporations, the Municipalities or the Panchayats initiated suo motu proceedings in O.P.No. 676 of 2004. It was mentioned by Dr. Vincent Panikulangara in his letter that west Cochin has become a heaven of stray dogs. On 3.3.2004 stray dogs bit Nashik, a 9 years old boy and Amal Deo, a 8 years old boy in Government Hospital, Mattancherry. In that area 56 persons were bitten by stray dogs during the period from 1st to 11th August, 2004. In the editorial dated 7.8.2004 as also various items of news on the 2nd, 4th, 10th and 11th of August, 2004 with photographs of children were published showing the menace caused by the stray dogs and how the citizens are suffering. Some stray dogs, it was stated by Dr. Vincent Panikulangara, were freely moving about in the State. The pitiable situation caused by stray dogs which is dangerous and a menace to the citizens assumed alarming proportions for the reason that the local bodies were disabled by the order of the State Government dated 2.8.2002 cancelling the notification dated 3.7.2002 empowering the local bodies to take action for destruction of stray dogs in terms of Section 11(3)(b) of the Prevention of Cruelty to Animals Act, hereinafter referred to as "Animals Act". In the wake of the situation as mentioned above, one N.Bhaskaran moved W.P. (Q.23543 of 2003 seeking a direction to the State Government to restore the notification dated 3.7.2002 empowering the local bodies to take immediate action for the destruction of stray dogs. The Court was shown The Animal Birth Control (Dogs) Rules and based on the provisions contained therein the Division Bench of this Court observed that the Rules be strictly observed in its letter and spirit. The Bench also observed that Rules have been framed for implementing the Animal Birth Control & Immunisation of Stray Dogs Scheme and they are satisfied that adequate provisions have been made therein to deal with the stray dogs, particularly those which are sick and dangerous to human beings. They also observed that provisions have been made for their elimination as well.

4. The legislature enacted Prevention of Cruelty to Animals Act, 1960. Sections 9(f), 11(3)(b) and 38(1)(2)(e-a) of the Act which are relevant for the purpose of deciding the present matter read as follows:-

Section 9(f): To take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to

do so, either instantaneously or after being rendered insensible to pain of suffering.

Section 11(3)(b): The destruction of stray dogs in lethal chambers or (by such other methods as may be prescribed).

Section 38(1): The Central Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the forgoing power, the Central Government may make rules providing for all or any of the following matters, namely:

Section 38(2)(e-a): The other methods of destruction of stray dogs referred to in Clause (b) of Sub-section (3) of Section 11.

5. It is u/s 38(1) of the Animals Act, the rule making power of the Government that Animal Birth Control (Dogs) Rules, 2001 came into being. Whereas it may be difficult to uphold the observation made by the Ombudsman in the impugned order Exhibit P2 that the subject matter of the "The Dog Rules" namely The Animal Birth Control (Dogs) Rules is not one of the matters enumerated in Sub-section (2), nor for that matter is this, one of the purposes of the Act, it is however clear that Rules made pursuant to the provisions contained in Section 38(1) of the Act 1960, could not override the provisions contained in Sections 9(f) and 11(3)(b) which in turn deals with destruction of unwanted animals, including stray dogs. The Parliament in its wisdom thought it expedient that effective steps be taken for destruction of stray dogs and as mentioned above, the Rules made u/s 38(2) could not take precedence over the provisions of Animals Act, 1960. "The Dog Rules" framed u/s 38(2) of the Animals Act could be permitted to operate without violating the provisions of Section 11(3)(b) of the Animals Act. In other words, the said Rules would apply to stray dogs and not to the dogs afflicted with fatal diseases of rabies and who had become dangerous. The Rules, it is too well settled, cannot travel beyond the Act and must thus operate within it subject to the provisions of the main Act.

6. The Division Bench judgment of this Court on which reliance has been placed by the counsel for the petitioners would reveal that the Honourable Judges seized of the matter did not consider the validity of the Dog Rules in the light of the provisions of the Animals Act, 1960. It, therefore, only took into consideration the Dog Rules and gave directions as mentioned above. The Division Bench judgment of the High Court is per incuriam having not taken into consideration the relevant provisions of the Act, 1960 which in turn provide for eliminating dangerous animals and stray dogs. The Division Bench judgment of this Court as pointed out by the learned Counsel would also not be binding as there was no debate and no decision thus rendered under the relevant provisions of the Animals Act. It cannot be a law laid down under Article 141 of the Constitution of India. The Honourable Supreme Court in *Mamleshwar Prasad and Another Vs.*

Kanhaiya Lal (Dead) through L. Rs., observed that where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it might not have the sway of binding precedents.

7. Going by simple logic or provisions of Act, 1960 under discussion, it is apparent that there has to be more concern with the life of human being than that of stray dogs. The right to live as enshrined under Article 21 is a fundamental right. It would take precedence over Dog Rules. It is rather strange that the petitioner, a registered Society for Prevention of Cruelty to Animals wants dogs inflicted with fatal disease or suffering from rabies to be preserved at the cost of invaluable human lives. Whereas, one may appreciate the anxiety of the petitioners to save animals, its total abdication to the interest of human lives and preservation thereof thus needs to be condemned. Finding no merit in this Writ Petition, we dismiss the same leaving, however, the parties to bear their own costs.