

(1997) 03 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Petition No's. 2750 of 1986, 319, 368, 369, 370, 371, 437, 438, 819, 1197, 1198, 1551, 1854, 2140, 2141, 2962 and 3586 of 1987, 2342 of 1988 and 207 of 1989

G.R. Simon

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1997 Delhi 301 : (1997) 41 DRJ 604 : (1997) 2 ILR Delhi 87 : (1997) 117 PLR 66 : (1997) 4 RCR(Civil) 689

Hon'ble Judges : Manmohan Sarin, J;M. Jagannadha Rao, J;A.D. Singh, J

Bench : Full Bench

Advocate : D.D. Thakur, K.K. Luthra, Mukul Rohatagi, N.N. Bhatt, R.M. Tufail, A.K. Dutt, Vijay Kishan, Sumbul Rizvi, S.M. Aquil, S.K. Luthra, S.B. Sharma, Madan Lokur, Meera Bhatia, Nandini Ramachandran, Virender Goswami and Raj Panjwani, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) These are batch of writ petitions filed by the manufacturers, wholesalers and dealers engaged in retail trade of tanned, cured and finished skins of animals. Petitioners are also engaged in retail trade of articles made of skin, hereinafter referred to as the "animal articles".

(2) The petitioners in the above writ petitions had challenged the introduction of provisions of Chapter Va in the Wild Life (Protection) Act, 1972 by Wild Life (Protection) Amendment Act 1986, together with notification issued there under as being violative of Article 19(1)(g) read with Articles 300 and 300A of the Constitution of India.

(3) We are taking up C.W.P. No. 2750/86 and C.W.P. No. 3586/87 as the lead cases.

(4) In writ petition No.2750/86, petitioner Nos. 1 to 13 claim themselves to be the dealers, while petitioner Nos. 14 to 25 claim themselves to be manufacturers and petitioner Nos. 26 to 28 as wholesalers in tanned, cured and finished skins. The petitioners claim to have applied for licences and were granted licences in various categories and claim to have carried on their business as valid license holders. The petitioners submit that apart from those who hunt and trap the animals and do the curing and tanning, there are wholesale dealers of skins including snake skins, manufacturers of these skins into articles and retail dealers of made up articles. The petitioners submit that animal "articles" in their trade are in two categories namely furs, which consist of coats, caps, gloves, blankets, stoles, skins and snake skin items such as bags, shoes, wallets, brief cases, Belts etc.

(5) The schedule to the act was amended in 1977 which included snake skin and the authorities stopped permission for export of snake skin. The grievance of the petitioners is with the passing of Wild Life (Protection) Amendment Act of 1986. The Government of India acting under Section. 61 of the Wild Life Act of 1972 issued a notification No.1-15/86 (WL-1)-50-859-E dated 24-11-1986, whereby almost all the items excepting a few as contained in schedules 111,1V and V have been transferred to either schedule I or part II of schedule II of the Act. The consequence was that every "animal article" in which the petitioners dealt was brought within purview of Chapter Va introduced by the Amendment. As a consequence of which within two months from 25-11-1986, stocks of petitioners would be rendered unsaleable and their trade brought to a grinding halt. The Government of India vide another notification bearing No.1-15/86(WL-I)-50848-B dated 26-11-1986 granted exemption from the provisions of 49-B (1) and (2) of the impugned Act in favor of Bharat Leather Corporation and the State Trading Corporation. The said corporations were enabled by the notification to export animal skins even after the expiry of two months of the amending Act coming into force.

(6) The petitioners' case is that under the 1972 Act animals mentioned in schedule IV could be hunted and killed in accordance with the provisions of the licences issued for the said purpose. A large number of animals were lawfully killed by holders of the licences and the killing resulted in continued lawful availability of the animals' skins as long as for a period of 13 years.

(7) The petitioners had challenged the Amendment Act of 1986 inter alia on the following grounds:-

(I) While generally denying that preservation of Wild Life was in public interest, it was contended by petitioners that there is no nexus between the object of preservation of animal life and banning and destroying the trade/business in the animal skins and articles made there from. The statement in the Statement of Objects and Reasons that traders were not inclined to part with their stocks of skins so as to continue with their clandestine and illegal activities was denied. The petitioners claimed that the prices offered by the Bharat Leather Corporation

for snake skin were ridiculously low and hence the assertion of petitioners" unwillingness to sell the stocks was denied.

(II)The amendment was a colourable exercise of power, and wherein the Parliament had been misled by the Statement of Minister. The Parliament was made to believe that the ban on trade/business was to apply to only specified animals and not to all the animals. However, almost all the animals from schedule Iii and schedule Iv were deleted and brought within the purview of schedule I and part Ii of schedule Ii leaving rabbits, rats domestic cats etc. in Schedule Iii and I V.

(III)The amendment to the Act by which the holding of stocks on the expiry of the stipulated period except those retained for personal use became unlawful was assailed as confiscatory and as deprivation of property, without the authority of law. While questioning the proposition that protection of Wild Life was in general interest of public, petitioners contended that certain animals like Black Bears, Jackal and Otter were detrimental to cattle and fish etc. Similarly snakes were taken as endangering and taking a toll of human life.

(IV)The impugned Act rendered jobless the petitioners who carried on their legitimate trade, business and occupation, without any compensation. The petitioners who had lawfully acquired skin and skin articles of animals already killed and had invested huge amounts of money, were deprived of their sources of livelihood. It resulted in extinction of fundamental rights of the petitioner under Article 19(1)(g). The impugned Act was not restrictive as contemplated under Article 19(6) but completely destructive of Article 19(g). The impugned Act was not in interest of general public as the trade and business in animal skins and animal articles could not be treated as relevant in preventing the illegal trapping, killing and hunting of animals. The protection of large number of wild animals who had no utility for humans could not be said to be in public interest. Apart from violating petitioners" fundamental rights under Article 19(1)(g), it was an arbitrary piece of legislation inasmuch as it had the effect of confiscation and appropriation of property without reasonable prices being paid. A large number of petitioners and other persons in the trade arc deprived of their livelihood without any alternative arrangement or rehabilitation. The Act created a monopoly in favor of the State Trading Corporation and Bharat Leather Corporation to the exclusion of the petitioners.

(8) Counter had been duly filed in these writ petitions. The stand of the respondents may be briefly summarized. The Amendment Act of 1986 was constitutionally invalid. It was brought about for the preservation of Wild Life. It was contended that the amendment in the schedules of Wild Life (Protection) Act 1972 was not the first one but was the fourth one, preceded by three amendments made on 3-9-1977, 5-10-1977 and 9-9- 1980, amending the Schedule to the Act. The earlier amendments were not assailed by the petitioners.

(9) The protection of Wild Life is included in the directive principles of the State

policy under the 42nd Constitutional Amendment Act, 1976 under Clause G of Article 51A of the Constitution. It is the fundamental duty of every citizen to protect and improve the natural environment including various lakes, rivers and Wild Life and to have compassion for living creatures. The contention of the petitioners that protection and preservation of Wild Life was not in public interest was Therefore devoid of all merit. Wild Life forms part of our cultural heritage in the same manner as other archaeological monuments painting, literature etc. Each and every animal plays a role in maintaining the ecological balance and, Therefore, the contention that certain animals have no role to play or are detrimental to human life is completely misconceived. Taking the case of even jackals, which are referred to by the petitioners as animals of no utility, these are natural scavengers who feed on offal and dead animals, thereby keeping the environment clean. Snakes which have been described by some petitioners as harmful and dangerous to human life feed on rats. The mortality rate in the country due to snake bites is less than 0.0005%, which is very low compared to the death and fatalities caused by other diseases and animal bites. Snakes are the natural killers of rats which cause loss of nearly 33 million tonnes of stored cereals, apart from dreaded diseases such as plague. Russel Wipers and Rat snakes are known to have fascination of rats for food. The above would show that even the most maligned animals which appear apparently to be of no utility, have a role to play in retaining ecological balance. Besides, it is only when human beings tread their natural habitat that animals react. The Wild Life (Protection) Act has provisions to deal with and eliminate those animals which become harmful to human lives or properties. Thus, the argument that certain wild animals are harmful to life and serve no useful purpose is misconceived. It is to be recognized that Wild Life is an asset and heritage to be preserved for future generations.

(10) The changes in the Schedule to the Act, made by the amendments, were not only confined to new species or vermins, but it included animals that were removed from one Schedule to the other Schedule, depending upon the existing status of the species of wild life. The Notification u/s 61(1), pursuant to the Amending Act dated 24.11.1986, had been made on the basis of recommendations of the specialists in the field who considered the existent state of the animals. -The changes were based on the recommendations of the Indian Board for Wild Life, comprising eminent environmentalists, conservationists, scientists and important public representatives. As a result of the change in the Schedule the petitioners would not be eligible for dealing in wild life articles that had been shifted from the Schedule IV to Part-1 and Part-2 of Schedule I and II. Undoubtedly, the preservation of wild life has a strong nexus and is related to trade in wild life articles. Despite measures, such as creation of sanctuaries and animal parks, where no hunting was permitted, and the amendments in the Schedule of Wild Life (Protection) Act, there has been a steady decline and depredation and in some cases extinction of numerous species of wild animals for exploitation in trade. This necessitated inclusion of endangered species of

animals in Schedule I and Part-2 of Schedule II. Ban on hunting and trappings of wild animals had also been imposed. Despite these measures, the illegal poaching of wild animals continued for the purposes of trade, depleting the number of animals in several cases, endangering the very existence of the wild life species. The depletion in numbers of endangered species has a strong nexus with large scale poaching of wild life for the purposes of trade. The wild animals and snakes required for fur and skin trade are not killed for their meal or for any other purpose but for their furs and skins being used by the fur and skin traders.

(11) In these circumstances, it was essential to bring in the amendment in the Schedule to save the endangered species from extinction as well as to protect others whose numbers were being depleted by callous exploitation in trade. Some of the petitioners had themselves been booked for offences under the Wild Life (Protection) Act, especially in the case of snakes and other animal articles brought in Schedule I and Part-2 of Schedule II, it was necessary to ensure liquidation of the present stock and to stop further accumulation so as to discourage and prevent illegal poaching of wild animals.

(12) The Amending Act was not a colorable exercise of power. The power to make necessary changes in the Schedule of Wild Life (Protection) Act vests in the Government u/s 61 of the Act.

(13) The submission that Chapter V-A of the Act provides for acquisition and confiscation of properly is not correct in as much as for the preservation of certain species in Schedules I & II after the prescribed period in the Act makes the possession and retention of the said animal articles an offence. The question of making provision in the Act for purchase of stocks from the traders on market rate or for payment of compensation does not arise because the Amending Act does not provide for the acquisition of the stocks or any other properly held by them. It only provides for time period within which persons holding stock of such articles have to dispose of the said stocks and upon the expiry of the stipulated period it becomes an offence u/s 49-C(7) of the Wild Life (Protection) Amendment Act to retain the Wild Life articles under Schedules I and II, except those for personal bonafide use.

(14) Vide a separate judgment prepared by one of us (Anil Dev Singh, J.) and delivered today by this Bench in C.W.1016/92 with connected writ petitions titled M/s. Ivory Traders and Manufacturers Association and Others Vs. Union of India Others, the challenge to the amendment Act 44 of 1991 - whereby the trade in imported Ivory and articles made there from - had been dismissed and the constitutional validity of the said Act and Provisions of the Wild Life Protection Act of 1972 have been upheld. The said judgment also noticed and considered the provisions introduced by the amendment Act of 1986) vide Chapter Va as well as Wild Life (Protection) Amendment Act 1991. The said judgment has traced the legislative history and examined the amendments introduced in the Wild Life Act from time to time. The pleas and grounds on which the amendment of 1986 introducing Chapter Va as well as the amendments brought about by the

amendment Act of 1991 were challenged have been considered in the said judgment, though in relation to Imported Ivory at great length. As the grounds and pleas taken for challenging the provisions of the Act in the present petitions are similar, we adopt the reasoning given by us in Civil Writ Petition 1016/92, apart from the reasoning given in paragraphs 91011 above.

(15) The present batch of writ petitions, as stated earlier, are filed by those dealing with tanned, cured and finished skins. It would, however, be necessary to advert to certain special features of these batch of writ petitions and for this purpose, we would be referring to Civil Writ Petition No.2750 of 1986 and Civil Writ Petition No-3586 of 1987.

(16) Apart from challenging the constitutional validity of 1986 amendment and provisions of the Wild Life Protection Act, learned counsel for the petitioners submitted that the petitioners should be permitted to dispose of their existing stocks which have been duly declared and identified by the respondents. Learned counsel for the petitioners submitted that the petitioners should either be permitted to sell their stocks to avoid the extreme hardship or in the alternative the State should acquire them at reasonable prices. In this connection, it was submitted that petitioners had always been ready and willing to dispose of the said stocks. In order to determine whether the petitioners have had a reasonable opportunity and time for disposal of their stocks, it would be worthwhile to recapitulate and trace the proceedings in the writ petition:

(17) Civil Writ Petition No.2750 of 1987 was filed on 18-12-1986 when rule was issued. The amendment Act had received the Presidential assent on 23-5-1986 and notification in the Gazette was published on 25-11- 1986. This Court vide interim order made on 23-1-1987 permitted the petitioners to make the declaration of stocks. The petitioners were further authorized to manufacture, sell or offer for sale or transfer to any authorized person the stocks held by them. The provisions of the impugned Act were stayed to that extent for a period of 3 months. This interim order was extended from time to time. It also applied to certain parties who were permitted to join the petitioners. The interim directions were also given to the Government to consider renewal of licences without prejudice to the respective rights and contentions of the parties. The stay was extended from time to time and Finally vide order dated 18-1-1986, interim orders were directed to be continued till disposal of the writ petition. Further, vide order dated 9-2-1993, Division Bench of this Court vacated the stay order dated 23-1- 1987, observing that the stay order passed in respect of Ivory under the same Act had already been vacated. A SLP was filed against the said order and the Apex Court vide order dated 26-2-1993 dismissed the Special Leave Petition, it was, however, directed that no fresh prosecution would be launched against petitioners for possession of existing stocks till the writ petitions were finally disposed of. During the course of these proceedings, a Committee comprising representatives of wholesalers, retailer dealers and manufacturers as well as representatives of two Corporations and independent

person was constituted to assess the reasonable prices of stocks held by the petitioners. The Committee was appointed by the Government on 23-7-1987. After deliberations, the Committee submitted its report on 18-1-1988 stating that it was not possible to ascertain the reasonable prices of the stocks held by the petitioners. This Court observed that no useful purpose would be served by making further attempts to explore the possibility of ascertaining and fixing the reasonable prices based on the prices of Bharat Leather Corporation, instead it expedited the hearing of the writ petitions. In the meanwhile, the prosecution of the petitioners were also stayed.

(18) The grievance of the petitioners had been that Bharat Leather Corporation was offering absurdly low prices and far less the prices at which it was selling the skins to other fabricators. The petitioners in writ petition No.3586 of 1987 made a very fervent plea for being permitted to either dispose of their remaining existing stocks or the State take over the same on reasonable prices. It is claimed that Bharat Leather Corporation offered Rs.6.00 , Rs.5.00 and Rs.3.50p.- per skin for purchase from the petitioners as compared to their own selling price of Rs.20.00 and Rs.30.00 to the manufacturers from their stocks.

(19) As per the petitioners their total stocks declared of whip snake skins as on 23.2.1987 was 6,83,270, out of which they sold 90,585 after the stay granted by the Delhi High Court. In addition, 2,95,000 skins were exported pursuant to the permission granted vide orders of the High Court of Karnataka and they were left with 2,97,685 snake skins. After taking into account the skins of other animals, such as Lizards, crocodile, wild cat, tiger, leopard, etc. their total stock was 3,87,278. The petitioners urged that these snake skins are kept in bark tanned state in semi processed form, requiring further processing as per specifications. The processing in the tannery would be at the rate of 8000 skins per month. The petitioners also claimed that since there was hardly any domestic demand, they should be permitted to export their stocks by granting a one-time opportunity to them to export the skins.

(20) Learned counsel for the respondents opposed grant of any such opportunity, submitting that more than adequate opportunity has already been availed by the petitioners. In this connection learned counsel for the respondents submitted that past experience had clearly established that such opportunities had been misused to accumulate stocks by illegal poaching and clandestine collections. The accumulated stock rose from the estimated figure of 5,00,000 snake skins to 50,00,000 snake skins in 1978. Large scale seizure of skins by Customs Authorities that were sought to be smuggled, running into approximately 27,00,000 were deleted during the years 1979 to 1983. The same was true of the fur trade. Ban was imposed on export of fur articles in 1979. Exemption was given to the fur traders of Jammu and Kashmir for export on receipt of numerous representations from traders. The Central Government permitted the traders to export and liquidate the stocks held by them. However, by the year 1983-84 the J & K traders had exported 60,259 articles while the request for quota was only

for 45,450. By this token their stocks should have been exhausted but surprisingly the stock position as on 1.4.1984 comprised 4,41,361 skins and 64,171 articles, thereby registering an increase in the stock. The respondents, Therefore, contended that the petitioners wanted to cling to their stocks to accumulate more stocks and to be used as a cover for smuggling of articles.

(21) As regards the allegation of the petitioners that Bharat Leather Corporation was not offering reasonable prices, it is stated that the petitioners were free to sell the said stocks during the period provided in the Statute as well as the period during which the operations of the provisions of the Act remained stayed to other authorised dealers.

(22) It would be seen that from December 1986 up till 9-2-1993, the petitioners had all the opportunity for selling and disposing of their stocks to authorized persons. Not only this, but from perusal of the reports of the Committee, it would be seen that one of the issues was whether it should attempt to fix the prices of snake skin only or of all the products and all the items of the stocks. The Bharat Leather Corporation and Ihc Stale Trading Corporation in view of the provisions of 49 (b) (1) and (2) wanted to confine it to purchases of stocks which could be exported and only for snake skin. The efforts of the Committee proved futile as noticed above, the petitioners had desired that the prices be fixed on the basis of international sale price of Bharat Leather Corporation while the petitioners themselves were unable to furnish requisite details of their cost of acquisition, purchase price and other relevant details. The respondent contended that there had been large scale poaching of wild life. Wild animals and snakes involved in fur and snake skin trade are not killed only for their meat or any other purpose but only for their skins, used by Fur and Snake skin traders. It had led to extinction of many species wild life all over the world. The petitioners had been provided under the Act a period of two months to dispose of their stocks and as noticed above in fact as a result of petitions filed and orders passed, the petitioners have enjoyed the opportunity to sell for a period of nearly six years till February, 1993. Accordingly, the petitioners cannot have any legitimate grievance of denial of opportunity in this regard. We are of the considered view that neither the State nor the Bharat Leather Corporation and the State Trading Corporation are under any legal obligation to buy the stocks of the petitioners in acceptance of the one time sale proposition advanced by the petitioners. The petitioners are also not entitled to any further time for disposal of stocks. The stocks of the petitioners would, Therefore, be liable to be dealt with in accordance with the provisions of the Wild Life (Protection) Act, 1972.

(23) We hold that the provisions of Chapter V-A, introduced by the Amending Act of 1986 to the Wild Life Act of 1972 are valid and intra vires.

(24) For the aforesaid reasons the writ petitions are dismissed.