
(2009) 10 P&H CK 0093
In the Punjab And Haryana At Chandigarh

Lok Pratham and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133
Penal Code, 1860 (IPC) — Section 289

Citation : (2009) 156 PLR 728 : (2009) 4 RCR(Civil) 852 : (2009) 4 RCR(Criminal) 739

Hon'ble Judges : T.S. Thakur, C.J.; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Judgement

T.S. Thakur, C.J.—Agriculture accounts for a major part of the economy of this Country. It is in turn dependent upon the Country"s livestock as future growth and development of agriculture sector draws its sustenance from livestock which generates employment, provides power, manure and also a major source of income for the farmers. Livestock not only provides food and nutrition security but also generates income for landless and small land holders who constitute a major part of the population of the Country.

2. The present writ petition, filed in public interest, brings to light complete lack of care towards livestock generally, the cows in particular. This petition also highlight problems of stray animals and call for the State to take strict action including initiation of prosecution against the persons who dump their animals which, in turn, create traffic hazards and nuisance.

3. To understand and find solution to the problem, facts can be gathered from the writ petition, counter-affidavits filed, various orders passed by this Court from time to time and the five status reports submitted by the Court Commissioner.

4. Lok Pratham, a registered Society, Gau Sewa Samiti and five other persons filed this writ petition, in public interest, with a prayer that Haryana State Government through its various functionaries which include Department of Urban

Local Bodies, having control over the Municipal Corporations, Municipal Councils, Department of Finance, Agriculture and Police, be directed to enforce the provisions of the Haryana Municipal (Registration and Proper Control of Stray Animals) Bye laws 2006 (for short "2006 Bye laws") so that numerous road accidents are avoided. The writ petition seeks issuance of mandamus to the authorities to book guilty persons who leave their cattle on the road without feeding them. A further direction has been sought that a branding code or identification mark be assigned to all animals by use of micro chip. Furthermore, financial aid be provided to Gaushalas so that the stray animals, especially the Cows, are fed, taken care and rehabilitated in Gaushalas as their adoptive homes. In the writ petition, petitioners have urged that there is an inaction on the part of the respondents as the Government Machinery has failed to enforce the legal provisions as contained in Haryana Municipal Act, 1973 (for short "1973 Act") and other relevant laws which resulted into thousands of stray Cows on the roads, colonies and dying unnatural deaths by consuming polythene, garbage and harmful substances etcetera. It has also been averred in the writ petition that in Indian mythology right from Jain Agams and Rigveda, Cow was considered holy. Petitioners further stated that on 19.11.1947, Government of India had appointed a Cattle Preservation and Development Committee which recommended establishment of "Gosadans" where uneconomic cattle could be kept and allowed to die natural death. Petitioners have urged that a new scientific device of branding animals has been conceptualized and branding code by means of Tiny Microchip is being used in Delhi. Describing Cattle's physiology, benefits of insertion of microchip have been highlighted, so that in case owner of the animal desert the animal and make it go stray, he can be adequately punished. The petitioners have relied upon Article 48 of the Constitution, a directive principle to the State to say every endeavour to organize agriculture and animal husbandry on modern and scientific lines is imperative. Various provisions of Cattle Trespass Act, 1971 (for short "1971 Act") and Prevention of Cruelty to Animal Act, 1960 (for short "1960 Act") have been detailed to say that lack of enforcement of the provisions of the Acts have aggravated the problem. Petitioners also divulged information that there are approximately 225 Gaushalas run by private Societies and public spirited persons in the State of Haryana. A list of 163 Gaushalas has been placed on record as Annexure P3. Paucity of funds, unskilled workers and traditional outlook to keep pace with new scientific and technological development in Dairy Science are stated to be the reasons for the malfunctioning of Gaushalas. Petitioners have also given various suggestions which according to them would go to the root of solving the problem. One of the suggestion is that in each district one Gaushala may be developed as "Krishi-Govigyan Anusandhan Kendra" with demonstration units to show the making of Nadep Compost, Vermicompost, bio-pesticides and bio-energy. It also canvass for establishment of laboratories at the above said Kendras so that health of livestock is improved. The petitioners also suggest that like Government of Uttar Pradesh, a fraction of Krishi Mandi Tax may be diverted for upkeep of these Kendras.

5. On behalf of Director General of Police, Haryana, and the Superintendent of Police, Hisar, a counter affidavit of Superintendent of Police, Hisar, has been filed which accept that the police is duty bound to implement all relevant legal provisions such as 1960 Act, 1971 Act and Section 289 IPC and Section 133 Cr.P.C. This counter-affidavit also acknowledge the efforts made by the petitioner-Society for 2000 cattle.

6. The Estate Officer, Hisar, denied that any cause of action has arisen to the Petitioners as the cattle stray or otherwise are being taken proper care in the State of Haryana.

7. On behalf of Director, Urban Local Bodies, Haryana, reply has been filed by the Executive Officer, Municipal Council, Hisar. In the reply, it was stated that public notices have been published in the newspapers and owners of the cattle were directed to get their cattle registered.

8. The State of Haryana has stated that there are 244 Gaushalas in the State of Haryana, out of which 217 have been registered and the Gaushalas are having population of 1.5 lacs cattle in the State of Haryana. The state has further taken a stand that Animal Welfare Board of India has provided a sum of Rs. 1109.34 lacs as grant-in-aid during 2001-02 to 2007-08 for disbursal to the registered Gaushalas in the State.

9. On 31.7.2008, this Court had appointed Mr. B.R. Gupta as Court Commissioner to inspect and look after the affairs of Gaushalas in the State of Haryana and also to ensure that funds made available by the Government are distributed amongst the Gaushalas of the State. This Court gave further directions that an amount of Rs. 15/- per Cow per day as part of immediate relief from August 2008 be released to the Gaushalas. Thereafter, the State was made duty bound to release the amount for a period of successive six months in advance. This order whereby Rs. 15/- was ordered to be paid to every Gaushala per Cow per day was assailed by the State of Haryana in a Special Leave Petition. SLP filed by the State of Haryana was disposed of by the Hon'ble Apex Court on 16.2.2009 and the following order was passed:

Delay condoned.

Heard learned Counsel for the parties.

Petitioner-State of Haryana is challenging the order passed by the Division Bench of the High Court of Punjab and Haryana. By the impugned judgment the State was directed to release Rs. 15/- per Cow who are being maintained in the "goshala" in the State. The Petitioner-State has moved an application for recalling/reviewing the said order, but the same is pending consideration before the High Court. It is alleged that during the pendency of that application, the order is sought to be enforced. In view of the same we request the High Court to dispose of the recall/review application within a period of three months.

Learned counsel for the respondent submitted that he will not move any

contempt petition and the same is recorded.

The SLP is disposed of accordingly.

10. From the date of receipt of order, within three months the writ petition was ordered to be disposed of. Mr. Randhir Singh, counsel for the State, requested that the matter be taken up immediately after vacations. During the hearing of petition, it also surfaced that State Advisory Board for Animal Welfare appointed in terms of notification dated 26.7.2002, could not co-ordinate the activities of Gaushalas and Pinjrapoles on matters relating to the development of cattle welfare, as due to non-extension of term it became dysfunctional.

11. This Court passed an order directing the State Government to constitute Board in compliance with the directions of the Hon''ble Supreme Court in its order dated 6.8.2008 passed in Writ Petition (Civil) No. 440 of 2000 titled "Geeta Sheshmani v. Union of India and Ors.". The Hon''ble Supreme Court had directed all the State Governments to constitute State Animal Welfare Board. This Court also called upon the newly constituted Board to consider whether any financial aid is to be extended to the Gaushalas. On 31.3.2009, Mr. Randhir Singh, counsel for the State, has placed on record a copy of proceedings of the meeting of Animal Welfare Board held on 20.3.2009. Various functions of the State Animal Welfare Board have been defined in the notification. One of the functions assigned to the State Animal Welfare Board is to organize and co-ordinate the activities of Gaushalas and Pinjrapoles on matters relating to the development of cattle wealth, establishment and development of Gaushala on proper lines. This Board is required to meet quarterly under the Chairmanship of the Secretary to Government of Haryana, Animal Husbandry and Dairying Department, who has been appointed as Chairman of the Board.

12. In the first meeting, so held, the Board noticed that the Societies for Prevention of Cruelty to the Animals (SPCAs) have also been formed in all the districts of the State and the directions of the Hon''ble Supreme court have been complied with. The Board also noticed that there is a lot of influx of animals especially cowherds from the neighbouring States like Rajasthan which poses a lot of threat to the healthy livestock of the State including possible spread of Food and Mouth Diseases. The Board also noticed that to help needy Gaushalas financially on continuous and sustainable basis, it would be appropriate that public involvement through campaign mode is solicited.

13. In the last and fifth Status Report submitted by the Court Commissioner, it has been stated that Court Commissioner had inspected 183 Gaushalas and out of these 41 Gaushalas (list has been attached with the Status Report), are in urgent need of financial assistance. In the Status Report, the Court Commissioner had qualified this observation with a rider that this may not be construed to conclude that other Gaushalas are not in the need of financial help.

14. The State of Haryana has informed this Court that there is total livestock population of 15.63 lacs of Cows and 60.00 lacs for Buffaloes in the State of

Haryana, in addition to other domestic livestock which include Sheep, Goat, Camel etc. Out of above said population of livestock, in total 1,71,529 Cow species are kept in 252 Gaushalas which are independent bodies and are manned by various religious Socio Organizations. To look after entire livestock of the State, there are 2751 Veterinary Institutions (Dispensaries and Hospitals) for 6759 villages having an average one Veterinary Institution for almost every three villages in the State with a total of 4189 numbers of Technical Staff (Doctors and Para Medical Staff) employed along with 6301 members of the supporting staff.

15. Gaushala Development Officer has further stated that the total planned budget of the Animal Husbandry Department of the State, was Rs. 22.00 Crores for the year 2007-08. This amount is spent to take care of primary object, livestock development, provide health cover, breeding and extension services to the farmers at the nearest possible place, at their door step. After providing health cover to the livestock throughout the State necessary funds are not available with the State to provide feed and fodder to the Cows housed in the Gaushalas. Therefore, an inability has been expressed to comply with the order dated 31.7.2008 wherein State has been directed to provide Rs. 15/- per Cow daily. It has been stated that compliance of the order shall entail the State with additional burden of Rs. 90.00 Crores per year taking into consideration present number of cattle in the Gaushalas in the State. It has been urged that the State is not in a position to cope up with this extra financial burden on the State Exchequer. It has been stated that the State has been providing Rs. 5/- per day under supplementary nutrition programme for pregnant women, nourishing mothers and adolescent girls. Under the ICDS Programme, allowance of Rs. 2/- per child per day has been provided to the child upto the age of six years. Therefore providing Rs. 15/- per Cow per day will not be justifiable.

16. We have heard counsel for the parties.

17. We find merit in the contentions advanced by counsel for the State that it may not be Viable and feasible for the State to incur Rs. 15/- per cattle per day in terms of order dated 31.7.2008. Therefore, that part of the order shall remain in abeyance till the ground realities change and the State has the necessary economic capacity to lend financial support for the care of the Cows in the Gaushalas. We say so because the Hon'ble Apex Court, in Secretary to Government of Madras and another Vs. P.R. Sriramulu and another, , has observed as under:

15. As pointed out earlier with reference to the decisions of this Court, the State enjoys the widest latitude where measure of economic regulations are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria, adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue. It is settled law that in view of the inherent complexity of the fiscal adjustments, the courts give a large discretion to. the legislature in the matter of its preferences of

economic and social policies and effectuate the chosen system in all possible and reasonable ways.

18. Relying upon Narmada Bachao Andolan Vs. Union of India and Others, , the Hon"ble Apex Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, , reiterated the maxim "It is not for the Courts to consider the relative merits of different economic policies and consider whether a wiser or better one can be evolved". Therefore, we grant liberty to the petitioners to file representation to the State Government detailing needs to provide necessary financial grant-in-aid in favour of the Gaushalas. A Division Bench of this Court in Jaswant Singh v. State of Haryana 2007(5) RCR 814 said "What is the public purpose is also the satisfaction of the State as it is its duty to undertake development works for the benefit of the society. This is the reason why public purpose constantly changes with the needs of the State and the society and like time never remains static." Therefore, what amount is to be provided and when the same is to be disbursed is the sole prerogative of the State. Representation so filed by the petitioners shall be decided by the State within four months from the receipt of the copy of the orders. Needless to say, petitioners will be at liberty to take recourse to legal remedy, available to him, under law against the orders passed on the representation so submitted.

19. We cannot loose sight of the fact that 70% of livestock wealth in India is owned by 67% of small and marginal farmers who are land less. A survey carried for Indian Agro Industry reveal that 60% of livestock farming labour is provided by women. The survey also state that "Indian livestock is reared in close human proximity where they form component of the life system of the people. Cows, buffaloes, bullocks, mule and donkeys are not just utility animals but also companions at work for the toiling poor who rear them in their own dwelling". The survey also states that the Government has planned to create a sound Natural Resource Management with co-ordination to enhance synergy between the activities of the livestock production and Sustainable Land Use. Still Cows which are considered as a sacred and holy animals are often found as stray animals. The hapless are in immediate need of food, shelter and medical facilities. All the same, resources of the State Government permit the requisite expenses on maintenance, the present writ petition can be disposed of with the following directions:

I) The State Animal Advisory Board constituted under the directions of the Hon"ble Supreme Court, Animal Welfare Organization, Societies formed under Rule 3 of the Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001 and referred as "SPCAs" shall co-ordinate and act in harmony and hold their meetings periodically to provide necessary care, medical aid, food and shelter to the animals so that they are saved from neglect, and both Animal Welfare Organization and Societies become effective for achieving the object for which they have been constituted; The State Animal Advisory Board may also take up

with the respective State Governments the need for providing financial support to the Gaushalas in the States, specially those that are in urgent need for such support.

II) Local Authorities which include Municipal Board, Municipal Committees, State Welfare Boards, District Boards or any other local Welfare Organization authorized by law for the control of administration or any matter relating to any animal within a specified local area shall devise and take innovative steps to involve members of the community by propagating and promoting love for animals including the Cow. School Children, Charitable Societies and Non-Government Organizations can be involved in this exercise.

III) The Department of Animal Husbandry shall ensure that Veterinary Doctors and other Veterinary para medical staff posted in the Institutions managed by the State Animal Husbandry Department on and off visit Gaushalas to provide medical consultation, treatment and care;

IV) The State Animal Advisory Board, and Societies constituted under 2001 Rules shall make every endeavour to educate public at large for preventing unnecessary pain and suffering to animals and shall inculcate compassion for animals;

V) Any owner of the animal who deserts the animal and fails to provide sufficient food, drink or shelter is liable to be prosecuted u/s 11 of 1960 Act. Section 11 of 1960 Act envisage various acts of cruelty and make them punishable. The State Government shall actively pursue prosecution of the guilty so that provisions of laws are adhered to;

VI) The Prevention of Cruelty to Animal Act was enacted in 1960 and thereafter was amended in the year 1982. Section 11 provide punishment in case of first offence with fine which shall not be less than Rs. 10/- but which may extend to Rs. 50/- and in case of second or subsequent offence committed within three years of the previous offence to a fine of which shall not be less than Rs. 25/- but may extend to Rs. 100/- or with imprisonment for a term which may extend to three months or with both. We are of the view that with the prevailing inflation, the amount of fine prescribed has outlived its purpose to cause, effective deterrence. Therefore, the penalty to be imposed is required to be enhanced. Thus, we request the Law Commission to take into consideration amendment of Section II of the Act and provide punishment which may be adequate and effective in the changing scenario. A copy of this order be forwarded to the Commissioner for that purpose.