
(2015) 07 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 6176 of 2014

Mahaveer Bishnoi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Prevention of Cruelty to Animals Act, 1960 — Section 11, 2, 4, 9

Citation : (2015) 07 RAJ CK 0033

Hon'ble Judges : Govind Mathur, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : Deepak Bishnoi and G.R. Punia, Senior Advocate assisted by N.R. Choudhary, for the Appellant; S.S. Ladrecha, Additional Advocate General, Advocates for the Respondent

Judgement

Govind Mathur, J.—The President, Legal Cell of "Vishnoi Mahasabha Van Evam Vanya Jeev Raksha Samiti" has preferred this petition for writ with a prayer to restrain the respondents from organising "Tonga Race" from village Mundiad to Kharnal and from Kharnal to Nagaur on the occasion of "Ganeshji Ka Mela" and "Veer Tejaji Ka Mela". As per the petitioner in light of the provisions of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as "the Act of 1960") the race so organised is a cruelty towards the animals, hence deserves to be stopped.

2. The factual background giving rise to this public interest litigation is that every year on the 9th Shukla day of the month of Bhadrapad the Gram Panchayat, Mundiad organises a fair known as "Ganesh Mela" and on the next day to that Gram Panchayat, Kharnal organises a fair in memory of folk deity "Veer Tejaji". On these two days the concerned Gram Panchayats with the cooperation of Municipal Council, Nagaur holds "Tonga Race". The "Tonga Race" that takes place on 9th Shukla day of Bhadrapad covers a distance of 17 kms. from village Mundiad to Kharnal and the race on the next day passes through a distance of 19 kms. between village Kharnal and the town of Nagaur. The distance of 19 kms.

between Kharnal and Nagaur is part of National Highway 65. As per the petitioner the "Tonga Race" on both the days happens in presence of thousands of persons and the participating Tonga Riders (Coachwans) with an anxiety to win the race commit cruelty with the animal pulling tonga. It is stated that the horses pulling tonga run on hard surface and that is quite difficult being highly stressful. It is also stated that the Coachwan use to beat animal for movement with higher speed. To substantiate the statement made several photographs are also placed on record showing that beside the Coachwan 3-4 other persons are also riding on the Tongas and Coachwan is also giving hunter blows to the horse running on road. The photographs also disclose big presence of people following Tongas with motorcycles, jeeps, cars, three wheelers etc. It also reveals from the photographs that huge presence of people to witness the "Tonga Race" causes traffic hazard as well as a problem of law and order. During the course of hearing learned counsel appearing on behalf of the petitioner submits that by submitting several representations various social organisations made request to the District Administration Nagaur to abandon the "Tonga Race" but of no consequence. It is also pointed out that in the years 2000 and 2004 Coachwans viz. Shri Kutub Pehalwan and Shri Puthida Pehalwan died while participating in the "Tonga Race". In the year 2006 one young lady wife of Shri Rajendra Patodia died and one Mrs. Bhagwati Tiwari suffered serious injuries. In the year 2011 Shri Narpal son of Nemichand Khatik died during the course of "Tonga Race". While placing reliance upon the judgment of Hon'ble Supreme Court in Animal Welfare Board of India Vs. A. Nagaraja and Others, (2014) AIRSCW 3327 : (2014) 7 JT 1 : (2014) 6 SCALE 468 : (2014) 7 SCC 547 : (2014) 5 SCJ 614 , it is asserted that the "Tonga Race" is an avoidable non-essential human activity organised to ignore welfare of horses solely for human pleasure. The race inherently involve pain and suffering which involves both physical and mental components including fear and distress. The "Tonga Race" also causes huge strain and stress which is nothing but cruelty as defined under Section 11 of the Act of 1960.

3. While contesting the petition for writ learned Additional Advocate General Shri S.S. Ladrecha submits that the "Tonga Race" is an important cultural event of District Nagaur and is a part of folk tradition wherein animals play a vital role, therefore, it cannot be banned or regulated in form of banning the modes of celebration of the people. The stand of the respondent State and its functionaries as stated in reply to the writ petition reads as under:--

"That the case in hand is regarding "Tanga Race" (i.e. Horse Chariot Racing) in the festival of Ganeshji and Tejaji Fair in Kharnal, which lies in District Nagaur. The festival of Tejaji fair is celebrated in Rajasthan in the memory of Veer Tejaji, a folk deity held in high regard by the local people. The annual event is celebrated on the 11th day of the bright fortnight of the Bhadrapada month of Hindu calendar. On this day grand fairs are organized in various parts of the state which are attended by people, especially those from the rural areas in large numbers. The wondrous locales of Rajasthan plays host to a variety of vivacious festivities through the year. The vibrant Nagaur fair is one such colorful

jubilation. Each year, in January and February, Nagaur throws its doors open to hundred and thousands of merchants dealing in domesticated bovine animals. The fair is an assortment of bullocks, camels, cows, and horses, merchants sporting attire in striking hues, haggling traders and visitors, brimming with enthusiasm and excitement. Thus, the culture of District Nagaur is basically full of folk tradition wherein "animals" play a pivotal role in their day today life. Animals are used in traditions, chariots and in festivals; they play a vital role in celebrations. This fair is being celebrated from ancient times and the same cannot be banned or regulated in form of banning the modes of celebrations of the people."

4. Beside the above it is also stated that the District Administration is taking all necessary care to tackle the problem of traffic and also to ensure that no cruelty be caused to the animals. To substantiate the contention reference of the document dated 2.9.2014 passed by the Sub Divisional Magistrate, Nagaur is given imposing certain conditions for participation in "Tonga Race". The conditions so imposed read as under:--

5. Learned counsel appearing on behalf of the office bearers of Akhil Bhartiya Shri Veer Tejaji Janma Sthali Sansthan, Kharnal submits that Veer Tejaji Mela is organised in memory of folk deity Veer Shri Tejaji. Veer Tejaji was a legendary folk hero and he is considered as one of the measures 11 incarnation of Lord Shiva. Veer Shri Tejaji was born on Friday Magh Shukla 14 Vikram Samvat 1130 in a chart family of Kharnal in District Nagaur. Certain details with regard to Shri Veer Tejaji are also given on behalf of this respondent and that reads as under:--

"(iv) During Teja's period the country was ruled by small republics which were in constant struggle with each other. There were conflicts between Nagavanshis and Aryans. Nagavanshis were bent upon to destroy the Aryans. According to Hindu mythology, during Mahabharata period, Parikshita the successor of Yudhisthira, was the ruler of Hastinapura. Parikshit was cursed by a sage's son to die after snake bite. On hearing this, the king forswore the throne for his son Janamejaya and spent his last days listening to the discourses of Sage Suka on Bhagwat. As prophecised, Snake king Takshaka bit arikshit leading to his death. In fact Takshaka was a Nagavanshi king who killed Parikshit.

(v) It is said that when Tejaji was in village paner to bring his wife Pemal, Lachha Gujar told Teja that thieves have taken away all her cows and there is no body in this village to help her. Teja mounted his mare Lilan and started alone to fight with dacoits, who had taken away Lachha's cows. Teja found that dacoits who had stolen the cows of Lachhan Gujar were Meena sardar's people. Teja, who was made for helping others, decided to bring those cows. The myth is that he encountered a snake burning in fire that was saved by Teja. That snake cursed Teja and wanted to bite. Tejaji became martyr on 28th August, 1103 while bravely fighting with Meenas.

(vi) Recognizing the faith and belief of rural community of Rajasthan, the Postal

Department, Government of India released a special commemorative Stamp on folk-deity Veer Teja at Kharnal in Nagaur District on Teja Dashmi i.e. Thursday 7th September, 2011 and State Government observe holiday on Teja Dashami.

5. That it is in these historical back ground and belief Veer Teja festival at village Kharnal is being organized since time immemorial. Devotees comes from Rajasthan, Hariyana, Punjab, Utter Pradesh, Gujrat and Madhya Pradesh to pay tributes at Kharnal (Birth Place) and sursura i.e. place of martyr. Since mare "Leelan" (Female Horse) savari of Teja ji, sacrificed herself for Tejaji while fighting with Meenas force, as in the case of Horse "Chetak" for Maharana Pratap fighting with Mughal Force. It is, therefore, according to religious belief and faith of rural people a chariot race with mare and horses is organized and conducted since time immemorial, during Tejaji and Ganesh Ji fair."

6. The allegation of animal cruelty has been denied by this respondent by referring certain steps said to be taken by the State Government to regulate the "Tonga Race".

7. Heard learned counsels appearing for the parties.

8. The Act of 1960 was enacted by parliament with introduction that "animals are an integral part of the Indian economy. Animals have been and are being used in various fields, specially agriculture, transportation and amusement, etc. To reap maximum gains they have been exploited by human beings by using coercive methods and by inflicting unnecessary pain. In order to prevent cruelty to animals the then British Government in India enacted the Prevention of Cruelty to Animals Act, 1890 (11 of 1890). During the course of administering this Act many deficiencies were found. To put the law on sound footing the Government of India appointed a Committee to investigate and suggest measures for the prevention of cruelty to animals. The said Committee drew attention to a number of deficiencies in the 1890 Act and suggested its replacement by a more comprehensive Act". The object of the Act of 1960 is to prevent cruelty to the animals and further to regulate their welfare. It also provides measures to control experimentation on animals and further declare certain type of cruelty as offence demanding punishment. As per clause (a) of Section 2 of the Act of 1960 "animal" means any living creature other than a human being. The definition of "captive animal" and "domestic animal" is given in clauses (c) and (d) respectively of Section 2 of the Act of 1960. Section 11 of the Act of 1960 prescribes several eventualities/treatment which is termed as "cruelty" and according to that if any person beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated, is a cruelty.

9. The argument extended on behalf of the petitioner is that during the "Tonga Race" the animal suffers an unnecessary pain, therefore, that is a cruelty. It shall also be relevant to mention here that as per Section 4 of the Act of 1960 there is

an Animal Welfare Board of India for the promotion of animal welfare and to protect animals from being subjected to unnecessary pain or suffering. As per Section 9 of the Act of 1960 Animal Welfare Board of India is required to discharge several functions including to keep the law in force in India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time.

10. We have been made to understand that at present there is no systematic study with regard to the cruelty extended to a horse during "Tonga Race", however, at several places including Lucknow Mahotsava, Lucknow, Uttar Pradesh the Government has stopped such type of race keeping in view the cruelty suffered by the horse pulling Tonga.

11. Be that as it may, having considered the material available with us, prima facie we are satisfied that the "Tonga Race" in the manner that is conducted from Mundiad to Kharnal and Kharnal to Nagaur on tar road in presence of thousands of people on the Tongas carrying 4-5 persons is a cruelty as prescribed under the Act of 1960. We also failed to understand as to how a permission has been granted to organise the "Tonga Race" on a busy National Highway. We are also not satisfied with the measures said to be taken by the State and its functionaries to regulate the "Tonga Race". The conditions said to be imposed for participation in "Tonga Race" are very much open to be violated and appears to have been violated.

12. Looking to whatever stated above, we deem it appropriate to direct the State of Rajasthan through the Collector, Nagaur not to permit any institution, body or person to organise any "Tonga Race" on National Highway or on any other tar road, or a road made by cement and concrete. As an interim measure we deem it appropriate to direct the Collector, Nagaur to approach the Animal Welfare Board of India on or before 15.7.2015 to conduct a complete study as to whether the "Tonga Race" amounts to a cruelty towards animal as prescribed under the Act of 1960 or not. The petitioner as well as all other parties interested are also at liberty to furnish all necessary facts and details with regard to the event in question to the Animal Welfare Board of India on or before 15.8.2015. The Board if consider appropriate may also provide opportunity of hearing to the parties interested, if demanded. The Animal Welfare Board of India is requested to complete its investigation and study expeditiously as far as possible within a period of three months from the date the Collector, Nagaur or his nominee approaches the Secretariat of Animal Welfare Board of India. Till receiving complete report of study from Animal Welfare Board of India the Collector, Nagaur and any other functionaries of the State of Rajasthan shall not permit any organisation, institution, body or person to hold "Tonga Race" in District Nagaur.

13. Put up on 02.11.2015.