
(2010) 10 MP CK 0024
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1156 of 2002

Prani Raksha Sangh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-10-2010

Acts Referred:

Constitution of India, 1950 — Article 51A
Prevention of Cruelty to Animals Act, 1960 — Section 11, 28

Citation : (2011) 2 MPHT 169 : (2011) 2 MPLJ 428

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Alok Aradhe, J.

Petitioner is a society which is involved in the work of welfare of animals and birds, has approached this Court by filing the instant petition as Public Interest Litigation in which a direction is sought to Respondent Nos. 1 to 6 to prevent slaughter of the animals in contravention of the provisions of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as "the Act"). The Petitioner has prayed for issue of a writ of prohibition to the Respondents to prevent and stop slaughter of animals in the temple, namely, "Shiv Baba Mandir" situate at Village Gambhirpura, Khandwa immediately and to take measures to prevent illegal felling of trees. The Petitioner has also prayed for a direction to the Respondents to prevent manufacture, sale and consumption of illicit liquor in the vicinity of the temple.

Brief facts necessary to decide the controversy involved in the instant petition are that a temple which is known as "Shiv Baba Mandir", is situate in Village Gambhirpura, Tehsil Nepanagar, District Khandwa. The disciples of aforesaid temple have got published a booklet (Annexure P-I) in which it is mentioned that "Mela" is organized between "Basant Panchmi" to Purnima". The aforesaid booklet further provides that any person on fulfilment of his wish or desire, can

offer fruits, grains and sweets to the deity. However, some persons having vested interest, have developed a blind belief amongst the devotees and public in general that by sacrifice of goats and sheep, deity can be pleased and their wishes and desires can be fulfilled by offering sacrifice of such animals. It is further averred in the writ petition that people visiting the temple, sacrifice goats and sheep by slaughtering them brutally. It is pleaded that when the animal is sacrificed, one of the legs of the animal is cut and then its head is also half-cut as a result of which the blood oozes out from the body of the animal and is spread in the premises of the temple. Thereafter the head of that animal is chopped off and its body is handed over to the devotee, who after cutting it into pieces, cooks the same in the premises of the temple. In order to cook the sacrificed animal, wood is cut illegally from the forest surrounding the temple.

Slaughter of animals in such brutal manner results in environment pollution and is a potent threat to forests which adjoin the temple, which are being destroyed on account of illegal felling of trees. It is further alleged that in order to facilitate consumption of meat in large quantity, illicit liquor is sold in the premises of the temple. It has been pointed out that between the period from 13-2-2002 till 28-2-2002, 35,000 animals were sacrificed. In the aforesaid factual backdrop, Petitioner has sought the reliefs as stated supra.

Respondent Nos. 1 to 6 have filed return in which inter alia it is pleaded that Parliament has enacted Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as the "Act" for sake of brevity). Section 28 of the Act carves out an exception and provides that nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community. It is, therefore, beyond the powers of the State Government to stop outright sacrifice of the animals, which is done in the manner required by the religion of Banjara community. It has further been averred that efforts are made to discard the practice of sacrifice of animals which is performed within the premises of temple; but since same relates to religion the Respondents are slow in interfering with the matter. It has further been pleaded that there are ample provisions under Excise Act, 1915 to prevent the menace of sale and consumption of illicit liquor. It has also been pleaded that there are sufficient provisions in the law enacted by Legislature to deal with the offender involved in the illegal felling of trees. The Petitioner is not entitled to any relief as prayed for in the writ petition. A careful scrutiny of averments made in the return reveals that State Government has not specifically denied that animals are subjected to cruelty, while they are being slaughtered.

Respondent No. 7, which is a Trust registered under the provisions of Madhya Pradesh Public Trust Act, 1951 and manages the affairs of the temple in question, has also filed a return in which it is averred that Section 28 of the Act permits sacrifice of the animal. It has further been stated that Petitioner is residing away from the place of sacrifice and therefore, has no locus standi to file the petition. It has further been stated that Petitioner is an unregistered society

therefore, it cannot maintain the instant writ petition. It has also been stated that devotees do not subject the animals to cruelty.

This Court vide order dated 8-3-2002 directed that there shall be no slaughter of the animals in the premises of the temple. While considering the prayer for vacation of the aforesaid interim order on 20-2-2006 at the instance of Respondent No. 7, this Court observed that neither any custom nor any authority has been produced before the Court to show that religion of "Banjara" community requires slaughtering of animals, as has been done in the temple in question. Pursuant to the aforesaid observation made by this Court, Respondent No. 7 along with application for vacating the interim order has, filed affidavits of several persons.

We have heard the learned Counsel for the parties, Shri Ashok Lalwani, learned Counsel for the Petitioner argued that Section 11 of the Act prescribes that anybody who treats the animal with cruelty, commits the offence under the Act. He has further argued that from perusal of affidavits filed on behalf of Respondent No. 7, it is apparent that affidavits do not show that sacrifice of animals is required by the religion of the Banjara community. Therefore, even assuming that there is custom of sacrifice of animals, the same would fall outside the purview of Section 28 of the Act.

Shri Kumaresh Pathak, learned Deputy Advocate General on the other hand has submitted that custom of sacrifice of the animal is covered u/s 28 of the Act. He assured this Court that if any complaint is made regarding environmental pollution or illicit felling of trees or sale of illicit liquor, requisite action shall be taken by the State Government. Shri Sameer Seth, learned Counsel for Respondent No. 7 has contended that members of the Tribal Community are not involved in any activity which violates the mandate of Section 11 of the Act. It is alleged that devotees purchase wood from the Forest Department, in order to cook the meat of the slaughtered animal. It has further been argued that allegations made in the petition are vague and baseless.

Before proceeding to deal with the matter on merits it is apposite to deal with the objection raised on behalf of the Respondent No. 7 that the Petitioner being an unregistered society cannot maintain the instant writ petition. It is relevant to mention here that the Petitioner is an organization which has a special interest in the subject-matter in sense it has been involved in the work of welfare of the animals and birds and the instant petition has been entertained by this Court as a Public Interest Litigation. Our current processual jurisprudence is not individualistic Anglo-Indian mould. It is broad-based and people-oriented and envisions access to justice through "class actions", "Public Interest Litigation", and "representative proceedings". See: Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, and Fertilizer Corporation Kamgar Union (Regd.) Sindri and Ors. v. Union of India and Ors. AIR 1981 SC 344. The Petitioner has some concern deeper than that of a busy body.

Therefore, it cannot be held that writ petition at the instance of the Petitioner is not maintainable merely because it is an unregistered association. Thus, we have no hesitation in holding that the writ petition at the instance of the Petitioner is maintainable.

The Act has been enacted with the object to prevent infliction of unnecessary pain or suffering on animals. Relevant portion of Section 11 of the Act is reproduced below for the facility of reference

Treating animals cruelly. - (1) If any person:

(a) beats, kicks, overrides, overdrives, overloads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated;

he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.

Section 28 of the Act reads as under:

28. Saving as respects manner of killing prescribed by religion. - Nothing contained in this Act shall render it an offence to kill any animal in a matter required by the religion of any community.

After having noticed the relevant provisions of the Act, we may advert to facts of the case. In Paragraph 5.4 of the petition, Petitioner has averred that any person on fulfilment of his wish or desire, can offer fruits, grains and sweets to the deity which is mentioned in booklet (Annexure P-I) published by the devotees. From perusal of the return filed on behalf of Respondent No. 7, we find that in reply to Para 5.4 of the petition it has been stated that contents of the aforesaid para need no comments. Thus, the averment made in the petition that booklet which has been published by the devotees of the temple which provides that on fulfilment of a desire, a devotee can offer fruits, grains or sweets to the deity, has not been specifically denied. It is also relevant to mention here that in Paragraphs 5.7 and 5.8 of the petition, the Petitioner has specifically mentioned the manner in which an animal is sacrificed. Return of Respondent Nos. 1 to 6 is silent with regard to manner in which animal is sacrificed. From perusal of the return filed on behalf of Respondent No. 7, we find that the manner in which an animal is sacrificed, has not been specifically denied. In Paragraph 14 of the return, it is only stated that Petitioner has nowhere disclosed wherefrom he got this baseless and false information. It has further been stated that devotees have not acted with the animals in a brutal manner. From the perusal of photographs filed along with writ petition pertaining to sacrifice of animals, averments made

in the petition with regard to manner of sacrifice are substantiated, which brings the act of sacrifice the animal within the purview of Section 11 of the Act. It is trite law that any averment of fact made in writ petition if not specifically denied, is deemed to be admitted. In this connection, we may refer to decision of the Apex Court in Smt. Naseem Bano Vs. State of U.P. and others, .

It is also relevant to mention that the averment made by the Petitioner that between the period from 13-2-2002 till 28-2-2002, 35,000 animals were sacrificed, has also been admitted by Respondent No. 7, trust which manages the affairs of the temple.

It is also pertinent to note that pursuant to order of this Court dated 20-2-2006, affidavits have been filed on behalf of Respondent No. 7/Trust. From perusal of the affidavits, we find that nobody has stated that sacrifice of the goat or sheep is required by the religion of the community which is engaged in the practice of sacrifice of animals in temple in question. The affidavits only speak about the custom. Therefore, the practice of sacrifice of animal is clearly outside the purview of Section 28 of the Act.

We may also refer to Article 51-A(g) of the Constitution, which reads as under:

51-A. Fundamental duties. - It shall be the duty of every citizen of India:

(a) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

Admittedly, in a brief spell of about 15 days, i.e., 13-2-2002 to 28-2-2002, 35,000 animals were sacrificed in the premises of the temple. Though Respondent No. 7 has stated in its return that devotees purchase the wood from Forest Depot, yet no documents have been annexed to substantiate this plea. Taking into account the entirety of the situation, we are of the opinion that if practice of sacrifice of animals in such mass scale is permitted to be continued and illicit felling of trees continues, it would be hazardous to protection of environment. For this reason also the practice of sacrifice of animals which even otherwise has no sanction of religion cannot be permitted to be continued.

In view of preceding analysis, we see no good reason to permit the custom of sacrifice of animals in the temple in question by the "Banjara" community, specially in absence any material on record to indicate that killing of animal is required by the religion the aforesaid community and in view of our finding that manner in which animals is sacrificed brings the act of sacrifice within purview of Section 11 of the Act. In our considered opinion, benefit of statute enacted for protection of dumb animals should be extended to them. Therefore, we deem it appropriate to issue following directions

(a) It will be the responsibility of Respondent Nos. 1 to 6 to ensure that there shall be no slaughter of animals in or around "Shiv Baba Mandir", situate in Village Gambhirpura, Tehsil Neapanagar, District Khandwa.

(b) The Respondent Nos. 1 to 7 shall further ensure that there is no illegal felling of trees in or around the premises of the temple and that illicit liquor is neither sold nor consumed in the vicinity of the temple.

Accordingly, the writ petition is allowed.