
(2015) 03 SC CK 0148

In the Supreme Court Of India

Case No : Civil Appeal No. 7130 of 2003

Regional Deputy Director

APPELLANT

Vs

Zavaray S. Poonawala and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 124

Citation : (2015) 4 ABR 82 : (2015) 4 AD (SC) 671 : (2015) 5 FLT 428 : (2015) 5 LW 585 : (2015) 3 RCR(Civil) 583 : (2015) 3 RCR(Criminal) 172 : (2015) 5 SCALE 184 : (2015) 7 SCC 347

Hon'ble Judges : A.K. Sikri, J;Rohinton Fali Nariman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arjan Kumar Sikri, J.

1. The first Respondent herein wanted to import into India a trophy of one stuffed leopard which he shot in Zambia. Leopard is a protected and prohibited species under Schedule I of the Wild Life (Protection) Act, 1972 and also under the Convention of International Trade on Endangered Species of Wild Fauna and Flora (CITES). Therefore, requisite permission under the aforesaid provisions is needed to import such a trophy. Respondent No. 1 had, in fact, applied for such permissions, the details whereof and the outcome thereof will be mentioned at a later stage, at the relevant place.

2. To put it in nutshell here, the CITES had refused to grant the permission. However, the High Court vide impugned judgment dated 28.04.2003 has come to the conclusion that the authorities which were required to give the permission had accorded due permission to the Respondent No. 1 and further that in such circumstances CITES had no locus to entertain the application or to reject it. The writ petition was, accordingly, allowed. Present appeal, via grant of special leave, arises out of the aforesaid judgment.

3. Now, some facts in detail:

Respondent No. 1 hunted certain animals in Zambia in June, 2000. No doubt, this hunting was with due permission taken from the Government of Zambia. Thereafter, he exported the hunted animals to Zimbabwe for processing them into items of taxidermy hunting trophies. Respondent No. 1 claims that he had complied with the local laws prevailing in Zambia as well as Zimbabwe for the aforesaid purposes. One of the items, with which we are concerned, is the trophy of stuffed leopard. He wanted to bring this trophy into India.

4. It is a matter of record that leopard is a protected and prohibited specie under Schedule I of the Wildlife (Protection) Act, 1972 (hereinafter referred to as the "Act"). It is also treated as an endangered species at the international level. Therefore, for import of such a trophy into India, various statutory or legal permissions are required to be taken.

5. Respondent No. 1 for import of the aforesaid trophy of stuffed leopard made his first application on 27.4.2002 to the Regional Deputy Director, Wild Life Protection (WLP). This application was, however, rejected by the Regional Dy. Director (WLP) vide communication dated 16.5.2002. It was stated in this letter by the Dy. Director that as per condition No. 5 of letter issued by the Dy. Inspector General, Wild Life (W.L.) vide his reference dated 9.10.2001 Respondent No. 1 was to obtain clearance and certificate from Director General Foreign Trade (DGFT) and CITES, wherever required and in the absence of any such permission no approval could be granted by the Dy. Inspector General (W.L.).

6. On 23.7.2002, permission was granted by the Joint Director, DGFT. Permission was granted in the form of a license. This license was, however, issued subject to certain conditions stipulated therein. Condition No. 4 thereof, with which we are concerned, reads as under:

The applicant to obtain the clearance and certificate from DGFT and CITES Authorities wherever required

7. It would be pertinent to mention here that after the aforesaid permission was granted by the Jt. Director, albeit conditional, CITES wrote a letter dated 8.11.2002 raising a query as to under what circumstances such a permission was granted. CITES had taken the position that it is under an obligation to regulate the export and import of species as set out in Appendix I of the CITES. The Authority constituted under the CITES is charged with the responsibility of granting approvals under CITES insofar as imports in the Western Region are concerned. As per CITES, the species which are set out in Appendix-I of the Convention, their import and export is to be restricted inasmuch as the spirit of the prohibition against import/export/trade of trophies of prohibited and protected animals is that it is reprehensible to hunt and display endangered species which are fast vanishing from the earth. Such animals and trophies should not be made objects of aggrandizement and display in homes and

commercial establishments.

8. On CITES apprising the DGFT with the aforesaid position in law, DGFT sprung into action and issued the show cause notice to Respondent No. 1 Under Section 124 of the Customs Act, 1962 for confiscation of the aforesaid trophy sought to be imported by it. The defence of Respondent No. 1 was that it is the Chief Wildlife Warden under the Wild Life (Protection) Act, 1972, who was competent authority to grant the permission and Respondent No. 1 had the permission of the said authority granted to him vide letter dated 11.4.2002.

9. After the aforesaid show cause notice was issued by the Custom Authorities, Respondent No. 1 filed the writ petition in the High Court, as mentioned above, Under Article 226 of the Constitution challenging the validity of CITES" letter dated 8.11.2002 as well as show cause notice issued by the Customs Authorities Under Section 124 of the Customs Act. In the writ petition, interim orders were passed by the High Court directing Regional Dy. Director CITES to treat the communication dated 8.11.2002 as the show cause notice and pass order after hearing Respondent No. 1. Pursuant to this direction the Dy. Director, CITES heard Respondent No. 1 and passed the orders dated 17.1.2003, thereby rejecting the request of Respondent No. 1 and refusing the permission for clearance of the item in question. Respondent No. 1 amended the writ petition and included challenge to the orders dated 17.1.2003 as well, passed by Dy. Director of CITES.

10. After hearing the matter finally, the High Court has allowed the writ petition on two counts: in the first place it is observed that the competent authorities to grant the permissions were DGFT and the Chief Wildlife Warden and Respondent No. 1 had the requisite permissions from these two authorities. Secondly, in the opinion of the High Court, CITES had no role to play and did not have any locus to examine the issue of permission. As per the High Court, the only role of the CITES is to see that the imported item is not used for commercial purposes.

11. After hearing the counsel for the parties at length, we are of the opinion that High court fell into error on both the counts. Insofar as permissions of DGFT and Chief Wildlife Warden are concerned, we have already noticed above that both these permissions were conditional. Apart from many conditions imposed, the most material condition, which has been ignored by the High Court, was that those permissions were subject to the approval of the CITES and insofar as the CITES is concerned, it had not given any permission. On the contrary it had first issued letter dated 1.11.2002 which was treated as the show cause notice and thereafter, it passed the order dated 17.1.2003 specifically refusing the permission. Thus, the conditions mentioned in the approval granted by the DGFT as well as Chief Wildlife Warden, were not met by Respondent No. 1 and in the absence thereof it cannot be treated that there were any proper or valid approval/ permission given by the DGFT or by the Chief Wildlife Warden which could enable Respondent No. 1 to import the aforesaid item into this country.

12. With this, we advert to the role and jurisdiction of CITES which it has to play in such circumstances, we find that is all stated in the convention which was signed at Washington DC on 3.3.1973 and amended at Bonn on 22.6.1979. It is not in dispute that India became signatory of the aforesaid international convention item in 1976.

13. Before embarking the exact nature of function and role to be played by CITES, we deem it necessary to state the background and the objective with which the Convention was signed at global level.

14. As a result of indiscriminate killing of the animals and birds by human beings, either for its flesh or for trade or as a matter of hobby, several species of animals/birds have virtually become extinct. To curb the ecological imbalance caused by the ruthless killings of the animals and birds various legislations have been enacted by several countries worldwide, to protect the lives of the endangered species of animals and birds and also curb the international trade in live animals/birds or their products.

15. Saving wildlife is a core responsibility of mankind. Animal populations are disappearing at an alarming rate. Saving endangered species (plants and animals) from becoming extinct and protecting their wild places is crucial for our health and the future of our children. Man has produced a thousand and one inventions while observing nature. Think of Leonardo da Vinci, who drew flying machines as he watched the flight of bats. In the area of human health, animals and plants often show us the way to stay in shape. As species are lost it impacts the possibility of future discovery and advancement. The impacts of biodiversity loss include clearly into fewer new medicines, greater vulnerability to natural disasters and greater effects from global warming. In nature, everything is interconnected. Unfortunately, we often have very little idea of all the repercussions involved in the disappearance of a single animal population in a corner of a forest, swamp or river. Unrecognized benefits of maintaining biological diversity are those services we receive when ecosystems function normally. These ecosystem functions include energy fixation, chemical cycling (oxygen production by rainforests), soil generation and maintenance, ground water recharge, water purification, and flood protection. These services are provided to us at no cost. When we destroy the ability of ecosystems to function naturally, we not only lose these free services but all too often have to pay to replace them.

16. Protecting these species contributes to a thriving, healthy planet for people's health and well-being. Wildlife nurtures a sense of wonder. It is integral to maintain the balance of nature. Ultimately, by protecting these species, we save this beautiful, vulnerable and utterly irreplaceable planet we call home. By protecting species, we also protect the essential goods and services that make our lives possible and contribute enormously to human health and well-being -- breathable air, clean water, food, fibers, building materials, medicines, energy, fertile soils, climate Regulation, transport, and recreational and spiritual values.

We are on mission to find solutions that save the marvelous array of life on our planet.

17. If a species goes extinct, it's lost forever. Any aesthetic value it once had is gone. As Theodore Roosevelt said, "When I hear of the destruction of a species, I feel just as if all the works of some great writer have perished."

18. The leopard, *Panthera pardus*, is a member of the felidae family. This secretive and elusive large cat was once distributed across eastern and southern Asia and Africa. Now at the center of a severe man-animal conflict because of expanding agricultural practices and development projects, its habitat has depleted to mostly sub-Saharan Africa and fragmented populations in Asia (Stuart, 2007). As one of South Africa's "Big Five", the leopard forms a lucrative part of South Africa's economy being a favourite to both the tourist and hunting industries. The ecological importance of this animal lies in its position at the top of the food chain in most ecosystems. The shooting of wild game purely for sport and trophies is no longer compatible with our commitment to preserve local fauna as a national treasure.

19. The leopard, *Panthera pardus*, was listed in Appendix I in 1975, as part an overall move to protect spotted cats from commercial trade in their skins. Therefore, international trade in it or its products for primarily commercial purposes was prohibited. However it has been recognized that killing of specimens may be sanctioned by countries of export in defense of life and property and to enhance the survival of the species. Furthermore, this resolution also recognized that the leopard was not endangered in several African countries. Equally, this resolution recognized the overwhelming desire of Parties not to re-open a commercial market in leopard skins. Thus, Resolution Conf. 4.13 struck a balance by establishing a quota system that was subject to a review every two years at successive Conferences to the Parties. Quotas were initially established from 7 African countries, totaling 460 specimens. Importers were allowed only one skin per person per calendar year, and these were allowed only as personal imports that could not be sold in the country of import. The leopard quota system was reviewed through Resolution Conf. 5.13 and 6.9, when quotas were raised or added, but the recommendations remained practically the same. Resolution Conf. 7.7 allowed the system to continue without the usual biannual review, but any increase in quota or any state not previously having a quota required the consent of the Conference of the Parties. Importers were allowed two skins per person per calendar year. Resolution Conf. 8.10 (Rev.) was repealed by Resolution Conf. 10.14 which contains the currently applicable recommendations. Eleven African range States are now allowed export quotas per calendar year, totaling 2085 specimens. Each skin must be tagged by the exporting country to show the country of origin, the number of the specimen in relation to the annual quota and the calendar year to which the quota applies, and the same information must be recorded on the export document. Each exporting state must also submit an annual report to the Secretariat detailing the

number of trophies and skins exported in the previous quota year.

20. Keeping in view the aforesaid spirit, CITES, as an International Treaty, was made at Washington in the year 1973 with a view to regulate the international trade in specimen of selected species subject to certain control set out therein. The clear intention behind this international Convention is that all the consenting countries come together and make joint efforts to save the animal species from going extinct, inasmuch as their survival is for the benefit of the mankind itself. The importance and role to be played by the Authorities created under CITES is to be highlighted in this context.

21. Preamble to this convention reads as under:

The Contracting States,

Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

Recognizing that people and States are and should be the best protectors of their own wild fauna and flora;

Recognizing, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trader;

Convinced of the urgency of taking appropriate measures to this end;

22. Article I Clause (a) defines "species" in the following form:

(a) "Species" means any species, subspecies, or geographically separate population thereof.

23. As per the Clause (b) which defines "specimen" to mean, amongst others, in case of an animal those which are included in appendices I and II. CITES vision statement is conserve biodiversity and contribute to its sustainable use by ensuring that no species of wild fauna or flora becomes or remains subject to unsustainable exploitation through international trade, thereby contributing to the significant reduction of the rate of biodiversity loss. The Preamble to the Convention states that the objective of CITES is to prevent the over-exploitation of species through international trade and to ensure their long term survival. The ultimate aim of the Convention is undoubtedly to promote species conservation. However, legally the convention only has jurisdiction over the Regulation of international trade and cannot be held accountable for the effects of other factors which affect species conservation, such as habitat conversion.

24. Widespread information nowadays about the endangered status of many prominent species like tiger make the need of convention obvious. With

hindsight, the need of CITES is clear. Annually international wildlife trade is estimated to be worth billions of dollars and to include hundreds of millions of plant and animal specimens. The trade is diverse, ranging from live animals and plants to a vast array of wildlife products derived from them, including food products, exotic leather goods, wooden musical instruments, timber, tourist curios and medicines. Levels of exploitation of some animal and plant species are high and the trade in them, together with other factors, such as habitat loss, is capable of heavily depleting their populations and even bringing some species close to extinction. Many wildlife species in trade are not endangered, but the existence of an agreement to ensure the sustainability of the trade is important in order to safeguard these resources for the future.

25. Because the trade in wild animals and plants crosses borders between countries, the effort to regulate it requires international cooperation to safeguard certain species from over-exploitation. CITES was conceived in the spirit of such cooperation.

26. In order to perform its task, namely, to regulate the animal species mentioned in Appendix-I, scientific as well as Management Authority are also contemplated in this convention which have to perform some designated function as mentioned therein. Clauses (f) and (g) of Article I defines these authorities as below:

(f) "Scientific Authority" means a national scientific authority designated in accordance with Article IX;

(g) "Management Authority" means a national management authority designated in accordance with Article IX.

27. Article II which deals with the fundamental principles, inter alia, mentions that it shall include all species threatened with extinction which are or may be effected by trade. It also stipulates that trade in specimens of these species must be subject to particularly strict Regulation in order not to endanger further their survival and must be in authorization in exceptional circumstances.

28. Next Article which is of relevance to this case is Article III (iii) as it stipulates the role of Scientific as well as Management Authority. In order to understand the importance of these authorities we reproduce Clause (iii) of Article III as under:

The import of any specimen of species included in Appendix-I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate etc. An import shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of import advised that the import will be for the purposes which are not detrimental to survival of the species involved;

(b) a Scientific authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

29. We may also point out at this stage that Under Article IX, the functions of Management and Scientific Authorities are mentioned.

30. What flows from the conjoint reading from the aforesaid provisions is that before import of any specimen of species included in appendix I, prior import permit of Scientific Authority and Management Authority is required and before such a permit is given, the opinion of Scientific Authority as well as the Management Authority on particular aspects is required. Insofar as the Scientific Authority is concerned, it would look into the matter from two angles, namely, that the import is not detrimental to the survival of the species involved and further the proposed recipient is suitably equipped of house and care for it. Insofar as the Management Authority is concerned, it is to satisfy itself that the specimen is not to be used for primary commercial purposes.

31. The High Court while observing that the only function of the Management Authority was to ensure that "specimen" is not to be used for commercial purpose looked into the function of Management Authority alone. Error is committed by glossing over the function of the Scientific Authority. This resulted in passing the impugned directions which are clearly erroneous. It is here where the High Court clearly erred. It is stated at the cost of repetition that matter is to be placed before the Scientific Authority and it is this Authority which has to form an opinion as to whether the import will or will not be detrimental to the survival of the species involved. This becomes extremely important to carry out the objects of the aforesaid conventions read with the fundamental principles stipulated in Article II thereof.

32. The judgment of the High Court, therefore, is not sustainable. The judgment of the High Court is set aside for the same reason. We also set aside the order of 17.1.2003 passed by the CITES, Order dated 16.5.2002 as well as show cause notice dated 27.11.2002 given by the Custom Authority Under Section 124 of the Customs Act.

33. We may record at this stage that after the High Court had pronounced the judgment, Respondent No. 1 got the aforesaid item cleared from the Customs and is in possession thereof as of now. In such circumstances, we are of the opinion that appropriate course of action would be to permit Respondent No. 1 to apply to the Scientific Authority for necessary permission in the light of the observations made hereinabove. Application for the said purpose shall be preferred within four weeks from the date of receipt of the copy of this order. The Scientific Authority, which we are informed has already been constituted, shall consider the application and pass speaking order after giving opportunity of being heard to Respondent No. 1. The order shall be passed by the Scientific Authority within three months from the date the application is made by Respondent No. 1. In case order passed is in favour of Respondent No. 1, he will

be allowed to keep the trophy with him. In case order passed goes against Respondent No. 1, he shall surrender the trophy to the Custom Authorities. Needless to mention, this would be subject to any rights which Respondent No. 1 will have in law, to challenge the orders passed by the Scientific Authority or CITES.

34. The appeal is disposed of in the aforesaid terms.