

(2014) 05 MAD CK 0001

In the Madras High Court

Case No : W.P. (MD) No. 8040 of 2014 and M.P. (MD) No. 1 of 2014

S. Kannan

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 48A, 51A, 51A(g), 51A(h)

Prevention of Cruelty to Animals Act, 1960 — Section 1, 11, 11(1), 11(1)(a), 11(1)(m)
(ii)

Citation : (2014) 3 CTC 676 : (2014) 4 FLT 595 : (2014) 5 MLJ 440

Hon'ble Judges : S. Vaidyanathan, J;N. Kirubakaran, J

Bench : Division Bench

Judgement

N. Kirubakaran, J.—"ANGRYBIRDS" fight with each other which is a "BLOOD SPORT" to the pleasure of the persons, who are all watching the fight.

Whether the anger of the birds is natural ?

Whether the fight is spontaneous ?

Whether the fight is natural ?

The answer is:

The Anger is artificial.

The fight is man made.

The fight is not intentional.

The Cocks are made to fight to get pleasure in the name of fight.

"Torture, injury, hurt, discomfort, trauma, agony, pain, distress, disturbance, sorrow, suffering, harm, shock, bleeding, brutal attack, etc. are neither synonymous nor can go together with "Pleasure, Joy, Happiness, excitement, fun, celebration, entertainment, enjoyment, recreation, championship, etc."

What has been described in the first part, what the poor birds suffer while fighting and the one mentioned in the second part is what men derive out of the birds-fight.

2. Are we justified in taking away the natural rights available to the birds ? When the rights of the human beings are infringed, the law of the land takes care of the situation. What about the natural rights of the animals and birds ? We have got scant respect for the natural rights of the fellow creatures. After all, we "human beings" are also one of the creatures of God along with other living creatures in the world. Though man is considered to be the supreme form of God's creature, whether the supreme creature has got any right to injure intentionally, torture deliberately, cause pain and mental torture make the birds to fight unnecessarily ? Certainly not. The birds and animals are entitled to co-exist along with the human beings. Any imbalance in the nature would lead to disaster, mainly due to the acts of the human beings. Felling of trees, deforestation, pollution are man made causes for disasters like Global warming, holes in the Ozone layer, land slide, decline in rainfall, etc.

3. Therefore, the nature has to be preserved and protected. Similarly, the animals, birds and other creatures have to be preserved and protected unless they are needed for necessity. Otherwise the animals and birds should not be unnecessarily tortured to derive pleasure in the name of birds fight or animal fight. Taking into consideration of the unnecessary pain or suffering caused to the animals, Parliament passed the enactment "Prevention of Cruelty to Animals Act, 1960". The object of the Act reads as follows:

An Act to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend law relating to the prevention of cruelty to animals.

Section 2(a) defines "animal" which is usefully extracted as follows:

2(a) "animal" means any living creature other than a human being;

Definition of "animal" is wide enough to include all living creatures including birds other than the human beings. Section 11 speaks about treating of animals cruelly and punishment for the said act as an offence. Section 28 of the Act gives exemption for killing of animals in the manner required by the religion of any community. Section 11 is usefully reproduced as follows:

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

(a) 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 animal to be so treated; or

(b) (employs in any work or labour or for any purpose any animal which, by reason of its age or any disease) infirmity; wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be employed; or

- (c) wilfully and unreasonably administers any injurious drug or injurious substance to (any animal) or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by (any animal); or
- (d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or
- (e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or
- (f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or
- (g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or
- (h) being the owner of (any animal) fails to provide such animal with sufficient food, drink or shelter; or
- (i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation thirst; or
- (j) wilfully permits any animal, of which he is the owner, to go at large in any street, while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or
- (k) offers for sale or without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or
- (l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections, in the heart or in any other unnecessarily cruel manner; or
- (m) solely with a view to providing entertainment-
- (i) confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object or prey for any other animal; or
- (ii) incites any animal to fight or bait any other animal; or
- (n) [.....] organises, keeps uses or acts in the management or, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or
- (o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting:

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.)

(2) For the purposes of Section 1, an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this Section shall apply to--

(a) the dehorning of cattle, or the castration or branding or nose roping of any animal in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers [by such other methods as may be prescribed]; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

From the above provision, it is clear that Section 11(a) of Prevention of Cruelty to Animals Act, 1960 prohibits treating any animal in any way which causes unnecessary pain, suffering, etc. to them.

4. Right to exist at par with human beings, though is conferred upon the animals through legislation, yet, when the existence and the right of the animals are infringed, it is only thorough human beings, such rights could be extended on the affected animals. In this context, when an injury or infringement on the rights of the animals are noticed by Judicial Forum, this Court deems it just to seize the opportunity to render justice to the poor animals, which could not plead and initiate action by themselves.

5. This Court in the said circumstances will have to weigh the relative cause and effect in the light of the Prevention of Cruelty to Animals Act, 1960, namely "the pleasure derived by the human beings" viz-a-viz "the Pain and Suffering caused to the birds" in the cock-fight. In the above background the present case has to be examined. The Petitioner has come before this Court seeking for a Mandamus

directing the Respondents to grant permission to the Petitioner to conduct cock-fight as per schedule dated 31.5.2014 and 1.6.2014 during the festival of Arulmigu Muniyandi Temple at Virattipathu 2nd Stop, Theni Main Road, Madurai, by considering the Petitioner's representation dated 5.4.2014.

6. The Petitioner contends that during the festival of the above temple in the month of Vaikasi as a community festival, the cock-fight is conducted as part of temple function and the programme is being conducted for the past 30 years. As a part of the conduct of the festival only, the permission is sought to conduct cock-fight.

7. It has been recorded in the history and literature that the Cock fight has been in vogue for centuries together from the days of Indus Valley Civilisation. Encyclopedia Britannica (2008), reads as follows:

The sport was popular in ancient times in India, China, Persia, and other Eastern countries and was introduced into Ancient Greece in the time of Themistocles (c. 524-460 BC). For a long time the Romans affected to despise this "Greek diversion", but they ended up adopting it so enthusiastically that the agricultural writer Columella (1st century AD) complained that its devotees often spent their whole patrimony in betting at the side of the pit.

8. Even in Tamil Nadu Cock fighting is being conducted for Centuries together more during the festival seasons. The birds are basically trained for the purpose of Cock fight. "Natural Spur" of the Cock is sharpened or even attached with steel blade to inflict injury/damage to the opposing birds. The birds brought to common place by two groups, who may not have any enmity. But still they may become enemies after the fight. The Cocks are allowed to face each other and the owners instigate them to start the fight. It is a man made fight and the birds are forced into the fight. It is said that Cocks are even drugged and are made to consume liquor so as to exhibit aggressive fight causing injuries to the opposing bird.

9. The attacks of each bird on the other are being enjoyed by the spectators. The injuries, wounds, resultant blood and subsequent falling of the bird or death of one bird is treated as victory of the other bird and consequently victory of the owner of the bird. The pleasure derived from the suffering of a poor bird is nothing but human perversion. No human can have this kind of sadistic pleasure. The effect of witnessing the cock fight on the minds of the humans is enormous. Brutality, torture, cruelty would pave the way for the children to enjoy violence. There is every possibility of youth being mislead psychologically that the suffering, brutality, pain and sorrow are normal in life and it would make them to become cruel during their life time. The young people should not be allowed to get the influence of this kind of brutal violence exhibited during the birds fight.

10. As stated above, the birds are stated to be drugged for the purpose of the fight and their nails are being sharpened so as to cause injury to the opposing birds. With the vengeance, by the birds are instigated to fight, and the birds"

fight is being witnessed by the human deriving satisfaction out of the fight.

11. Cock fight is generally conducted during festival seasons. Not only the birds suffer during the fight and the fight is capable of creating human fight also. There is a possibility of group clashes resulting in injuries to men and even loss of lives which are all unwanted and avoidable and is not conducive for congenial atmosphere. In ancient times, people would not have much entertainment and therefore, the animal fights and birds fight would have provided then needed fun and enjoyment. Now much water has flown under the bridge. Many comforts, entertainments like cinema, video, television, cable T.V. have become essential part of life and in fact they provide entertainment in overdose.

12. The cock fights are also said to be conducted for betting and gambling. It is prohibited under law as per Section 12 of the Tamil Nadu Gambling Act, 1930 which reads as follows:

Section 12 of the Tamil Nadu Gaming Act, 1930

Penalty for gaming in public street, etc.--Whoever is found gaming with cards, dice, counters, money or other instruments of gaming in any public street, place or thoroughfare or publicly fighting cocks, shall be liable on conviction to fine not exceeding (one hundred) Rupees or to imprisonment not exceeding (three months) and such instruments of gaming and moneys shall be forfeited.

13. Though Section 11(1)(a) of the Prevention of Cruelty to Animals Act prohibits subjecting of animals to unnecessary Pain or Sufferings, Cock fight is not banned in our country. Many of the countries like United Kingdom, Australia, Spain, France and in almost all the States of United State of America have banned the Cock-fight except a few States. Therefore, the Government has to take appropriate steps to declare Cock fight as illegal following the Judgment of the Apex Court in the case of Animal Welfare Board of India v. A. Nagaraja & ors., C.A. No. 5387 of 2014 dated 7.5.2014, which held that Jallikattu and Bullock-cart race and such events per se violate Sections 3 & 11(1)(a) & 11(1)(m)(ii) of Prevention of Cruelty to Animals Act except under Sections 11(3) & 28 of PCA Act.

14. The Hon''ble Supreme Court while examining the conduct of Jallikattu and Bullock-cart Races with particular reference to the provisions of the Prevention of Cruelty to Animals Act, 1960 and Tamil Nadu Regulation of Jallikattu Act, 2009, in the above Judgment held that the animals have right against the human beings not to be tortured and against the infliction of unnecessary pain or sufferings. The Apex Court recognised rights, honour and dignity of the animals. Paragraphs 51, 58, 62, 63 & 64 of the Judgment are extracted as follows:

51. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

58. Article 51-A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression "humanism" which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, understand benevolence, compassion, mercy, etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of PCA Act as well as in Sections 3 & 11 of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the Principles of Humanism in Article 51-A(h). Both Articles 51-A(g) & (h) have to be read into the PCA Act, especially into Sections 3 & 11 of the PCA Act and be applied and enforced.

62. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 & 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 & 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 & 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-rider, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking Disciplinary action against those officers, who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.

63. Jallikattu and other forms of Bulls race, as the various reports indicate, causes considerable pain, stress and strain on the bulls. Bulls, in such events, not only do move their head showing that they do not want to go to the arena but, as pain is being inflicted in the Vadiwasal is so much, they have no other go but to flee to a situation which is adverse to them. Bulls, in that situation, are stressed, exhausted, injured and humiliated. Frustration of the Bulls is noticeable in their vocalization and, looking at the facial expression of the bulls, ethologist

or an ordinary man can easily sense their suffering. Bulls, otherwise are very peaceful animals dedicating their life for human use and requirement, but are subjected to such an ordeal that not only inflicts serious suffering on them but also forces them to behave in ways, namely, they do not behave, force them into the event which does not like and, in that process, they are being tortured to the hilt. Bulls cannot carry the so-called performance without being exhausted, injured, tortured or humiliated. Bulls are also intentionally subjected to fear, injury - both mentally and physically - and put to unnecessary stress and strain for human pleasure and enjoyment, that too, a species totally dedicated its life for human benefit, out of necessity.

64. We are, therefore, of the view that Sections 21 & 22 of the PCA Act and the relevant provisions have to be understood in the light of the rights conferred on animals under Section 3, read with Sections 11(1)(a) & (o) and Articles 51-A(g) & (h) of the Constitution, and if so read, in our view, Bulls cannot be used as a Performing Animals for Jallikattu and Bullock-Cart Race, since they are basically draught and pack animals, not anatomically designed for such performances.

(Emphasis supplied)

15. The Judgment in Centre for Environment Law, WWF-I Vs. Union of India (UOI) and Others, , held that human are part of nature and non-human have intrinsic value. Paragraph 46 of the said Judgment reads as follows:

46. Sustainable development, it has been argued by various eminent environmentalists, clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth. Anthropocentrism is always human interest focused thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-human are based on benefits to humans. Ecocentrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans.

(Emphasis supplied)

16. Article 48-A of the Constitution of India reads as follows:

48-A. Protection and improvement of environment and safeguarding of forests and wild life.--The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Section 51-A(g) speaks about the fundamental duty of every one to have compassion for every creature, which is extracted as follows:

51-A.

(g) to protect and improve the natural environment including forests, lakes,

rivers and wild life, and to have compassion for living creatures;

From the above it is clear that it is the fundamental duty of every citizen to treat all the living creatures with compassion. It also denotes that no human being has got any right or authority to torture, causing cruelty or causing injury to any living creatures unnecessarily.

17. Para 56 of the Apex Court Judgment in State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and Others, , emphasised the duty of the Government and citizens to have compassion for living creatures, it reads as follows:

56. In T.N. Godavarman Thirumalpad v. Union of India, : 2002(10) SCC 606, a Three-Judge Bench of this Court read Articles 48-A & 51-A together as laying down the foundation for a jurisprudence of environmental protection and held that: (SCC p. 627, para 31)

Today, the State and the citizen are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures.

18. In Hindu Mythology the animals, birds and other creatures are considered to be the vehicles of Gods:

1. Siva--Bull (Nandhi) & Snake
2. Vishnu--Eagle (Krishna Bird) & Snake
3. Ganesha--Rat
4. Muruga--Cock & Peacock
5. Yama--Buffalo
6. Indra--White Elephant
7. Saneeswara-Crow

Lord Krishna is associated with cows and snake. Lord Krishna and Lord Jesus are said to be Shepherds.

The message which has been conveyed from the above facts is that we have to treat the animals and birds with sympathy and compassion and that is the reason why the Gods themselves have taken them as their companions. In such circumstances can we cause injury, torture to the fellow creatures unnecessarily ?

19. Even before many years of our Constitution came into force in 1950, the great Tamil saint "Vallalar Ramalingaswamy" was sympathetic to the plants as evident from the his poem, which reads as follows:

Whenever I see sick plant I became disturbed

The Saint showed sympathy and compassion even for creatures like plant and he also demonstrated in nineteenth Century itself that he had the scientific

knowledge that even the plant has got life. More than 2000 years ago, our Great Tamil Poet Thiruvalluvar wrote about "non-killing" and devoted 10 Kurals under the heading Kural 321 is extracted as follows:

It means:

what is the work of virtue ? "not to kill".

For "killing" leads to every work of ill.

20. When our forefathers thought about the non-killing of the animals and treating them with compassion, which is also enshrined in our Constitution, it is the bounden duty of the every citizen to treat animals with compassion and sympathy except for necessity. The birds and animals are friends of human kind.

21. Pleasure, joy, happiness should be derived by treating the fellow human beings equally and considering the animals, birds, etc. are entitled to co-exist in this world. After all, the animals and birds are always useful to the mankind for their sustenance and therefore, we should take care of their well being in our own interest. When the rights of the voiceless species are sought to be affected, obligation is cast upon this Court to protect their rights. This Court is not only custodian of rights of the Citizens but also rights of voiceless non-humans.

22. Though the learned Counsel for the Petitioner relied upon the Division Bench Judgment of this Court in W.P. No. 7444 of 2013 dated 29.4.2013 and W.P. No. 8298 of 2014 dated 14.5.2014 granting permission to conduct Cock-fight, this Court declines to grant permission following the Judgment of the Hon'ble Supreme Court, which prohibited Jallikattu. Taking into consideration the overall interest of the society and the provisions of the Act and the interpretation and rendering of Judgment by the Apex Court in Jallikattu case, it is time for the Authorities to raise to the occasion to do the needful. Hence, cock-fight or any other animal and birds fight, should be prohibited. For the above, this Court suggests to the Government to prohibit Cock-fight. Accordingly, the permission sought for by the Petitioner cannot be granted and the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

This Court would like to quote what father of the nation, Mahatma Gandhi said about treatment of Animals:

The greatness of a nation and its moral progress can be measured by the way in which its animals are treated.