

(2010) 04 DEL CK 0191

In the Delhi High Court

Case No : Writ Petition (C) 17087 of 2004

Samir Thapar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Customs Act, 1962 — Section 124

Foreign Trade (Development and Regulation) Act, 1992 — Section 5

Wild Life (Protection) Act, 1972 — Section 1, 2(31), 2(36), 49B

Citation : (2011) 7 RCR(Civil) 2559

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Ashok Grover, with Ms. Meenakshi Singh, for the Appellant; Monika Garg, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—By the present petition filed under Article 226 of the Constitution of India, petitioner has invoked the extra-ordinary jurisdiction of this Court and seeks a direction to respondents no. 3 and 4 to issue a No Objection Certificate for importing one animal trophy from the Republic of Tanzania, for his personal use.

2. Brief facts, which have led to filing of the present petition, as stated in the petition, are that the petitioner had visited Republic of Tanzania for a holiday and he went on a hunting spree to Farms of Solaces Game Reserves from 24th July to 31st August, 2001. During the course of hunting the petitioner hunted various species under a valid hunting permit granted to the petitioner by the Government of Tanzania, as detailed below:

Sl. No.

Species

Zoological Name

No.

1.

Hartebeest

Alcelaphus B. Lichteinsteini

2

2.

Warthog

Phacochoerus Asthiopicus

2

3.

Hyaena

Crocota Crocuta

1

4.

Impala

Aepyceros Melampus

2

5.

Lion

Pathera (Felis) Leo

1

6.

Wildbeest

Connochaetes taurinus taurinus

2

7.

Buffalo

Syncerus Caffer Caffer

1

8.

Zebra

Equus Burchelli

2

9.

Bushpig

Potamochoerus porcus

1

10

Hippo

Hippopotamus amphibious

1

11.

Bushbuck

Tragelphus scriptus

1

12.

Eland

Taurotragus oryx

1

13.

Greater Kudu

Strepsiceros strepsiceros

1

14.

Duiker

Sylvicapra gimmia

1

15.

Leopard

3. The petitioner, in support of his claim that he had visited Tanzania and had also been on a hunting spree, produced before respondents no. 3 and 4 a letter dated 08.07.2002 issued from Luke Samaras Safaris Limited, Tanzania, as well as letter dated 17.07.2002 from the Ministry of Natural Resources and Tourism, United Republic of Tanzania, stating that the species hunted by him were legally acquired and supported the claim for importation into India, CITES permit for lion, hypo and leopard. Other species do not attract provisions of CITES. Expert's certificates dated 12.11.2001 and 05.11.2001 from the United Republic of Tanzania as well as the hunting permit were also produced. On his return to India, petitioner made an application for grant of a no objection certificate for import and clearance of hunting trophies to the Deputy Director, Wildlife Regional Office (NR), respondent no. 3, Ministry of Environment and Forests, Bikaner House, New Delhi, on 02.08.2002.

4. Along with the application, petitioner furnished all the necessary documents to substantiate his claim for bringing into India the said articles and trophies and applied for grant of a "no objection certificate" for clearance of the said articles and trophies to be kept by the petitioner in his house for personal use. The petitioner also made an application on the same date i.e. 02.08.2002 to respondent no. 4 bringing to its notice the claim of the petitioner that on a hunting spree in the republic of Tanzania between July 24 to August 13, 2001 petitioner had hunted animals, and prayed for a no objection certificate for clearance of the articles to enable him to keep the articles and trophies for his personal use. In this communication the petitioner also pointed out that he had already made an application to respondent no. 3 for the said purpose. It is submitted that petitioner received a communication from the office of the Deputy Conservator of Forests and Wild Life Officer, Govt. of NCT of Delhi by which a no objection certificate being No. F.30 (291)/CWL-99/297-298 dated May 27, 2003 with reference to petitioner's application dated 02.08.2002 and application of 18.03.2003 was granted and petitioner was permitted to import the trophies from Tanzania to India under hunting permit no. 05390. The petitioner was informed that the Office did not have any objection to the import of the said articles, subject to following conditions inter alia:

1) Permission from the Regional Deputy Director (NR), Wildlife Preservation, Government of India, Bikaner House, Shahjahan Road, New Delhi under CITES management authority should be taken before bringing the articles under valid license for import.

2) After the import of the trophies they should be produced if verified and allowed under the CITES authorities, to the Chief Wildlife Warden, Delhi or to his authorized officer.

3) The animal trophies would not be displayed in any commercial premises and

would not be gifted or transferred except with the prior permission to Chief Wildlife Warden, Delhi.

4) The animal trophies would not be sold or disposed off under any circumstances.

5) The import of animal trophies and articles of look alike species will not be allowed.

6) The importer should not have past criminal record especially relating to wildlife anywhere in India.

5. On July 10, 2003 petitioner received a communication from the Deputy Director (N.R.) Wildlife Regional Office (N.R.), in response to his communication dated 02.08.2002 and the no objection certificate issued from the office of Deputy Conservator of Forests and Wildlife Officer dated 27.05.2003. By this communication, petitioner was informed that the competent authority had decided to allow the import of trophies/ skins from Tanzania on production of license from the Directorate General of Foreign Trade and a valid CITES Export Permit from exporting country. The petitioner was informed that the import of skull and skin of look alike species i.e. *Panthera pardus* would not be allowed. Petitioner was also informed that the final no objection certificate would be given by the office only upon examining the goods and relevant documents at the time of import. Petitioner was duly informed and advised to comply with all the conditions in the no objection certificate dated 27.05.2003 issued by the Deputy Conservator of Forests and Wildlife Officer, Delhi after the Import of skins, trophies. The petitioner also addressed a communication to Deputy Director Wildlife Regional Officer (N.R.) on 08.09.2003 inviting the said respondents' attention to the petitioner's application of 02.08.2002 pointing out that respondent no. 3 had issued a no objection certificate to the petitioner in respect of the items mentioned in the petitioner's application except import of skull and skin of look alike species i.e. *Panthera pardus*. Petitioner also pointed out in the said application that he had addressed a communication dated 23.07.2003 to Mr. Vinod Rishi, Additional Director General, Ministry of Environment and Forests, requesting for grant of permission for one time import of trophies (*Panthera pardus*) hunted by the petitioner. The office of respondent no. 3 had directed the petitioner to approach the Delhi Government and in case the Delhi Government takes a sympathetic view of the matter, the petitioner would be allowed to import animal trophies, articles of look alike species as a onetime import. The petitioner pointed out that he had addressed letters to Deputy Conservator of Forests and Wildlife Office dated 23.07.2003 and also approached the Secretary, Ministry of Environment and Forest and sought permission to import of look alike species on a one time basis subject to clearance of Ministry of Environment and Forest in Delhi.

6. The petitioner addressed another letter dated 17.10.2003 to the Deputy Wildlife, Regional Officer (NR), respondent no. 3 and pointed out that he was not

importing skin and trophies of look alike spices till the matter was finally settled with the Ministry, however, he would import the balance trophies as per the list. The petitioner in this communication requested that a fresh no objection certificate may be issued in respect of balance trophies as per the list which was enclosed with the communication. The Deputy Director, Wild Life Regional Office by his communication dated 16.02.2004 with reference to no objection sought by the petitioner for import and clearance of hunted trophies to be imported from Tanzania Republic, informed the petitioner that trophies of following spices would be allowed to be imported to India subject to fulfillment of conditions of Exim Policy i.e. license from Directorate General of Foreign Trade on the recommendation of the Chief Wildlife Warden:

Sl. No.

Common Name

Zoological Name

Qty.

CITES App.

1.

Warthog

Phacochoereusaethiopicus

2

Nil

2.

Hippo shouldermount

Hippopotamus amphibious

1

App. II

3.

Buffaloshouldermount

Synceruscaffer

1

Nil

4.

Eland shouldermount

Taurotragusoryx

1

Nil

5.

Lion rugmount

Patheraleo (African lion)

1

App. II

6.

Bluewildbeestshouldermount

Connochaetestaurnius

2

Nil

7.

Bushbackshouldermount

Tragelaphusscriptus

1

Nil

8.

Soptted Hyena rugmount

Crocutacrocuta

1

Nil

9.

Impala shouldermounts

Aepycerosmelampus

2

Nil

10

Bush Duiker fullmount

Sylvicapragrimmia

1

Nil

11.

Greater Kudu shouldermount

Tragelaphusstrepsiceros

1

Nil

12.

Hippo foot ice bucket

Tippopotamusambhibius

1

App. II

13.

Hartbeestshouldermounts

Alcelaphusbaselaphus

2

Nil

14.

Zebra flatskins tan & felt

Equusburchelli

2

Nil

7. It is submitted by counsel for the petitioner that petitioner has not violated any of the provisions of the Wild Life (Protection Act) 1972 and Rules framed there under or the Foreign Trade (Development and Regulation) Act, 1992. The aim of the petitioner is only to import the said articles into the country, upon grant of a no objection certificate and /or a valid import license in favor of the petitioner by the respondent. The Deputy Director Wild Life Regional Office (NR) permitted the petitioner to partially import the trophies and articles from the Republic of Tanzania, detailed as items Nos. 1 to 14, however, petitioner was not permitted to import the trophies of Panthera pardus.

8. Mr. Ashok Grover, learned senior counsel for petitioner submits that there is no provision either in the Wild Life (Protection Act) 1972 and Rules framed there under or in the Foreign Trade (Development and Regulation) Act, 1992 or in the Exim Policy of the Government, banning import of Panthera pardus and the request of the petitioner has been declined in an arbitrary manner, in spite of the representation dated 23.02.2004 to the Director General of Foreign Trade for issuance of an import and clearance of hunted trophies.

9. Counsel for petitioner submits that the facts of his case are similar to the case before the Bombay High Court, wherein the Bombay High Court had an occasion to deal with a writ petition which had been filed against the order of Regional Director, WLP dated 08.11.2002 at the instance of one Mr. Punawala whereby the said Sh. Punawala had sought permission for import into India the wild life animals, including leopard Panthera pardus, from the State of Namibia, which permission was granted by the Union of India, but he had been denied the clearance by the Customs/CITES which led to filing of the said writ petition.

10. Counsel for petitioner also submits that Bombay High Court in its judgment dated 28.04.2003 has held that petitioner (Mr. Punawala) had complied with all the requirements of CITES under the Export Import Policy and also under the provisions of Wild Life (Protection Act) 1972 and Rules framed there under and the order passed by the Regional Deputy Director (W.R.) and Assistance CITES Management Authority, Wild Life Regional Office were liable to be quashed and set aside. Bombay High Court further directed the Customs Authorities to adjudicate upon the show cause notice issued to the petitioner u/s 124 of the Customs Act. SLP against the aforesaid order has been filed by the Union of India and the same is pending consideration.

11. Mr. Grover, counsel for petitioner submits that petitioner has been approaching the respondent and has made repeated requests for grant of no objection certificate to import the trophies of Panthera pardus for his personal use on one time basis, but "no objection certificate" has not been issued. Counsel for petitioner submits that action of the respondent in not permitting the petitioner to import the trophies of Panthera pardus into India is discriminatory as in the year 2002 Sh. Punawala has been granted permission to import the said articles into India. Even otherwise it is contended that the decision not to issue the "no objection certificate" is not based on any rational basis or classification and the action is arbitrary and based on the whims and fancies of the respondent and is uncalled for.

12. It is contended that the decision in not granting the "no objection certificate" is contrary to the provisions of the Wild Life (Protection Act) 1972 and Rules framed there under. Counsel for petitioner submits that a trophy of an animal is bound to be look alike original. He has drawn attention of the court to the term trophies as defined u/s 2(31) of the Wild Life (Protection Act) 1972. The term reads as under:

"Trophy" means the whole or any part of any captive animal or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural, and includes -

(a) rugs, skins and specimens of such animal mounted in whole or in part through a process of taxidermy, and

(b) antler, horn, rhinoceros horn, hair feather, nail, tooth, musk, eggs and nests.

13. Counsel for petitioner submits that reading of the definition would show that trophies mean rugs, skins and specimen of such animal whether in whole or in part. Further the expression "specimen" connotes a trophy which is a copy of the original and would not be different from the original.

14. Counsel also submits that any administrative instructions prohibiting the import of trophies of *Panthera Pardus* cannot be binding on the petitioner as the said instructions cannot either regulate or control the provisions of Wild Life (Protection Act) 1972. Even otherwise, it is contended that the instructions are discriminatory, arbitrary and bad in law. Further counsel for petitioner submits that a policy cannot take place of law as also any instructions which would tend to go against the statutory provisions so as to whittle down the effect of such a provision, such instructions would be non est in the eyes of law. It has been strongly urged before this Court that petitioner has furnished all the relevant documents to show that petitioner was genuinely and lawfully desirous of importing the said articles into the country, which has not been considered by the respondent. Counsel also submits that respondents have failed to appreciate that petitioner is desirous of importing said article into India for his personal use and not for commercial purposes and for which he has not violated the provisions of Wild Life (Protection) Act, 1972. He further submits that a mere fact that items 1 to 14 were permitted to be imported would by itself show that import of such articles is not prohibited as per the Exim Policy and an unreasonable classification of articles cannot be made at the whims and fancies of the respondents.

15. During the pendency of this writ petition, petitioner had placed on record subsequent events by filing an additional affidavit. In the additional affidavit petitioner has pointed out the acts of discrimination at the hands of the respondent. Para 3 of the additional affidavit reads as under:

3. That the petitioner, has now, come across, copies of the Import Licenses which have been issued by Respondent No. 2 in favor of the following persons namely:

Sl. No.

License No. / Date

Issued in favor of

Name of the Item

1.

0260794/ 23.3.2005

Shri Digamber Purnam Giri (Naga Baba), Siddha Kutti, Siddha Yog Ashram, Gangotri Dham, Distt. Uttarkashi

Common Tiger (Skin)

2.

0260795/ 23.3.2005

Shri Prem Puri, (Naga Baba), Joshi Math, Distt. Chamoli, Gharwal, Uttaranchal

Common Leopard Hide (Skin)

3.

0260796/ 23.3.2005

Shri Krishna Giri (Naga Baba), Man Mahesh, Mahadev Yoga Ashram, Chandreshwar, Chander Bhaga, Rishikesh, Uttaranchal

Common Leopard Hide (Skin)

16. Counsel for respondents No. 3 and 5 has opposed this petition and has placed reliance to the stand taken in the counter affidavit and the preliminary objections, which are reproduced below:

3. The petitioner, by way of present petition, is trying to import into India the animal skin which is expressly prohibited in accordance with the relevant provisions of law as stated hereunder. In this view of the matter the present petition is an abuse of the process of this Hon"ble Court and as such is liable to be dismissed on this ground as well.

4. It is submitted that the Petitioner had made an application for the grant of No Objection Certificate from the Chief Wildlife Warden, Govt. of NCT of Delhi and Deputy Director, Wildlife Preservation, Regional Office (NR) & Assistant CITES Management Authority of India to import into India a trophy of leopard - Panthera Pardus. It is submitted that the import and export of any item into India or from India is governed by the provisions of Foreign Trade (Development & Regulation) Act, 1992 and the Foreign Trade Policy. The Foreign Trade Policy is notified from time to time by the Director General of Foreign Trade in exercise of its power u/s 5 of the Foreign Trade (Development & Regulation) Act, 1992. A copy of the Notification No. 1 (RE-2003/2002-07), New Delhi dated 31st March, 2003 notifying the Export - Import Policy (which is now known as Foreign Trade Policy) 1st April 2002 - 31st March, 2007 as amended upto 31.03.2003. It is submitted that under the provisions of entry No. 4302 19 40 of the Foreign Trade Policy, the import of tiger/ cat skin is prohibited /not permitted to be imported. The import of hides and skins of other animals with hair on, tanned or dressed is

though free, i.e. without license, however, subject to the provisions Wildlife (Protection) Act, 1972 and CITES vide entry No. 4302 19 90 of ITC (HS) classifications of Export Import items 2002-07.

5. By virtue of Import Licensing Note 6 given under Chapter I of Section 1 of Exim Policy ITC (HS) Classifications of Export & Import items, 2002-2007, the import of wild animals, including their parts and products, as defined in the Wildlife (Protection) Act, 1972 is prohibited.

6. It is submitted that as per Section 2(36) of the Wildlife (Protection) Act, 1972, "wild animal means any animal specified in Schedules I to IV and found wild in nature." *Panthera pardus* (leopard) is listed at entry No. 16B of Schedule I of the Wildlife (Protection) Act, 1972. It is thus amply clear that as per the provisions of Exim Policy vide its entry no. 4302 1990 read with Import Licensing Note no. 6 and Section 2(36) and Schedule I of the Wildlife (Protection) Act, 1972, the import of leopard (*Panthera*) skin is prohibited.

7. It is thus seen that the import of panther (*Panthera pardus*) skin is illegal in violation of existing Exim Policy as explained in the above paragraphs. The "No Objection Certificate dated 27.5.03 issued by the Chief Wildlife Warden, Delhi and dated 16.2.04 issued by the Ministry of Environment & Forests, New Delhi, relate to the items which are allowed to be imported as per the existing Exim Policy and do not relate to the Panther (*Panthera pardus*) skin which is prohibited from being imported in accordance with the Exim Policy, CITES, Wildlife (Protection) Act and other relevant policy provisions as stated above. Hence, without a proper NOC, the petitioner cannot import the said skin in violation of the laws of the country. It is submitted that the No Objection certificate dated 27.05.2003 referred to in the writ petition to have been issued by the officer of the Chief Wildlife Warden, Delhi clearly states that the import of animal trophies and articles of look alike species will not be allowed. The Look-alike species also include species listed in Wildlife (Protection) Act, 1972. Thus it is not correct to suggest by the petitioner that any office order, that may be in existence and /or said to have been issued by the Deputy Inspector General (WL), Government of India, Ministry of Environment & Forests and/or the Chief Wildlife Warden, Delhi and/or any functionary under the Wildlife (Protection) Act, 1972 and/or the Foreign Trade (Development and Regulation) Act, 1992, is arbitrary in nature/ without jurisdiction/ contrary to law and inconsistent and/or contradictory to the provisions of the Foreign Trade (Development & Regulation) Act, 1992 and the provisions of the Wildlife (Protection) Act, 1972 and the rules framed there under. The rejection of case to issue NOC in favor of the petitioner by the Ministry of Environment & Forests is very much in accordance of provisions of the Foreign Trade (Development & Regulation) Act, 1972, Exim Policy and the Wildlife (Protection) Act, 1972 as explained in the above paragraphs. Therefore, the petition filed by the petitioner is liable to be dismissed.

17. A short affidavit has been filed by respondent no. 2, Director General of Foreign Trade, wherein it has been stated that the petitioner vide letter dated

23.2.2004 had made a request to the Office of respondent no. 2 for issuance of "No Objection Certificate" for clearance and import of hunting trophies from Tanzania. Along with the letter dated 23.2.2004, petitioner had enclosed a list of 15 items, sought to be imported by him. The petitioner in the said communication dated 23.2.2004 had also brought to the notice of respondent no. 2 that the Ministry of Environment and Forests in their "No Objection Certificate" dated 10.7.2003 had not allowed the petitioner to import one of the items i.e. Panthera Pardus due to look alike factor. In the short affidavit, respondent no. 2 has set out the policy provision in respect of import of Panthera Pardus. Para 5 of the same reads as under:

5. The Policy provision in respect of the item in question as per Chapter 43 of ITC(HS), Classification of Export and Import items is reproduced below:

ITC (HS) Code No.

Item

Policy

Condition relating to the Policy

43021940

Tiger-Cat Skins

Prohibited

Not permitted to be imported.

43021990

Hides and skins of other animals with hair on, tanned or dressed

Free

Imports are subject to Wild Life (Protection) Act, 1972 and CITES

43022000

Heads, tails, paws and other pieces

Free

Imports are subject to Wild

or cuttings, not assembled

Life (Protection) Act, 1972 and CITES.

43023000

While skins and pieces or cuttings thereof, assembled

Free

Imports are subject to Wild Life (Protection) Act, 1972 and CITES.

18. Ms. Monika Garg, learned counsel for respondents submits that import and export of any item into India or from India is governed by the provisions of Foreign Trade (Development & Regulation) Act, 1992. The notification No. 1 (RE-2003/2002-07), New Delhi, dated 31.3.2003 notifying the Export - Import Policy, known as Foreign Trade Policy, dated 1.4.2002 - 31.3.2007 has been relied upon by counsel for the respondent.

19. Learned counsel for the respondents submits that under the provisions of entry no. 4302 19 40 of the Foreign Trade Policy, import of tiger / cat skin is prohibited / not permitted to be imported. Counsel further submits that while the import of hides and skins of other animals with hair on, tanned or dressed is though free i.e. licensing, however, subject to the provisions of the Wildlife (Protection) Act, 1972, and CITES vide entry no. 4302 19 90 of ITC (HS) classifications of Export Import Items 2002 - 2007. Counsel for the respondents has drawn the attention of the court to the copy of the ITC (HS) classification of Export Import items 2002 - 2007 relating to the relevant entry no. 4302 19 90.

20. Learned counsel for the respondents submits that by virtue of Import Licensing Note 6 given under Chapter I of Section 1 of Exim Policy ITC (HS) Classification of Export and Import items 2002 - 2007, the import of wild animals including their parts and products as defined in the Wildlife (Protection) Act, 1972, is prohibited. Note 6 of the Import Licenses given in Chapter I of Section 1 of the Exim Policy ITC (HS) Classifications of Export & Import Items 2002 - 2007, reads as under:

(6) Import of Wild Animals (including their parts and products) as defined in the Wild Life (Protection) Act, 1972 is prohibited.

21. Learned counsel for the respondents relies upon Section 2(36) of the Wildlife (Protection) Act, 1972 with regard to the definition of Wild animal, which is reproduced below:

2. Definitions-

[(36) "wild animal" means any animal specified in Schedules I to IV and found wild in nature;]

22. Learned counsel for the respondents submits that Panther (*Panthera Pardus*) is listed at entry no. 16B of the Schedule (I) of the Wildlife (Protection) Act, 1972.

23. Learned counsel for the respondents has strongly urged before this Court that Wildlife (Protection) Act, 1972, cannot be read in isolation and the same is to be read along with the provisions of Exim Policy vide its entry no. 4302 19 90 read with Import Licensing Note no. 6 and Section 2(36) and Schedule (I) of the Wildlife (Protection) Act, 1972, as per which, the import of Leopard (*Panthera pardus*) skin is prohibited and it is in view thereof that the "No Objection Certificate" was not issued to the petitioner.

24. Learned counsel for the respondents submits that the "No Objection Certificate" dated 27.5.2003 issued by Chief Wildlife Warden, Delhi, as also the Certificate dated 16.2.2004 issued by the Ministry of Environment and Forests relate only to the items, which are allowed to be imported as per the existing Exim Policy and did not relate to the Panther (*Panthera Pardus*), which is prohibited from being imported in accordance with Exim Policy, CITES, Wildlife (Protection) Act, 1972. Counsel further submits that "No Objection Certificate" dated 27.5.2003 issued by Chief Wildlife Warden, Delhi, clearly states that the import of animal trophies and articles of look alike species will not be allowed.

25. Respondents have filed a reply to the application filed by the petitioner whereby the petitioner had brought on record subsequent events as also additional documents. In the application, the petitioner had specifically pointed out three instances where import licenses have been issued by respondent no. 2 for import of common tiger skin and common leopard hide on 23.3.2005. In reply to the application, the respondents have drawn out a distinction between the cases of the petitioner and the case relating to the import of one tiger / leopard skin, each, by Uttaranchal based Mahatmas for the purpose of prayers and meditation for Sadhana gifted by the King of Nepal.

26. It is contended by learned counsel for the respondents that in the case of Mahatmas, they have imported the tiger / leopard skins as gift on the strength of the import license / custom clearance permit issued by the Director General Foreign Trade. As per the provisions laid under para 2.19 of Foreign Trade Policy import of gift in cases other than free imports is allowed on the strength of Custom Clearance Permit (CCP), whereas the petitioner had applied for issuance of "No Objection Certificate" to import leopard skin / trophy, which falls under Chapter 43 (Exim Policy Code No. 4302 19 90) of ITC (HS) classification of export and import. The import, under this code, is subject to Wildlife (Protection) Act, & CITES. Counsel for the respondents further contends that as per the provisions of Exim Policy entry no. 4302 19 20 read together with the import licensing note no. 6 and Section 2(36) of Schedule (I) of the Wildlife (Protection) Act, 1972, the import of Leopard skin / trophy is prohibited. Counsel also contends that dealing with skin / trophies / animal articles is prohibited u/s 49B of the Wildlife (Protection) Act, 1972.

27. I have heard learned counsel for the parties and perused various documents filed along with the pleadings. The basic facts are not in dispute that the petitioner visited republic of Tanzania and went on a hunting spree to Farms of Selous Game Reserves during the period 24.7.2001 to 13.8.2001. In support of his visit to Tanzania for hunting spree, the petitioner has placed on record letter issued from Luke Samaras Sararis Limited dated 8.7.2002 as well as from the Ministry of Natural Resources and Tourism, United Republic of Tanzania, dated 17.7.2002 stating that various species hunted by the petitioner were legally acquired. On 2.8.2002, petitioner made an application to the Deputy Director, Wildlife Regional Office (NR), Ministry of Environment and Forests, seeking a "No

Objection Certificate" for bringing trophies into India. On the same date, a similar application was also made by the petitioner to the Office of Chief Wildlife Warden, Delhi. By a letter dated 27.5.2003, the Office of the Conservator of Forests and Chief Wildlife Warden informed the petitioner that the office of the Conservator of Forests and Chief Wildlife Warden would have no objection for import of trophies, subject to the various conditions, as outlined in the aforesaid communication. In this communication, it was made clear that the import of animal trophies and articles of look alike species would not be allowed. Another communication dated 10.7.2003 was issued to the petitioner by the Deputy Director, Wildlife Regional Office (NR), informing the petitioner that the competent authority has decided to allow import of trophies / skins from Tanzania on production of license from DGFT and valid CITES export permit from exporting country, however, the import of skull and skin of look alike species i.e. *Panthera Pardus* will not be allowed. The petitioner, subsequently, sought permission to import other trophies other than the *Panthera Pardus*, which was allowed to the petitioner in the year 2004. Various representations made by the petitioner for import of *Panthera Pardus*, stands rejected. In this backdrop, the petitioner seeks a direction to the respondents to issue a "No Objection Certificate" to import *Panthera Pardus* and also seeks a direction to quash communication dated 10.7.2003, by virtue of which, the said request of the petitioner has been rejected.

28. The main thrust of the argument of learned senior counsel for the petitioner is that the petitioner had visited Republic of Tanzania for holiday and went for the hunting spree. During the course of his hunting spree he hunted species under valid hunting permit and on his return he approached the respondents for grant of No Objection Certificate. It has been strongly urged before this Court by senior counsel for the petitioner that petitioner is neither a dealer nor is an importer of wildlife and the import of articles / trophies are for his personal use. Senior counsel for the petitioner has relied upon a decision rendered by the Bombay High Court whereby one Sh. Zavaray S. Poonawala was given permission to import the said articles into India. Taking into consideration that the decision of the Bombay High Court is subject matter of a SLP filed by the Union of India, wherein the Apex Court had granted leave and directed the status quo, with regard to trophies, to be maintained in the meanwhile, the petitioner can gain no advantage of the decision rendered.

29. Learned senior counsel for the petitioner has also strongly urged before this Court that there is no bar under the Wildlife (Protection) Act, 1972, and more so the action of the respondents is arbitrary in nature, irrational, not based on any rule of law and the "No Objection Certificate" is sought to import of a trophy of *Panthera Pardus* and not for any hide or skin or skull for which the case of the petitioner would clearly fall under Chapter 97 Exim Code 97050010 - Stuffed animals and not under Entry 4302 19 40 or 4302 19 90 under Chapter 43 of the Exim Policy.

30. I am unable to accept the submission of the learned senior counsel for the petitioner for the reasons that the Wildlife (Protection) Act, 1972 cannot be read in isolation. In response to the first application made by the petitioner on 20.11.2001, the Office of the Chief Wildlife Warden vide memo dated 3.12.2001 had informed the petitioner that they would have no objection, subject to the following conditions:

As per condition no. 5, the import of trophies and animals articles of look alike species will not be allowed.

31. Thereafter the stand of the respondents has been consistent. In response to another applications made by the petitioner on 2.8.2002 and 18.3.2002 while granting the "No Objection Certificate" the Office of the Conservator of Forests and Chief Wildlife Warden by a communication dated 27.5.2003 made it clear that the "No Objection Certificate" would be granted, subject to the various conditions and condition no. 5 remained unchanged. Petitioner was informed by the Deputy Director Wildlife Regional Office (NR) by a communication dated 10.7.2003, in response to the letter of the petitioner dated 2.8.2002, that import of skull and skin of look alike species i.e. Panthera Pardus will not be allowed. The Convention on International Trade in Endangered Species of Wild Fauna (CITES) and Flora was signed at Washington, D.C., and came into existence on 3.3.1973. The introduction of Convention on International Trade in Endangered Species of Wild Fauna and Flora 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 even-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

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

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

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

Have agreed as follows:

32. To protect certain species of Wild Fauna and Flora and against every exploitation of species through Foreign International Trade, certain regulations were formulated. The import and export of items into India are governed by the provisions of Foreign Trade (Development and Regulation) Act, 1992, and the Foreign Trade Policy. As per entry no. 4302 19 40 of the Foreign Trade Policy, the import of tiger / cat skin is prohibited. There is no force in the submission of

learned senior counsel for the petitioner that the case of the petitioner is not covered by entry no. 4302 19 90 in view of the fact that the petitioner does not seek import of skin of Panthera Pardus. However, entry no. 4402 19 90 is to be read along with import licensing note no. 6 read with Section 2(36) of Schedule (I) of the Wildlife (Protection) Act, 1972. As per note 6, the wild animals include their parts and products, as defined in Wildlife (Protection) Act, 1972, and Schedules (I) to (IV) and the wild animals have been defined u/s 2(36) of Wildlife (Protection) Act, which means any animal specified in Schedules (I) to (IV) and found wild in nature. Perusal of the Schedule shows that Panthera Pardus is listed at entry no. 16B of Schedule (I) of the Wildlife (Protection) Act, 1972. Thus, a conjoint reading of the Foreign Trade Policy, more particularly entry no. 4302 19 40 the Wildlife (Protection) Act, 1972, read with import licensing note 6 leaves no room for doubt that there is an express bar in importing Panthera Pardus.

33. Learned counsel for the respondents has unable to give a satisfactory explanation as to how import licenses were granted on 23.3.2005 in the case of Mahatmas except that the tiger / leopard skins were gifted by the King of Nepal for the purpose of prayer and meditation for Sadhana and their case would be covered under Para 2.19 of the Foreign Trade Policy, import of gift, whereas the case of the petitioner would fall under Chapter 43 of the Exim Policy. It is strange that what cannot be allowed directly is being allowed to be done indirectly. As per the provisions laid under Para 2.19 of the Foreign Trade Policy, merely because the skins were presented to Mahatmas cannot be a ground to treat the case of Mahatmas separately, however, issuance of a license to the Mahatmas by itself cannot be a ground to allow this petition in favor of the petitioner. Consequently, present petition is without any merit and the same is dismissed, leaving the parties to bear their own costs.