
(2015) 07 SHI CK 0074
In the High Court Of Himachal Pradesh
Case No : CWPIl No. 3 of 2015

Sonali Purewal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 254(1), 51A(g), 51-A(g)
Prevention of Cruelty to Animals Act, 1960 — Section 11, 11(1), 11(1)(a), 11(1)(m)
(ii), 11(3)

Citation : (2015) 07 SHI CK 0074

Hon'ble Judges : Dharam Chand Chaudhary, J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Vandana Misra Panta, for the Appellant; Shrawan Dogra, A.G.,
Romesh Verma, Anup Rattan, Addl. A.Gs. and J.K. Verma, Dy. A.G., Advocates
for the Respondent

Final Decision : Disposed off

Judgement

Dharam Chand Chaudhary, J—The writ petition has been filed with the following prayers:

"(a) This Hon'ble Court may ban the practice of bull fights/animal versus animal fights/human versus animal fights/birds fights across the State of Himachal Pradesh and direct the State Government and concerned officials like the Deputy Commissioner, Superintendent of Police, SDO and other officials to implement the said ban accordingly.

(b) That there should also be a complete ban on the illegal betting that goes on during the event of bull fighting/animal versus animal fights/human versus animal fights/birds fights.

(c) That any person organizing, abetting, inciting, betting and being willing spectators in the event of bull fights/animal versus animal fights/human versus animal fights/birds fights should be dealt with most strictly in accordance with

the law.

(d) There should be a direction that the general public should be made aware and sensitized against the practice of bull fights/animal versus animal fights/human fights/bird fights through media both print and electronic."

2. The petitioner claims herself to be an animal rights activist and has been working for animal rights for the last 10 years. The complaint is that in different parts of the State of Himachal Pradesh, bulls fights are being held contrary to the provisions contained under Sections 3 and 11 of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as the "Act" in short), enacted with the sole object to prevent the animals from infliction of unnecessary pain and suffering or cruelty on animals to prohibit the incidents like animal fights. News items Annexure P-1 (Colly.) published in the issues of Punjab Kesari, a Hindi daily dated 13.10.2014 and 17.11.2014 have been pressed into service to substantiate the relief sought in the writ petition.

3. The respondents in reply to the writ petition have come forward with the version that the activities like bull fights have already been banned and as per information collected from the District Superintendent of Police, no incident of bulls fights, animal versus animals fight, human versus animal fights and birds fights has been reported in Bilaspur, Chamba, Kinnaur, Kangra, Kullu, Lahaul & Spiti, Shimla, Solan, Sirmour and Una Districts. In the cases reported in Districts Hamirpur and Mandi, appropriate action as per the provisions contained under the Act has been taken. Nothing, however, has been said in the reply qua the correctness or otherwise of the news items Annexure P-1 (Colly.).

4. We need not to go to every factual details and also legal aspect because the points raised in this writ petition are squarely covered by the judgment of the Hon"ble Apex Court in Animal Welfare Board of India Vs. A. Nagaraja and Others, (2014) AIRSCW 3327 : (2014) 7 JT 1 : (2014) 6 SCALE 468 : (2014) 7 SCC 547 : (2014) 5 SCJ 614 . The apex Court while interpreting the object and scope of the Act and what should be the role and duty of the Court has observed as under:

"33. The PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state of affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the

welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of *parents patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

34. The PCA Act, as already indicated, was enacted to prevent the infliction of unnecessary pain, suffering or cruelty on animals. Section 3 of the Act deals with duties of persons having charge of animals, which is mandatory in nature and hence confer corresponding rights on animals. Rights so conferred on animals are thus the antithesis of a duty and if those rights are violated, law will enforce those rights with legal sanction."

5. Similarly, while discussing the right of life enshrined under Section 21 of the Constitution of India and the provisions contained under Sections 3 and 11 of the Act read with Article 51-A(g) of the Constitution, which recognizes well being and welfare of animals, the apex Court has further observed as follows:--

"72. 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 and 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 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 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-ridden, overloaded 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."

6. It is after taking note of the above legal provisions, the apex Court has held that the bulls cannot be used for performing "Jallikatu" and bullock cart race

being conducted for entertainment and as a sports event in Tamilnadu. This part of the judgment of the apex Court reads as follows:

"73. 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 inflicted in the vadi vasal 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 they 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 which has totally dedicated its life for human benefit, out of necessity.

74. 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 51A(g) and (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."

7. Therefore, in order to prevent the infliction of unnecessary pain, suffering or cruelty on animals, the Apex Court has held and directed the Animal Welfare Board of India (AWBI) and also the Government as under:--

"90. We, therefore, hold that AWBI is right in its stand that Jallikattu, Bullock-cart Race and such events per se violate Sections 3, 11(1)(a) and 11(1)(m)(ii) of the PCA Act and hence we uphold the Notification dated 11.7.2011 issued by the Central Government. Consequently, bulls cannot be used as performing animals, either for the Jallikattu events or Bullock- cart races in the State of Tamil Nadu, Maharashtra or elsewhere in the country.

91. We, therefore, make the following declarations and directions:

91.1. We declare that the rights guaranteed to the bulls under Sections 3 and 11 of the PCA Act read with Articles 51A(g) & (h) of the Constitution cannot be taken away or curtailed, except under Sections 11(3) and 28 of the PCA Act.

91.2. We declare that the five freedoms, referred to earlier be read into Sections 3 and 11 of the PCA Act, be protected and safeguarded by the States, Central Government, Union Territories (in short "Governments"), MoEF and AWBI.

91.3. AWBI and Governments are directed to take appropriate steps to see that the persons in-charge or care of animals, take reasonable measures to ensure the well-being of animals.

91.4. AWBI and the Governments are directed to take steps to prevent the infliction of unnecessary pain or suffering on the animals, since their rights have been statutorily protected under Sections 3 and 11 of the PCA Act.

91.5. AWBI is also directed to ensure that the provisions of Section 11(1)(m)(ii) scrupulously followed, meaning thereby, that the person-in-charge or care of the animal shall not incite any animal to fight against a human being or another animal.

91.6. AWBI and the Governments would also see that even in cases where Section 11(3) is involved, the animals be not put to unnecessary pain and suffering and adequate and scientific methods be adopted to achieve the same.

91.7. AWBI and the Governments should take steps to impart education in relation to human treatment of animals in accordance with Section 9(k) inculcating the spirit of Articles 51A(g) & (h) of the Constitution.

91.8. Parliament is expected to make proper amendment of the PCA Act to provide an effective deterrent to achieve the object and purpose of the Act and for violation of Section 11, adequate penalties and punishments should be imposed.

91.9. Parliament, it is expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honour.

91.10. The Governments would see that if the provisions of the PCA Act and the declarations and the directions issued by this Court are not properly and effectively complied with, disciplinary action be taken against the erring officials so that the purpose and object of the PCA Act could be achieved.

91.11. TNRJ Act is found repugnant to the PCA Act, which is a welfare legislation, hence held constitutionally void, being violative of Article 254(1) of the Constitution of India.

91.12. AWBI is directed to take effective and speedy steps to implement the provisions of the PCA Act in consultation with SPCA and make periodical reports to the Governments and if any violation is noticed, the Governments should take steps to remedy the same, including appropriate follow-up action."

8. In view of the law laid down by the apex Court in the judgment supra, no other and further order except for a direction to the respondents to ensure the implementation of the judgment in mutatis mutandis and also observe compliance to the provisions contained under the Act, particularly under Sections 3 and 11, is warranted. Ordered accordingly.

9. With these observations, the writ petition is disposed of so also the pending application(s), if any.