

(2004) 11 KL CK 0058

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 25615 and 27119 of 2003

Sreekumar

APPELLANT

Vs

Travancore Devaswom Board

RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Kerala Captive Elephants (Management and Maintenance) Rules, 2003 — Rule 5

Citation : (2005) 1 KLT 43

Hon'ble Judges : S. Sankarasubban, J;A.K. Basheer, J

Bench : Division Bench

Advocate : S. Subhash Chand, for the Appellant; S. Gopakumaran Nair, for the Respondent

Judgement

S. Sankarasubban, J.—Both these Writ Petitions have been filed to bring to the notice of this Court that an elephant by name Manikantan, which was offered to Sree Vallabha Temple, Thiruvalla was dead. According to the petitioners, the elephant died because no proper care was taken and that the elephant was not properly treated for the disease. Since the petitioners proved a prima facie case, we appointed Sri. D. Sreevallabhan, Addl. District Judge, Pathanamthitta to enquire into the matter and file a report to this Court. Accordingly, he enquired into the matter and filed an enquiry report in two volumes. The first volume contains the report and the second volume contains depositions and documents.

2. In the report at page 39, it is stated as follows: "Hence, it is clear that there was laches on the part of EW 7 Sub Group Officer, EW9 Assistant Devaswom Commissioner and EW1 mahout in getting medical aid for the elephant at the proper time. At page 47, it is stated as follows: "Hence negligence can be attributed on the part of EW14 in causing the death of the elephant without giving effective treatment for the elephant". In the same page at paragraph 22, it is further stated as follows: "No proper care was taken by him in diagnosing the disease or for giving necessary treatment to the elephant Manikantan. Hence, there is negligence on his part in not giving proper medical care and

treatment". At page 56, in paragraph 27, it is stated as follows: "During the course of enquiry it is clearly revealed that Manikantan was not properly fed and not much care as required by the rules was taken by EWs.7 and 9 in feeding the elephant. No earnest effort is seen to have been made by them to get proper medical aid while Manikantan was suffering from illness for days together". Learned District Judge has further stated in paragraph 31 thus: "It is already pointed out that there is only one Veterinary Officer attached to the Travancore Devaswom Board for the check-up and treatment of about 50 elephants in the various temples of the Devaswom. EW10 had stated that there are three Devaswom Districts having its headquarters at Thiruvananthapuram, Ambalappuzha and Vaikom. In all these Districts there are elephants in several temples. All those elephants cannot be expected to get proper medical aid if there is only one Veterinary Officer". The Enquiry Officer further referred to Sub-Clauses 2 to 12 of Rule 5 of the Captive Elephants (Management and Maintenance) Rules, 2003 (Kerala).

3. In the facts and circumstances of the case, we are of the view that some specific directions have to be issued to the Travancore Devaswom Board and its functionaries in order to avoid recurrence of such unfortunate calamities to the animals in the custody of the Devaswom.

4. It has to be remembered that the Devaswom Board is the custodian of the animals which are entrusted by the devotees with the fervent hope and expectation that they will be looked after well. These animals are in a way offerings to the deities. Therefore, it is the paramount duty and responsibility of the Board to take proper care of these animals at all costs.

5. The learned District Judge in his enquiry report has referred to Clause 15 of Chapter XV of the Devaswom Manual which prescribes the duties of Sub Group Officer as regards the elephants of the Devaswom. Clauses 16 to 20 have also been extracted in the report which deal with the manner and mode in which the elephants have to be looked after and handled. The learned District Judge has also referred to Clauses 9, 10 and 11 of Chapter XV which pertain to the food that has to be given to the elephants and also the pattern of feeding.

6. Captive Elephants (Management and Maintenance) Rules, 2003 (Kerala) for short "the Rules" were brought into force on March 13, 2003. The Rules provide that the owner of the elephant has to maintain certain records relating to the elephants viz., the vaccination record, disease and treatment record, movement register, feeding register, work register, etc. Rule 4 of the above Rules also stipulates that the stable (tethering place) where the elephant is kept must have a clean and healthy environment with sufficient shade. If the shed is covered, the height of the structure shall not be less than the prescribed specifications. If corrugated iron sheets or asbestos sheets are used for roofing of elephants stables, they should be covered with gunny bags, grass, cadjan leaves etc. We have referred to some of the rules and the Clauses in the Manual not only to remind the Board about the existence of these provisions in the statute book and

the Manual, but also to remind them that these rules and Clauses are meant to be complied with and also implemented in letter and spirit.

7. The respondents have admitted that they are in custody of about 90 animals of which 50 are elephants. In the course of the enquiry the learned District Judge had found that the elephant which met with the tragic end was not put in a stable constructed as per the specifications contained in the Rules. It has come on record that one Veterinary Officer, who is a retired Government servant, is in charge of all these animals. It is also the admitted position that there are three Devaswom Districts viz., Thiruvananthapuram, Vaikom and Ambalapuzha. The animals are now being kept at various places in the three Districts. It is more or less conceded by the Board that one Veterinary Officer may not be able to attend to all the animals in the three Districts. It is also submitted that the Board may not be in a position to appoint more Veterinary Officers because of financial constraints. We cannot accept the above contention. If more Veterinary Officers have to be appointed, the Board should find ways and means to appoint them and pay their salaries. If the Board is not in a position to look after these animals, they should have thought twice before accepting them from the devotees. The devotees had reposed faith in the Board that these animals would be looked after well. If the animals are not looked after well, necessarily it will amount to cruelty to them. This, in turn, will attract the provisions of Prevention of Cruelty to Animals Act.

8. Having regard to the entire facts and circumstances, we issue the following directions:

- 1) The Board shall take all necessary steps to look after the animals in their custody in a proper and hygienic atmosphere. The animals should be fed properly and they should be regularly got examined by the Veterinary Officer.
- 2) The provisions contained in the Rules shall be scrupulously followed and implemented. Similarly the Clauses mentioned in Chapter XV of the Devaswom Manual shall also be adhered to and implemented. The Board shall ensure that its officers maintain the various, records/registers as provided in the Rules.
- 3) The Board shall appoint one more Veterinary Officer within one month from the date of receipt of a copy of this judgment. The duties of the two Veterinary Officers in the service of the Board shall be properly distributed among them, so that the two Officers are in a position to take care of all the animals in the three Districts. The two Officers shall be stationed in the three Districts. The two Officers shall be stationed at two convenient locations so that they can reach the station wherever their services are needed within the shortest possible time. If the Board is of the view that its financial position may not permit to accept more animals from the devotees, they shall stop accepting them.
- 4) The Board shall also ensure that the elephants which are sent to various Temples at the time of festivals are not overburdened and also that they are looked after well in the respective Temples wherever they are sent.

Writ Petitions are disposed of as above.