

(1993) 02 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 3286 of 1992

Sukhdev Singh Roy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-02-1993

Acts Referred:

Citation : (1993) 50 DLT 319 : (1993) 25 DRJ 522 : (1993) 2 ILR Delhi 264

Hon'ble Judges : G.C. Mittal, C.J;A.D. Singh, J

Bench : Division Bench

Advocate : Narinder Singh, V.K. Shall and Raj Panjwani, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This writ petition calls in question some provisions of the Wildlife (Protection) Act, 1972 as amended by Act 44 of 1991. The petitioner claims to be an agriculturist owning land in village Qutabpur, Tehsil Garhmukteshwar, District Ghaziabad, U.P. and submits that the Parliament in passing the amendment Act has encroached upon the legislative field reserved for the States. Mr.Narender Singh, learned counsel for the petitioner points out that u/s 62 of the unamended Act the States had been given power to declare any wild animal other than those specified in Schedule. I and Part Ii of Schedule Ii to be vermin for any area for such period as may be specified therein, but under the amending Act this power has been taken over by the Centre. He has invited our attention to Section 62 of the amended Act, by virtue of which the Central Government has been given power to declare by means of a notification any wild animal other than those specified in Schedule I and Part Ii of Schedule Ii to be vermin for any area. The learned counsel also invited our attention to Schedule V of the Act, in which following animals have been shown as vermin:

1.Common crow 2. Fruit bats 3. Mice 4. Rats

(2) Mr. Singh contended that the the wild animals like wild boars and blue bulls destroy the crops and the same are found in great numbers in the area in which

the land of the petitioner is located. He submits that the Central Government has not issued any notification u/s 62 of the Amending Act declaring the said animals to be vermin in for the area in question. He has drawn our attention to an earlier notification dated 26th November, 1990 issued by the State of Uttar Pradesh under the unamended Act whereby wild boar was declared as vermin. It is the contention of the learned counsel that the Parliament by taking away the power of the State Government to declare the said animals, which are destructive of the crops, as vermin and conferring the same on the Central Government has acted beyond its legislative competence as these matters pertain to agriculture falling in Entry 14 of in List II of the 7th Schedule of the Constitution.

(3) We have given our earnest consideration to the submissions of the learned counsel but regret our inability to accept the same. Entry 17B of List III of 7th Schedule reads as under:

"17B. PROTECTION of wild animals and birds".

(4) At this stage, preamble to the Act may also be noticed, which is in the following terms:

"AN Act to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto."

(5) A reading of the preamble shows that this Act is meant to protect the bio diversity, which is so very essential for survival of human race. By saving it we are only saving ourselves and preventing the world to perish as all beings and plants are interdependent upon each other for their existence.

(6) Section 62 deals with wild animals, a subject which squarely falls in Entry 17B of List III, list. of the 7th Schedule of the Constitution, with regard to which Parliament has also the legislative competence to enact a law. Argument of the learned counsel that the legislation has encroached upon the State field as saving of crops from wild boars and blue bulls is a subject pertaining to agriculture with regard to which only States have power to legislate under Entry 14 of List II of the 7th Schedule, is not correct. Applying the doctrine of pith and substance we find that the provisions of the Act especially Section 62 wholly fall within the purview of Entry 17B of List III of the 7th Schedule of the Constitution. Merely because some provision of the Act in its sweep touch a subject which falls in the State List would not make the provisions unconstitutional. The said section does not purport to enact any provision relating to agriculture but is directed towards protection of animals and birds. Accordingly, we reject the contention of the learned counsel that the Act impinges upon the field reserved for the States.

(7) The other contention of Mr. Singh, learned counsel for the petitioner, that the provisions of the Amended Act suffer from vagueness and show lack of application of mind by the Parliament, cannot be gone into as the wisdom of the Parliament cannot be tested by courts in the garb of judicial review.

(8) Accordingly, the writ petition is dismissed in limine.