

(2003) 03 MAD CK 0108

In the Madras High Court

Case No : Writ Petition No's. 38252 to 38258, 38259, 40995, 40996 and 41462 of 2002

Syed Ahamed Kabir

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 LW 71

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Gladys Daniel and K. Venkatasubbaraju, for the Appellant; N. Muralikumaran, A.C.G.S.C. for R1 and Selvi George, for V.S. Sethuraman, Spl. G.P. for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—In all these writ petitions, the petitioners have challenged the notifications issued by the 1st respondent-Union

Government bearing S.O. No. 665(e) dated 11.7.2001 and S.O. No. 1197(E) dated 5.12.2001.

2. The petitioners are fishermen doing fishing activities with the help of some mechanized boats. There are about 650 varieties of Sea Cucumbers

and out of which 200 varieties are found in Tamil Nadu coastal areas. According to the petitioners, among them, *Holothuria Scabra*, *Holothuria*

Spinifera, *Holothuria Arta* are the major catching varieties in Tamil Nadu and they are the main sources of income to the fishing community. Even

according to the petitioners, there is a ban with reference to the catching of Sea Cucumber of sizes below 3 inches, from 1982 and so the

petitioners have come forward with these writ petitions challenging the impugned

notifications banning the fishing of several varieties of fishes.

3. Heard Mr. Gladys Daniel, learned counsel appearing for the petitioners, Mr. N. Muralikumaran, learned Addl., Central Govt., Standing

Counsel appearing for 1st respondent-Union Government and Mrs. Selvi George, learned counsel appearing for the 2nd respondent.

4. Learned counsel appearing for the petitioners submitted that the impugned notifications cannot be sustained, as the same have been issued

without application of mind, as no study was conducted and no material was placed before the 1st respondent-Union Government to conclude

such banning. The next submission put forth by the learned counsel was to the effect that the impugned notifications are contrary to law and ultra

vires The Wildlife (Protection) Act, 1972, hereinafter called "the Act".

5. Learned Standing Counsel appearing for the 1st respondent-union Government, referring to the counter, submitted that only after getting

experts' opinion and also on the basis of the materials, the impugned notifications were issued. He also submitted that in view of Sec. 61 of the

Act, the 1st respondent-union Government is having power to issue the impugned notifications and so these writ petitions cannot be sustained.

6. The Act was enacted for protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto. The

Act came into force on 9.9.1972. Before dealing with the case of the petitioners, I am inclined to deal with the scheme of the Act.

Sec. 2(1) of the Act defines "animal" as follows:-

"animal" includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs.

Sec. 2(36) of the Act defines "wild animal", as follows:-

"Wild animal" means any animal found wild in nature and includes any animal specified in Schedule I, Schedule II, Schedule III, Schedule IV or

Schedule V, wherever found.

Sec. 2(37) of the Act defines "wild life", which is as follows:-

"wild life" includes any animal, bees, butterflies, crustacea, fish and moths; and aquatic or land vegetation which form part of any habitat.

According to Sec. 9 of the Act, no person shall hunt any wild animal specified in Schedules I,II,III and IV except as provided u/s 11 and section

12.

7. Till the impugned notifications are issued, the variety of fish in Part IV C of Schedule I of the Act, namely, Sea Cucumbur (All Holothurians) was

not brought within the scope of Sec. 9 of the Act. In exercise of powers conferred by sub-section(1) of Sec. 61 of the Act, the Central

Government made certain amendments to Schedules I and III of the Act by issuing notification dated 11.7.2001 which was published on

12.7.2001. As submitted by the learned counsel appearing for the petitioners, we are now concerned only with Part IV C in Schedule I of the Act.

Part IV C of Schedule I of the Act was included in Schedule I of the Act in and by the said notification. Though the petitioners challenge the

notification dated 5.12.2001, it does not deal with Sea Cucumber mentioned in part IV C to Schedule I and so I am not dealing with the

sustainability of the said notification, as no argument was advanced on the same.

8. Referring to Sec. 2(1) of the Act, the definition of ""animal"", learned counsel appearing for the petitioners submitted that fish has not been defined

as animal and so the 1st respondent-union Government have no jurisdiction to bring fish within the scope of the Act. Learned counsel further

submitted that the scope of the Act is not to deal with fish and so the impugned notifications cannot be sustained.

9. In the definition for ""wild life"" defined under Sec. 2(37) of the Act, "fish" also has been included. The definition for ""animal"" made under Sec.

2(1) of the Act is inclusive definition and so it cannot be restricted to the categories mentioned in the definition only. Exercising powers conferred

under Sec. 61 of the Act, the Government have now included "fish" also within the Schedule I of the Act. So, Sea Cucumber as mentioned in Part

IV C of Schedule I had been brought into Schedule I of the Act so as to treat the same as a wild animal as defined under Sec. 2(36) of the Act. If

the Union Government is having jurisdiction to bring Sea Cucumber within the definition of wild animal, the notification cannot be challenged as the

Government have no jurisdiction.

10. While considering whether sea fan can be covered under the definition of ""wild animal"", Murugesan, J., in his order passed in W.P. No. 17536

of 1994, dated 10.8.2001 has held as follows:-

From a reading of the definition, it could be seen that it is an aquatic and it can

be brought under the definition of wild life which definition also includes any animal. When once this Court comes to the conclusion that the sea fans which are aquatic can be considered as a part of animal kingdom and falls within the definition of wild life, there cannot be no other interpretation except the sea fan shall also be considered as a wild animal.

But, in the present case, "fish" has already been defined as wild life. By that definition, it has been considered as a part of animal kingdom and so it has to be considered as wild animal.

11. The subordinate legislation can be invalidated only if any reasonable construction in favour of its validity is not possible. Where the Legislature has clearly delegated such authority, the only issue that can normally be raised as to the validity of the Rule concerns the question whether it is ultra vires as exceeding the scope of authority delegated and whether it is violative of due process guaranteed. Court cannot assume that the Rule is invalid for the absence of competence or bona fides or fairness or reasonableness and cast the negative burden on the rule-making authority. But it should be just the other way. The person who challenges the validity of a rule has to prove his challenge just as a person who challenges a legislative enactment as the Rule made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and the statutory rules cannot be described or equated with administrative direction.

12. In exercise of the powers conferred under Sec. 61 of the Act, the Central Government was given power to add or delete any entry or from any Schedule or transfer any entry from one Part of a Schedule to another Part of the same Schedule or from one Schedule to another. The same could be done by issuing a notification. Exercising such powers conferred under the said provision, "Sea Cucumber" has been added in the I Schedule of the Act, by mentioning the same under Part IV C of Schedule I of the Act. When "fish" has been considered as a part of animal kingdom, in view of the definition of "wild life", it cannot be said that the Union Government cannot define "fish" as "wild animal" by way of the impugned notifications issued under the Act. In view of the fact that "fish" can be dealt with under the Act, and in view of the notifications issued exercising powers conferred under Sec. 61 of the Act, by adding Sea Cucumber

in Schedule I of the Act, it cannot be said that the said notifications are ultra vires of the Act itself. Such submission was made only on the basis that "fish" cannot be brought into the scope of the Act itself. When "fish" is brought in within the definition of "wild life" to make it as a member of animal kingdom, it cannot be said that fish cannot be brought into the scope of the Act by amending the Schedules.

13. With respect to the second submission that the Government issued the notifications without any material and by non-application of mind, the same also cannot be sustained. Though the learned counsel appearing for the petitioners is correct in submitting that merely because power is conferred under the Act it cannot be exercised arbitrarily, in this case a detailed counter is filed by the 1st respondent-Government stating the reason for including the Sea Cucumber in the I Schedule of the Act and about the materials for taking such decision to add Sea Cucumber in the I Schedule of the Act. In paragraphs 8 to 12 of the counter filed by the Regional Dy. Director, Wild Life Regional Office(Southern Region), Chennai, has explained elaborately the reasons and the basis for inclusion of Sea Cucumber in the I Schedule of the Act. This Court cannot sit on appeal on their decision which is based on some materials and so the submission made by the learned counsel that such decision is not based on any material cannot be sustained.

14. In view of the foregoing discussion, the petitioners cannot sustain these writ petitions saying the notifications are ultra vires of the provision of the Act, as the notifications have been issued exercising powers conferred under Sec. 61 of the Act and also in view of the fact that "fish" has been considered one of the animals in the animal kingdom as defined under Sec. 2(37) of the Act, defining "wild life".

15. These writ petitions are dismissed accordingly. No costs. Connected Miscellaneous Petitions are also dismissed.