

ITEM NO.23

COURT NO.4

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.24 of 2016

COMPASSION UNLIMITED PLUS ACTION

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

(With appln. (s) for stay/interim directions and office report)

WITH W.P.(C) No.23/2016

(With appln.(s) for stay and office report)

W.P.(C) No.25/2016

(With appln.(s) for interim relief and interim relief and office report)

W.P.(C) No.26/2016

(With appln.(s) for directions and office report)

W.P.(C) No.27/2016

(With office report)

Contempt Petition (C) No.D 1269/2016 in C.A. No.5387/2014

Date: 12/01/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s)

Mr. C.A. Sundaram, Sr. Adv.

Ms. Rohini Musa, Adv.

Mr. Abhishek Gupta, Adv.

Mr. Zaffar Inayat, Adv.

Ms. Anjali Sharma, Adv.

Mr. Balraj Dewan, Adv.

Mr. K.K. Venugopal, Sr. Adv.

Mr. R. Venkataramani, Sr. Adv.

Signature Not Verified

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Gulshan Kumar Arora

Date: 2016.01.12

17:09:58 IST

Reason:

Mr. Ajit Sharma, AOR

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Ms. Aparna Bhat, AOR

Mr. P. Ramesh Kumar, Adv.

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Ms. Tara Narula, Adv.

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Ms. Mehaak Jaggi, Adv.
Mr. Prithpal Nijjar, Adv.
Mr. Amit, Adv.
Ms. Ambika Nijjar, Adv.
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Mr. Nithya Rajehekar, Adv.
Mr. Mihir Samson, Adv.
Mr. Ravi Chandra Prakash, Adv.
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Mr. Yashraj Bundela, Adv.

Mr. Bijan Ghosh, Adv.

For Respondent(s) Mr. Mukul Rohatgi, A.G.

Mr. L.N. Rao, Sr. Adv.
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Mr. M. Y. Deshmukh, AOR

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Mr. Aniruddya Rajput, Adv.
for M/s Lemax Lawyers & Co.

UPON hearing the counsel the Court made the following
O R D E R

In these writ petitions preferred under Article 32 of the Constitution of India, the petitioners, Compassion Unlimited Plus Action, the Animal Welfare Board of India, Gauri Maulekhi, People for Ethical Treatment of Animals India and Federation of Indian Animal Protection Organizations, have prayed for an appropriate writ, order or direction for quashing Notification No.G.S.R.13(E) dated 7th January, 2016, published by the respondent, the Union of India, in The Gazette of India; Extraordinary, and further to command the respondent to ensure compliance with the law laid down in Animal Welfare Board of India vs. A. Nagaraja and Others (2014) 7 SCC 547, and to pass such other order as may be deemed necessary. There is a prayer for stay of the impugned Notification.

h We have heard Mr. C.A. Sundaram, Mr. Sidhart
 R. Luthra, Mr. K.K. Venugopal, Mr. Anand Grover, Mr.
 Venkataramani, Mr. Dushyant A. Dave, learned senior counsel
 along with Ms. Anjali Sharma, learned counsel and ot
 her learned counsel for the petitioners and Mr. Mukul Rohatgi,
 learned Attorney General for the Union of India, Mr. L.N. Rao
 and Mr. Shekhar Naphade, learned senior counsel for the State
 of Tamil Nadu and Mr. Nishant Ramakantrao Katneshwarkar,
 learned counsel for the State of Maharashtra.

The present case has a history to narrate.
 The Central Government had issued a Notification on 11th July,
 2011. The said Notification read as follows:
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"MINISTRY OF ENVIRONMENT AND FORESTS
 NOTIFICATION

New Delhi, the 11th July, 2011

G.S.R. 528(E).- In exercise of the powers conferred by Section 22 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), and in supersession of the Notification of the Government of India in the erstwhile Ministry of Social Justice and Empowerment No. G.S.R. 619 (E), dated 14-10-1998, except as respects things done or omitted to be done before such supersession, the Central Government, hereby specifies the the following animals shall not be exhibited or trained as performing animals, with effect from the date of publication of this notification, namely :-

1. Bears
2. Monkeys
3. Tigers
4. Panthers
5. Lions
6. Bulls

[F.No.27-1/2011-AWD]
 ANJANI KUMAR, Director(AW)"

The matter when travelled to this Court, a two-Judge Bench was required to examine the rights of animals under the Constitution of India, laws, culture, tradition, religion and ethology, especially in connection with the conduct of "Jallikattu", bullock cart races, etc. in the States of Tamil Nadu and Maharashtra, with particular reference to the provisions of the Prevention of Cruelty to Animals Act, 1960 (for short, 'the PCA Act'), the Tamil Nadu Regulation of Jallikattu Act, 2009, and the Notification dated 11 th July, 2011, issued by the Central Government under Section 22(ii) of the PCA Act. The Court adverted to various aspects and it expressed its views from various angles. Paragraphs 55, 56, 61, 62, 67, 73 and 74, are relevant to be reproduced for
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understanding the analysis made therein. We quote the same:

"55 As early as 1500-600 BC in Isha-Upanishads, it is professed as follows:

"The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

In our view, this is the culture and tradition of the country, particularly the States of Tamil Nadu and Maharashtra.

56. The PCA Act has been enacted with an object to safeguard the welfare of the animals and evidently to cure some mischief and age old practices, so as to bring into effect some type of reform, based on eco-centric principles, recognizing the intrinsic value and worth of animals. All the same, the Act has taken care of the religious practices of the community, while killing an animal vide Section 28 of the Act.

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61. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

62. The Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals. Five freedoms

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referred to in UDAW, which we will deal with in latter part of the judgment, find support in PCA Act and the rules framed thereunder to a great extent.

Article 51A(g) states that it shall be the duty of citizens to have compassion for living creatures. In State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others (2005) 8 SCC 534, this Court held that by enacting Article 51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51A(g), therefore, enjoins that it was a fundamental duty of every citizen "to have compassion for living creatures", which means

concern for suffering, sympathy, kindness etc., which has to be read along with Sections 3, 11(1)(a) & (m), 22 etc. of PCA Act.

X X X X X X X

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 is being inflicted in the vadivasal 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 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

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and enjoyment, that too, a species 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."

Mr. C.A. Sundaram and Mr. Anand Grover, learned senior counsel, have also drawn our attention to paragraphs 90 and 91. They read as follows:

"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 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:

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

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

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(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.

(4) AWBI and 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 PCA Act.

(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.

(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.

(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.

(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.

(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.

(10) The Governments would see that if the provisions of the PCA Act and the

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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 PCA Act could be achieved.

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

(12) AWBI is directed to take effective and speedy steps to implement the provisions of 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."

When the matter stood thus, the Central Government has issued a Notification on 7th January, 2016. The said Notification reads as follows:

"MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE
NOTIFICATION

New Delhi, the 7th January, 2016

G.S.R. 13(E).- In exercise of the powers conferred by Section 22 of the Prevention of Cruelty to Animals Act, 1960(59 of 1960), and in supersession of the notification of the Government of India in the Ministry of Environment and Forest, Government of India number G.S.R. 528(E), dated the 11th July, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, hereby specifies that the following animals shall not be exhibited or trained as performing animal, with effect from the date of publication of this notification, namely:-

1. Bears
2. Monkeys
3. Tigers

4. Panthers
5. Lions
6. Bulls

Provided that bulls may be continue to be exhibited or trained as a performing animal, at events such as Jallikattu in Tamil Nadu and bullock cart races in Maharashtra, Karnataka, Punjab, Haryana, Kerala and Gujarat in the manner by the customs of any community or practiced traditionally under the customs or as a part of culture, in any part of the country subject to the following conditions, namely:-

- (i) Such event shall take place in any District

where it is being traditionally held annually, at such place explicitly permitted by the District Collector or the District Magistrate;

(ii) bullock cart race shall be organised on a proper track, which shall not exceed two kilometres. In case of Jallikattu, the moment the bull leaves the enclosure, it shall be tamed within a radial distance of 15 metre;

(iii) ensure that the bulls are put to proper testing by the authorities of the Animal Husbandry and Veterinary Department to ensure that they are in good physical condition to participate in the event and performance enhancement drugs are not administered to the bulls in any form; and

(iv) ensure that the rights conferred upon animals under section 3 and clause(a) and clause(m) of sub-section(1) of section 11 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960) and five freedoms declared by the Hon'ble Supreme Court in its order dated 7 th May, 2014 in Civil Appeal No.5387 of 2014 are fully protected during such events:

Provided further that any event of Jallikattu or bullock cart races so organised shall be held with the prior approval of the District Authorities concerned:

Provided also further that the Jallikattu or bullock cart races so organised shall be duly monitored by the District Society for Prevention of

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Cruelty to Animals and State Animal Welfare Board or the District Authorities as the case may be, ensuring that no unnecessary pain or suffering is inflicted or caused, in any manner, whatsoever, during the course of such events, or in preparation thereof.

[F.No.27/01/2011-AWD]
HEM PANDE, Special Secy."

It is submitted by the learned senior counsel appearing for the petitioners that the said Notification does not really efface the verdict of this Court and, in fact, it runs contrary to the provisions of the PCA Act. It is urged by them that though the Central Government by recent Notification has added conditions, but treating of bulls in such a manner would not be justifiable regard being had to the compassion which has been enshrined under the PCA Act and the fundamental duties engrafted under Article 51-A of the Constitution of India. Learned counsel would urge that the use of bulls in this manner cannot be a matter of festivity for the human race, particularly in the 21 st century and, therefore, the Notification dated 7th January, 2016, should be stayed.

Mr. Mukul Rohatgi, learned Attorney General, in his turn, has submitted that the writ petitions are not maintainable under Article 32 of the Constitution of India as the fundamental rights of the Animal Welfare Board and other

petitioners are in no way affected. The said issue shall be debated at a later stage, for earlier a writ petition was entertained and as we perceive the Board and the others have really not approached the Court for protection of their fundamental rights, but the rights of the animals in the constitutional and statutory framework. Be that as it may, as such a preliminary objection has been raised by the

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learned Attorney General, we keep the issue open. Apart from the said submission, it is canvassed by Mr. Mukul Rohatgi, learned Attorney General that paragraph 91 of the judgment pronounced in A. Nagaraja case (supra) has to be appropriately understood. In essence, the submission of Mr. Rohatgi, is that this Court has not totally prohibited the participation of bulls in the Jallikattu, but it desired that care should be taken so that the bulls are not meted with cruelty. He has emphasized on the various terms and the guidelines provided in the Notification dated 7th January, 2016, so that cruelty to the participating animals is avoidable. The issue is of the stage of avoidability or treating with cruelty.

Mr. L.N. Rao and Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu, have submitted that this sport is in vogue for centuries and this Court has taken note of the nature of the Jallikattu in the earlier decision in A. Nagaraja case (supra) and, therefore, there cannot be a prohibition as that will be creating a dent in the culture. The same view is echoed with more concern by Mr. Shekhar Naphade.

Mr. K.K. Venugopal, learned senior counsel appearing for the Federation of Indian Animal Protection Organizations (FIAPO), per contra, would contend that cruelty to animals is inconceivable in the present day. Learned senior counsel has seriously criticized such an activity on the foundation that the sports of this nature deserve to be prohibited. It is urged by him that sports with articles and sports with living beings are different and the Court should take cognizance of the same.

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Having heard learned counsel for the parties, we are inclined to issue notice. The respondents who have entered appearance be served with the copy of the petition within a week hence. Counter affidavit be filed within four weeks therefrom. Rejoinder affidavit, if any, be filed within four weeks from the date of receipt of the counter affidavit. The un-served respondents be served through Dasti.

As an interim measure, we direct that there shall be stay of Notification dated 7th January, 2016, issued by the Ministry of Environment Forest and Climate Change, until further orders.

Let the matter be listed on 15th March, 2016.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master