

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

Friday, the 14th day of November 2014/23rd Karthika, 1936

WP(C).No.25231/2014(D)

PETITIONERS:

1. CATTLE RACE CLUB OF INDIA,  
REPRESENTED BY ITS SECRETARY VIPIN U.,  
RESIDING AT NEAR S.V.TEMPLE, WEST YAKKARA,  
PALAKKAD DISTRICT.
2. KERALA HEREDITARY AGRICULTURIST ASSOCIATION,  
REPRESENTED BY ITS SECRETARY, MOIDEEN KUTTY CHUKLI,  
AGED 52 YEARS, S/O.CHEKKU HAJI,  
RESIDING AT MANASAM, PERUVALLUR POST,  
MALAPPURAM DISTRICT-673638.
3. K.V.MOHAMMED, AGED 75 YEARS, S/O.HASSANKUTTY HAJI,  
RESIDING AT FATHIMA MANZIL, PONNANI TALUK, KOLALAMBU AMSOM,  
AYILAKADU DESOM, AYILAKADU. PO, VIA EDAPPAL.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF ANIMAL WELFARE, GOVERNMENT SECRETARIAT,  
TRIVANDRUM-1.
2. DISTRICT MAGISTRATE, PALAKKAD DISTRICT-678001.
3. EXECUTIVE MAGISTRATE AND TAHSILDAR, PALAKKAD. 678 001.
4. STATION HOUSE OFFICER, KUZHALMANNAM POLICE STATION,  
PALAKKAD DISTRICT. 679533.
5. STATION HOUSE OFFICER, CHANGARAMKULAM POLICE STATION,  
MALAPPURAM DISTRICT. 676503.
6. THE ANIMAL WELFARE BOARD OF INDIA,  
REPRESENTED BY ITS SECRETARY, THIRD C WARD,  
VALMEKI NAGAR, THIRUBANIYOOR, CHENNAI-600 001.
7. THE SOCIETY OF PREVENTION OF CRUELTY TO  
ANIMALS (SPCA), IDUKKI, REPRESENTED BY ITS SECRETARY,  
ERAPPUZHICKARA BUILDING, PALA ROAD, THODUPUZHA. 685584.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay Ext.P1 to P4.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.S.RAMESH BABU, Senior Advocate for the petitioner, SRI. K.JAJU BABU Senior Advocate for Respondent 6 and of SRI.BRIJESH MOHAN, Advocate for Respondent 7, the court passed the following:

P.T.O.



**A.MUHAMED MUSTAQUE, J.**

=====  
WP(C).Nos.29051, 29052 & 25231 of 2014.  
=====

Dated this the 14<sup>th</sup> day of November, 2014.

**O R D E R**

These matters are relating to the conduct of 'Kaalapoottu', 'Maramadi' and 'Kannupoottu' events. It seems the authorities have refused to give consent citing the provision of Prevention of Cruelty to Animals Act, 1960. This Court has passed an interim order permitting the petitioner based on the judgment of this Court in WP(C). No.25486 of 2009 without noticing any other judgments in the matter. It is pointed out by the Senior Counsel for the 7<sup>th</sup> respondent that this interim order is contrary to the settled legal position of the judgment of the Hon'ble Supreme Court in *Animal Welfare Board of India v. Nagaraja & others* (2014(7) SCC 547). In fact, this Court has no occasion to go through the above referred judgment of the Hon'ble Supreme Court. It is also pointed out by the Senior Counsel in the counter-affidavit filed in WP(C).No.25231 of

2014 on behalf of the 6<sup>th</sup> respondent Animal Welfare Board of India wherein relevant paragraphs of the judgment of Supreme Court is extracted 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.

(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 Government 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 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 constitution 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."

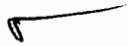
33. PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. 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. Section 3 is extracted hereunder for an easy reference: 3. Duties of persons having charge of animals. - It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.
42. Sections 3 and 11, as already indicated, therefore, confer no right on the organisers of Jallikattu or bullock-cart race, but only duties, responsibilities and obligations, but confer corresponding rights on animals. Sections 3, 11 (1)(a) & (o) and other related provisions have to be understood and read along with Article 51A

(g) of the Constitution which cast fundamental duties on every citizen to have "compassion for living creatures". Parliament, by incorporating Article 51A(g), has again reiterated and re-emphasised the fundamental duties on human beings towards every living creature, which evidently takes in bulls as well. All living creatures have inherent dignity and a right to live peacefully and right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering etc. Human life, we often say, is not like animal existence, a view having anthropocentric bias, forgetting the fact that animals have also got intrinsic worth and value. Section 3 of the PCA Act has acknowledged those rights and the said section along with Section 11 cast a duty on persons having charge or care of animals to take reasonable measures to ensure well-being of the animals and to prevent infliction of unnecessary pain and suffering.

43. All animals are not anatomically designed to be performing animals. Bulls are basically Draught and Pack animals. They are live-stock used for farming and agriculture purposes, like ploughing, transportation etc. Bulls, it may be noted, have been recognized as Draught and Pack animals in the Prevention of Cruelty to Draught and Pack animals Rules, 1965. Draught means an animal used for pulling heavy loads. Rules define large bullock to mean a bullock the weight of which exceeds 350 Kgs. Bullocks have a large abdomen and thorax and the entire body has a resemblance to a barrel shape, which limits ability to run.





Bulls have also limitations on flexing joints and the rigid heavily built body and limited flexion of joints do not favour running faster. Due to that body constitution, the Prevention of Cruelty to Animals (Transportation of Animals on Foot) Rules, 2001, especially Rule 11 says that no person shall use a whip or a stick in order to force the animal to walk or to hasten the pace of their walk. Bulls, it may be noted, are cloven footed (two digits) animals and two digits in each leg can comfortably bear weight only when they are walking, not running. Horse, on the other hand, is a solid hooped plant-eating quadruped with a flowing mane and tall, domesticated for riding and as a draught animal. Horse power, we call it as an imperial unit of power, equal to 550 foot-pounds per second. Horse's anatomy enables it to make use of speed and can be usefully used for horse racing etc., unlike Bulls.

44. Bulls, therefore, in our view, cannot be a performing animal, anatomically not designed for that, but are forced to perform, inflicting pain and suffering, in total violation of Sections 3 and Section 11(1) of PCA Act. Chapter V of the PCA Act deals with the performing animals. Section 22 of the PCA Act places restriction on exhibition and training of performing animals, which reads as under:

"22. Restriction on exhibition and training of performing animals: No person shall exhibit or train (i) any performing animal unless he is registered in accordance with the provisions of this Chapter; (ii) as a performing animal, any

✓

animal which the Central Government may, by notification in the official gazette, specify as an animal which shall not be exhibited or trained as a performing animal."

45. The words 'exhibit' and 'train' are defined in Section 21 of the PCA Act, which is as follows:

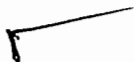
"21. "Exhibit" and "train" defined: In this Chapter, "exhibit" means exhibit or any entertainment to which the public are admitted through sale of tickets, and "train" means train for the purpose of any such exhibition, and the expressions "exhibitor" and "trainer" have respectively the corresponding meanings."

46. Section 23 of the PCA Act deals with the procedure for registration. Section 24 of the PCA Act deals with the powers of the court to prohibit or restrict exhibition and training of performing animals. Section 25 of the PCA Act confers powers on any authorised person to enter into the premises to examine as to whether the statutory requirements are properly complied with. Section 26 of the PCA Act deals with the offences and Section 27 of the PCA Act deals with exemptions. Performing Animals Rules, 1973 define 'performing animal' to mean any animal which is used at, or for the purpose of any entertainment to which public are admitted through sale of tickets. Jallikattu, Bullock-cart races, it was contended, are conducted without sale of tickets and hence Section 22 of the PCA Act would not apply, to also the notification dated 11.7.2011. We find no substance or logic in that submission. It may be noted that when Bull is specifically

✓

prohibited to be exhibited or trained for performance, the question whether such performance, exhibition or entertainment is conducted with sale of tickets or not, is irrelevant from the point of application of Sections 3 and 11(1) of the PCA Act.

54. The PCA Act, a welfare legislation, in our view, over-shadows or overrides the so-called tradition and culture. Jallikattu and Bullock cart races, the manner in which they are conducted, have no support of Tamil tradition or culture. Assuming, it has been in vogue for quite some time, in our view, the same should give way to the welfare legislation, like the PCA Act which has been enacted to prevent infliction of unnecessary pain or suffering on animals and confer duties and obligations on persons in-charge of animals. Of late, there are some attempts at certain quarters, to reap maximum gains and the animals are being exploited by the human beings by using coercive methods and inflicting unnecessary pain for the pleasure, amusement and enjoyment. We have a history of doing away with such evil practices in the society, assuming such practices have the support of culture and tradition, as tried to be projected in the TNRJ Act. Professor Salmond states that Custom is the embodiment of those principles which have commended themselves to the national conscience as the principles of justice and public utility. This Court, in *N Adithyan v. Travancore Devaswom Board and others* (2002) 8 SCC 106, while examining the scope of Articles 25(1), 2(a), 26(b), 17, 14 and 21, held as follows:



"18. .... Any custom or usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country."

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."

2. In view of the facts stated above, I am of the view, this Court passed the interim order without noticing the legal position as would apply for the above races <sup>involving</sup> including animal. Though the races are over,

✓

WP(C).Nos.29051, 29052 & 25231/2014.

11

considering its legal implications, the interim orders,  
therefore is recalled.

Sd/  
**A.MUHAMED MUSTAQUE**  
**(JUDGE)**  
True copy

*Kvs/-*

*|| True copy ||*

  
**Assistant Registrar**

*Ue*  
*12/11/14*

