

CASE NO.:
Appeal (civil) 3609-3620 of 2001

PETITIONER:
N.R. NAIR AND ORS.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 01/05/2001

BENCH:
B.N. KIRPAL & U.C. BANERJEE & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2001 (3) SCR 353

The Judgment of the Court was delivered by

KIRPAL, J. Intervention applications on behalf of Indian Circus Federation are allowed.

Special leave granted.

The main challenge in these appeals by special leave from the judgment of the Kerala High Court is to the validity of Section 22 of the Prevention of Cruelty to Animals Act, 1960 (for short "the Act") and the Notification issued under Section 22 to the effect that no person shall train or exhibit any animals specified therein, namely, bears, monkeys, tigers, panthers and lions. Briefly stated the facts are that on 2nd March, 1991 a Notification under Section 22 was issued banning training and exhibition of bears, monkeys, tigers, panthers and dogs. This Notification was challenged by the Indian Circus Federation before the High Court of Delhi. After the issuance of the Notification, a corrigendum was issued whereby dogs were excluded from the said Notification. Thereafter by an order dated 21st August, 1997, a Division Bench of the Delhi High Court required the Government of India to have a fresh look into the Notification after taking into account materials placed before it by the petitioners therein and other authorities.

A Committee was constituted by the Government of India consisting of Additional Inspector General (Wildlife), Director, Wildlife Institute of India, Member Secretary, Central Zoo Authority, Additional IGF (Retd.) and Director, Animal Welfare. The said Committee gave a detailed Report and in pursuance thereto the impugned Notification dated 14th October, 1998 was issued under Section 22 whereby exhibition and training of bears, monkeys, tigers, panthers and lions was prohibited.

The said Notification was challenged by filing a writ petition in the Kerala High Court and by the impugned judgment dated 6th June, 2000, the High Court has upheld the validity of the said Notification. It, inter alia, came to the conclusion that in exercise of judicial review it was not possible for the court to examine the correctness of the decision of the Government in issuing the said Notification especially when it had not been shown that any relevant fact had been ignored or irrelevant fact taken into consideration. Hence, these appeals.

The main thrust of the arguments of the learned counsel for the appellants has been that apart from Section 22 the Notification itself is arbitrary. It has been contended that Section 22 contains no guidelines on the basis of which the Central Government can issue a notification banning exhibition and training of any animal. It is also the case of the appellants that the Act does not provide for the animals to be taken away by the Government

once such a notification is issued.

The preamble of the Act states that it was enacted with a view "to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals". Section 11 provides as to what amounts to cruelty to animals generally. Section 21 defines the words 'exhibit' and 'train' and reads as follows :

"21. "Exhibit" and "train" defined-In this Chapter, "exhibit" means exhibit at 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 expression "exhibitor" and "trainer" have respectively the corresponding meanings."

Sections 22 and 24 with which we are concerned read as follows :

"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."

"24. Power of court to prohibit or restrict exhibition and training of performing animals-(1) Where it is proved to the satisfaction of any Magistrate on a complaint made by a police officer or any officer authorised in writing by the prescribed authority referred to in section 23, that the training or exhibition of any performing animal has been accompanied by unnecessary pain or suffering and should be prohibited or allowed only subject to conditions, the court may make an order against the person in respect of whom the complaint is made, prohibiting the training or exhibition or imposing such conditions in relation thereto, as may be specified by the order.

(2) Any court by which an order is made under this section, shall cause a copy of the order to be sent, as soon as may be after the order is made, to the prescribed authority by which the person against whom the order is made is registered, and shall cause the particulars of the order to be endorsed upon the certificate held by that person, and that person shall produce his certificate on being so required by the court for the purpose of endorsement, and the prescribed authority to which a copy of an order is sent under this section shall enter the particulars of the order in that register."

It will be seen that according to Section 24 if it is proved to the satisfaction of the Magistrate on a complaint being filed that there is any training or exhibition of performing animals which is accompanied by unnecessary pain or suffering, then the court has the jurisdiction to order the prohibition of the same. To our mind, keeping the preamble of the Act and Section 24 in view, power under Section 22 (ii) can be exercised only when the Central Government is of the opinion that the training and exhibition of the animals in respect of which a notification is being issued is for the purpose of preventing unnecessary pain or suffering being caused to the animals.

In the very nature of things when the animals are used for performance in circus, it requires training. It is for the Government to decide on the basis of the evidence on record and after taking into consideration other factors whether the training and exhibition of those animals would result in unnecessary pain or suffering being inflicted on them. It is pertinent to note that even with respect to the animals whose exhibition & training is prohibited the Act does not prevent the owner from keeping them as

domestic pets. Of course, it is going to be difficult to expect someone to have a lion or tiger as a pet. That apart, it is the welfare of the animals which is of paramount consideration and it is only if the Government is satisfied on the basis of the materials on record that unnecessary pain or suffering is inflicted on an animal during the course of training or at the time when it is exhibited that a notification under Section 22(ii) is issued. We are, therefore, unable to agree with the learned counsel for the appellants that the power contained in Section 22 is unguided. The reading of the Act as a whole clearly shows that implicit in Section 22 is the necessity for the Government to come to the conclusion that if a notification under said Section is issued there would be unnecessary pain or suffering in the training or exhibition of the animals. The existence of the said fact is a pre-condition to the issuance of the Notification.

Section 29 of the Act gives power to the court to deprive a person convicted under the Act of the ownership of animals. It is true that the Act is silent with regard to the ownership of the animals with respect to whom a notification under Section 22 is issued, but inasmuch as the circus owners keep the animals only for the purpose of training and exhibition then it must follow that they cannot retain them for that purpose. We are informed by the learned Solicitor General that Rescue Homes have been set up by the Central Government which are at Zoological Parks at Tirupati, Visakhapatnam, Bangalore, Jaipur and Chennai.

It is contended by the learned counsel for the appellant that no direction can be issued depriving the appellants of the ownership of the animals. We need not go into this question, but one thing is certain and that is that the appellants, namely, the circus owners are prohibited from either training or exhibiting any of the five animals referred to in the impugned Notification. What is done to the animals is not within the domain of these proceedings and we refrain from passing any order in respect thereto.

We agree with the decision of the High Court that in exercise of judicial review neither the High Court nor this Court can go into the correctness of the decision of the Government in issuing the impugned Notification. We are not satisfied that the Government acted irresponsibly or did not take into consideration the relevant materials which were available to it. A High Powered Committee had been constituted under the directions of the High Court, that Committee looked into all the evidence which was placed before it and the High Court has referred to extracts thereof which shows the manner in which the animals are trained or ill-trained. We need not make any further observations in respect thereof except to hold that we are satisfied that the impugned Notification is within the parameters of the Prevention of Cruelty to Animals Act, 1960.

For the aforesaid reasons, these appeals are dismissed. Parties to bear their own costs.