

CASE NO.:
Appeal (civil) 5519 of 1994

PETITIONER:
CHIEF FOREST CONSERVATOR (WILD LIFE) AND ORS.

RESPONDENT:
NISAR KHAN

DATE OF JUDGMENT: 18/02/2003

BENCH:
V.N. KHARE CJ S.B. SINHA & AR. LAKSHMANAN

JUDGMENT:
JUDGMENT

2003 (2) SCR 196

The following Order of the Court was delivered :

This appeal is directed against a judgment and order dated 27th August, 1993 passed by a Division Bench of the Allahabad High Court in Civil Misc. Writ No. 36693 of 1991 whereby and whereunder a writ petition filed by the respondent herein, inter alia, for issuance of a writ in the nature of mandamus directing the appellants herein to grant a licence for carrying on business as a dealer in birds which are bred in captivity, was allowed.

Before the High Court, the contention of the respondent was that he had been dealing in birds of several varieties specified in the Schedule IV appended to the Wild Life (Protection) Act 1972 (hereinafter called "the Act") wherefor he had applied for and had been granted a licence which was valid upto 31st December 1990. For renewal of the said licence for the year 1991, he filed an application but the same had not been granted. According to the respondent he had mainly been dealing in Munias, Parakeets, Mainas and Buntings which are found in abundance in the State of Uttar Pradesh and as such no prohibition can be imposed on his business in captive birds by the appellants in terms of the provisions of the Act or otherwise.

The contention of the appellants herein on the other hand, is that having regard to the Amendment made in Section 9 of the Act as the term 'hunting' includes 'trapping' of birds as specified in Schedule IV appended to the Act, no licence for dealing in them can be lawfully granted. It was further contended that the appellants served a notice on or about 4th December, 1991 directing the respondent to dispose of all the birds in his possession before 31st December 1991.

The High Court upon consideration of the respective contentions made by the parties held that the respondent herein was entitled to carry on business in the birds specified in Schedule IV of the Act and as such the matter relating to grant of licence ought to have been considered. The High Court directed as under:

"For the reasons, the petitioner partly succeeds and is allowed; the impugned notice dated 4.12.1991 (Annexure "5" to the writ petition) is quashed, the respondents are restrained from interfering in the business of the petitioner dealing in the birds, specified in Schedule IV to the Act and the respondents are further directed to grant licence to the petitioner for carrying on business as a dealer in the birds as specified in Schedule IV to the Act, which are bred in captivity either by the petitioner himself or which he procures from other breeders, within three months from the date a proper application is made in that behalf by the petitioner fulfilling all the conditions, prescribed by the aforesaid Rules of 1974."

Mr. Y. P. Singh, learned counsel appearing on behalf of the appellants

would submit that a bare perusal of the writ petition filed by the respondent herein would clearly indicate that he in his pursuit of dealing in birds categorically admitted that the birds are required to be trapped and as such he was not entitled to carry on his business.

Mr. Mukul Rohtagi the learned Addl. Solicitor General appearing as Amicus Curias inter alia, submitted that although dealing in birds in captivity as such is not prohibited, no licence can be granted in terms of Section 44 of the Act if by reason thereof the licensee would violate any of the provisions of the Act.

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

Section 2(1) of the Act defines 'animal' to mean amphibians, birds, mammals and reptiles and their young, and also includes, in the case of birds and reptiles their eggs. 'Captive animals' has been defined in Section 2(5) of the Act to mean any animal, specified in Schedule I, II, III or IV, which is captured or kept or bred in captivity. The term 'dealer' has been defined in Section 2(11) to mean any person who carries on the business of buying and selling any captive animal, animal article, trophy, uncured trophy meat or specified plant.

'Hunting' has been defined in Section 2(16) of the Act as under:

"hunting", with its grammatical variations and cognate expressions includes;

(a) capturing, killing poisoning, sharing and trapping of any wild animal and every attempt to do so.

(b) driving any wild animal for any of the purposes specified in sub-clause (a),

(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles or disturbing the eggs or nests of such birds or reptiles;

'Wild animal' has been defined in Section 2(36) of the Act to mean any animal found wild in nature and includes any animal specified in Schedule I, II, III, IV or V, wherever found.

Section 9 of the Act underwent an amendment by Act 44 of 1991 w.e.f. 2.10.1991 which provides that no person shall hunt any wild animal specified in Schedules I, II, III and IV except as provides under section 11 and Section 12. Section 11 provides for grant of permission for hunting of wild animals in certain cases, whereas Section 12 provides for grant of permit for special purposes.

'Trapping' of birds which comes within the purview of the meaning of the term 'hunting' is thus prohibited in terms of Section 9 of the Act.

It is not in dispute that the birds which the respondent had been dealing in, find place in Item Nos. 9, 44, 45 and 50 of Schedule IV appended to the Act. Section 44 of the Act prohibits any person from commencing or carrying on business, inter alia, as a dealer in captive animals subject to the provisions of Chapter 5A except under in accordance with the licence granted under sub-section (4) of Section 44 thereof, which reads thus.

"(4)(a) Every application referred to in sub-section (3) shall be made in such form and on payment of such fee as may be prescribed to the Chief Wild Life Warden or the authorised officer.

(b) No licence referred to in sub-section (1) shall be granted unless the Chief Wild Life Warden, or the authorised officer having regard to antecedents and previous experience of the applicant, the implication which the grant of such licence would have in the status of wildlife to such other matters as may be prescribed in this behalf and after making such inquiry in respect of those matters as may think fit, is satisfied that the licence should be granted."

Sub-section (6) of Section 44 provides that every licence granted thereunder would be valid for one year would not be transferred and would be renewable for a period not exceeding one year at a time.

Section 63 of the Act provides for the rule making power of the Central Government. Clause (i) of sub-section (1) of Section 63, inter alia, empowers the Central Government to make rules in relation to the matters covered under clause (b) of sub-section (4) of Section 44. Section 64 of the Act empowers the State Government to make rules. Clause (d) of sub-section (2) of Section 64 provides for the conditions subject to which any licence or permit may be granted under the Act.

It is not in dispute that the Central Government in exercises of its power conferred upon it under section 63 of the Act made the Wild Life (Transactions and Taxidermy) Rules, 1973, providing for the mode and manner under which licence can be granted in terms of the Act.

The Central Government also made rules known as the Wild Life (Protection) Licensing (Additional Matters for Consideration) Rules, 1983; Rule 3 whereof reads thus:

"Additional matters for consideration for grant of licence under section 44 of the Act - For the purposes of granting a licence referred to in sub-section (1) of section 44 of the Act, the Chief Wild Life Warden or the authorised officer, as the case may be, shall in addition to the matters specified in clause (b) of sub-section (4) of that section have regard to the following other matters, namely,...

(i) capacity of the applicant to handle the business concerned with reference to facilities, equipment and suitability of the premises for such business.

(ii) the source and the manner in which the supplies for the business concerned would be obtained;

(iii) number of licences for the relevant business already in existence in the area concerned;

(iv) implications which the grant of such licence would have on the hunting or trade of the wild animals concerned.

Provided that no such licence shall be granted if the said implications relate to any wild animal specified in Schedule I or Part II of Schedule II to the Act, except with the previous consultation of the Central Government."

It is now well settled that when rules are validly framed they should be treated as a part of the Act. A conjoint reading of the provisions of the Act and the Rules as referred to hereinbefore, leaves no manner of doubt that although grant of licence in respect of birds in captivity is not altogether prohibited but before grant of licence the licensing authority is under a statutory obligation to ensure that thereby inter alia the provisions of Section 9 of the Act as also the provisions of the Rules are not violated. The Act, as noticed hereinbefore, seeks to protect wild animals. Any provision contained in the Act aiming protection of wild animals, must necessarily be strictly complied with. When hunting of the birds specified in Schedule IV is prohibited, there cannot be any doubt

whatsoever that no person can be granted a licence to deal in birds in captivity which are procured by hunting which, as indicated hereinbefore, would also include trapping. It is one thing to say that by reason of breeding of birds in captivity their population is raised, but it is another thing to say that the birds are trapped before they are made captive so as to enable the licensee, to deal in them. The latter is clearly prohibited. Rule 3 of the 1983 Rules clearly postulates that the licensing authority is not only required to consider the source and the manner in which the supplies for the business concerned would be obtained but also is required to bestow serious consideration as regards implications which the grant of such licence would have on the hunting or trade of the wild animals concerned. When the licensing authority arrives at a finding of fact having regard to the past transactions of a licensee that it cannot carry on any business by reason of breeding of captive birds but necessarily therefor he is to hunt, he would be justified in refusing to grant a licence in terms of the provisions of the Act. Unless the provisions of the Act and the Rules are construed strictly and in the manner as observed hereinbefore, the very purpose for which the Act has been enacted would be lost.

Having regard to the purpose and object which the Act seeks to achieve, we have no other option but to hold that the High Court has proceeded on a wrong premise by issuing the impugned directions.

The High Court, in our opinion, committed a manifest error in directing the appellants herein to grant licence in favour of the respondent. As the licensing authority in terms of the provisions of the Act and the Rules framed, thereunder is required to consider the application filed by an applicant and satisfy himself that in the event any licence is granted in favour of the applicant, he is capable of strictly complying with the provisions of the Act, the Rule as also the terms and conditions of the licence laid down therefor. Only in the event of his being satisfied upon considering the objective criteria laid down therefor in the statute, he may issue a licence and as such it was not within the domain of the High Court to issue the impugned direction. It is set aside accordingly.

For the reasons aforementioned, while allowing the appeal in part, we direct that in the event the respondent herein files an application for grant of licence for dealing in captive birds, the same shall be considered by the Licensing Authority upon satisfying himself about the capability of the respondent as regards strict compliance of the Act the Rules and/or the relevant terms and conditions of the licence as also the fact as to whether by reason of such grant any provisions of the said Act would be violated or not.

This appeal is, thus, disposed of, but in the facts and circumstances of this case there shall be no order as to costs.