

GAHC010201532016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/73/2016

OITIGYA MANDITA AHATGURI ANCHALIK MOH-JUJ and BHOGALI BIHU
UTSAV SAMITI and ANR
MORIGOAN, DIST. MORIGAON, KAMRUP, ASSAM- 782105. THROUGH SRI
PRANAB JYOTI DAS SECRETARY.

2: SRI PRANAB JYOTI DAS
SECRETARY
MOH-JUJ AND BHOGALI BIHU UTSAB SAMITI
MORIGAON
DIST. MORIGAON
KAMRUP
ASSAM-782105

VERSUS

THE STATE OF ASSAM and 6 ORS,
THROUGH THE PRINCIPAL SECRETARY, HOME, POLITICAL INFORMATION
AND PUBLIC RELATIONS, GOVT. OF ASSAM, DISPUR, GUWAHATI- 781006,
ASSAM.

2:THE DEPUTY COMMISSIONER

NAGAON
ASSAM-782201.

3:THE DEPUTY COMMISSIONER
MORIGAON- 782105
KAMRUP
ASSAM.

4:THE CIRCLE OFFICER

MORIGAON REVENUE CIRCLE
MORIGOAN- 782105

KAMRUP
ASSAM.

5:THE OFFICER-IN-CHARGE

DHARAMTUL P.S. DHARAMTUL- 782412
MORIGAON
DISTRICT
KAMRUP
ASSAM.

6:THE UNION OF INDIA
REP. BY MINISTRY OF ENVIRONMENT AND FORESTS (MOEF)
GOVT. OF INDIA
NEW DELHI.

7:THE ANIMAL WELFARE BOARD OF INDIA
FARIDABAD
HARAYANA-121004

Advocate for the Petitioner : MR.A D CHOUDHURY

Advocate for the Respondent : GA, ASSAMR1

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 12-12-2023

JUDGMENT & ORDER (ORAL)

Heard Ms. B Chowdhury, learned counsel for the petitioners. Also heard Mr. BJ Talukdar, learned senior counsel appearing for the State respondents and Mr. KK Kalita, learned counsel for the respondents in the Union of India.

2. The petitioners, Oitigya Mandita Ahatguri Anchalik Moh-Juj And Bhogali Bihu Utsav Samiti (for short, the Samiti) have approached this Court being

aggrieved by the communication dated 13.01.2015 of the respondent No.5 and the impugned WT Message bearing No.WT MSG PLA No.62/2011/PT/236 dated 14.01.2015 whereby the authorities had prevented them from holding buffalo fight in connection with their Bhogali Bihu Utsav. According to the petitioners holding of buffalo fight during the Bhogali Bihu Utsav is a traditional activity which had been in vogue since the 15th Century. According to them, the event is held for its excitement and fun and also as a part of the long standing tradition during the festival and the animals are not adversely affected, in any manner and it is only their natural instinct which is put into play in such buffalo fights. On the other hand, the State respondent authorities were of the view that subjecting the buffaloes to the buffalo fight causes a cruelty which is prevented and prohibited under the provisions of the Prevention of Cruelty to Animals Act, 1960 and accordingly seeks to justify the impugned restrain orders.

3. Mr. BJ Talukdar, learned senior counsel for the State respondent authorities refers to the judgment of the Hon'ble Supreme Court rendered in *Animal Welfare Board of India Vs. A Nagaraja* reported in (2014) 7 SCC 547 (to be referred to as the *Animal Welfare 1*). By referring to the propositions laid down in paragraph 35 thereof, Mr. BJ Talukdar, learned senior counsel for the State respondents submits that the wellbeing of the animal means being comfortable, healthy or happy and when sadism and perversity is writ large in the actions of the organizers of the animal fights, which is nothing but for pleasure and enjoyment of human beings, it gives a corresponding right to the animal to ensure its wellbeing. The judgment rendered by the Supreme Court in *Animal Welfare 1* (supra) was in respect of certain disputes being raised in respect of the Jallikattu event being held in the States of Tamil Nadu, Karnataka etc.,

where the bulls are subjected to certain human intervention resulting in a fight with the bulls. It is the submission of Mr. BJ Talukdar, learned senior counsel that the principle of a buffalo fight in Assam and the Jallikattu event in Tamil Nadu are to a great extent same to the extent that cruelty is inflicted upon the animals, although in a buffalo fight it is between two buffaloes, whereas in Jallikattu event, it is between human and bulls. To substantiate the same, a report from certain wildlife experts have also been produced before the Court that before the buffaloes are subjected to a fight they are exposed to certain adverse conditions like making them excited subjecting them to consume certain extraneous materials which may result in a more aggressive behavior leading to more excitement in the buffalo fights.

4. But, Ms. B Chowdhury, learned counsel for the petitioners on the other hand refers to a subsequent judgment of the Supreme Court rendered in the Animal Welfare Board of India and Ors. Vs. Union of India and Ors., reported in (2023) SCC Online 661(to be referred to as the Animal Welfare 2). Ms. B Chowdhury, learned counsel by referring to the aforesaid judgment submits that the said judgment was rendered in a circumstance, where in response to the earlier judgment in Animal Welfare I(supra), the States of Tamil Nadu, Karnataka and Maharashtra had enacted certain statutes allowing the Jallikattu event to take place under certain restrictions as may be provided in the statutes. In the Animal Welfare II (supra), the constitutionality and validity of the enactments by the States of Tamil Nadu, Karnataka and Maharashtra were assailed. In the judgment rendered by the Supreme Court in Animal Welfare II(supra) the challenge to the constitutionality and validity of the three enactments by the States of Tamil Nadu, Karnataka and Maharashtra were upheld. By drawing an inference from the judgment in Animal Welfare II(supra),

a submission is made that although as per the Animal Welfare I(supra) inciting fights amongst the animals would amount to cruelty, but if the same is done under the supervision of certain legislative enactments or under restrictive supervision of the State authorities, the same would be permissible. As the enactments providing for the Jallikattu event in a restrictive manner had been upheld by the Hon'ble Supreme Court, we cannot say that the submission of Ms. B Chowdhury, learned counsel that under restrictive and supervised atmosphere of the State and if the State allows so, such event can be allowed to take place. Accordingly by our earlier order, we required the Chief Secretary to the Government of Assam to take a decision on the aforesaid aspect as the matter may be an inter-departmental issue. Accordingly, the Court has been informed by a communication dated 07.11.2023 of the Joint Secretary to the Government of Assam in the Home and Political Department that in reference to the earlier orders of the Court in the present writ petition, a meeting was held by the Chief Secretary on 07.11.2023 and the views/opinion of the Stakeholder departments namely, Animal Husbandry & Veterinary Department, Environment & Forest Department, Indigenous & Tribal Faith and Culture Department and the Judicial Department were obtained and the file had been placed before the competent authority for placing the same before the Cabinet for a decision to be taken. Another communication dated 12.12.2023 of the Joint Secretary to the Government of Assam, Home & Political Department has also been produced before the Court, wherein it has been informed that the matter had been placed before the Cabinet in its meeting of 08.12.2023 and the Cabinet has approved the proposal and the minutes whereof are being prepared and whenever the minutes would be prepared the same would be placed before the Court for its consideration.

5. As the communication dated 12.12.2023 has provided a specific information that the Cabinet had approved the proposal as regards prevalence of buffalo fight during the Bhogali Bihu Utsav, we are of the view that the matter does not require any further consideration and we require the authorities in the State of Assam to complete the process and bring the same to its logical end as per the decision of the Cabinet dated 08.12.2023. The entire exercise be done at an early date by taking note that the Bhogali Bihu festival would be held in the next month.

6. The two communications dated 07.12.2023 and 12.12.2023 of the Joint Secretary to the Government of Assam, Home & Political Department are kept as part of the records.

7. The Cabinet decision that may be taken shall now prevail over any other earlier orders as regards not allowing buffalo fights during the Bhogali Bihu Utsav and the petitioners or any other intending organizers may make their applications seeking permission and the authorities shall consider such application as per the Cabinet decision that may be taken.

8. The writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant