

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(PIL) No.01 of 2024

Ms. Paramita Sen

.....Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s).

For Petitioner(s) : Ms. Paramita Sen, Petitioner in person

For Respondent(s) : Mr. Kohinoor N. Bhattacharyya, G.A.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

01/05/2024

Heard petitioner in person Ms. Paramita Sen, who is also a learned counsel of this Court and Mr. Kohinoor N. Bhattacharyya, learned Government Advocate for the respondents-State.

2. The present petition is filed for directing the respondents to take appropriate measures to take the custody of an abused elephant and her calf/calves from the owner in the district of Unakoti based upon a video which had gone viral on Facebook. On going through the video, petitioner found that the elephant was pregnant with an unweaned calf at Chinibagan area. She was being driven by the mahout in an inhuman manner towards Kailashahar. She had injuries, wound, and abscess all over her body which were left untreated for long. Both her hind legs got bent and there was a huge lump on front left leg of that elephant. There was a big wound on the left portion of her abdomen area which was discharging pus. Petitioner, being a local animal right activist, took initiative to collect detail information of the owner and filed a written complaint to the Sub-Divisional Forest Officer, Kailashahar on 08.04.2024. Thereafter, they could start the treatment of that elephant. She further came to

know that the elephant has been subjected to cruelty in different manners by its owner. The breeding of the elephant has been done illegally for a long period and she has given birth of about six calves in total. She is also pregnant at present. The owner was keeping the elephant without licence which is against the provisions of Prevention of Cruelty to Animals Act and the Wildlife Protection Act. The unweaned calf was also subjected to cruelty. Thereafter, she lodged a complaint before the Secretary, State Animal Welfare Board with a copy to the Principal Chief Conservator of Forests as well as DFO, Unakoti to take legal action against the owner and to confiscate the animal in accordance with law, also to take custody of the elephant and her abused calves and ensure their rehabilitation. However, since no legal action was being taken by the concerned authorities, she has been compelled to approach this Court in the present PIL. According to her, elephants are protected animals under Schedule-I of the Wildlife (Protection) Act, 1972. However, most of the elephants in the State are unprotected.

3. When the matter was mentioned in the previous week and ordered to be listed today, we had also asked the learned Government Advocate Mr. Kohinoor N. Bhattacharyya to inquire into the matter and seek a report. Learned Government Advocate has produced an action taken report submitted by the Chief Wildlife Warden as on 30.04.2024 in respect of the elephant 'Pratima' and her calf named 'Maniklal'. The report along with its annexures is taken on record. The report is also extracted hereunder as it details the proactive steps taken by the Chief Wildlife Warden, Tripura and the officials of the Forest Department:

“As per records available records at the Forest Headquarters, the elephant is in the possession of Shri Jahur Uddin s/o Late Shri Haji Habib Uddin of Irani, Kailashahar, Unakoti. The elephant is 56 years old having micro-chip no 0008061B31 as per the records available. The elephant is having a calf of about 2 years of age.

The DFOUnakoti has submitted two reports dated 16/04/2024 which is annexed as Annexure-I and 23/04/2022 (Annexure-II) regarding the said elephant, to Forest Head Quarters wherein necessary taken by the Forest Department as well as ARDD deptt is contained. Copies of the reports enclosed. The treatment of the said elephant was started as soon as the information reached the Forest and ARDD authorities and the Chief Wildlife Warden himself visited the animal on 13.04.2024 and discussed with all concerned and instructed for continuous treatment of the animal by veterinarians at the cost of the owner as it was difficult to transfer the elephant from the spot as it was unable to walk. The owner was asked to co-operate in this. He also instructed the veterinary doctor from the Sepahijala Zoological park to move there the next day and check the elephant.

In addition, a team of experts from VANTARA from Jamnagar, Gujarat also joined and supported the treatment process since 19.04.2024 undertaken by forest and ARDD departments as per the report of the DFO, Unakoti dated 23/04/2024. The Vantara Team and ARDD team have recommended shifting of the elephant to advanced facility for better treatment. The SDFO Kailashahar had been requested to pursue with the owner for giving consent for shifting the ailing captive elephant for better treatment. Daily the status was monitored by the staffs at field and CWLW at FHQ. During this process one supervising staff also got detained on 25.04.2024 by the elephant owners for pursuing this with them as an expression of their anger against the Department. Thereafter an E-mail dated 22.04.2024 received from Hon'ble Justice Deepak Verma, Chairperson, HPC constituted by the Hon'ble High Court of Tripura for facilitation of transfer (Annexure-III).

The consent of the owner then was received on 27.04.2024 and thereafter necessary action was taken for transfer of the said elephant along with her calf for better treatment and upkeep at the Radhe Krishna Temple Elephant Welfare Trust, Jamnagar (Annexure-IV).

Further, the DFO, Unakoti has written to the Dy. Director ARDD, Unakoti to take necessary action as per prevailing rules under Prevention of Cruelty to Animal Act, 1960 & its amendments regarding the said ailing elephant (Pratima) vide letter (Annexure-V). The Forest Department was contemplating to take legal action for confiscating the animal as a last resort due to lack of proper housing, maintenance and upkeep of animal as most of the animals are kept in this way only as there are no facilities for keeping many elephants in Govt. custody, meeting their food requirement and engagement of one Mahout and one mate for their daily management for each elephant. It was also anticipated that there would have been larger law and order problem if the elephant and calf were forcibly taken from the owner during election time.

Further, as per available information, the Deputy Director of ARDD, Unakoti District wrote to officer in-charge Unakoti PS to take necessary action as per the prevention of Cruelty to Animal Act, 1960 and to submit a detail report on action taken, as informed by DFO, Unakoti vide his letter (Annexure-VI). Simultaneously, the Deputy Director has issued a show cause notice to the owner of the elephant as to why action should not be taken against him under the said act. (copies enclosed) These actions by ARDD Department are in addition to the treatment of the said elephant in collaboration with the Forest Department.

Further, it would be pertinent to mention here that a High Powered Committee has already been constituted by the Hon'ble High Court of Tripura in WP(C) PIL No.17/2022 to look into the matter related to transfer/rehabilitation of captive elephants. The Hon'ble High Court further extended the functions of the HPC beyond the order dated 7/11/2022 regarding transfer/rehabilitation captive elephants. Copy enclosed at Annexure-VII.

Later the Hon'ble Supreme Court of India in Muruly M.S. vs. The State of Karnataka and other in the judgment dated 03/03/2023 in SLP (Civil)

No.12246 of 2022 also upheld the HPC constituted by the Hon'ble High Court of Tripoura and extended the jurisdiction of the HPC throughout the country for welfare, care and rehabilitation of wild animals including captive elephants. In its judgment dated 03/03/2023 the Hon'ble Supreme Court further directed that all complaints in this regard may be forwarded forthwith to the High Powered Committee for consideration and recommending appropriate action.

After getting consent letter of the owner, it was confirmed from the HPC if the e-mail dated 22.04.2024 to be treated as approval, by whatsapp on 28.04.2024. (Annexure-VIII) The owner of the elephant has given consent to donate and transfer the said elephant to the Radhe Krishna Elephant Welfare Trust. The Radhe Krishna Elephant Welfare Trust, Jamnagar, Gujarat also accepted the proposal for the said transfer (Annexure IX). Provisional ownership certificate was issued in respect of the said elephants as it was required for the transfer (Annexure X). Thereafter, NOC from the Chief Wildlife Warden, Gujarat was obtained (Annexure XI) and then finally Transport Permit was issued (Annexure XII) for transport of the said elephants to the above mentioned location. The elephant along with her calf will start the journey short.

Hence, all necessary action has been/are being taken by the Forest Department along with the ARDD in the instant case.

4. The report indicates that the High Powered Committee constituted by this High Court in WP(C)(PIL) No.17/2022 chaired by Hon'ble Mr. Justice Deepak Verma (former Judge of the Supreme Court of India) has also taken cognizance of this issue and directed the Chief Wildlife Warden to rescue the elephant and her calf and to facilitate their transfer to Radhe Krishna Temple Elephant Welfare Trust situated at Jamnagar, Gujarat. The Trust has also accepted to take the custody of the elephant and her calves. The report indicates that the Chief Wildlife Warden had also himself visited Unakoti to inquire into the matter and see the animals. Since the animals were suffering from various ailments, all the concerned officials were also instructed to ensure their treatment by veterinaries. Now, the custody of the elephant and her calf has been taken by the officials. Show cause notice has also been issued upon the owner as to why action should not be taken against him under the Prevention of Cruelty to Animals Act, 1960 and also under the Wildlife Protection Act.

5. Learned Government Advocate for the State informs that the elephant and her calf have now moved out of Unakoti and are on way to

Jamnagar, Gujarat. All necessary measures have been taken to ensure their smooth transfer. It is submitted that since the High Powered Committee has taken cognizance of the matter and in terms of the directions issued by this Court in WP(C)(PIL) No.17/2022, the elephant and her calf are being handed over to Radhe Krishna Temple Elephant Welfare Trust, Jamnagar- respondent No.3 in the said PIL, this Court may dispose of the matter.

6. Petitioner in person submits that in the light of the action taken report, she may be allowed to pursue the matter with the High Powered Committee.

7. We have considered the submission of learned counsel for the parties.

At the outset, we may take note of the slew of directions passed by this Court in WP(C)(PIL) No.17/2022 whereunder a High Powered Committee chaired by Hon'ble Mr. Justice Deepak Verma (former Judge of the Supreme Court of India) was constituted with members from the Director General of Forests (Union of India), Head of Project Elephant Division (MoEF), Member Secretary (Central Zoo Authority of India), Chief Wildlife Warden (State of Tripura) for Elephants and Chief Wildlife Warden (State of Gujarat). It is also pertinent to mention here that the Apex Court in the case of **Muruly M.S. v. State of Karnataka & Others** in Special Leave Petition (Civil) No.12246/2022 has been pleased to extend the jurisdiction and scope of the High Powered Committee constituted by this Court to pan-India with the modification that Chief Wildlife Warden(s) of the State(s) to which the issue relates would be co-opted as Members of the said Committee in place of the Chief Wild Life

Wardens of Tripura and Gujarat, throughout the territory of India leaving it open to the Committee to conduct necessary checks and to undertake fact finding exercise in any pending or future complaint in this regard. The Apex Court also directed that all complaints in this regard would be forwarded forthwith to the High Powered Committee for consideration and recommending appropriate action. All State and Central authorities were directed to forthwith report seizure of wild animals or abandonment of captive wild animals to the Committee. The Committee was given liberty to recommend transfer of ownership of captive animals or of seized wild animals to any willing rescue centre or zoo for their immediate welfare, care and rehabilitation.

8. Since a legal regime has already been framed by virtue of the judgment passed by this Court, and as affirmed and extended pan-India by the Apex Court in the case of *Muruly M.S.* (supra) and that the High Powered Committee has already taken cognizance of the instant matter and further the elephant 'Pratima' and her calf 'Maniklal' have been rescued and are being transported to the Radhe Krishna Temple Elephant Welfare Trust at Jamnagar, we are of the considered view that the instant PIL can be disposed of giving liberty to the petitioner to pursue her complaint with the High Powered Committee.

9. The instant public interest litigation is disposed of with the aforesaid observations.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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