



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2019

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.12890 of 2019

and

W.M.P.(MD) No.9599 of 2019

N.Sekar

...Petitioner

-Vs-

The Principal Chief Conservator of Forests
and Chief Wildlife Warden,
Chennai - 15.

...Respondent

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent passed in his proceeding Ref.No.WL1/40/2019 dated 20.05.2019 and quash the same as illegal consequently, direct the respondent to grant permission/transit permit to the petitioner to transport the Elephant by name Suma having Microchip No.000658C85A if the application is submitted along with fitness certificate in accordance with the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mrs.J.Padmavathi Devi, Spl.G.P.

ORDER

The prayer in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent passed in his proceeding Ref.No.WL1/40/2019 dated 20.05.2019 and quash the same as illegal consequently, direct the respondent to grant permission/transit permit to the petitioner to transport the Elephant by name Suma having Microchip No.000658C85A if the application is submitted along with fitness certificate in accordance with the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011.

Pleader appearing for the respondent.

3.The petitioner is owning an Elephant called Suma aged about 61 years and the same is engaged to participate in Gaja Pooja, temple festivals and other festivals. As per Section 48 A of the Wildlife Protection Act and Rule 9(1) of the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011, the petitioner has to get necessary permission from the respondent to transport the Elephant from one place to another place. Accordingly, in order to participate a Gaja Pooja scheduled to be conducted at Arulmigu Varadharaja Perumal Temple Sabha, Kanchipuram between 17.05.2019 and 27.05.2019, the petitioner had made an application on 02.05.2019 along with the fitness certificate dated 16.04.2019 issued by the Veterinary Assistant Surgeon, to the first respondent. However, the said application was rejected by the impugned order dated 20.05.2019 on the ground that, because of the hot summer season, transit permit is not issued for the welfare of the Captive Elephant.

4.The learned counsel for the petitioner, assailing the said reason, would submit that, the generalised reason of hot summer cannot be a reason to reject the permission of transportation of the Captive Elephant and hitherto such kind of refusal has not been made by the respondent as the petitioner has experienced this kind of refusal for the first time.

5.The learned counsel appearing for the petitioner would also submit that, it cannot be said that, during the summer season, no Captive animal (Elephant) has been permitted to transport from one place to another place in the State of Tamil Nadu and the said issue has not been considered by the respondent. When that being so, the respondent passed the impugned order and the reason of hot summer is palpably wrong and arbitrary and therefore, the impugned order cannot be sustained.

6.Per contra, the learned Special Government Pleader would submit that, in the impugned order, the reason given by the respondent was hot summer and that was necessitated, because this year, during the summer season in the month of May, the temperature was very high or unusual and most of the days, it crossed 40 degree Celsius. Moreover, the elephant has crossed 60 years of age and therefore, as per Rule, after 60 years, the Captive Elephant would be permitted to retire from doing normal activities of participating in these kind of festivals by travelling long distance.

7.However, for short distances, that too, in the other seasons, there is absolutely no objection on the side of the respondent in transporting the animal and therefore, the present reason given in the impugned order would not recur in future, when such request is made by the petitioner for transportation of the Elephant.

8.I have considered the said submissions made by both sides. At any rate, since the Gaja Pooja was fixed between 17.05.2019 t and



27.05.2019 at Kancheepuram, that was over. However, the impugned order dated 20.05.2019 has now been challenged. Therefore, if at all any issue to be taken up in this writ petition for decision that would be only for academic purpose.

9.Be that as it may. As submitted by the learned Special Government Pleader, during this summer season, temperature has been increased several times beyond 40 degree Celsius and therefore, having that in mind, the respondent could have rejected the request of the petitioner for transporting the Elephant in question for a long distance between Trichy and Kancheepuram as the Elephant admittedly is more than 60 years old.

10.As has been rightly pointed out by the learned Special Government Pleader, the said reason stated in the impugned order may not be acceptable in future cases. He further stated that if in future, the petitioner makes an application to transport the Elephant, depending upon the situation and based on the certificate of fitness to be issued by the Veterinary Assistant Surgeon, a decision would be taken by the authority, i.e. the respondent herein and wherever necessary, permission for transportation of animal would be given.

11.Recording the said stand taken by the learned Special Government Pleader appearing for the respondent, this Court is inclined to dispose this writ petition, with the following observation:

"that in future, if such permission is sought for by the petitioner for the Elephant in question, the respondent shall consider the same based on the fitness certificate to be issued by the Veterinary Assistant Surgeon and in this regard, generalised reason of hot summer etc. may not be given as such hot summer season is already over as far as this year is concerned."

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal Chief Conservator of Forests
and Chief Wildlife Warden,
Chennai - 15.



+1cc to Mr.T.Lenin Kumar, Advocate, SR.No. 67278
+1cc to M/s.Special Government Pleader, SR.No.67442

Order made in
W.P. (MD) No.12890 of 2019

Dated:
06.06.2019

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KK/SAR/12.06.2019/4P-4C

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