

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.12732 of 2020

Vinod O Jain

..Petitioner

-vs-

1. Union of India,
rep. by its Secretary,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan,
Jorbagh Road,
New Delhi - 110 013.
 2. Principal Secretary,
Animal Husbandry, Dairying and
Fisheries Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
 3. Chairman,
Animal Welfare Board of India,
National Institute of Animal Welfare Campus PO,
42 KM Stone, Delhi-Agra High Way NH-2,
Village-Seekri, Ballabgarh,
Faridabad, Haryana - 121 004.
 4. Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai - 600 003.
- ..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration declaring Rule 2 (k) of the Prevention of Cruelty to Animals (Pet Shop) Rules, 2018 to the extent of including birds in the definition of pet animals as unconstitutional.

For Petitioner

: Mr.Kaushik N.Sharma

For Respondents

: Mr.G.K.Muthukumar
Spl. Government Pleader
for respondent No.2

: Mr.M.Ganesan
for respondent No.4

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

This petition has been framed in a way so as to seek a result, which, in our opinion, would be prima facie travelling into an arena of a veiled legislative act of redefining and recasting the Prevention of Cruelty to Animals (Pet Shop) Rules, 2018, even though the petitioner has challenged the constitutionality of Rule 2(k) of the said Rules, and has urged that the fundamental defect of allowing birds to be kept as pets in cages or enclosures amounts to cruelty and, therefore, birds should be excluded from the definition of pets in the aforesaid Rule. For this, he has placed heavy reliance on the judgment of the High Court of Gujarat in the matter of Abdulkadar Mohamad Azam Sheikh v. State of Gujarat, 2011 SCC Online Gujarat 2603, where in paragraph 8.11 it has been observed as follows:

"8.11. Once it is held that the possession of the muddamal birds cannot be given to the original claimants, the next question which is posed for consideration of this Court is what should be done with the muddamal birds? Whether the birds are to be kept with some institution/NGOs and for how much time and if yes, who will bear the expenditure of maintenance of such birds? As stated above, every bird/animal has a right to move freely and it cannot be disputed that so far as the birds are concerned, they have right to move freely in the open sky/air and they cannot be kept in cages at all and that too with such a brutality. To keep the birds in the cages would be illegal confinement of such birds against their wish which would be against the fundamental right of the birds to move freely. Even practically and physically it is not possible to keep the custody of the birds even to the institutions/NGOs for long time, as it will be too expensive as well as nobody knows when the trial will take place. Even environmentally also it is not safe and/or in the interest of birds. Under the circumstances the only order which can be

passed in such circumstances would be to enlarge the birds free in the sky/air and if such an order is passed it would be respecting the rights of the birds."

He has also relied on the interim order delivered by the learned Single Judge of the Delhi High Court in *People for Animals v. Md. Mohazzim and another*, 2015 SCC Online Delhi 9508, which is to the same effect.

2. We may, at the outset, point out that such issues appear to have been raised before the Apex Court directly in W.P(C) No.286 of 2015, where the following order was passed on 5.10.2015:

"Shri Salman Khurshid, learned senior counsel, on instructions, would state that the Gujarat High Court has passed a judgment and order which would affect the interest of the present petitioner/association.

The Registry is directed to accept the special leave petition that may be filed against the aforesaid judgment.

Post the special leave petition that may be filed along with the present writ petition."

According to the website of the Apex Court, the last order uploaded in the matter on 2.11.2018 is as follows:

"Perused the letter circulated by the learned counsel for the petitioner(s). List the matters after four weeks to enable the learned counsel to file rejoinder affidavit."

It appears that S.LP.(Crl.)No.9950 of 2015 (II-B) has also been tagged along with the said writ petition, which appears to be an appeal filed against the judgment of the Gujarat High Court, referred to above.

3. It appears that a voluminous academic compilation has been relied on by the learned counsel to substantiate his submission in the shape of typed set of papers and interim reliefs have also been prayed for to ensure that bird shops in the city of Chennai, under the supervision of the Commissioner, Greater Chennai Corporation, be restrained from confining birds in cages during the pendency of these proceedings.

4. We, however, do not find that this attempt in the field of ornithology has ever been agitated by the petitioner before the Central Government that has framed the Rules, in as much as,

as pointed out by the learned counsel for the State, the Rules as notified, particularly Rules 6 and 7, in detail qualify all regulations that are necessary in order to ensure that birds enjoy adequate freedom of space, rationality whereof is sought to be questioned on the ground that any flying species cannot be confined in its basic activity of soaring the skies, which the petitioner believes to be fundamental to their existence.

5. We are doubtful about "fundamental rights" being available to birds in the context of the Indian Constitution, but in order to ensure the constitutional goals to be achieved by making appropriate laws in this field, the Constitution does envisage legislative activity to cover such fields keeping in view the provisions of Article 48-A of the Constitution of India, extracted herein under:

"Article 48A. Protection and improvement of environment and safeguarding of forests and wild life.-

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

Apart from this, the Fundamental Duties under Part IV-A also indicate that every citizen of India should strive towards the said goal as enjoined in Article 51-A(g), extracted herein under:

"Article 51A. Fundamental duties.-It shall be the duty of every citizen of India-

(a) to (f)

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures"

6. The rule making power of the Central Government has been exercised by copiously making provisions as per Section 38(1) of the Prevention of Cruelty to Animals Act, 1960. The notification clearly indicates that the said Rules had received wide publicity, inviting objections and suggestions from the public, whereafter the Rules were published. The preamble of the notification bears ample testimony to this effect.

7. Once the legislature and the rule making authority have reasonably taken all steps before promulgating the Rules, then it would have been more apt for the petitioner to have approached the Central Government itself before straightaway questioning the validity of the Rules, calling upon the Court to fundamentally remove birds from the parent definition clause itself. There is no challenge as such to the other provisions of the Rules, particularly, Rules 6 and 7, but in effect by raising a challenge to the definition clause itself, the

petitioner seeks to achieve a total exclusion of the applicability of the Rules in respect of birds contending that the restrictions defined do not meet the fundamentals of the basic requirement of birds to fly freely in an unhindered way.

8. It may be that the petitioner is battling for what may be termed as the natural rights of every animal to live freely, but this requires a wide range of expertise to visit all contours of free wild life. Such an issue, therefore, may require the petitioner to approach the Central Government itself or even raise such issue in the pending writ petition before the Apex Court, which appears is still under consideration before the Apex Court since the year 2015, where the correctness or otherwise of the Gujarat High Court judgment in Abdulkadar Mohamad Azam Sheikh (supra) is already sub judice in the SLP (Crl.).

We, therefore, consign this petition to records with the said observations, without prejudice to the rights of the petitioner to approach the appropriate forum. No costs. Consequently, C.M.P.Nos.15726 and 15727 of 2020 are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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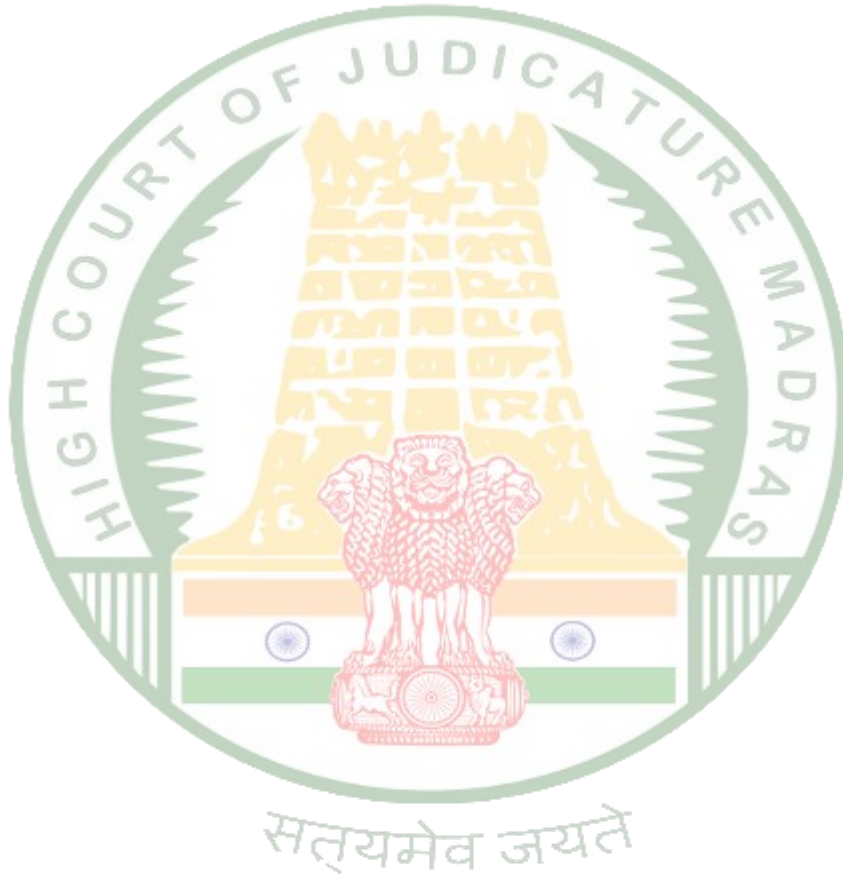
To:

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VSN II (CO)
KKV/22/09/2020



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