IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.24381 of 2022

R.Raja Sankar .. Petitioner

v.

1. Union of India
represented by Secretary Revenue
Department of Revenue
Ministry of Finance
North Block, New Delhi

2. Central Board of Indirect Taxes
represented by its Chairman
North Block, New Delhi

3. Ministry of Environment, Forest
and Climate Change
represented by Secretary
Indira Paryavaran Bhawan
Jorbagh Road
New Delhi 110 003
Email: dgfindia@nic.in

4. State of Tamil Nadu
rep. by Chief Wild Life Warden
No.1, Jennis Road
Suriyammapet Saidapet
Chennai 600 015 .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the Respondent Nos.1 to 3 to forthwith make appropriate amendments to include all exotic animals / exotic birds within ambit and scope of the Wild Life (Protection) Act, 1972 and in the Notifications issued under Sections 11, 123 and 135 of the Customs Act, 1962, so as to make possession, storage, breeding, trade and transport of exotic animals / exotic birds a cognizable and non-bailable offence, to ensure strict action including seizure and confiscation of all exotic animals not declared in terms of the Advisory, and for forthwith arrest and prosecution of all the persons concerned with such undeclared stock of exotic animals / exotic birds in any manner including its possession, storage, breeding, trade and transport etc.

For Petitioner	::	Ms.P.Torat for M/sArul Gnana Prakash
For Respondents	::	Mr.P.G.Santhoshkumar for R1 to R3 Mr.P.Muthukumar State Government Pleader assisted by Dr.T.Seenivasan Special Government Pleader for R4

ORDER

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

Mr.R.Raja Sankar, S/o M.Ramanujam has filed this writ petition for issuance of a mandamus under Article 226 of the Constitution of India directing the Respondent Nos.1 to 3 to forthwith make appropriate amendments to include all exotic animals / exotic birds within the ambit and scope of the Wild Life (Protection) Act, 1972 and in the Notifications issued under Sections 11, 123 and 135 of the Customs Act, 1962, so as to make possession, storage, breeding, trade and transport of exotic animals / exotic birds a cognizable and non-bailable offence, to ensure strict action including seizure and confiscation of all exotic animals not declared in terms of the advisory, and for arrest and prosecution of all the persons concerned with such undeclared stock of exotic animals / exotic birds in any manner including its possession, storage, breeding, trade and transport etc., forthwith.

2. Learned counsel appearing for the petitioner submitted that the

petitioner, being a senior citizen and social worker and besides animal lover, has been advised to file this Public Interest Litigation petition seeking for urgent directions as prayed, for the welfare of captive exotic animals / exotic birds, as they are kept in captivity unlawfully. Arguing further, learned counsel submitted that when Article 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wildlife in the country, Article 51-A also provides that it shall be duty of every citizen of India *inter alia* to protect and improve the natural environment including forests, wildlife and also to have compassion for all living creatures. Therefore, the petitioner, in fine tune with the above provisions, is interested in protecting the exotic species of birds / animals to improve their life conditions. It is further stated that when the exotic species are not notified under Section 123 of the Customs Act, 1962, there is no burden on the person who is in possession of exotic animals/birds to prove his lawful acquisition or lawful importation into India under the provisions of the Customs Act, 1962. When the exotic species are not of Indian origin, these species are introduced to a new location most often by people. Therefore, the expression "exotic live species" used in the Advisory shall be construed to mean only "the animals named under the Appendices I, II and III of the Convention of International Trade in Endangered Species (CITES) of Wild Fauna and Flora" for the purpose of the Advisory and does not include the species from the Schedules of the Wild Life (Protection) Act, 1972. This apart, the Ministry also had issued the Advisory considering the significance of import and export of exotic live species to streamline the process for import and possession of exotic live species in India by developing an inventory of exotic live species through the Voluntary Disclosure Scheme to streamline the CITES compliance, providing procedure for import of exotic live species. When the legality and validity of the said Advisory had been the subject matter of challenge in various High Courts as well as before the Hon'ble Supreme Court, in one such challenge under Article 32, the Hon'ble Supreme Court, in Writ Petition (C) No.540 of 2022 (*Swetab Kumar v. Ministry of Environment, Forest & Climate Change and others*), referring to the Division Bench judgment of the Rajasthan High Court in W.P.No.7491 of 2020 (*Vivek Swami v. Union* *of India*) dated 14.10.2020; Division Bench judgment of the Meghalaya High Court in PIL No.15 of 2021 (*Ms.J.S.Wahlang v. Union of India*) dated 28.10.2020; Division Bench judgment of the Allahabad High Court in PIL Civil No.12032 of 2020 (*Dinesh Chandra v. Union of India through Additional Principal Chief Conservator of Forest and others*) dated 30.07.2020, which order was also affirmed by the Hon'ble Supreme Court vide order dated 13.10.2020 in SLP (C) No.11659 of 2020, has observed as follows:-

> "4. The above judgment of the Allahabad High Court is a complete answer to the present PIL filed by the petitioner. Any interpretation to the contrary as suggested by the petitioner would defeat the very object of the Advisory. Once a declaration within the window of six months as provided under the Advisory is made, the exotic live species, including its progeny, the declarant or transferee(s) are fully exempt from explaining the source of exotic live species. The exotic live species which is declared or its progeny, are not liable to confiscation or seizure by any Central Agency or State Agency.

> Consequently, the declarant or the transferee(s) of such declarant will be immune from prosecution under any civil, fiscal and criminal statute by any Central or State Agency. Any other interpretation would lead to absurdity."

The learned counsel further submitted that a similar issue has also been recently considered by a Division Bench of the High Court of Tripura, Agartala in W.P.(C)(PIL) No.11 of 2022 (*Smt.Adwitiya Chakrabarti v. Union of India through the Secretary, Ministry of Environment, Forest and Climate Change and others*) and the Division Bench, referring to the aforesaid judgments, has answered the issue against the petitioner therein vide the judgment dated 21.09.2022.

3. We have also gone through the judgment dated 21.09.2022 passed by a Division Bench of the High Court of Tripura, Agartala in W.P.(C)(PIL) No.11 of 2022 (*Smt.Adwitiya Chakrabarti v. Union of India through the Secretary, Ministry of Environment, Forest and Climate Change and others*), wherein the Division Bench, after referring to the judgment of the

Supreme Court in Swetab Kumar's case - W.P.(C) No.540 of 2022 and also to the judgments of the Rajasthan High Court, Meghalaya High Court and the Allahabad High Court cited supra, putting all the key issues raised by the petitioner therein to rest in the negative, has dismissed the writ petition observing as follows:-

> "15. Large number of citizens across the country commonly own pets such as dogs, cats, birds, rabbits etc which may also belong to exotic species and might have been purchased or procured from those involved in captive breeding. Such pets may number in millions and also breed. We have considered the submissions of the petitioner about suggested wiping out of the distinction between exotic species and indigenous species by directing or at least recommending amendments in the two Acts. We are of the view that we can neither direct, nor expect the Government to take such drastic steps in haste, without assessment of impact and without detailed study. Such amendments in statutory provisions which may result in drastic penal action against common man cannot be directed or even

recommended as prayed by the petitioner. The petitioner effectively wants that even all such exotic pets in domestic possession will have to be forfeited and housed by government and their owners shall be arrested, imprisoned and prosecuted under Wild Life Act and compelled to disclose the source under Customs Act, 1962. The step suggested by the petitioner will have very wide and far reaching ramifications. We cannot lose sight of the facts that most people possessing such exotic species are animal lovers and over time such exotic species become a part of the family like a child in the house. There are sufficient safeguards available in law to prevent cruelty to animals which are also applicable to exotic species. Directing the amendments in the two Acts as suggested or even to suggest the Respondents to legislate such amendments, would lead to chaos and no public purpose will be achieved. Even otherwise in light of the judgments discussed above the Court cannot direct the Central Government and the Central Board of Indirect Taxes to forthwith make amendments against legislative will to include all exotic species in the Wild Life

(Protection) Act, 1972 and also in the Notifications issued under Section 11B, 123 and 135 of the Customs Act, 1962. Court can neither direct seizure/ confiscation contrary to existing provisions, nor can direct change in classification of such bailable offence to non-bailable offence, to enable arrest and prosecution of all the persons concerned with such undeclared stock of exotic animals / exotic birds.

16. We are unable to agree with the submission of the petitioner that, failure to arrest/prosecute such person who did/could not make declaration within the time stipulated in Advisory would frustrate the purpose of the Advisory. Unless a person is caught smuggling exotic species on the international borders, no presumption can be drawn that domestic keeper have illegally imported the exotic species on the ground that such person has not declared ownership of exotic species within the stipulated time, or has acquired such species after the stipulated time, for any arrest/prosecution/confiscation based on presumption would be unreasonable and violation of rights

guaranteed under Article 14 and 21 of Constitution of India.

17. This puts all the key issues raised by petitioner to rest in the negative. With above observations the petition is dismissed. No costs."

4. When the issues raised in the present writ petition have been answered by the Division Bench of the High Court of Tripura, Agartala by its judgment dated 21.09.2022 in W.P.(C)(PIL) No.11 of 2022 mentioned supra, the same is no longer res integra. Moreover, classification of an offence under the Customs Act, 1962 as a non-bailable or a bailable offence is governed by sub-sections (6) and (7) of Section 104 of the said Act. Under sub-section (6), classification of an offence under the Customs Act, 1962 as a non-bailable one is necessarily dependent on the quantum of duty / duty drawback being above Rs.50 lakhs, value being above Rs.1 Crore or nature of prohibition on the importation or exportation of goods i.e., goods being notified as prohibited not only under Section 11 but also under Section 135(1)(e)(i)(C) of the Customs Act, 1962. All other offences under the

Customs Act, 1962 are necessarily 'bailable'. It is also not possible to ascribe any value for live animals and consequently to compute duty on such value so as to ascertain the extent of duty evasion. The nature of prohibition prescribed in sub-section (6) is not applicable qua exotic animals. As per settled position of law elucidated in the judgment of Bombay High Court in *Imran Latif Shirgawkar v. Directorate of Revenue Intelligence, 2019 (368) ELT 1052*, the offence concerning exotic live species under the Customs Act, 1962 would therefore remain 'bailable' under Section 104(7) of the said Act, in the absence of any Notification under Section 135(1)(e)(i)(C) of the Customs Act, 1962 notifying exotic animals/birds as "prohibited goods". Such Notification has been issued in the case of Fake Indian Currency, but not for exotic animals / birds. Therefore, bail shall continue to be statutory as well as fundamental right in the matters concerning exotic animals and it would be wholly arbitrary and illegal to direct that an offence under the Customs Act, 1962 qua exotic animals/birds, in the absence of any Notification under Section 135(1)(e)(i)(C) of the Customs Act, 1962 notifying exotic animals/birds as "prohibited goods", may still be classified as non-bailable. In view thereof, this writ petition stands dismissed. Consequently, W.M.P.No.23387 of 2022 is also dismissed. However, there is no order as to costs.

Speaking/Non speaking order (T.R.,A.C.J.) (D.K.K.,J.)
Index : yes/no 30.09.2022

Issue on 24.11.2022
ss

To

1. The Secretary to Union of India
Department of Revenue
Ministry of Finance
North Block, New Delhi

2. The Chairman
Central Board of Indirect Taxes
North Block, New Delhi

3. The Secretary to Union of India
Ministry of Environment, Forest
and Climate Change
Indira Paryavaran Bhawan
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4. The Chief Wild Life Warden
Government of Tamil Nadu
No.1, Jennis Road

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Chennai 600 015

THE HON'BLE ACTING CHIEF JUSTICE

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D.KRISHNAKUMAR,J.

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