

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 25583 of 2023

**Sukanta Mallick
Vs.
Union of India and others**

For the petitioner	:	Mr. Senthil Kumar, Mr. Abhinav Rakshit, Ms. Sompurna Chatterjee
For the WBMC	:	Mr. Rajarshi Basu, Ms. Rajyashree Mukherjee
Hearing concluded on	:	13.12.2023
Judgment on	:	19.12.2023

Sabyasachi Bhattacharyya, J:-

1. The writ petition has been filed with a two-pronged attack. The petitioner gave a declaration regarding birds of exotic species, in which the petitioner deals, and its progeny as well as transfer of possession of such birds. Such declaration was made under the Advisory for Dealing with Import of Exotic Live Species in India and Declaration of Stock, informally known as the "Parivesh Rules, 2020". The respondent-Authorities having rejected the same on the ground that source documents were not uploaded, the petitioner has preferred the first limb of the challenge.

2. Secondly, the petitioner also applied for Breeders of Species Licence under the Breeders of Species Licence Rules, 2023 read with Section 49M and Section 49N of the Wildlife (Protection) Act, 1972, as amended by the Wildlife (Protection) Amendment Act, 2022.
3. The rejection of such application for licence was on the premise that the same was filed beyond the time stipulated in the Act and the Rules.
4. Learned counsel for the petitioner argues that the Parivesh Rules, 2020 are by way of a Voluntary Disclosure Scheme. As per Clause I(b) of the same, the declarer would not be required to produce any documentation if the declaration was made within six months from the date of issue of the Advisory. Since the petitioner applied within six months, no documentation was required in the first place. Only if declaration was made after six months, the declarer was required to comply with documentation under the extant Laws and Regulations.
5. It is argued that at the relevant juncture, the 1972 Act did not take into account exotic species but only dealt with wildlife as defined therein.
6. As per Clause I(g) any acquisition/death/trade/change of possession taking place after declaration should also be informed to the respective Chief Wildlife Warden (CWLW) within 30 days of such acquisition, which was also done by the petitioner. Learned counsel for the petitioner argues that as per the said provision, the CWLW is only to issue an acknowledgment and has no right to accept or reject such declaration.

7. Insofar as progeny is concerned, Clause III of the Parivesh Rules, 2020 provides that the owner of exotic live species shall make a declaration about the details of birth of progenies of the animals to the respective CWLW within 30 days from birth of the progeny as per the format at Annexure-IV thereto. The CWLW is only to register the details as per the particulars submitted by the owner and after due verification to issue an ownership certificate for such progenies. Thus, the CWLW acted beyond its powers in refusing to accept such declaration at the outset.
8. The next challenge is against the rejection of the application for Breeders' Licence filed by the petitioner on the ground of delay. Learned counsel argues that the Wildlife (Protection) Amendment Act, 2022 came into force on April 1, 2023. Section 49N thereof provides that an application has to be made before the CWLW in terms of the prescribed Rules. The outer limit for making such application is 90 days from the amendment.
9. However, the concerned Rules, namely, the Breeders of Species Licence Rules, 2023 was notified on April 24, 2023. Rule 3 thereof also provides that an application has to be made in Form-I thereof within 90 days from commencement of the 2022 Amendment.
10. However, there is inherent impossibility in complying with the time-limit, since the Rules, under which Section 49N provides that the application has to be made, were published only on April 24, 2023 and came into force on the date of such publication in the Official Gazette. Before that, there was no prescribed format for filing the

declaration. Thus, although the Amendment Act came into force from April 1, 2023, an application could be made in the proper form as envisaged therein only from April 24, 2023, leaving a gap of 20 days in-between.

11. The petitioner applied for licence first on July 18, 2023. Thereafter, the application was returned to rectify defects on August 9, 2023 and was re-submitted under Form-I on August 28, 2023. The re-submitted application was again returned with a direction to fill up Form-II *vide* Memo dated September 4, 2023. However, since the petitioner was already engaged in breeding specimens listed in Appendix I of Schedule IV, Form I applied and the petitioner was not required to submit Form II, which was for new breeders. The petitioner's licence application was rejected on September 22, 2023 on the ground that the last date had expired on June 29, 2023.
12. It is argued that the date of commencement for the purpose of filing such application is to be deemed as April 24, 2023, when the Rules came into force. Construing so, the application was filed within time, that is, on July 18, 2023.
13. Learned counsel for the petitioner cites, in support of his arguments, the judgment of *Swetab Kumar v. Ministry of Environment, Forest & Climate Change and others*, reported at 2023 SCC OnLine SC 339. There the Supreme Court reiterated that before the 2022 Amendment Act was enforced, the Ministry of Environment, Forests and Climate Change issued a Notification dated June 11, 2020 (the Parivesh Rules) in the form of an Advisory which was challenged before various High

Courts but was upheld. The Supreme Court had also upheld the same vide order dated August 8, 2022. The Supreme Court went on to observe that the Scheme of Section 49M is that every person in possession of species listed in Schedule IV is required to report details of such animal to the Management Authority which is required to satisfy itself that the animals have not been possessed by contravention of any law and upon such satisfaction the Authority shall issue a registration certificate permitting retention of such animal.

14. It was observed, inter alia, that the legal position to be taken into consideration was that an amendment act cannot post facto criminalize possession.
15. Having gone through the amending Act, the Supreme Court found that the Advisory was optional, aimed essentially at regulation of import/export and the public at large was not put to notice that failure to opt would lead to penal and other consequences affecting their right to possess the animal. The Supreme Court was of the opinion that the respondent must provide the option of Advisory to citizens at large for a further reasonable period by putting them to notice of the consequences of failure to make such registration/declaration. The Advisory was held to be an Amnesty Scheme and declarants are immune from prosecution which would obviously mean that the declarations are immune from prosecution or action under any future laws and amendments incorporated in the 1972 Act.

16. Learned counsel then cites a Division Bench judgment in *Sukanta Mallick Vs. Union of India and others*, reported at 2022 SCC OnLine Cal 1301, which was a matter where the present petitioner was an appellant. The Supreme Court discussed the provisions of the Parivesh Rules in the said judgment and held that proceedings could not be taken under the Customs Act against the petitioner since the Central Government had not notified the exotic bird and animals-in-question under Section 11B of the Customs Act or any of the Schedules of the 1972 Act.
17. Learned counsel next cites a Division Bench judgment of the Allahabad High Court in *Dinesh Chandra Vs. Union of India and others*, reported at 2020 SCC OnLine All 1889 where the provisions of the relevant guidelines were discussed. The Advisory was held to be a Voluntary Disclosure Scheme and any penal action taken contrary to it was deprecated.
18. Learned counsel for the State argues that the breeders of species licence is for breeding Schedule-IV, Appendix-I species which are given the highest level of protection in accordance with the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is an international agreement between Governments. The protection given to Schedule-IV Appendix-I species is at par with the protection given to animals mentioned in Schedule-I of the Amendment Act, 2022. The aim of it is to ensure that trade in species covered under Schedule-IV Appendix-I does not threaten the survival of the species which may eventually lead to extinction if not closely

regulated. India implemented CITES through the Amendment Act of 2022 by including it in the Schedule-IV of the Amendment Act by adding three classes of Appendices.

19. It is argued that extreme caution has to be exercised by the CWLW while granting a breeder's licence to individuals as it may well become a tool for legalizing illegally smuggled species. The concerned Ministry fixed the last date of applying for licence through Form-I as June 29, 2023 which is evident from the Notification dated May 12, 2023.
20. As regards the source documents being not supplied by the petitioner, the respondents submit that the voluntary disclosure scheme only tried to streamline the process of ownership by creating an inventory of the species concerned. The Declarations were to be made in the Parivesh Portal where all acquisitions, births, deaths and transfers were to be recorded.
21. As per the interpretation of the Forest Department, it is contended, 'source papers' means Parivesh transfer papers for transfer of any species issued by the transferor to the transferee. If the Parivesh portal generated papers are not considered as source papers, the entire process of the Voluntary Disclosure Scheme becomes meaningless and the inventory maintained with the offices of the CWLW of the respective States also becomes meaningless. The stock declared in the case of the petitioner is after the expiry of the Voluntary Disclosure Scheme. No valid source paper/reference number of the stock was provided.

22. While submitting a document in the Parivesh portal, there is no AI (Artificial Intelligence) interface that would identify the documents submitted through the upload box. Documents such as identity cards cannot substitute the need to upload source documents.
23. Learned counsel for the respondents contends that no criminal case has been initiated against the petitioner. Any proposal which has been rejected for not having appropriate/adequate source papers can be filed afresh via a fresh portal in the Parivesh Portal, it is argued, along with uploading the Parivesh transfer proposal issued in favour of the concerned individual for the concerned species.
24. The respondents deny that any false case has been registered for cancellation of proposals against any individual in the State of West Bengal.
25. The respondents contend that the CWLW, through his authorised officials, can accept or reject proposals if they are not found in order with the relevant source paper or if any irregularity is found with the proposals. A bare perusal of the 2020 Advisory deals with Parivesh declarations in Clause I (j) which states that for violation of any of the above provisions, action as appropriate would be taken by the CWLW.
26. It is further submitted by the respondents that the CWLW is not a post-office meant only to receive and approve applications but also scrutinizes applications and rejects them if not found in order. Otherwise the option of rejecting proposals by the CWLW through his authorized officers would not exist in the Parivesh portal.

27. The DGFT licence of import of live species listed in CITES as per Notification No. 22/2022-2023 dated December 19, 2022 needs to be strictly valid; otherwise anybody can produce animals such as gorilla, African lions, etc., through illegal route.
28. Heard learned counsel for the parties.
29. The first component of challenge of the present writ petition is the rejection of the petitioner's declaration related to parent birds, progeny and transfer of possession.
30. The Parivesh Rules of 2020 are the relevant guidelines in that regard. Clause I(b) of the same clearly stipulates that the declarer would not be required to produce any documentation in relation to exotic live species if the same has been declared within six months from the date of issue of the Advisory. It is not in dispute that the petitioner declared all stocks, progeny and acquisition and transfer within six months through the Parivesh Portal.
31. Thus, as per Clause I (b), the petitioner was not required to produce any documentation at all.
32. The 2020 Scheme, as also interpreted by the Supreme Court in *Swetab Kumar (supra)*, is a voluntary disclosure scheme which is in the nature of an amnesty scheme. The same clearly provides immunity to declarants from action being taken under the extant law.
33. Seen in such perspective, there is no scope of rejection as such at the stage of declaration itself. Clause I of the 2020 Rules envisages several steps. The first step is that the declaration is to be made on the concerned portal. Thereafter, as per sub-clause (e) of Clause I, the

CWLW shall, after physical verification, register the stock and maintain a record in their office and issue an online certificate of possession within six months of the date of the voluntary disclosure. Hence, the powers of the CWLW argued by the respondents come only at a later stage, after physical verification and registration of the stock.

34. Sub-clause (g) of Clause I thereafter provides that any acquisition/death/trade/change of possession taking place after the declaration should be informed to the respective CWLW within 30 days of such acquisition/death/trade, upon which the mere function of the CWLW is to issue an acknowledgement as per format as Annexure-II. A detailed procedure of subsequent physical verification and registration, after the stage of declaration, has been envisaged in the Parivesh Rules, 2020.
35. Thus, the CWLW at that stage is indeed a mere 'post-office' and issues an acknowledgement. The CWLW does not have any power of accepting or rejecting or adjudicating on the declaration at that stage. Sub-clause (h) of Clause I provides that the register of stock shall include details such as species imported/acquired, number of animals of each species imported/acquired, photographs, address, etc. Sub-clause (j) provides that for violation of any of the above procedures laid down, action as appropriate would be taken by the Chief Wild Life Warden.
36. Although sub-clause (j) provides scope for action to be taken, at the stage of declaration, there is no scope of any such action.

37. In any event, Clause I (b) merely provides that a voluntary declaration is to be made and there is no scope of any “action” by the CWLW at that stage. As held by the Supreme Court in *Swetab Kumer (supra)*, the Advisory is in the nature of a voluntary disclosure scheme and provides amnesty and is not a penal provision. The Supreme Court also observed in the said judgment that when the Advisory was issued, it was optional, aimed essentially at regulation of import/export and the public at large was not put to notice that failure of opt therefor would lead to penal and other consequences affecting their right to possess the animal.
38. The Division Bench in *Sukanta Mallick (supra)*, however, is not of much benefit to the petitioner vis-à-vis the contentions raised in the present case. There, it was observed by the Court that there was no violation of the Customs Act in the petitioner dealing with exotic birds. The modalities and dates of submitting declarations and applications for breeder’s licence were not decided as issues therein.
39. In *Dinesh Chandra (supra)*, the Division Bench of the Allahabad High Court reiterated that the Parivesh Rules were a voluntary disclosure scheme and was to be promoted by all departments of the Central Government in wider public interest. During the limited interregnum of six months, it was observed, any inquiry or action against procession, breeding or transportation of exotic species within India by officers of any Government Agency or department, whether Central or State, was held to be wholly illegal, arbitrary, unreasonable,

unsustainable and would defeat the purpose of the voluntary disclosure scheme.

40. Taken in letter and spirit, the voluntary disclosure scheme did not contemplate any detailed documents to be produced if submitted within six months. In any event, the petitioner in the present case provided sufficient documents for the declaration to be registered in the concerned portal. Subsequent “rejection” of the same was *de hors* the Scheme and beyond the authority of the respondents. Thus, the rejection of the petitioner’s declaration of the species, their progeny and transfer is palpably *de hors* the law.
41. The next component of challenge is rejection of the petitioner's application for breeder’s licence.
42. After the Parivesh Rules were introduced, the 2022 Amendment of the 1972 Act came in which introduced, *inter alia*, Sections 49M and 49N. Section 49M(1) stipulates that every person possessing a living specimen of animal species listed in Schedule-IV shall report the details of such specimen or specimens in his possession to the Management Authority or the Authorised Officer who, on being satisfied that a person was in possession of a living specimen which had not been obtained in contravention of any law relating to protection of fauna and flora, issue a registration certificate allowing the owner to retain such specimen.
43. Reading the provisions in conjunction with the 2020 Rules, if a dealer/breeder of a person dealing with such species had voluntarily disclosed about the same under the Parivesh Rules, 2020, he would

obviously be immune to prosecution under any law subsequently coming into force. Thus, the operation of Section 49M has to be read in context of the Parivesh Rules, 2020.

44. The provision of application for licence by breeders is dealt with the amended Section 49N which provides that every person who is engaged in breeding in captivity or artificially propagating any Scheduled specimen listed in Appendix-I of Schedule-IV shall make, within a period of 90 days of commencement of the 2022 amendment, an application for a licence to the CWLW.
45. Thus, Section 49N which came into force on and from April 1, 2023, stipulated an application to be made within 90 days from that date. However, there is a catch in the provision. Sub-section (2) of Section 49N provides that the form and manner of the application to be made to the CWLW under sub-section (1), the fee payable, the form of licence, the procedure to be followed in granting or cancelling the licence shall be such *as may be prescribed by the Central Government*.
46. The term “prescribed” as per Section 3(25) of the 1972 Act means prescribed by Rules made under the Act.
47. Section 63 of the 1972 Act empowers the Central Government to make Rules under the Act. Sub-clauses (jvi) and (jviii) of sub-section (1) of Section 63 of the 1972 Act were also introduced by the Amendment of 2022. As per sub-clause (jvi), the Central Government may by notification make Rules with regard to the form and manner of the application, fee payable, form of licence and procedure to be followed in granting or cancelling a licence as per sub-section (2) of Section

49N. Sub-clause (jviii) relates to any other matter for proper implementation of the Convention as may be required under Chapter VV. Thus, the prescribed Rules, in terms of which the application under Section 49N(1) is to be made in terms of Section 49N(2), are the Breeders of Species Licence Rules, 2023 which were framed in exercise of the powers conferred under Section 63(1)(jvi) and (jviii) by the Central Government. However, as per Rule 1 (2) of the said Rules, the same shall come into force on the date of its publication in the Official Gazette. The said date was April 24, 2023.

48. Thus, there was a gap of 23 days between the commencement of the 2022 Amendment to the 1972 Act on April 1, 2023 and the commencement of the 2023 Rules, from April 24, 2023.
49. Rule 3 of the 2023 Rules provides that any person who is engaged in breeding in captivity or artificially propagating a scheduled specimen listed in Appendix-I shall, within a period of 90 days of the commencement of the Amendment Act of 2022, make an application to the CWLW in Form-I either in person or through electronic mode or through registered post addressed to the CWLW of the concerned State or the Union Territory. Hence, the provisions of Rule 3(1) are identical as Section 49N (1) of the 2022 Amendment Act. However, as on April 1, 2022, from when the prescribed time-limit of 90 days commences, the 2023 Rules had not come into force. For the next 23 days till April 24, 2023, the same position prevailed. Hence, in the event a person wanted to apply for a breeders of species licence during such period, he/she could not have done so, since Section 49N(2)

specifically stipulates that the application under Section 49N(1) has to be made as per prescribed Rules.

50. Thus, the first day on which an application could actually be made within the contemplation of Section 49N (1) was April 24, 2023 when the 2023 Rules came into force, prescribing the format and modality of making such application.
51. Hence, necessarily, it is to be construed that the 90 days stipulated in Rule 3(1) of the 2023 Rules and Section 49N(1) of the 2022 Amendment Act must necessarily start from the date when the Rules came into force, that is, from April 24, 2023. For the purpose of Section 49N, the option of application under the said provision opened only on April 24, 2023 and, for all practical purposes, the Amendment Act of 2022 “commenced” vis-à-vis the said Section. A different approach than such purposive interpretation would lead to an absurdity, nullifying the effect of the 2022 Amendment.
52. Thus, the 90 days has mandatorily to be read to commence from April 24, 2023 (when the Breeders of Species Rules came into force) and not April 1, 2023 when the Amending Act came into force otherwise.
53. In the present case, the application of the petitioner for breeders of species licence was made on July 18, 2023 which is within 90 days from April 24, 2023 (although not from April 1, 2023). Hence, the same has to be necessarily deemed to be in time, that is, filed within 90 days from the date of commencement of the Rules, which was the date of commencement of operation of Section 49N of the Amendment Act of 2022 for all practical purposes.

54. Although the application was initially returned to the petitioner to rectify defects and was subsequently returned after curing such defects, the said dates do not count, since the date of the application remained July 18, 2023.
55. As to the last return, the same was erroneous on the part of the respondents since the petitioner had rightly applied in Form-I in terms of Appendix-I of Schedule-IV, since the petitioner was already engaged in breeding specimens under the said list. Only if the petitioner was a new applicant in the field would the Form have to be submitted in the format of Form-II which is not the case of the petitioner.
56. Thus, the petitioner duly filed his application within 90 days as contemplated in the Amended 1972 Act and the 2023 Rules. As such, there was no scope of rejection of the application on the ground that the same was filed beyond time. Since the petitioner successfully uploaded the declaration under the Parivesh Rules by producing some documents, the same ought to have been construed as the source documents insofar as the application for breeders of species licence is concerned.
57. In such view of the matter, the impugned rejection of the petitioner's application for breeders licence was also *de hors* the authority of the respondents and ought to be set aside.
58. Accordingly, WPA No. 25583 of 2023 is allowed on contest, thereby setting aside the rejection of the petitioner's declaration under the Parivesh Rules, 2020 with regard to possession of the parent birds, progeny as well as transfer of the said specimens. The declaration

given by the petitioner on such count shall be deemed to be valid for all practical purposes within the contemplation of the Parivesh Rules, 2020. The rejection of the petitioner's breeder of species licence application is also set aside. The petitioner's application for such purpose dated July 18, 2023 is to be accepted as a valid application and due action shall be taken by the respondents on such premise accordingly.

59. There will be no order as to costs.
60. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)