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W.P.Nos.23230 & 23231 of 2016 & 10496 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.03.2023

Pronounced on: 06.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.23230 & 23231 of 2016 and 10496 of 2017 and
WMP.Nos.19923, 19924, 19925 & 19926 of 2016 and
WMP.No.11386 of 2017

The Kennel Club of India

Represented by its Secretary

C.V.Sudarshan

Registered Office at Old No.89, New No.28,

AA Block First Street,

Anna Nagar, Chennai-600 040.

... Petitioner in WP.23230 of 2016

C.R.Bhaalakrishna Bhat

... Petitioner in WP.23231 of 2016

The Madras Canine Club

Represented by its Secretary

Rajinikanth

New No.2, Old No.51, 7th Cross Street,

Shenoy Nagar, Chennai-600 030.

... Petitioner in WP.10496 of 2017

Vs

1.The Union of India

Represented by its Secretary,

The Government Department of Commerce and Industry,

Udyog Bhawan, Raji Ahmed Kidwai Marg,



W.P.Nos.23230 & 23231 of 2016 & 10496 of 2017

Rajpath Road, Central Secretariat,
New Delhi.

2.The Director General of Foreign Trade,
I.P. Bhawan, I.P. Estate,
New Delhi 110002.

3.The Secretary to Government,
Animal Husbandry, Dairying, Fisheries and
Fishermen Welfare Department,
Secretariat, Chennai 600 009.

... Respondents in all WPs

(R3 suo motu impleaded vide order dated 19.12.2022
made in WP.Nos.23230 & 23231 of 2016 &
WP.10496 of 2017 by this Court)

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with the notification No.3/2015-2020, dt. 25.04.2016 and quash the same and further direct to the respondents No.1 & 2 not to prevent dog lovers from lawfully importing dogs into India for dog shows, as pets and for breeding.

For Petitioners : Mr.R.Srinivas, Senior Counsel
For Ms.Mythili Srinivas
(in WP.Nos.23230 & 23231 of 2016)
Mr.V.Selvaraj, Senior Counsel
For Ms.Mythili Srinivas (WP.10496 of 2017)

(In all WPs)

For Respondents: Mr.AR.L.Sundaresan, Additional Solicitor General
assisted by Mr.V.Chandrasekaran (for R1 and R2)
Senior Panel Counsel

Mr.Alagu Goutham (for R3)
Government Advocate



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COMMON ORDER

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The Kennel Club of India (KCI), The Madras Canine Club (MCC) and C.R.Balakrishna Bhat are the petitioners in these Writ Petitions. Their prayer in common, is for a Certiorarified Mandamus quashing Notification No.3/2015-2020 dated 25.04.2016. They also seek a direction to R1 and R2, being the Secretary, Department of Commerce and Industry and Director General of Foreign Trade (DGFT) (hereinafter referred to as R1 and R2/DGFT respectively) not to prevent dog lovers from lawfully importing dogs into India for dog shows, as pets and for breeding.

2. Heard Mr.R.Srinivas and Mr.V.Selvaraj, learned Senior Counsel appearing for learned counsel on record for the petitioners, Mr.AR.L.Sundaresan, learned Additional Solicitor General assisted by Mr.V.Chandrasekaran, learned Senior Panel Counsel appearing for R1 and R2 and Mr.Alagu Gowtham, learned Government Advocate appearing for R3. In addition, I had consulted Dr.R.Karunakaran, Dean of the Madras Veterinary College, Chennai, and Dr.Sujatha, Deputy Librarian, who have been most helpful in supplying books and literature to aid my understanding of the subject of native Dogs.



3. KCI was founded in the year 1896 by the British. It is the only private authority dealing with the interests of canines in India. It maintains the pedigree and stud book of various recognised dog breeds and its records date back to more than a century. It holds an ISO certification and a full membership of the Federation Cynologique International (FCI), the largest body in the world dealing with the interests of canines as well as the Asian Kennel Union and the Commonwealth Kennel Clubs as well as reciprocal arrangements with various major International Kennel Clubs.

4. KCI issues registration certificates as well as effects proper transfer of registration from one owner to another. Recently, it has also made it mandatory that all dogs registered with it be microchipped. The objects of the KCI are as follows:

'1. The promotion of scientific breeding of dogs, issue of literature for the instruction and diffusion of scientific and useful knowledge for the general use of the members, collection of natural history ancient paintings, etc.,

2. The collection and dissemination of scientific or other useful information considered to be of interest to the member of the Club and others.

3. The promotion of scientific knowledge among the public in general about dogs, their special skills and their faithful companionship and promotion of dog as therapeutic and practical aid to mankind specially to the physically handicapped persons like the blind, mentally



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retarded, young and timid children and old and infirm men and women.

4. The promotion of scientific research about dog physiology and dog psychology and facets of mutual relationship between dogs and their inter relationship with their masters and their families.

5. The promotion and the advancement of education and science by furthering research into canine diseases and hereditary disorders.

6. The promotion or relief and suffering of dogs who are in need of care and attention and to sterilize unowned stray dogs to prevent their further breeding which would result in the prevention or minimizing of dreaded diseases such as, rabies, leptospirosis, tuberculosis and other parasitic diseases which are easily communicable to mankind.

7. The promotion and scientific breeding of the various Indian Breeds and placing them at caring homes to propagate their growth and development.'

5. The KCI states that it follows social responsibility by inculcating good practice for management of canines and has introduced a Canine Good Citizen Training Scheme to integrate Canines into society. '*Save the Indian breeds*' project has been commenced with the sole purpose of protecting Indian dog breeds that are on the verge of extinction. Indian dog breeds enjoy special status with the KCI, in that there is no charge for their registration or for the registration of their litter, and microchips are issued free.

6. MCC is a society which was found in 1980 and which has the following objects,:



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'a). To promote membership of dog owners and dog lovers.

b). To promote the keeping of pedigreed dogs and provide necessary information to its members.

c). To conduct Dog Shows and Dog Trials at periodical intervals subject to the approval of the "Kennel Club of India".

d). To render assistance to new dog owners in the maintenance and care of dogs and to encourage and assist its members in breeding different varieties of Dogs.

e) To do all such other things as conducive or incidental to the attainment of these objects.'

7. It holds a membership in the KCI and conducts dog shows, recognised by both KCI and FCI. In all, the primary *raison de etre* of both KCI and MCC is to protect, preserve and promote the interests of distinct canine breeds by serving as a custodian of dog breeds and providing for their preservation, maintenance and improvement.

8. W.P.No.23231 of 2016 is filed by an individual claiming to be an avid dog lover and a member of the KCI and several canine clubs affiliated to it. He claims to be passionate about a breed of dog called Fila Braselerio, a canine breed from Brazil, primarily strong and aggressive guard dogs, and he claims to have several as pets.

9. Their challenge in common is as regards Notification No.3/2015-2020, dated 25.04.2016 ('impugned Notification') which places a restriction on

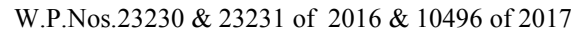


the import of dogs into the Country for commercial breeding or other commercial activities. All petitioners speak in one voice as regards the challenge to the Notification which is on two grounds. The first ground is that it is premised on a policy, which is perverse, uninformed, incorrect and detrimental to the interests of the Country, particularly dog lovers.

10. The second ground is that the Notification has been issued by R2, who does not have the requisite power under Section 3 of the Foreign Trade Development and Regulation) Act, 1992 (in short 'FT (D&R) Act') read with paragraphs 1.02 and 2.01 of the Foreign Trade Policy 2015-2020 (in short 'FTP') to have issued the same as it is only the Central Government that is competent in this regard.

11. Since the Notification was silent as to the reasons prompting its issue, the respondents were directed to produce the complete records in order to understand the sequence of events leading to the issuance of the same. The genesis is a letter dated 01.12.2015 from the then Minister for Women and Child Development, Government of India. The concerns expressed and the remedy sought are best set out in her words as follows:

D.O.No.535/14/2015
MINISTER
MINISTRY OF WOMEN & CHILD DEVELOPMENT



Maneka Sanjay Gandhi

1st December, 2015

Dear Shri Angurana,

Commercial import of dogs in India is steadily rising. There is absolutely no implementation of regulations regarding neutering or registration of dogs kept in commercial establishments for breeding or sale or for any other purpose. This has led to illegal breeding. The Government of India is already burdened with a countrywide birth control program for dogs and import of more dogs is phenomenally adding to the problem. The Supreme Court of India is also seized of the problem and has instructed the states to prevent breeding of dogs by implementing birth control programme.

The pathogens carried by the animals imported from other countries cannot be completely screened out in quarantine centers. New and fatal diseases including various kinds of tick fevers and canine circovirus are being brought in with each consignment, substantially affecting the health of the existing animals.

Imports of dogs in large numbers is also undermining and contaminating the genepool of the Indian breeds such as the Indian Pariah, Rajapalayam, Mudhol Hound, Rampur Greyhound etc. If commercial import of dogs is not immediately banned, the ramifications on the demographics and health of Indian dogs will be irreparably damaged, besides adding to the burden on the central and state governments to clean up the mess by providing neutering and vaccination services to the discarded animals left on the streets.

The import of pet dogs has been banned because of similar reasons, but the purpose is being completely defeated if the import



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of dogs is allowed for commercial purposes. This channel is now being used to bring in pets as well.

May I request you to strongly recommend a complete ban on the import of dogs so that the population of dogs in India can be stabilized and the demographics and health of the existing animals can be preserved.

With regards,

*Yours sincerely,
Sd/-
(Smt. Maneka Sanjay Gandhi)*

12. In response, the Additional Director General of Foreign Trade (ADGFT) by letter dated 14.12.2015 states as follows:

D.O. No.01/89/180/200/AM-02/PC-2 (A)/941

*GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DIRECTORATE GENERAL OF FOREIGN TRADE
UDYOG BHAWAN, NEW DELHI-110011*

Telefax:

E-Mail:

Date: 14/15 December, 2015

Dear Sri Arora,

This has reference to the D.O. letter No.535/14/2015 dated 1st December, 2015 from Hon'ble Minister for Women & Child Development regarding banning import of dogs, which is addressed to Secretary, Department of Animal Husbandry, Dairying & Fisheries, with a copy marked to DGFT.



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2. As per the Indian Trade Classification (Harmonised System), 2012, import of live animals (non- wild), including dogs, is "Restricted" i.e. an authorisation/license is required for their Import subject to the Live Stock Importation (Amendment) Act, 2001.

3. The DGFT considers grant of Authorisation for Import of pet/other dogs on the basis of recommendation by the Department of Animal Husbandry, Dairying & Fisheries, Government of India. During the last three years, DGFT has not granted any Authorisation for import of dogs for breeding purposes.

4. Further, Circular No.15/2013 - Customs dated 8th April, 2013 allows import of two pet animals as baggage only to persons transferring their residence to India after two years of continuous stay abroad in terms of Baggage Rules 1998 subject to production of the required health certificate from the country of origin and examination of pets by the Quarantine Officer concerned at the port of arrival.

5. The concerns on demography and health of native dogs fall in the domain of the Department of Animal Husbandry, Dairying & Fisheries, Government of India and this Department will be guided by their advice/decision.

6. The Hon'ble Minister may kindly be apprised.

With kind regards,

Yours sincerely

Sd/-

(KC Rout)

13. The next day, an Official Memorandum was issued by the Assistant Commissioner, Department of Animal Husbandry, Dairying and Fisheries (in short 'AHDF Department') that reads as follows:

No. 102-132/2013-Trade
Government of India
Ministry of Agriculture and Farmers Welfare
Department of Animal Husbandry, Dairying and Fisheries



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Krishi Bhawan, New Delhi

Dated. 15th March, 2016

OFFICE MEMORANDUM

Subject:- Ban on import of commercial dogs into India.

The undersigned is directed to refer to the O.M. of even number dated 18.12.2015 seeking views/comments of Ministry of Environment, Forest & Climate Change, Animal Welfare Board of India and Director General of Foreign Trade (DGFT) regarding ban on import of commercial dogs. In this regard, Department received views/comments, suggestion and request from Ministry of Environment, Forest & Climate Change (MoEF&CC), Animal Welfare Board of India (AWBI) and Ministry of Women & Child Development (WCD) in favour of imposing ban on import of commercial dogs.

2. The matter has been re-examined and it has been observed that the import of dogs is a restricted item for which the DGFT issues license on recommendation of this Department. The proposals for import of dogs are examined in this Department from the sanitary and quarantine point of view for which the Department has framed import requirements for all categories of dogs. Further, the matter has been considered in view of the comments/views received from AWBI, MoEF&CC, WCD, and with the approval of the Competent Authority, it has been decided that the import of dogs may be allowed only for the following specific purposes:-
 - i. Pet dog with valid pet book and relevant records/ documents in the name of importer.
 - ii. Dogs imported by the R & D Organisations for conducting research with the recommendation of CPCSEA.
 - iii. For the internal security by the Defence and Police Force.

However, import of commercial dogs for breeding or any other commercial activities other than the purposes



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mentioned above shall not be allowed. Accordingly, the DGFT is requested to issue necessary notification in this regard,

*Sd/-
(Sanjeet Kumar)
Assistant Commissioner*

*The Director General of Foreign Trade,
Dte. General of Foreign Trade,
Ministry of Commerce & Industry.
Udyog Bhavan,
New Delhi.*

14. The Assistant Commissioner refers to the views and comments received from the Ministry of Environment, Forest & Climate Change, Animal Welfare Board of India and Ministry of Women & Child Development that are in favour of imposing ban of import of commercial dogs for breeding or other commercial activities. The respondents were specifically asked to produce the file in order that the Court may note and appreciate the views of the experts as sought for. An e-mail dated 22.02.2023 from Deputy Commissioner (Trade) has been produced to the effect that the file has been weeded out and is untraceable.

15. The Deputy Commissioner (Trade) says that the list of destroyed files contains the file number of the file called for in this matter. Thus, this Court is denied the benefit of the supporting material on the basis of which the impugned ban has been imposed. With the reference of the matter by the



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Assistant Commissioner, AHDF Department in O.M. dated 15.03.2016 to the Director General of Foreign Trade, a file note was put up for circulation among the Cabinet.

16. The Administrative affairs of the Government of India are transacted in line with the Government of India (Transaction of Business) Rules, 1961 (in short 'Transaction of Business Rules'). The aforesaid Rules have been framed in exercise of powers conferred under Article 77(3) of the Constitution of India.

17. Rule 3, which deals with the transaction of business by Ministries, states that subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961 (in short 'Allocation of Business Rules') shall be disposed of by, or under the general or special directions of the Minister-in-charge.

18. Rules 2 and 3 of the Allocation of Business Rules deals with allocation of business and the distribution of subjects. Rule 4 deals with the allocation of Departments among Ministers. Rule 4(1) states that the business



of the Government of India allocated to Cabinet Secretariat is and, shall always be deemed to have been, allotted to the Prime Minister.

19. Rule 4(2) states that the President, on the advice of the Prime Minister, will allocate the business of the Government of India among Ministers by assigning one or more departments to the charge of a Minister. This allocation is what one commonly refers to as the portfolio of a Minister.

20. Rule 4(3) refers to the sub-delegation of said business to another Minister or Deputy Minister or the entrusting of responsibility for specified items of business affecting any one or more than one Department to a Minister without portfolio. Part C of the Second Schedule which relates to Rule 3, being distribution of subjects, relates to the categorisation of subjects qua the Department of Animal Husbandry and Dairy Farming (Pashupalan, Dairy Aur Matsyapalan Vibhag) (in short 'AHDF'). One of the subjects enumerated in Part I of Part C of the Second Schedule under serial number 6 is, '*Regulation of Livestock importation, Animal Quarantine and Certification*'.

21. Dogs are categorised as livestock and thus all matters relating to their importation including regulation, quarantine and others must be carried out by the Department of AHDF only, as per Rule 4 of the Allocation of Business Rules. When the file note was put up for circulation among the Cabinet, the



consent or rejection expressed and/or observations of the Hon'ble Ministers to whom the file was circulated would ultimately form part of the record when placed before the concerned Minister, in this case, the Hon'ble Minister for Agriculture and Farmers Welfare, under whom the Department of AHDF comes. The petitioners would state that there is nothing on record to indicate that this procedure has been followed in this case, thus vitiating the entire process, and consequently the Notification itself.

22. Per contra, it the respondents say that this portfolio had been assigned additionally to the then Hon'ble Minister for Commerce, the present Hon'ble Finance Minister. The file note concludes with her signature and the date '21.4' approving the draft Notification for banning the import of dogs for commercial breeding or other commercial activities. With this, the respondents would aver that the procedure as stipulated has been scrupulously followed.

23. Rebutting the defence taken, the petitioners would argue that the counter was silent on all the factual particulars which have now been provided in relation to the procedure followed. They specifically point out that no approval of the Hon'ble Minister for Agriculture has been produced as required under the Allocation of Business Rules and Transaction of Business Rules. This serious lacunae, in their submission, vitiates the impugned Notification.



24. They rely on a decision in the case of *Union of India and others v. Agricas LLP and others*¹, which elaborates on the procedure to be followed in the issuance of Notifications regulating import and export. They also rely on the decision in the case of *Union of India (represented by Director-General, All India Radio), New Delhi and another v. K.S.Krishnaswamy and another*² dealing with Central Civil Services (Pension) Rules, 1972.

25. A Division Bench of this Court sitting in Madurai also had had occasion to consider the procedure to be followed by the Central Government in the issuance of Notifications in the context of the Conduct of Business Rules, in *Union of India, represented by its Secretary, Ministry of Commerce and Industry and others V. Unik Traders*³. In that case, the Notification impugned had been quashed by the learned single Judge, whose decision had been reversed by the Division Bench that was of the view that it had been properly issued.

26. In *State of Maharashtra and another v. Indian Hotel and Restaurants Association and others*⁴, the Hon'ble Supreme Court considered

1 2020 SCC OnLine SC 675

2 2005 (2) L.L.N. 890

3 W.A.(MD) Nos.396 to 406 of 2009 dated 28.10.2022

4 [(2013) 8 SCC 519]



the absolute ban that had been imposed on dance performances in eating houses, permit rooms and beer bars. The observations of the Court rendered in that context have been brought to my attention to say that such a total and absolute ban must be based on empirical data.

27. In that case, the conclusion of the Court was that the State of Maharashtra had no material in its possession to come to a scientific and proper conclusion that dancing in public establishment leads to depravity and corruption of morals.

28. The petitioners attack the very basis on which the ban has been imposed, denying that the importation of dogs is in any way prejudicial to Indian breeds of dogs. The present domestic dog carries the biological name '*Canis Lupus Familiaris*' and evolved from the wild wolf more than 150 centuries ago.

29. According to the petitioners, there are very few primary dog breeds, perhaps only 1% of the breeds known today, and 99% of the existing dog breeds have been designed by humans. The hybrids caused by inter-breeding and evolutionary changes are quite different from the primary and native breeds of dogs.



30. Undoubtedly, the unethical breeding practices followed by unscrupulous and commercially avaricious breeders including inbreeding, lead to abnormalities and malformation in dog litters. While the petitioners acquiesce to the dangers and unfortunate consequences of capricious and unfettered dog breeding, the impugned ban is not a remedy for the same. A total ban on import for commercial purposes, such as the present one, is a hasty move which is not well thought out, apart from not being based on any scientific study.

31. There is no basis much less any truth in the statement that foreign dogs contaminate Indian breeds, as, in reality, Indian breeds have, over the years, been diluted to a great extent and native breeds of dogs today are vastly different from their ancestors with evolution over the years.

32. The right to own as a pet for a commercial purpose such as training or ethical breeding cannot be the matter of absolute ban except if the dog is diseased or poses a threat to public health and safety. There are measures in place for quarantine of diseased dogs, and with this, there is no necessity for further regulation. In all, the petitioners would passionately submit that the impugned Notification is bereft of any justification, either in law or as a policy, and must be quashed.



33. The respondents maintain that the Notification has considered all aspects of the matter in proper light and must be sustained. The procedure followed by the respondents in issuing the Notification has been detailed in the paragraphs above. R1 would stress that regulation of import and export, being a matter of policy and taken in the best interests of the Country must not be interfered with unless it is shown to be perverse.

34. In the present case, letter dated 01.12.2015 from the then Hon'ble Minister for Women and Child Development has explained the dangers of importation of foreign dogs and they would urge that this Court cannot embark on an exercise of second guessing such valid concerns. They have however no choice but to accede to the position that the file produced by them is incomplete and does not contain any scrap of scientific data to validate those concerns even at the relevant point of time.

35. In the initial hearings, and seeing as the matters related to the year 2016 and 2017, I wanted to ensure that the Notification had, in fact, been implemented. A copy of the tariff incorporating the import ban has been produced and the respondents confirm that the ban is, indeed, in place and operative as on date. The respondents rely on the judgment in the case of



Parisons Agrotech Private Limited and another v. Union of India and others ⁵

to say that even assuming that there was some collateral damage by way of public interest, in policy matters, it is always larger public interest that is sought to be addressed by the State.

36. According to them, this would justify prejudice, if any, caused to the petitioners and other dog lovers by way of the restrictions imposed. Such restrictions are necessary in larger public interest, both in terms of protecting local breeds of dogs and their gene pool.

37. They also rely on the decision of this Court in *M/s.Hira Traders v. The Director General of Foreign Trade, Ministry of Commerce & Industries, Department of Commerce, Udyog Bhavan H Wing, Gate No.2, Maulana Azad Road, New Delhi - 110 011 and others* ⁶, where the challenge was to a Notification restricting the import of pulses, cereals and spices from abroad.

38. Those Notifications came to be ultimately upheld, this Court noticing that they were for the benefit of the Farmers who cultivated indigenous peas. Specific reference is drawn to the observation of the Court that the import of peas flooding the local market reduced the demand for locally grown peas.

⁵ (2015) 9 SCC 657

⁶ WP.Nos.15921 of 2018 and batch dated 04.04.2019



Thus the restriction was found to be well conceived and not in violation of Article 19(6) of the Constitution of India.

39. All learned counsel have been heard in detail and the material relied upon closely studied. One primary concern expressed is that proper procedure has not been followed in the run-up to the issuance of the impugned Notification. Though this ground has only been expressed in general terms initially, the file produced by the respondent, the petitioners have pointed out, has fortified this submission, since there is no consensus expressed by the Hon'ble Ministry for Agriculture and Farmers Welfare.

40. Per contra, the respondents argue that the records reveal the endorsement and consent of the Hon'ble Minister-in-charge at the relevant point in time and that proper procedure has been followed. I now propose to test their submissions.

41. Letter dated 01.12.2015 conveys certain concerns of the Hon'ble Minister for Women and Child Development. The letter was forwarded to the Hon'ble Minister of Agriculture and Farmers Welfare with a copy marked to the Director General of Foreign Trade. There is no response available from the Agriculture Ministry and instead, it is the ADGFT under the Ministry of Commerce and Industry, who has responded stating that the expert to answer



the query of Hon'ble Minister would be the Department of AHDF. The aforesaid events have transpired between the 1st and 15th of December, 2015.

On the same day, an Office Memorandum has been issued by the Assistant Commissioner of AHDF Department.

42. This Court is given to understand that the then Hon'ble Commerce Minister was holding additional charge of the Ministry of Agriculture and Farmers Welfare, under which Ministry, the Department of AHDF falls. There is no written confirmation in this regard. The records do not indicate so and neither are there any pleadings to support this position.

43. Thereafter, that a file note has been prepared in F.No.01/89/180/00/AM-02/PC-2(A) with the subject '*Ban on import of commercial dogs into India*'. A combined reading of the Allocation of Business Rules and Transaction of Business Rules would show that any proposal that is to fructify into a policy decision of the Government must be one where all the Hon'ble Ministers have had occasion to deliberate and apply their minds. The file note containing the proposal is said to have been so circulated to all the Hon'ble Members for their endorsement.



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44. The file note produced before this Court reads thus:

F.No. 01/89/180/200/AM-02/PC-2 (A)

Page No.12

Subject: Ban on Import of commercial dogs into India.

Department of AH,D & Fisheries vide their OM dated 15.03.2016 has sought inputs on ban on import of commercial dogs into India. In this regard, they have stated that Department received views/comments, suggestion and request from Ministry of Environment, Forest & Climate Change [M/o EF&CC], Animal Welfare Board of India (AWBI) and Ministry of Women & Child Development [WCD] in favour of imposing ban on import of commercial dogs

2. They have further stated that the matter has been re-examined and it has been observed that the import of dogs is a restricted item for which the DGFT issues license on recommendation of the Department. The proposals for import of dogs are examined in the Department from the sanitary and quarantine point of view for which the Department has framed import requirements for all categories of dogs. Further, the matter has been considered in view of the comments/views received from AWBI, M/o EF&CC, WCD and with the approval of the Competent Authority, it has been decided that the import of dogs may be allowed only for the following specific purposes:-

- i. Pet dog with valid pet book and relevant records/documents in the name of importer.*
- ii. Dogs imported by the R&D Organisations for conducting research with the recommendation of CPCSEA.*



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iii. *For the internal security by the Defence and Police Force.*

However, import of commercial dogs for breeding or any other commercial activities other than the purposes mentioned above shall not be allowed. Accordingly, the DGFT is requested to issue necessary notification in this regard.

Submitted please.

Ft 20 (pc-2(a))

Currently, as per ITC (HS), 2012, Schedule –I (import policy), import of live animals (non-wild including the dogs in restricted. To bring changes in the import policy of dogs, it has to be assigned a specific separate Exim Code which can be done only by the Dept. of Revenue. It is, hence for consideration whether we may approach DoR for this purpose.

Sd/-

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Page No.13

File No.01/89/180/200/AM-02/po

Subject: Ban on import of commercial dogs into India.

The proposal under consideration relates to imposition of ban on import of commercial dogs into India.

2. Briefly, the Hon'ble Minister for Women & Child Development had written to Deptt. of Animal Husbandry (D/o AHD&F), with a copy to this Directorate, requesting for imposition of a ban on import of commercial dogs into India. DGFT's stand had been clarified to the Minister's office vide DO dated 15.1.2.2015. Subsequently, on comments being sought by D/o AHD&F on the same issue, they were also informed accordingly.

3. Now, having examined the comments received from M/o EF&CC as well the Animal welfare Board of India (AWBI), D/o AHD&F with the approval of their Competent Authority, has decided that import of dogs may be allowed only for the following specific purposes:-

- i. Pet dog with valid pet book and relevant records/documents in the name of Importer.
- ii. Dogs imported by the R&D Organisations for conducting research with the recommendation of CPCSEA.
- iii. For the internal security by the Defence and Police Force.

4. Further, as it has also been decided that import of commercial dogs for breeding or any other commercial activities other than the purposes mentioned above shall not be allowed, D/o AHD&F has requested this Directorate to issue necessary notification in the matter.

5. In this regard, it is stated that import policy of live animals (non-wild) is "restricted" subject to policy conditions. Since, no specific policy condition for import of dogs is laid down in Chapter



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1 of ITC (HS) 2012, it is proposed that we may introduce provisions as in Para 3 & 4 above as Policy Condition (7) & (8) in Chapter 1 of ITC(HS) 2012 as per the draft notification placed below, with the approval of Hon'ble CIM.

6. May like to consider

*Sd/-
(S.P. Roy)
Joint Director General
12.4.2016*

ADG(KCR)

*Sd/-
12-04-16*

*K.C.ROUT
Draft notification for approval of CIM ,
as proposed by the Dept. of Animal Husbandry.*

*Sd/-
18/4*

*ns
21.4*

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Page No.14

No. 01/89/180/200/AM-02/PC-2 (A)

*Directorate General of Foreign Trade
Policy-2 (A) Section*

Reference notes on prepage:

Hindi version of the Notification for introducing of policy conditions on import of dogs in Chapter 01 of ITC (HS), 2012-Schedule-1(Import Policy), as approved by the Hon'ble CIM on prepage, has been obtained from the Hindi Section. Two copies each of the Hindi and English version of the Notification are placed below for kind signature of DGFT.

(S. K. Mohapatra)

Dy. DGFT (PC-2)

Date: 25th April, 2016

*Jt.DG (SPR)-on tour
Addl.DG(KCR)*

*Sd/-
25/4/16*

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INTENTIONALLY



45. Pages 13 and 14 contain initials that, according to the respondents, indicate that the file has been circulated to various persons including Hon'ble Ministers for their endorsement. The official website of the Government of India reveals that the Hon'ble Minister holding charge of the Ministry of Agriculture and Farmers Welfare was Mr.Radha Mohan Singh. None of the initials on that concluding page of the file notes have been pointed out to be that of that Hon'ble Minister.

46. Instead, the initials and date in bold above are said to be the endorsement of the then Hon'ble Minister holding additional charge of the Ministry of Agriculture and Farmers Welfare though there is no pleading available in this regard. My understanding of the Transaction of Business Rules read with Allocation of Business Rules is that it is only the concerned Minister holding portfolio who has the final word on the issuance of Notification in this regard.

47. In light of the categorical statement of the learned ASG to the effect that the Minister of State (Independent Charge) of the Ministry of Commerce and Industry was holding additional charge of the portfolio of Agriculture and Farmers Welfare at the relevant point in time, I accept that statement without question. If the petitioners believe that the statement requires probing, it is left



open to them to utilize the provisions of the Right to Information Act and seek and obtain necessary clarification/information. With this, this objection of the petitioners is rejected.

48. The provisions of the FT(D&R) Act and the FTP state that, generally exports and imports are free unless regulated by way of a prohibition, restriction or a provision for exclusive trading through the State Trading Enterprises. In the interests of completion, the impugned Notification is extracted below:

*To be published in the Gazette of India Extraordinary Part-II,
Section 3,
Sub-Section (ii)
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade*

*Notification No. 3/2015-2020
New Delhi, Dated: 25 April, 2016*

Subject: Introduction of policy conditions on import of dogs in Chapter 01 of ITC (HS), 2012-Schedule-1(Import Policy).

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby introduces policy conditions on import of dogs under Chapter 01 of ITC (HS), 2012-Schedule-1 (Import Policy) as under:



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(7) *Import of dogs is allowed only for the following specific purposes:-*

- i. *Pet dog with valid pet book and relevant records/documents in the name of importer.*
- ii. *Dogs imported by the R&D Organisations for conducting research with the recommendation of CPCSEA.*
- iii. *For the internal security by the Defence and Police Force.*

(8) *Import of commercial dogs for breeding or any other commercial activities other than the purposes mentioned above is not permitted.*

2. *Effect of this Notification: Import of commercial dogs for breeding or any other commercial activities is not permitted.*

(Anup Wadhawan)
Director General of Foreign Trade

49. The first submission is that R2 was not competent to have issued the impugned Notification as Section 3 of the FT(D&R) Act empowers only the Central Government to do so. Section 3 of the FT(D&R) Act reads as follows:

3. Powers to make provisions relating to imports and exports.-

(1) *The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.*

(2) *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the ⁴[import or export of goods or services or technology].*

(3) *All goods to which any Order under sub-section (2) applies shall be deemed to be goods and import or export of which has been prohibited*



under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

(4) without prejudice to anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods, nor any goods shall be prohibited for import or export except, as may be required under this Act, or rules or orders made thereunder.

50. To decide this issue, one needs to refer to section 6 of the FT (D&R) Act that deals with appointment of a Director General. Section 6(3) in terms of which the Central Government delegates power to the DGFT reads thus:

6. Appointment of Director General and his functions

(1)

(2).....

(3) The Central Government may, by Order published in the Official Gazette, direct that any power exercisable by it under this Act (other than the powers under sections 3, 5, 15,16 and 19) may also be exercised, in such cases and subject to such conditions, by the Director General or such other officer subordinate to the Director General, as may be specified in the Order.

51. The Central Government has been statutorily endowed with the power of delegation of its authority under the Act, barring power under sections 3, 5, 15, 16 and 19, to the DG, or any other officer as may be specified in the order of delegation. While Section 3 of the Act deals with the powers of the Central Government to make provision relating to import and export, Section 5



states that it is the Central Government that, from time to time, will formulate foreign policy.

52. Thus, the Foreign Trade Policy as well as Orders/Notifications dealing with matters of import and export will have to be traceable to the Central Government only. However, it is the DGFT that would implement such decision by Notification and publication in the Gazette. This act of the DGFT is to authenticate the decision of the Central Government. In the present case, I have held that the decision to issue the impugned Notification has emanated from the Central Government and thus, in my considered view there is no infirmity in R1 having issued the impugned Notification. This issue is also decided adverse to the petitioners.

53. It is the third issue that appeals, persuading me to decide the matter in favour of the petitioners. Any State policy has to be based on scientific and empirical data to authenticate and justify it. The absolute ban now imposed is on the basis that import of dogs for commercial breeding will bring foreign diseases to India as well as contaminate native gene pool. As far as import of alien diseases is concerned, there are effective measures for quarantine and testing of the animals prior to permitting entry into India. Thus, this can be no reason to justify the ban.



54. The Royal Canin Dog Encyclopaedia⁷ contains the details of two native Indian dogs describing them as follows:

RAMPUR DOG (INDIA)

This dog's origins are uncertain. He is believed to be related to the Afghan Hound and the Arabian Greyhound. A splash of Greyhound blood was added in the 19th century. He stands 56 to 76 cm (22-30 in) tall and weighs 23 to 32 kg (50.5 -70.5 lb). He has close-lying hair and is not very well-known outside his native land.

HIMALAYAN SHEEPDOG (INDIA)

This dog of unknown origin stands 51 to 66 cm (20-26 in) tall, weighs 23 to 41 kg (50.5-90.5 lb) and has a thick coat with a variety of colours.

55. The *Book of Indian Dogs*⁸ sets out the origins of the domestication of dogs and the history of dogs in India. The author refers to the results of research carried out in Sweden and published in a journal by name *Current Biology* in May, 2015, relating to an analysis of an old fragment of the jaw of a dog. Based on this, the researchers had come to the conclusion that the dog had been domesticated around 27000 to 40000 years ago. The bone fragment was attributed to around 35000 years ago and was said to belong to the Timur wolf '*the most recent ancestor of wolves and modern dogs*'. There is an on-

7 Anjwa Publishing 2004 Anjwa SA

8 S.Theodore Baskaran, 2017 edition by Aleph Book Company



going project on the Indian dog (INDog Project) and I have had the benefit of a publication entitled ‘The Indian Dog’⁹, made available on the internet.

56. Interestingly, the author refers to the role he played officiating as a Judge in 1959 at a dog show held in Bombay organized by a ‘newly started Kennel Club’, the Indian National Kennel Club, perhaps the precursor of one of the petitioners in these Writ Petitions. He says that there that it was astonishing that though there were several entries for the dog show, there was no entry of any dog of Indian origin. Thus, even as early as in 1959, the interest shown and the attention devoted to Indian breeds appears to have been scant and rather poor.

57. At one time, there were several original native Indian breeds, such as, Taji, Bhutani, Banjari, Northern Dhole, Esquimaux dog, Southern Dhole, Saluki, Koochee, Bhotia (Himalayan Sheep dog and its varieties), Tripuri dog, Vaghari Hound, Maratha Mudhol or Pashmi Hound, Rajapalayam, Dhanagari, Poligar, Chippiparai – Thambai, Chippiarai – Raja, Patti dog, Bakharwal, Jonangi, Kombai, Sindhi, Pandikona, Lhasa, Alaknoori, Kaikadi, Kanni, Kurumalai. Today, it is moot as to how many of the aforesaid breeds survive. Even among those that do, the gene pool would surely have been diluted over the years.

⁹ Authored by WV Soman, digitized by the INDog Project with permission of Popular Prakashan



58. While I have no doubt in my mind that all steps must be taken to protect and perpetrate original, native Indian breeds, this cannot be achieved by placing an embargo on the import of foreign dogs for commercial purposes, ensuring, of course, that such commercial purposes are regulated and are ethical. It is rather too late in the day to expect that anything can be done now to put the clock back to a time when there were pure native breeds, quite apart from the fact that there is no justification in doing so.

59. Clearly, the focus has been lost. Today, there is a clarion call to identify native breeds, to protect and nurture them and most critical of all, to ensure that there are proper Rules and Regulations in place to regulate commercial activities including breeding. Further, it is not enough merely to frame such policies and regulations, but to ensure strict their compliance.

60. I am thus of the considered and categoric view that the impugned Notifications have no legs to stand. The cases relied upon by the respondents would come to their assistance if only there had been some/any material produced by them to establish the proper and scientific study made prior to issuance of the Notification. However, the background material referred to in Office Memorandum dated 15.03.2016, being the alleged deliberations of the Ministry of Environment, Forest & Climate Change, Animal Welfare Board of



W.P.Nos.23230 & 23231 of 2016 & 10496 of 2017

India and Ministry of Women & Child Development, on the basis of which the impugned ban has been imposed, are stated to have been destroyed. I am not inclined to assume the existence of such material which is fundamental and critical to justifying the impugned Notification.

61. These Writ Petitions were filed on the heels of the impugned Notifications and the learned Senior Panel Counsel for the Central Government has accepted notice on behalf of the respondents on 12.07.2016 in respect of W.P.Nos.23230 and 23231 of 2016 and notice has been directed to be issued vide order dated 26.04.2017 in respect of W.P.No.10496 of 2017, when it had come up for admission.

62. It was thus incumbent upon the respondents to have secured and retained all files in connection with the Notification, particularly since the affidavit discloses the grounds of challenge. Thus, I am persuaded to adopt the view and conclude that the impugned Notification has been issued without necessary scientific study and due diligence as called for. In light of the discussion as above the impugned Notification is set aside and these Writ Petitions are allowed.

63. The prevention of Cruelty to Animals (Dogs Breeding and Marketing) Rules, 2017 (in short 'PCA Rules') have been challenged in



W.P.No.16765 of 2017 by the Kennel Club of India. As seen from the interim order passed by the First Bench in that Writ Petition on 22.07.2020, the challenge by way of Declaration is premised on Section 38 of the Prevention of Cruelty to Animals Act, 1960 (in short 'PCA Act') contending that it amounted to incompetent exercise of framing a delegated legislation, constitutionally impermissible, keeping in view Entry 15 of List II of the Seventh Schedule of the Constitution of India, a subject exclusively in the State List.

64. The argument advanced was that '*breeding*' was not part of the definition '*cruelty*' under Section 11 of the PCA Act and thus the Central Government has no competence to frame such Rules. This flows from the position that Entry 17 of the Concurrent List, being List III of the Seventh Schedule deals specifically with prevention of cruelty of animals and it is only if breeding were understood to be a cruel act, that the Centre assume any authority in this regard.

65. This was countered by the respondents, who submitted that while breeding may not be cruelty per se, breeding in violation of exigible norms, relatable to dignified existence of all pets could well be considered as excess and it is an order to regulate such contingency where breeding would fall in the fringes of cruelty to animals that the Rules can be saved under Entry 17 of List



III. The interim protection was granted, since that order was passed during the Covid -19 pandemic. Paragraph 8 where interim protection has been granted reads thus:

8. During the interregnum period, keeping in view the COVID situation existing as on today, particularly, in the State of Tamil Nadu, we find it expedient and in the interest of justice to provide interim relief to the effect that pursuant to the impugned Rules, no further action to physically seize dogs from their owners shall be undertaken by the respondent State subject to any further orders in this regard.

The last hearing was on 19.02.2021 and the stay continues.

66. There has been consensus on issue that there must be regulation of canine breeding in the State of Tamil Nadu across all learned counsel before me. The State was thus impleaded vide order dated 19.12.2022 to report to the Court on the measures taken to regulate animal breeding and has filed a status report dated 28.02.2023 confirming that the framing of regulations as regards breeding of dogs for commercial purposes will be examined in consultation with the Tamil Nadu Animal Welfare Board, TANUVAS and other statutory bodies. Let this process be initiated forthwith.

67. A direction to R3, being the Secretary to Government, Animal Husbandry, Dairying, Fisheries and Fishermen Welfare Department to



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formulate a breeding policy and rules for regulation of breeding in the State of Tamil Nadu for which eight (8) weeks is granted.

68. List on 05.08.2023 to report compliance.

06.06.2023

Index : Yes / No

Speaking Order/Non-speaking order

Neutral citation: Yes/No

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To

1. The Union of India

Represented by its Secretary,
The Government Department of Commerce and Industry,
Udyog Bhawan, Raji Ahmed Kidwai Marg,
Rajpath Road, Central Secretariat,
New Delhi.

2. The Director General of Foreign Trade,

I.P. Bhawan, I.P. Estate,
New Delhi 110002.

3. The Secretary to Government,

Animal Husbandry, Dairying, Fisheries and
Fishermen Welfare Department,
Secretariat, Chennai 600 009.

DR. ANITA SUMANTH, J.

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W.P.Nos.23230 & 23231 of 2016 & 10496 of 2017

WP.Nos.23230 & 23231 of 2016 and 10496 of 2017 and
WMP.Nos.19923, 19924, 19925 & 19926 of 2016 and
WMP.No.11386 of 2017

06.06.2023