

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

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 27716 of 2023

**Shri Indranil Bhattacharya
Vs.
Union of India and others**

For the petitioner	:	Mr. R. Senthil Kumar, Mr. Pratip Mukherjee, Mr. Sudip Basu
For the Union of India	:	Mr. Dhruv Surana, Ms. Sarda Sha
For the State	:	Mr. Supritam Dhar, Mr. Anand Farmania
Hearing concluded on	:	26.02.2024
Judgment on	:	07.03.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner is engaged in breeding in captivity exotic species of birds. The petitioner applied under Section 49N of the Wildlife (Protection) Amendment Act, 2022 (hereinafter referred to as, “the 2022 Act”) for registration on July 18, 2023. By a Notice dated August 9, 2023, 15 days’ time was granted to the petitioner to rectify the application. Upon such rectification, the petitioner re-filed the same on August 25, 2023. The respondents insisted that the petitioner files the application under Form-II; however, since the petitioner was already engaged in breeding such species, Form-I was the appropriate provision as per Rule 3(1), for which the petitioner did not so file. The

application was rejected on the ground of delay. According to the respondent-Authorities, the same was filed beyond the statutory outer limit of 90 days from the commencement of the 2022 Act.

2. Learned counsel for the petitioner submits that Section 49(1) stipulates 90 days' limitation period for filing of an application to the Chief Wildlife Warden (CWW). Sub-section (2) provides that the form and manner of the application, 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.
3. The Central Government, however, published the Breeders of Species License Rules, 2023 (for short, "the 2023 Rules") on April 24, 2023 and the same was notified in the Official Gazette on April 28, 2023. It is argued that as Section 49N(2) of the 2022 Act provides that the form and manner of the application and the fee payable shall be such as prescribed by the Central Government, in the absence of any such Rules being promulgated before April 24, 2023, there was no scope for the petitioner to file such application. In fact, it is contended that the period of 90 days should be calculated from April 28, 2023, when the Rules came into force and not from April 1, 2023 when the 2022 Act came into force, on a proper reading of the provisions of the Act and the Rules. From such perspective, the application was filed on July 18, 2023, that is, well within 90 days from the promulgation of the Rules.
4. Insofar as the objection as to maintainability of the writ petition on the ground of alternative remedy is concerned, learned counsel for the

petitioner argues that Section 49-O of the 2022 Act, read with the 2023 Rules, indicates that the CWW has to first receive the application and scrutinize the same and thereafter may reject or cancel the same. In the present case, the petitioner's application was refused to be accepted at the outset. Hence, there was no "rejection" or "cancellation" as such. Thus, it would be premature to prefer an appeal under Section 49-O of the 2022 Act.

5. Rule 10 of the 2023 Rules also provides for an appeal against an order under Rule 8. Rule 8 speaks of cancellation of licence, which can only take place once licence is issued. The petitioner was never favoured with any issuance of licence and, as such, no appeal lies under Rule 10 as well.
6. Learned counsel petitioner also cites an unreported judgment dated December 19, 2023 passed by this Court in *WPA No. 25583 of 2023 [Sukanta Mallick Vs. Union of India and others]* in support of his arguments.
7. Learned counsel appearing for the Union of India contends that the writ petition is not maintainable since Section 49-O(4) clearly provides for an appeal against any refusal or cancellation of licence by the CWW. It is argued that the judgment of *Sukanta Mallick (supra)* has been challenged in an appeal before the Division Bench which is now pending. It is further argued that the said judgment does not deal with the bar under Section 49-O of the 2022 Act at all; hence, ought not to be relied on.

8. It is settled law, learned counsel argues, that the Act shall prevail over the Rules. Section 49-O clearly provides for an appeal before the State Government and hence even in the absence of any specific Rule, the right to file an appeal shall certainly prevail and no writ petition lies in view of the alternative remedy available to the petitioner. It is argued that Section 49N clearly provides for 90 days from the date of commencement of the 2022 Act as the outer limit of filing an application. The Act came into force on April 1, 2023. Hence, the limitation runs from such date.
9. Even though the 2023 Rules came into force on and from April 28, 2023, the Act would prevail over the Rules as the Rules do not prescribe any time period. That apart, wide publicity was given by the Government for implementation of the Rules *vide* Notifications dated May 5, 2023 and May 12, 2023 which clearly mentioned that applications under Section 49N have to be made within 90 days from the date of coming into force of the 2022 Act. The Notification of May 12, 2023 also mentioned the last date for making applications to be June 29, 2023. Thus, it is argued that the application of the petitioner was rightly rejected.
10. Learned counsel for the CWW contends that the Principal Chief Wildlife Warden and the Principal Chief Conservator of Forests, Wildlife has preferred an appeal against the Order dated December 19, 2023 passed in *Sukanta Mallick (supra)*, which is pending adjudication. It is further argued that the Breeders of Species Licence is for breeding species which are specified in Schedule-IV, Appendix-I

which are given the highest level of protection in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is an international agreement between Governments. The said protection is at par with the protection to animals mentioned in Schedule-I of the 2022 Act, which has been stipulated with an aim 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 their extinction if not closely regulated.

- 11.** India implemented the CITES through the Amendment of 2022 to the Act. Thus, it is argued that extreme caution has to be exercised by the CWW while granting breeders licence to individuals since it may become a tool for legalizing illegally smuggled species.
- 12.** The concerned Ministry fixed the last date of filing Breeders Species Licence through Form-I as June 29, 2023 in terms of the Notification dated May 12, 2023.
- 13.** It is argued that the Ministry, via its Voluntary Disclosure Scheme, only tried to streamline the process of ownership by creating an inventory of the species concerned. It was introduced in June 20, 2020 for six months and was further extended by three months till March 15, 2021. The declarations were to be made in the Parivesh Portal where all acquisitions, births, deaths and transfers were to be recorded. 'Source Papers' means Parivesh transfer papers for transfer of any species issued by the transferor to the transferee and not transfer papers generated by the web portal *parivesh.nic.in*. The entire

process of Voluntary Disclosure Scheme becomes meaningless and the inventory maintained with the offices of the CWW shall be rendered toothless if the stock is declared after the expiry of the Voluntary Disclosure Scheme.

14. The authority of the CWW with respect to accepting/rejecting proposals has been conferred under the Act, since for violation of any of the procedures, actions as appropriate would be taken by the CWW in terms of the Advisory issued in 2020 by the concerned Ministry. The CWW, it is contended, is not a post-office meant to receive and approve applications, but to scrutinize applications and reject them if not found in order.
15. That apart, it is pointed out that the writ petitioner, in prayer (b), has prayed for stay of all criminal proceedings/action whereas he has also preferred criminal appeals under Section 482 of the Code of Criminal Procedure bearing CRR No. 59 of 2024 and CRR No. 4903 of 2023 where one of his essential prayers is for ad interim order of stay of all further proceedings arising out of Case No. POR/28/WL/23-24 pending before the Additional Chief Judicial Magistrate at Bidhannagar, Dist. - North 24 Parganas.
16. Thus, the respondents pray that the writ petition be dismissed.
17. While adjudicating the present matter, the first question which arises is whether the appellate provision in the Statute is a bar to entertaining the writ petition.
18. Section 49-O(4) stipulates that any person aggrieved by the refusal or cancellation of licence of the CWW under sub-section (2) may prefer

an appeal to the State Government within 60 days. Sub-section (2) of Section 49-O provides that the CWW shall, if the provisions or resolutions of the Convention or the Act and any Rules made thereunder have not been complied with or if a false particular is furnished, refuse or cancel the licence as the case may be after providing the applicant with an opportunity of being heard.

- 19.** Clause (c) of Section 49-O(1) stipulates that the provisions of the Act and Rules made thereunder have to be duly complied with, which is one of the considerations for the CWW to check on receipt of an application.
- 20.** On the other hand, Rule 5 of the 2023 Rules provides that the CWW may authorize an officer as stipulated therein to endorse the application and on the receipt of an application, the authorized officer shall scrutinize the application as expeditiously as possible. Under Rule 5(2), if on scrutiny the application found to be in order, it shall be registered and given a serial number. Sub-rule (3) provides that if the application, on scrutiny, is found to be defective, the same shall be returned to the applicant for rectifying the defects and re-submitting the same within 15 days.
- 21.** Under sub-rule 5(4), if an applicant fails to so rectify, the Deputy Conservator of Forests shall submit report to the CWW who may, by order and for reasons to be recorded in writing, decline to register the application.
- 22.** Although it has been argued by the respondents that the Rules cannot override the Act, it is not so in the present case. Rule 5 merely

elaborates the procedure which follows from the substantive provision of Section 49-O of the 2022 Act and not in derogation thereof. Even sub-section (2) of Section 49-O provides for an opportunity of being heard to be given to the applicant before rejection of the application. Section 49-O, read in conjunction with Rule 5, clearly provides for an application being scrutinized and thereafter registered and given a serial number.

- 23.** In the present case, the petitioner has not been given any hearing but at the threshold, his application has been refused to be accepted/registered. Thus, it is rightly contended by the petitioner that the stage of preferring an appeal under sub-section (4) of Section 49-O has not yet arrived, since the application was not rejected upon giving an opportunity of hearing to the petitioner and/or for reasons recorded in writing. Under rule 5(4), even for declining to register the application, the CWW shall have to give reasons in writing, which will follow the process of the Deputy Conservator of Forests submitting a report.
- 24.** Thus, no appeal lies in the present case.
- 25.** That apart, the challenge taken out in the present writ petition hits at the root of the jurisdiction of the CWW to refuse to register the application, since the CWW refused to exercise jurisdiction vested in him by law on a palpable misinterpretation of the concerned Act and the Rules framed thereunder.
- 26.** A purposive interpretation has to be given to Section 49N, since otherwise there will arise an absurdity. Sub-section (1) thereof

provides for a limitation of 90 days from the “commencement of the 2022 Act”. However, sub-section (1) cannot be read in isolation but is circumscribed by sub-section (2) of Section 49N, which provides that the form and manner of the application to be made under sub-section (1), the fee payable, the form of licence and also the procedure to be followed in granting or cancelling the licence shall be “such as may be prescribed by the Central Government”.

- 27.** The 2022 Act amends the Wildlife (Protection) Act, 1972. Section 2(25) of the Act defines “prescribed” as prescribed by Rules made under the Act. The Rules made under the Act, as amended, also takes within its fold the 2023 Rules. Thus, for an application to be filed under Section 49N(1), it essentially has to comply with sub-section (2). Under sub-section (2), the form, manner and fee payable for the application as well as the form of licence shall be entirely governed by the said Rules.
- 28.** For example, Rule 3 stipulates the procedure for filing of applications for licence. Under Rule 3(1), a person engaged in breeding in captivity or artificially propagating a scheduled specimen listed in Appendix-I shall, within a period of 90 days from the 2022 Act, make an application to the CWW in Form-I either in person or through electronic mode or through registered post addressed to the CWW of the concerned State or Union Territory. Hence, unless the Rules came into force, it would not be known to a prospective applicant as to what would be the form and manner and requisite fee of making the application. It is only Rule 3(1) which stipulates that the application

has to be in Form-I and provides the modality in making the application.

29. Hence, the entire process of filing of the application being governed by the Rules under sub-section (2) of Section 49N and in view of sub-section (2) circumscribing sub-section (1), since the form and manner of the application to be made under sub-section (1) has to be governed by the Rules, it is not possible for any prospective applicant to file the application in the first place without there being any Rules to govern the procedure.
30. The 2022 Act came into force on April 1, 2023 whereas the 2023 Rules came into force on April 28, 2023. Testing the principle on its margins, the 2023 Rules could very well have come into force even after 90 days from April 1, 2023 which is the date of commencement of the 2022 Act, in which case all applications would be time-barred *ab initio*.
31. Thus, the prescribed form and fees and the modalities being available to a prospective applicant only on and from April 28, 2023, the implementation of the 2022 Act, insofar as filing of applications is concerned, has to be governed by the Rules. Hence, on a purposive construction of Rule 3(1) and Section 49N(1) of the 2023 Rules and the 2022 Act respectively, the only harmonious construction possible is that the date of commencement of the limitation period of 90 days is the date when the Rules came into force, that is, on April 28, 2023, which is when it became possible for the first time to prefer an application under Section 49(1) in accordance with Section 49N(2) of

the 2022 Act. Thus, life-blood was injected into the said Section only on the promulgation of the Rules and hence the commencement of the Act of 2022, for the purpose of Section 49N, is contemporaneous with the coming into force of the Rules of 2023.

- 32.** Any other interpretation would lead to the palpable absurdity that an application would be filed under Section 49N(1) without complying with Section 49N(2) which is barred by the construction of Section 49 itself, since an application under sub-section (1) is subjected to the prescription by the Central Government under sub-section (2).
- 33.** Thus, giving meaning to the legislation would necessarily entail that the expression “date of commencement of the 2022 Act” should be read as “date of commencement of the 2022 Act as expressed through the 2023 Rules”.
- 34.** Thus, the date of commencement of the limitation period of 90 days is to be taken as April 28, 2023, when the 2023 Rules came into effect. Going by such interpretation, the petitioner’s application was made within time, that is, on July 18, 2023.
- 35.** The subsequent steps of the application being returned and re-filed were in terms of Rule 5 and as such cannot be construed to be a delay in filing the application. The date of filing of application has to be taken to be the date of first filing, that is, July 18, 2023, since Rule 5 itself provides a leeway for the application being re-submitted in case of a defect being pointed out.

- 36.** Hence, the petitioner's application is held to have been filed within the limitation period as stipulated in the 2022 Act, read in conjunction with the 2023 Rules.
- 37.** Thus, even an independent interpretation, without looking into the cited judgment of *Sukanta Mallick (supra)*, leads us to the above conclusion.
- 38.** The respondents have relied on the Notification dated May 12, 2023 which mentioned June 29, 2023 as the last date for filing an application under Section 49N of the 2022 Act. However, Executive action/interpretation cannot override legislative intent. The Notification dated May 12, 2023 was an executive/administrative action which could neither be construed to be an amendment of the Act and/or the Rules or an interpretation of the statutory provision, which prerogative lies not with the Executive but with the Courts.
- 39.** Even otherwise, the argument of the respondents regarding applicability of *Sukanta Mallick's* case is not tenable in the eye of law. It is well-settled that mere pendency of an appeal does not operate automatically operate as stay of the order impugned in such appeal. Hence, the ratio laid down in *Sukanta Mallick (supra)* is also applicable to the present case.
- 40.** The reliance placed by the CWW on the CITES and the adoption of the same in the 2022 Amendment Act has no relevance in the present context, since it cannot be doubted that both CITES and the consequential amendments in the Indian Statute are perfectly in line

with the perfectly justified intention to give the highest level of protection to endangered species of birds and animals.

41. The CWW has further argued that the petitioner has, on similar prayers as the writ, taken out criminal challenges before the appropriate forums. Such challenges have no bearing with the present *lis*. The criminal proceedings initiated against the petitioner are only consequences of the rejection of his application/refusal to accept the same. In the event the impugned rejection of the application is set at naught, the criminal consequences automatically get obliterated. Hence, the criminal proceedings are dependent on the outcome of the present writ petition and not the other way round. As such, the pendency of the criminal matters do not, in any way, deter this Court in deciding the issue as above.
42. In the light of the above observations, WPA No. 27716 of 2023 is allowed on contest, thereby setting aside the refusal by the respondent no. 3, the Principal Chief Wildlife Warden, to accept and/or register the application of the petitioner filed under Form-I as stipulated in the 2022 Act read with the 2023 Rules.
43. The respondent no. 3 is directed to accept the petitioner's application and undertake a scrutiny as envisaged in Rule 5 of the 2023 Rules and thereafter take a decision on the issuance of licence to the petitioner, preferably within 4 weeks from date. In the event respondent no. 3 is of the opinion that he will decline the registration of the application, respondent no. 3 shall positively give an opportunity of hearing to the petitioner and thereafter pass a reasoned

order in writing as envisaged in Section 49-O(2) of the 2022 Act, read with Rule 5(4) of the 2023 Rules and communicate the same to the petitioner immediately thereafter.

- 44.** The actions against the petitioner, criminal or otherwise, taken as a consequence of the refusal by respondent no. 3 to register the petitioner's application, shall be kept in abeyance till a reasoned decision is arrived at by the CWW on the petitioner's application as per the direction given above and shall abide by the decision so taken.
- 45.** There will be no order as to costs.
- 46.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)