

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
APPELLATE SIDE

The Hon'ble **Justice Arijit Banerjee**
And
The Hon'ble **Justice Apurba Sinha Ray**

C.P.A.N. No. 508 of 2022

In

WPA 7022 of 2019

Human & Environment Alliance League & Anr.

Vs

**Mr. Debal Ray, Principal Chief Conservator of Forests,
Wildlife and Chief Wildlife Warden,
Department of Forests & Ors.**

For the petitioners : Mr. Siddhartha Mitra, Sr. Adv.,
Mr. Siddhartha Mitra, Adv.

For the Respondent no. 11 : Mr. Siddhartha Lahiri, Adv.,

For the State : Mr. Sirsanya Bandopadhyay, Adv.,
Mr. Arka Kumar Nag, Adv.

Heard on : 08.09.2022, 16.11.2022, 06.12.2022,
14.12.2022, 22.12.2022, 01.02.2023,
16.02.2023

CAV on : 16.02.2023

Judgment on : 20.02.2023

Arijit Banerjee, J.:

1. This contempt application has been filed for alleged wilful violation of a judgment and order dated April 18, 2019, whereby a coordinate Bench disposed of a Public Interest Litigation which was registered as W.P. 7022(W) of 2019.

2. The issue that was raised in the writ petition was with regard to protection of environment, forests and wild life at large and in particular, the indiscriminate killing of thousands of wild mammals, birds and reptiles, which are protected under various Schedules to the Wild Life (Protection) Act, 1972 and other statutory provisions.

3. The writ petitioners contended that such killing takes place by hunters from Tribal and Non-tribal communities, especially during “Shikar Utsavs”, particularly in the Districts of Paschim Medinipur, Bakura, Purulia, Jhargram and Mursidabad.

4. The writ petition was disposed of by directing the Principle Chief Conservator of Forests, Wild Life, who is also the Chief Wild Life Warden, Department of Forests, Government of West Bengal, to take immediate steps in the matter for effective prevention of atrocities against wild life during Ritualistic Hunting Festivals.

5. Learned Senior Advocate appearing for the petitioners has submitted that a lot of deliberations have taken place on the issue of protecting the wild life but nothing effective has been done. There has been no real implementation of the judgment and order dated April 18, 2019. He submitted that no arrests have been made by the law enforcing agencies nor any criminal proceedings initiated against the offenders.

6. The State respondents and the Railways have filed separate affidavits wherein they have detailed the steps that they claim to have taken at their end.

7. We have heard learned Counsel for the parties at length. All the learned Counsel have submitted that this is a matter in which we should be more concerned about how to implement the judgment and order dated April 18, 2019, rather than to determine whether the respondents are guilty of contempt of Court. We agree.

8. It is of utmost importance that the environment, the forest and the wild life at large are protected and preserved. This is not only because the humans

must act with humanity. This is also necessary for maintaining the ecological balance without which Mother Earth will not survive resulting in annihilation of all kinds of life in the planet.

9. The Protection of Cruelty to Animals Act, 1960 is a piece of welfare legislation with an extremely laudable object and purpose. Various provisions of the said statute have been discussed by the Hon'ble Supreme Court in the case of ***Animal Welfare Board of India v. A. Nagaraja & Ors., (2014) 7 SCC 547***. We may profitably extract a few paragraphs from the judgment in that case:-

“59. Based on ecocentric principles, rights of animals have been recognized in various countries. Protection of animals has been guaranteed by the Constitution of Germany by way of an amendment in 2002 when the words “and the animals” were added to the constitutional clauses that obliges “State” to respect “animal dignity”. Therefore, the dignity of the animals is constitutionally recognised in that country. German Animal Welfare Law, especially Article 3 provides

far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners' fundamental rights to property and the animals' interest in freedom from unnecessary suffering or pain, damage and fear.

60. Animals Welfare Act of 2006 (U.K.) also confers considerable protection to the animals from pain and suffering. The Austrian Federal Animal Protection Act also recognises man's responsibilities towards his fellow creatures and the subject "Federal Act" aims at the protection of life and well being of the animals. The Animal Welfare Act, 2010 (Norway) states:-

"3. General requirement regarding the treatment of animals.-

Animals have an intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain."

Section 26 of the legislation prohibits training and animal to fight with people; the operative portion of the same reads as follows:-

“26. Training, showing, entertaining and competition.- *“Any person who trains animals and who uses animals which are used for showing, entertainment and competitions, including those who organise such activities, shall ensure that the animals:*

(a) – (c)

(d) are not trained for or used in fights with other animals or people.”

61. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

62. *The Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals. Five freedoms referred to in UDAW, which we will deal with in latter part of the judgment, find support in PCA Act and the Rules framed thereunder to a great extent.*

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64. *Chapter 7.1.2 of the Guidelines of OIE, recognizes five internationally recognized freedoms for animals, such as:*

- i) freedom from hunger, thirst and malnutrition;*
- ii) freedom from fear and distress;*
- iii) freedom from physical and thermal discomfort;*

iv) freedom from pain, injury and disease; and

v) freedom to express normal patterns of behaviour.

Food and Agricultural Organisation (FAO) in its “Legislative and Regulatory Options for Animal Welfare” indicated that these five freedoms found their place in Farm Welfare Council 2009 UK and is also called “Brambell’s Five Freedoms”. These five freedoms, as already indicated, are considered to be the fundamental principles of animal welfare and we can say that these freedoms find a place in Sections 3 and 11 of the PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India.

66. Rights guaranteed to the animals under Sections 3, 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under Sections 3 and 11 have to be read along with Article 51-A(g) and (h) of the Constitution, which is the magna carta of animal rights.

67. Article 51-A(g) states that it shall be the duty of citizens to have compassion for living creatures. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, this Court held that by enacting Article 51-A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51-A(g), therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for suffering, sympathy, kindness, etc., which has to be read along with Sections 3, 11(1)(a) & (m), 22 etc. of PCA Act.

68. Article 51-A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression “humanism” which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, to understand benevolence, compassion, mercy etc. Citizens should, therefore, develop a spirit of compassion and humanism which

is reflected in the Preamble of PCA Act as well as in Sections 3 and 11 of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51A (h). Both Articles 51-A(g) and (h) have to be read into the PCA Act, especially into Section 3 and Section 11 of the PCA Act and be applied and enforced.

72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily

recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognized by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who

fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.”

10. We propose to form a committee which shall ensure implementation of the judgment and order dated April 18, 2019, and in general shall take steps for protection and preservation of the animals in the forest and to see that the animals are not killed indiscriminately whether during Hunting Festivals or otherwise.

11. Accordingly, we constitute a committee which we shall call the “Humane Committee” at the District level for 5 Districts, for the time being, as mentioned above i.e. Paschim Medinipur, Bakura, Purulia, Jhargram, Murshidabad. The members of the Committee will be:-

(1) District Judge who is also the Chairperson of the District Legal

Services Authority (Chairperson)

(2) District Magistrate

(3) Superintendent of police

(4) Divisional Forest Officer

(5) Chief Conservator of Forests/Conservator of Forests

(6) Member Secretary, District Legal Services Authority (Convenor)

(7) Public Prosecutor

(8) Wild Life Warden.

(9) One person from tribal community to be nominated by the District Judge in consultation with other members of the Committee.

(10) Divisional Security Commissioner, Head Quarters, Railway Protection Force of the concerned zone.

12. The petitioner has suggested certain measures which the committee may take. We find such suggestions be reasonable and we endorse the same. The suggestions are as follows:-

“Hold bi-monthly meetings to discuss ways and means to take up year-round pre-emptive measures against ritual hunting including:

(a) Constant awareness generation through programmes to send a strong message against hunting of native species;

(b) Involvement of local resources to gather intelligence about exact hunting date/time, place of gathering, size of crowd, approach routes etc.;

(c) Distribution of handbills and miking in village markets and other important places around the area (a) at regular intervals during the year and (b) continuously for at least one week before the hunting event;

(d) Signboards/posters to be put up at important places like village markets and congregation points for hunting festivals, clearly stating that hunting is a punishable offence.

(e) Conversations to be held with village heads (tribal majhis – not only Panchayat heads) at regular intervals during the year and also a few days before the hunt explaining that hunting is illegal and has been banned.

(f) Clearly explain to the local communities through dialogue that gathering of large number of people with weapons, or entering inside forests with weapons violate various laws and are not permitted.

(g) Meetings to be held amongst local administration, forest department and RPF/GRP to discuss deployment strategies on the hunt dates and protocols to arrest hunters, well in advance of the hunting season.

A field report on the steps taken with regard to points (a)-(g) above be placed before the committee at each meeting.

7. Adoption of punitive/legal measures and other measures to prevent ritualistic hunting on D-day of the hunt fests.

A DAY BEFORE THE EVENT

(a) Establishing adequate number of check posts on the main approach routes to the hunt congregation areas for checking the hunters' vehicles and arms used for hunting (spears, bows, spades, arrows, knives, etc.).

(b) If a group of more than 4/5 outsiders are encountered in a vehicle, they should be questioned about their reasons to travel.

(c) Seizure of vehicles used by the hunters to reach hunt destinations including trucks, motorbikes, etc.

(d) Confiscation of weapons if hunters are seen carrying them to the hunt locations.

(e) If the area has nearby railway stations, then RPF/GRP need to check incoming passengers for weapons, and disallow entry to those carrying arms. For large festivals for which the hunters extensively use the railways, this checking also needs to happen at large junctions like Kharagpur where hunting parties change trains.

(f) Extensive miking around the hunt locations to dissuade hunters from gathering.

ON THE DAY OF THE EVENT

(g) District magistrates to invoke Section 144 of the Code of Criminal Procedure and impose curfews to stop the hunters from congregating/forming unlawful assemblies at the hunt locations.

(h) In addition to checkpoints on major roads, wherever possible, the smaller roads should be barricaded to prevent vehicles or motorbikes from going to the hunting grounds.

(i) Ensure that there is enough manpower and police support to turn away the hunters who slip in through the checkpoints and barricades. Usually there are specified locations where hunters congregate before and after the hunt. It is critical to focus on such areas to mitigate ritualistic hunting.

(j) All approach roads to the hunt locations should be closed off to the hunters and monitored closely. Police personnel may be deployed to patrol the hunt areas and go inside the forests on foot to check for any illegal activity.

(k) Ensure that gatherings with weapons are not allowed inside forest or in nearby areas. Weapons are to be seized wherever armed hunters are found.

(l) If hunters are found hunting wildlife, they are to be arrested immediately. The protocols of arresting the offenders should be clear to all authorities (often there are complications like the offender being apprehended in railway premises resulting in confusion as to the roles of RPF/GRP, Forest Dept Staff, Police, CRPF etc.).”

13. We, however, clarify that the aforesaid measures are merely indicative and not exhaustive. The committee shall apply its mind independently and decide what other steps can be taken so that the judgment and order dated April 18, 2019, can be implemented in its true spirit and intent and generally how the wild animals in the forests may be protected from being killed indiscriminately.

14. The committee shall hold a preliminary meeting as soon as possible and preferably within 2 weeks from date and shall place a report before us on the next date indicating the measures that the committee intends to take and the general plan of action to achieve the object for which the committee is being constituted.

15. The committee shall keep the Member Secretary of the State Legal Services Authority in the loop so that he is kept posted about the activities of the Committee.

16. The Member Secretary, District Legal Services Authority shall act as the Convenor of the Committee and shall coordinate amongst the other members of the Committee. The meetings of the committee shall be held at the office of the Chairperson of the Committee or such other place as the Chairperson may decide.

17. We are keeping this contempt application pending as we intend to supervise and keep track of how the Committee is functioning and also for the purpose of passing further orders as may be necessary for effective implementation of the judgment and order dated April 18, 2019. Let the matter be listed once again on March 30, 2023, under the heading “for orders” marked 2 p.m. The Registry shall immediately communicate this order to all the members of the Committee as also the Member Secretary of the State Legal Services Authority.

18. Before parting we would like to say that senseless killing of animals in the wild for pleasure and in purported show of false prowess is in our opinion, as heinous and culpable a crime as the offence of murder under Section 302 of the Indian Penal Code. The animals in the forests do not interfere with the lives of human beings as long as they are left alone to live their lives in their natural surroundings. They may retaliate in self-defense and justifiably so, when humans unjustifiably intrude and trespass into their territory and disrupt or destroy their habitat. They have a right to peaceful co-existence with Homo Sapiens in this planet. They don't have a voice to ventilate their pain and agony which they

suffer by reason of the torture they are subjected to. We deeply appreciate the initiative taken by the petitioner to take up the cause of the creatures in the wild by way of the present proceedings.

19. All parties shall act in terms of Server Copy of this order duly downloaded from the official website of this Court.

20. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)

I agree.

(Apurba Sinha Ray, J.)