



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19th September, 2023

Pronounced on: 06th October, 2023

+ **W.P.(C) 7933/2023 & CM APPL. 30588/2023, CM APPL. 32595/2023, CM APPL. 41076/2023, CM APPL. 41077/2023**

ANUBHAV KHAJURIA AND OTHERS Petitioners

Through: Mr. Siddharth Gupta, Mr. Abhikalp Pratap Singh, Mr. Lovekesh Choudhary, Ms. Yamini Singh and Ms. Avani Arya, Advocates.

versus

**UNION OF INDIA THROUGH MINISTRY OF FISHERIES,
ANIMAL HUSBANDRY AND DAIRYING** Respondent

Through: Mr. Rajesh Gogna, CGSC with Ms. Priya Singh and Mr. Vikram Chandravanshi, Advocates for UOI. Ms. Supriya Juneja, Ms. Esha Dutta and Ms. Shaalini Agrawal, Advocates for Impleader Gauri Manlekhi, C.M. No. 41076/2023.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGEMENT

SANJEEV NARULA, J.

CM APPL. 32594/2023*(under Section 151 of the Code of Civil Procedure, 1908 on behalf of Petitioners seeking interim relief)*

1. The instant petition calls into question the constitutional validity of Rules 3, 5, 6, and 8 of the Animal Birth Control Rules, 2023 promulgated by the Ministry of Fisheries, Animal Husbandry and Dairying, Government of



India [“ABC Rules, 2023”]. The bone of contention, as set forth by the Petitioners, is the purportedly arbitrary exclusion of veterinary doctors and officers from the process of animal birth control, including immunization and vaccination of animals.

2. While the primary challenge to the ABC Rules, 2023 remains under deliberation, the Petitioners, in the interim, have put forth a prayer for immediate redressal. They urge the Court to consider them as eligible contenders in any tenders launched under the aegis of the animal birth control programme(s), and seek directions compelling the Municipal Corporation of Delhi [“MCD”] to grant them the authority to execute sterilization and immunization of stray dogs, in a manner analogous to NGOs and Animal Welfare Organisations [“AWOs”], as currently outlined in the ABC Rules, 2023.

The background

3. To understand the Petitioners’ predicament, it would be apposite to briefly trace the legislative background to the ABC Rules, 2023:

3.1. Under the authority vested by Section 38 of the Prevention of Cruelty to Animals Act, 1960, the Ministry of Culture, Government of India, introduced the Animal Birth Control (Dogs) Rules in 2001 [“2001 Rules”]. These Rules *inter alia* enabled AWOs, private individuals, and designated local authorities to sterilize and immunize street dogs.

3.2. On account of laxity in implementation of the 2001 Rules and maltreatment of stray dogs in various States, certain proceedings were initiated before the Supreme Court in *Animal Welfare Board of India v.*



People for Elimination of Stray Troubles and Ors and connected matters.¹ In the said cases, several directives were issued to the State Governments to formulate appropriate measures for execution of duties of the local authorities under the Prevention of Cruelty to Animals Act as well as 2001 Rules. As a result of the Court's directions, a "Module for Street Dog Population Management, Rabies Eradication, Reducing Man-Dog Conflict" ["the Module"], was framed by the Animal Welfare Board of India ["AWBI"] to ensure sterilization and immunization of stray and street dogs. On 04th October, 2016, the Supreme Court afforded time to the Governmental bodies to examine the afore-mentioned module and bring forth appropriate suggestions or objections. This laid the groundwork for conception and subsequent promulgation of the ABC Rules, 2023, which aim at fulfilling the vision and mandate articulated by the Module.

3.3. In light of the suggestions received, on 18th August, 2020, the AWBI issued a communication to all District Magistrates to ensure adequate infrastructure, logistical arrangements, and trained personnel in the implementing agencies for effective administration of the animal birth control programme. As per this advisory, local bodies were precluded from engaging the services of individual veterinarians or agencies/ organizations other than recognized AWOs for the programme.

3.4. Exercising their powers under the Prevention of Cruelty to Animals Act and to overcome the lacunae in the existing regime, the draft Animal Birth Control Rules, 2022 were released in the Gazette of India, calling for suggestions and objections from the relevant stakeholders. After deliberating on the recommendations received from the public, the ABC Rules, 2023

¹ SLP (C) No. 691/2009 and connected matters.



were notified on 10th March, 2023.

The ABC Rules, 2023

4. Let us now examine definitions and the explanations contained in the ABC Rules, 2023, which shall form the cornerstone for subsequent deliberations in respect of the contentions urged in the present application. The ABC Rules, 2023, through various provisions, ensure that animal birth control programmes are carried out by authorized entities in a systematic manner. Rule 2(b) delineates an animal birth control centre as a veterinary establishment equipped with surgical infrastructure, post-operative care, and other logistical requirements designed specifically to implement animal birth control programme targeting street dogs, as detailed by the AWBI. Rule 2(f) expounds upon the term ‘animal welfare organisation’. Such an organisation, which is committed to animal welfare, needs to be registered under the Societies Registration Act, 1860 or any other analogous legislation currently in force. For an organisation to fall under this definition, it should further be approved by the AWBI, in accordance with the Board’s existing policies. Rule 2(h) offers clarity on the term ‘certificate’, that is issued by the AWBI as a testament of the endorsement of the project. Such a certificate can be extended either to an AWO or a local authority, but its purpose remains singular: to facilitate animal birth control programme.

5. Rule 3, bearing the title ‘Project Recognition’, delineates the modalities for recognizing a project for animal birth control. Further, Rule 5, under the title ‘Prohibition without Recognition’, emphasizes that no project associated with the animal birth control programme can function, unless it receives Project Recognition as per the Rules. This serves as a regulatory



measure to ensure that only approved entities partake in the animal birth control initiative, safeguarding the programme's integrity. Rule 8(2) stresses the legitimacy of only the local authorities or AWOs acknowledged by the AWBI, to run animal birth control programmes in consonance with the established Rules. Rule 10, earmarked as 'Obligations of the Local Authority', enlists the facilities to be available in animal birth control centres, which are to be overseen by the local authority. The local authority is empowered to enquire into alleged violations, and if the same are proven, to outrightly terminate or suspend any engagement based on the recommendations of local animal birth control monitoring committee or the AWBI. This brings forth accountability in operations. As per Rule 10(5), the local authority may employ its own staff for animal birth control by creating a special purpose vehicle. For this purpose, it shall commission contractual or full-time veterinarians, handlers, drivers, or para-veterinarians to effectively implement the programme, ensuring that the programme is not further subcontracted to any other animal birth control project/ agency.

Petitioners' contentions

6. The crux of the Petitioners' grievance lies in the modifications introduced by the ABC Rules, 2023 in comparison with the 2001 Rules. They argue that historically, individual veterinary doctors, such as the Petitioners, were recognized and deemed fit for animal welfare programmes, evidencing their competence and capability to manage mass-level animal birth control initiatives. Municipal bodies nationwide, over the years, have consistently floated tenders inviting participation in animal birth control programmes from both AWOs, and individual veterinary practitioners. Yet,



in a concerning shift in 2023, allegedly influenced by the lobbying of certain AWOs operating as NGOs, the new Rules now seemingly bestow a monopolistic status on these organizations, sidelining individual professionals. The definition contained in Rule 2(f) is too restrictive and altogether prevents participation of individual professionals in mass sterilization and immunization drives. Further, Rules 3,5,6, and 8 of the ABC Rules, 2023, through their intricacies, seem to intentionally bypass the role of private veterinary doctors and practitioners, such as the Petitioners. This is further evident from the deliberate omission of any direct role assigned to them in executing animal birth control programmes. They argue that the veterinary doctors/ practitioners should be at the helm of executing the core activities like sterilization or immunization. Contrary to the generalized notion, the on-ground practical work is predominantly overseen and conducted by veterinary professionals. While the overarching framework is defined by the AWBI and local authorities, the intricate and hands-on responsibilities predominantly rest with the veterinary practitioners.

7. The Petitioners also highlight a conspicuous absence of empirical studies or surveys underpinning these changes. Such foundational omissions and lack of proper deliberation or justification, have resulted in formulation of new Rules as uninformed decisions. The established jurisprudence dictates that any subordinate legislation, particularly when seeking to restrict rights or introduce classifications, must be founded in thorough research, valid reasoning, and clear intent. Lack of these prerequisites renders the impugned Rules discriminatory and arbitrary, infringing upon the principles enshrined in Articles 14 and 19 of the Constitution of India, 1950.



8. They argue that the new framework, favouring NGOs and AWOs, effectively discriminates against registered veterinary doctors, barring them from participation. As a direct consequence, the Petitioners find themselves ineligible to participate in the tender issued by MCD under the animal birth control programme concerning the sterilization and immunization of stray dogs across five designated centres.

Respondent's stance

9. The Respondent vehemently countered the claims made in the petition, asserting that the ABC Rules, 2023 do not discriminate against registered veterinary doctors/ officers. They emphasize the pivotal role of Project Recognition Certificate from AWBI, asserting that no entity can effectively run an animal birth control programme without it. Moreover, they argue that the Rules do not preclude veterinary practitioners from carrying out animal birth control procedures as the local authorities, who are endowed with the responsibility of regulating the programme, are authorized to engage private veterinarian officers for this purpose. Further, such doctors are, in no way, impeded from vaccinating or surgically sterilizing an animal privately at their place of operation. The Respondent rationalize the modifications brought in ABC Rules, 2023 by highlighting their past experience, which has shown that for large-scale street dog surgery projects, organisational set-up is necessary for effective management and welfare supervision. Further, in comparison with private entities, charitable organizations are more inclined to collaborate with local authorities to ensure animal welfare during population management.



Analysis and findings

10. A careful examination of the ABC Rules, 2023 provides insights into the operational framework of the provisions. According to Rule 2(c), the procedures associated with animal birth control, which encompasses sterilization and immunization, can only be pursued within the defined parameters of an animal birth control programme. Independent or ad-hoc initiatives outside the programme's umbrella are not permitted. The entities vested with the authority to launch such a programme are local administrative bodies and AWOs. Should an AWO aim to execute a programme relating to sterilization and immunization of animals, obtaining a project recognition certificate is non-negotiable. This certificate acts as a testament to the organization's legitimacy and capability to carry out animal birth control activities. Rule 5 makes it clear that without Project Recognition, neither the local authorities nor an AWO, would have the legal competence to perform sterilization or immunization activities. The onus of granting this recognition falls upon the AWBI who, *via* its decentralized local centres, oversees and approves these permissions.

11. The pertinent question we must address is: do the ABC Rules, 2023 unjustly exclude individual veterinarians from the animal birth control programme, thereby infringing upon their constitutional rights? A close examination of the ABC Rules, 2023 reveals that veterinarians are integral to animal birth control programme. Their expertise in sterilization, immunization, and animal care remains crucial and inclusive. The ABC Rules, 2023 do not outrightly prohibit veterinarian participation, instead, they advocate for a formalized, structured approach *via* the mechanism of Project Recognition from AWBI. Rule 3 introduces a standardized system



for seeking recognition to conduct animal birth control operations. It only curtails individual veterinarians from seeking Project Recognition. This limitation has a multifaceted, welfare-centric approach. There can be no dispute that large-scale animal birth control programmes require an integrated framework, encompassing medical proficiency alongside welfare and logistical facets, which are typically associated with AWOs. The ABC Rules, 2023 envision AWOs as inherently philanthropic entities. AWOs, possessing the requisite logistical support and charitable orientation, are appropriately positioned for the welfare-centric facets of the programme. Their collaboration with veterinarians thus ensures a comprehensive approach and individual practitioners are not entirely excluded, as portrayed by the Petitioners. The justification for insisting upon organizational set-up stems from empirical data which divulges that private players did not adhere with essential requirements for carrying out animal birth control programmes, and inflicted pain and agony upon the animals. The lack of requisite infrastructure, leading to failure to adopt best practices, jeopardize the larger interests. By systematizing the approach and entrusting only recognized bodies, the ABC Rules, 2023 are framed to achieve better efficacy of the animal birth control programme. Thus, differentiation between veterinarians and AWOs is purpose-driven, not arbitrary and grounded in sound rationale.

12. The Petitioners' understanding that the ABC Rules, 2023 are exclusionary and curtail their rights is fundamentally premised on the interpretation of Rule 2(f), which reads as follows:

“2. *Definition;- In these rules, unless the context otherwise requires, -*
xx-xx-xx

(f) "Animal Welfare Organisation" means any Organisation working for welfare of



animals which is registered under the Societies Registration Act of 1860 (21 of 1860) or any corresponding law for the time being in force and which is recognised by the Animal Welfare Board of India as per the extant policy of the Board;”

13. According to the Petitioners, the definition of an AWO is exclusive to societies. Their perspective is that Rule 2(f) is too restrictive as it creates a niche for AWOs, thereby sidelining individual veterinarians or groups that might not fit into this stringent definition. However, as we see it, an AWO by the very essence of its definition, is designed to serve a specialized role. Rule 2(f) stipulates two primary criteria: registration and recognition. An “Animal Welfare Organisation” must be a registered entity under the Societies Registration Act, 1860 or any corresponding law, and it must also gain recognition from the AWBI, in line with AWBI’s current policies. The stipulation of registration of an AWO implies a formal and legal structuring. This is intended to ensure that the organization has defined objectives, accountability mechanisms, and is amenable to legal oversight. The requirement for recognition by the AWBI arguably adds a layer of expertise and oversight.

14. The intent of Rule 2(f) is to ensure a formal structure and accountability of organizations engaged in animal welfare. The emphasis is not on the nature of the entity (*i.e.*, whether it is a society or trust), but rather on registration and adherence to recognized standards of animal welfare. The specificity in Rule 2(f) is an attempt to ensure that these complex facets are addressed holistically by entities equipped for this multidimensional role. However, it is also essential to strike a balance between creating specialized entities and ensuring inclusivity of veterinarians. After all, such doctors’ role is crucial. The purpose of Rule 2(f) might be to establish a high



standard for animal welfare initiatives, but it is also necessary to ensure that that ABC Rules, 2023 do not unintentionally marginalize competent professionals and entities. We notice that while Rule 2(f) does create a specialized bracket for AWOs, with an emphasis on registration and recognition, but, while delineating the requisite criteria for an “Animal Welfare Organisation”, the provision does not specify the structural and operational make-up of AWOs. The absence of express guidelines concerning the constitution of AWOs could be potentially misused. An entity, even without direct involvement or expertise of veterinary professionals, could theoretically form an AWO, merely associating its name with a veterinary doctor for the sake of legitimacy. Such a setup, devoid of active participation from veterinary professionals, stands in stark contradiction to the very essence of the animal birth control programme’s objectives. Thus, a nuanced approach, considering both the letter and spirit of Rule 2(f), is essential for an equitable and effective implementation.

15. The additional affidavit furnished by the Respondent also provides some clarity on this front. It categorically states that ‘AWO’ encompasses a range of entities, be it societies, trusts, cooperative societies, gaushalas, or any other organizational form that complies with registration norms. This seems to suggest that the Respondent’s focus is on the set-up of the AWO.

16. We conclude that Rule 2(f) must be interpreted as inclusive in its spirit, aiming to ensure quality and accountability in animal welfare activities rather than excluding any specific professional group. It is incumbent upon veterinarians and other stakeholders to recognize the broader scope of this provision and engage proactively within its ambit. Thus, at this juncture, in light of Respondent’s clarified stance in their



additional affidavit, we clarify that individual veterinarians can either align with existing compliant entities or form their own organizational structures, such as societies, trusts, cooperative societies, LLPs, partnerships, etc., and get them registered under the applicable laws.

17. Although the Petitioners preferred the instant application seeking relief to participate in MCD tender for sterilization and immunization of stray dogs at five of its centres, we note that the last date for bid submission has lapsed during the pendency of the application. Nonetheless, in view of the foregoing discussion, we dispose of the application clarifying that any entity, be it a society, trust, cooperative society, gaushala, LLP, partnership, or a company, that is duly registered under the appropriate laws, can be considered as an AWO under the ambit of ABC Rules, 2023. However, we emphasize that registration alone is not sufficient. Such entities, desirous to partake in tenders of this nature, must also secure recognition from the AWBI, underscoring their commitment to AWBI's standards and norms. Furthermore, they must satisfy all additional criteria related to their credibility and experience, as set forth in the ABC Rules, 2023.

18. With the above observations, the present application is disposed of.

W.P.(C) 7933/2023 & CM APPL. 30588/2023, CM APPL. 32595/2023, CM APPL. 41076/2023, CM APPL. 41077/2023

19. Re-notify on 04th December, 2023.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

OCTOBER 06, 2023/d.negi