

Tripura High Court

Smt. Adwitiya Chakrabarti vs Union Of India on 21 September, 2022

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HIGH COURT OF TRIPURA
AGARTALA

W.P.(C)(PIL) No.11/2022

Smt. Adwitiya Chakrabarti, Daughter of Lt. Dipankar Chakrabarti, Resident of Matripalli Road, Badharghat, P.O. Siddhi Asharam, Agartala, West Tripura, Pin - 799003.

-----Petitioner(s)

Versus

1. Union of India, through the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan Jorbagh Road, New Delhi, Pin - 110003, India.

2. The Chief Wild Life Warden and Principal Chief Conservator of Forests (Wildlife), having their office at Office of Principal Chief Conservator of Forests, Department of Forests and Wildlife, Govt. of NCT of Delhi, A-Block, 2nd Floor, Vikas Bhawan, I.P. Estate, New Delhi, Pin - 110002.

3. Director General of the Department of Revenue Intelligence, having their office at Directorate of Revenue Intelligence (Headquarter), Drum Shape Building, I.P. Bhavan, I.P. Estate, New Delhi, Pin - 110002.

4. Chairman of the Custom and GST Board, having their office at North Block, Central Secretariat, New Delhi, Pin - 110001.

-----Respondent(s)

For Petitioner(s) : Mr. Manoj Kumar Biswas, Advocate. For Respondent(s) : Mr. Biswanath Majumder, C.G.C. HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY Date of hearing : 12th September, 2022.

Date of judgment : 21st September, 2022.

Whether fit for reporting : YES.

JUDGMENT & ORDER

(Indrajit Mahanty, C.J.)

Rule made returnable forthwith. Heard all parties.

2. The above PIL petition is filed by a law graduate in public interest with prayers to seek issuance of show cause to the respondents as to why a writ of or in the nature of Mandamus shall not be issued declaring that possession of all exotic animals/ birds by persons (other than those who have made voluntary disclosure with the time contemplated in Advisory, dated 11.06.2020(Annexure -3), issued by Respondent No. 1, is illegal and the person in possession of such exotic animals/ birds be forthwith prosecuted for violation under the Customs Act by Department of Revenue Intelligence and under the Wild Life (Protection) Act, 1972.

3. Petitioner relies upon news articles (Annexure - 1 & 2) to demonstrate that there is proliferation of trade in exotic wildlife species in the State.

4. Petitioner submits that Birds and Animals can be categorized under following heads via a) Indigenous/ local or Indian animal species and

b) Exotic/ Foreign or non-Indian animal species. Petitioner further submits that there is no provision/ prohibition under the Wild Life (Protection) Act, 1972 qua the second category. Petitioner further submits that Respondent No. 1 issued an Advisory dated 11.06.2020 for dealing with import of exotic live species in India and declaration of stock within six months of the issuance of the Advisory.

5. Petitioner in his written submissions further contends that -

"3. Significantly, if a person who has availed the Advisory and made Voluntary disclosure is treated at par with a person who has not made declaration during the time period contemplated in the advisory; the legislative intent behind issuing advisory i.e., to grant immunity to a person making voluntary disclosure within stipulated time stands defeated and the Advisory serves no purpose. By not carrying out amendments in the two Acts granting immunity from prosecution and forfeiture to a person who has not made voluntary disclosure under the Advisory issued by Respondent No. 1 and thereby treating him at par with a compliant citizen would be violative of Article 14 of Constitution of India.

4. The protection to the person found with exotic species as noticed in the judgments of in the matter of Anil Naidu Versus UOI (Writ Petition No. 807 of 2019) vide order dated 11.09.2019 and Allahabad High Court in the matter of Dinesh Chandra Versus UOI (PIL civil 22903 of 2019) vide order dated 30.08.2019 against coercive steps and prosecution under The Wild Life Act, 1972 and The Customs Act 1962 is prior to issuance of Advisory by Respondent No. 1 on 11.06.2020. Bombay High Court in the matter of Imran Latif Versus DRI (Writ Petition No. 4779 of 2019) vide order dated 27.09.2019 held such offence under Customs Act, 1962 as bailable. Exotic species Birds and animals are subjected to torture while being caught and smuggled. This is offence of a grave magnitude and person smuggling or possessing such exotic species must be subjected to custodial interrogation to uncover the entire chain of criminals involved in the heinous crime. The offence of

smuggling exotic species and possession of such species (not immune by timely disclosure as per the Advisory) must be specifically made non-bailable under the Customs Act, 1962, and exotic species must be added in the Wild Life (Protection) Act, 1972.

5. It would thus be in the public interest, if this Hon'ble Court would direct or at least recommend appropriate amendment in The Wild Life(Protection) Act, 1972 by adding exotic species therein so that their domestic trade, transportation, breeding, possession etc within India can be made a punishable offence. Moreover, unless undeclared exotic species are directed to be, or at least recommended to be, included in Notifications issued under Sections 11B, 123 and 135(1)(i)(c) of the customs Act, 1962, the concerned persons found with undeclared exotic species within India would continue to have protection of law as recognized in the aforesaid judgments of Allahabad High Court and Bombay High Court. Thus, to wipe out the distinction between domestic / wild animals and the exotic species and to take stern action against the persons who are concerned with possession, transportation, dealing, breeding etc of exotic species, the directions as sought would be in public interest.

6. Only then persons in possession of such animals would be accountable under the said two Acts. Thus, this Hon'ble Court under the Writ Jurisdiction in public interest shall forthwith direct the Respondents to bring out appropriate legislative amendments to include exotic species in Schedule II of the Wild Life (Protection) Act, 1972 and to amend the Notifications issued under Sections 11B, 123 and 135(1)(i)(c) of the Customs Act, 1962 so that the owner of exotic species who have not made disclosure during the Advisory can be forthwith arrested and prosecuted under The Wild Life Act, 1972 as well as The Customs Act 1962 and exotic species can be confiscated by the Respondents."

6. We have examined the Advisory which is essentially concerning 4 issues:

- a. Developing an inventory of exotic live species in India through Voluntary Disclosure Scheme to streamline CITES compliance.
- b. Procedure for import of exotic live species.
- c. Registration/ Declaration of progenies of the imported exotic live species, d. The processes under this Advisory shall be dealt online through the Parivesh Portal.

7. Significantly, the Hon'ble Allahabad High Court in the case of Dinesh Chandra versus UOI (PIL CIV 12032 of 2020) had considered pre and post Advisory period and held as under:

"9. An earlier PIL Civil No. 22903 of 2019: Dinesh Chandra Vs. Union of India and others, filed by the very same petitioner against the same respondents was dismissed vide a detailed judgment dated 30.08.2019. It is not in dispute that the said judgment attained finality and binds the parties, as the same has not been challenged by any of the parties. It was inter alia observed that:-

"37. From the aforesaid, it is very clear that exotic birds/ animals do not come under the purview of Wild Life Protection Act, 1972. There is no provision under the Wildlife (Protection) Act, 1972 to issue licence or permission for dealing in exotic birds. There are no Rules and Regulations and procedures for keeping, breeding, buying, selling and exhibiting such animals (exotic animals) within country which have been bred in India. No documents are specified and no permission are required as per Customs Act for keeping, breeding, buying, selling and exhibiting such animals (exotic animals) within country which have been bred in India. Animals have been bred in captivity in India, customs Act does not have role in it.

47. It is well settled that the Court must be extremely careful to see that under the guise of redressing public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. Thus, it cannot direct the government to initiate legislation or interfere in the matters of governmental policy, except in cases of violation of fundamental rights.

48. From the aforesaid, we are of the view that the Central Government has consciously kept the exotic animals/ exotic birds out of the purview of Wildlife (Protection) Act, 1972 by not including them in its Schedules, and has thus permitted their domestic trading, possession and captive breeding in India. Such legislative intent and decision of the Government can neither be interfered with in writ jurisdiction, nor can any direction be given to the Government in this regard to amend Wildlife (Protection) Act, 1972 or Customs Act, 1962. At the point of Import/ Export, a Customs/ DRI Officer has jurisdiction to detect and prevent International Trade, i.e., import/ export of live animals and birds into or out of India, if found in violation of the provisions of Customs Act, 1962 read with the 'CITES' and Foreign Trade Policy. Thus, any live animals and birds, while being smuggled through the Indian Customs Frontiers, can be seized at the point of Import/Export by DRI/ Customs and the concerned persons can be subjected to penal and confiscatory provisions in accordance with the provisions of the Customs Act, 1962. There is no restriction on domestic trade, keeping, captive, breeding, buying, selling and exhibiting 'exotic animals/ exotic birds' within India, either under the Wildlife (Protection) Act, 1972 or under the Customs Act, 1962 or under the Foreign Trade (Development & Regulation) Act, 1962 or CITES. Any person in possession of 'exotic animals/ exotic birds' within India, is not bound to comply with the requirements of Section 11C to 11F of the Customs Act, 1962 regarding intimation of place of storage, precautions to be taken in acquiring, maintaining accounts or sale, as they are not notified under Section 11B. Similarly, mere 'acquisition', 'purchase', or 'possession' of the exotic animals or exotic birds within India, shall not invite any penal consequences under the Customs Act, 1962 or Wildlife (Protection) Act, 1972."

49. For all the reasons mentioned above, the present Public Interest Litigation petition is hereby dismissed without costs."

10. The said judgment dated 30.08.2019 was much before the issuance of the subject Voluntary Disclosure Scheme, announced and published on 11.06.2020 by the Central Government through the Ministry of Environment, Forest and Climate Change. So far as any smuggling activities if noticed at the point of Import/Export, a Customs/DRI Officer would continue to have jurisdiction to

detect and prevent International Trade, i.e., import/ export of live animals and birds into or out of India, if found in violation of the provisions of Customs Act 1962 read with the 'CITES' and Foreign Trade Policy, and any live animals and birds, while being smuggled through the Indian Customs Frontiers, can be seized at the point of Import/ Export by DRI/Customs and the concerned persons can be subjected to penal and confiscatory provisions in accordance with the provisions of the Customs Act, 1962.

11. There is no change in the legal position stated in the said judgment dated 30.08.2019 even in respect of domestic trading, possession, transportation and captive breeding of exotic species within India, at least for a period of six months from the date of introduction of the present "voluntary disclosure scheme" as the Clause (b) of Part I of this voluntary disclosure scheme also provides that - "the declarer would not be required to produce any documentation in relation to the exotic live species if the same has been declared within six months of the date of issue of the advisory."

8. SLP (C) 11659 of 2020 filed against the said judgment was dismissed by the Hon'ble Supreme Court vide an Order dated 13.10.2020. Thereafter, Hon'ble Supreme Court of India in Swetab Kumar versus Ministry of Environment, Forest & Climate Change and Others (Writ Petition (Civil) No. 540 of 2022) while dealing with the challenge to legality and validity of the Advisory again approved the said decision of Allahabad High Court and observed thus:

"3. We have gone through the judgments of the High Courts referred to above upholding the Advisory impugned herein and are in agreement with the same. It may be noted that a Special Leave Petition, being SLP (C) No. 11659 of 2020, was filed against the abovementioned judgment of the Allahabad High Court which came to be dismissed by this Court vide order dated 13.10.2020.

4. The above judgment of the Allahabad High Court is a complete answer to the present PIL filed by the petitioner. Any interpretation to the contrary as suggested by the petitioner would defeat the very object of the Advisory. Once a declaration within the window of six months as provided under the Advisory is made, the exotic live species, including its progeny, the declarant or transferee(s) are fully exempt from explaining the source of exotic live species. The exotic live species which is declared or its progeny, are not liable to confiscation or seizure by any Central Agency or State Agency. Consequently, the declarant or the transferee(s) of such declarant will be immune from prosecution under any civil, fiscal and criminal statute by any Central or State Agency. Any other interpretation would lead to absurdity.

5. However, any declaration made after the expiry of the window under the Advisory shall carry no such exemption and the declarer shall have to comply with all requisite documentation under the extant laws and regulations."

9. The same Advisory has also been the subject matter of challenge before various other High Courts. However, it has been upheld at all junctures. Reference may be made to the judgment of the Delhi High Court dated 23.10.2020 rendered in Khodiyar Animal Welfare Trust & Anr. Vs. Ministry

of Environment [Writ Petition (Civil) No. 6372 of 2020]; judgment of the Rajasthan High Court dated 14.10.2020 in Vivek Swami Vs. Union of India [D.B. Writ Petition No. 7491 of 2020]; judgment of the Meghalaya High Court dated 14.10.2020 in Miss. J.S. Wahlang Vs. Union of India [PIL No. 15 of 2021].

10. Bombay High Court has come to a conclusion in no uncertain terms in the case of Imran Latif Shirgawkar Versus DRI (Writ Petition No. 4779 of 2019) that the offence concerning exotic live species under Customs Act, 1962 would remain 'bailable' under Section 104(7) of the said Act, in absence of any notification under Section 135(1)(i)(c) of Customs Act, 1962 notifying exotic animals/ birds as "prohibited goods" (as issued in case of Fake Indian Currency), and bail would continue to be statutory as well as fundamental right.

11. The Advisory is an executive direction to maintain inventory of exotic species and regulate the import of such species. The exemption that is provided in the Advisory is limited to dispensation with explanation of source of exotic species. Consequence of non-declaration within the time stipulated in the Advisory is that the owner of exotic species is required to comply with all requisite documentation under the extant laws and regulation.

12. There is no change in the statutory provisions in this regard to the period pre or post advisory. The judgment dated 11.09.2019 of Bombay High Court in the matter of Anil Naidu Versus UOI (Writ Petition No. 807 of 2019) as well as the judgment dated 30.08.2019 passed by the Allahabad High Court in the matter of Dinesh Chandra Versus UOI (PIL Civil 22903 of 2019), which clarify the position in regard to the inapplicability of the penal provisions of Wild Life Act, 1972 and the Customs Act 1962 in regard to exotic species continue to apply as per extant laws and regulations despite advisory dated 11.06.2020.

13. As per settled position of law in various judgments noticed above as per the extant laws and regulations-

(i) Domestic trade, possession, transportation and breeding of undeclared exotic animals/ exotic birds within India continues to be out of the purview of Wildlife (Protection) Act, 1972.

(ii) There is no reverse burden to prove licit importation into India, because such undeclared exotic species are not included in Notifications issued under Section 123 of the Customs Act, 1962.

(iii) The undeclared 'exotic animals/ birds' continue to be out of purview of provisions of chapter IVA- Detection of illegally imported goods and prevention of disposal thereof, containing Sections 11A to 11G, as they are not notified under Section 11B. Thus, the person in possession of undeclared 'exotic animals/ Birds' would continue to be not bound to comply with requirements of Section 11C to 11F of the Customs Act, 1962 regarding intimation of place of storage, precautions to be taken in acquiring, maintaining accounts or sale thereof.

(iv) The offence concerning exotic live species under Customs Act, 1962 continues to be 'bailable' under Section 104(7) of the said Act, in absence of any notification under Section 135(1)(i)(c) of Customs Act, 1962 notifying exotic animals/ birds as "prohibited goods" (as issued in case of Fake Indian Currency), and bail continues to be statutory as well as fundamental right.

14. Despite the above settled legal position continuing even for the undeclared stock of exotic species, court can neither legislate, nor direct Government to legislate in a particular manner. The Court cannot direct the Central Government to forthwith make amendments against legislative will to include all exotic species in the Wild Life (Protection) Act, 1972 and also in the Notifications issued under Section 11B, 123 and 135 of the Customs Act, 1962. Court can neither direct seizure/ confiscation contrary to existing provisions, nor can direct change in classification of such bailable offence to non-bailable offence, to enable arrest and prosecution of all the persons concerned with such undeclared stock of exotic animals / exotic birds.

15. Large number of citizens across the country commonly own pets such as dogs, cats, birds, rabbits etc which may also belong to exotic species and might have been purchased or procured from those involved in captive breeding. Such pets may number in millions and also breed. We have considered the submissions of the petitioner about suggested wiping out of the distinction between exotic species and indigenous species by directing or at least recommending amendments in the two Acts. We are of the view that we can neither direct, nor expect the Government to take such drastic steps in haste, without assessment of impact and without detailed study. Such amendments in statutory provisions which may result in drastic penal action against common man cannot be directed or even recommended as prayed by the petitioner. The petitioner effectively wants that even all such exotic pets in domestic possession will have to be forfeited and housed by government and their owners shall be arrested, imprisoned and prosecuted under wild life Act and compelled to disclose the source under Customs Act, 1962. The step suggested by the petitioner will have very wide and far reaching ramifications. We cannot lose sight of the facts that most people possessing such exotic species are animal lovers and over time such exotic species become a part of the family like a child in the house. There are sufficient safeguards available in law to prevent cruelty to animals which are also applicable to exotic species. Directing the amendments in the two Acts as suggested or even to suggest the Respondents to legislate such amendments, would lead to chaos and no public purpose will be achieved. Even otherwise in light of the judgments discussed above the Court cannot direct the Central Government and the Central Board of Indirect Taxes to forthwith make amendments against legislative will to include all exotic species in the Wild Life (Protection) Act, 1972 and also in the Notifications issued under Section 11B, 123 and 135 of the Customs Act, 1962. Court can neither direct seizure/ confiscation contrary to existing provisions, nor can direct change in classification of such bailable offence to non-bailable offence, to enable arrest and prosecution of all the persons concerned with such undeclared stock of exotic animals / exotic birds.

16. We are unable to agree with the submission of the petitioner that, failure to arrest/prosecute such person who did/could not make declaration within the time stipulated in advisory would frustrate the purpose of the Advisory. Unless a person is caught smuggling exotic species on the international borders, no presumption can be drawn that domestic keeper have illegally imported

the exotic species on the ground that such person has not declared ownership of exotic species within the stipulated time, or has acquired such species after the stipulated time, for any arrest/prosecution/confiscation based on presumption would be unreasonable and violation of rights guaranteed under Article 14 and 21 of Constitution of India.

17. This puts all the key issues raised by petitioner to rest in the negative.

With above observations the petition is dismissed. No costs. (S.G. CHATTOPADHYAY), J (INDRAJIT MAHANTY), CJ Munna S