

Reserved on : 08.04.2024
Pronounced on :10.04.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.8409 OF 2024 (GM - RES)

BETWEEN:

1 . SHRI. KING SOLOMON DAVID

2 . MARADONA JONES

... PETITIONERS

(BY SRI SWAROOP ANAND R., ADVOCATE)

AND:

- 1 . JOINT SECRETARY
GOVERNMENT OF INDIA,
MINISTRY OF FISHERIES,
ANIMAL HUSBANDRY AND DAIRYING,
DEPARTMENT OF ANIMAL
HUSBANDRY AND DAIRYING
KRISHI BHAWAN,
NEW DELHI - 110001
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA – 560 001.

- 2 . CHIEF SECRETARY
GOVERNMENT OF KARNATAKA,
AMBEDKAR VEEDHI, VIDHANA SOUDHA,
BENGALURU – 560 001
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU- 560 001.

- 3 . KENNEL CLUB OF INDIA
A SOCIETY REGISTERED
UNDER THE TAMIL NADU SOCIETY REGISTRATION ACT,
REPRESENTED BY ITS SECRETARY
HAVING ITS REGISTERED ADDRESS AT
NO.28/29, AA BLOCK,
FIRST STREET, ANNA NAGAR,
CHENNAI – 600 040.

... RESPONDENTS

(BY SRI K.ARVIND KAMATH, ADDL.S.G A/W
SRI H.SHANTHI BHUSHAN, DSGI, FOR R-1;
SMT.NAVYA SHEKHAR, AGA FOR R-2;
SMT.LAKSHMY IYENGAR, SR.ADVOCATE A/W
MS.NIKITHA SURABHI, ADVOCATE FOR INTERVENING
APPLICANT IN I.A.No.2/2024))

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH CIRCULAR DT. 12/03/2024 BEARING NO. D.O.V-11/1/2024-ANLM.DADF PASSED BY R1 HEREIN, PRODUCED HEREIN AT ANNEXURE-A AS AGAINST THE PETITIONERS.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.04.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question a Circular dated 12-03-2024 issued by the 1st respondent imposing ban on certain breeds of dogs on the score that they belong to a category of 'ferocious dogs'.

2. Shorn of unnecessary details, facts in brief germane, are as follows:-

The 2nd petitioner claims to be the owner of German breed Rottweiler male dogs and have a registration from the sole registering agency, the Kennel Club of India, the 3rd respondent. The 1st petitioner is said to be a licensed professional dog handler recognized by the 3rd respondent and claims to have bred dogs like

Rottweiler, Cane Corso, Mastiffs etc. with regard to their behavior, socialization, obedience *inter alia*. He is said to have trained the Rottweiler of the 2nd respondent. What has driven these dog owners/breeders to this Court, is a Circular issued by Government of India through the Ministry of Fisheries, Animal Husbandry and Dairying, in the Department of Animal Husbandry and Dairying imposing a ban on several breeds of dogs including those that are bred by the 1st petitioner. The reasons for issuance of the Circular appear, to be upon an order, passed by the High Court of Delhi in a Public Interest Litigation filed by the Legal Attorneys and Barristers Law Firm. Since the circular imposes a ban and importing of the said dogs, it travels a little further that the Government would sterilize all the breeds of dogs in India to stop further breeding. It is, therefore, the petitioners have rushed to this Court in the subject petition.

3. This Court in terms of its order dated 19-03-2024 granted an interim order of stay of the Circular insofar as it concerns the State of Karnataka. It appears that the other High Courts have also

granted such stay after the interim order granted by this Court and the matters are pending consideration in the hands of those Courts.

4. Heard Sri R. Swaroop Anand, learned counsel appearing for the petitioners, Sri.K.Arvind Kamath, learned Additional Solicitor General of India along with Sri.H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondent No.1, Smt.Navya.S.Shekar, learned Additional Government Advocate appearing for respondent No.2 and Smt.Lakshmy Iyengar, learned senior counsel along with Ms.Nikitha Surabhi, learned counsel appearing for PETA/intervening applicant.

SUBMISSIONS:

PETITIONERS:

5. The learned counsel appearing for the petitioners Sri R. Swaroop Anand would vehemently contend that the Circular that imposes a ban creates an embargo upon participation of Indian breed of dogs which are equivalent to international breeds which are now sought to be banned. He would quote an illustration of a breed by name Raja Palyam, which the learned counsel for the

petitioners submits that it is equivalent to Rottweiler. He would further contend that the Department of Animal Husbandry has no power whatsoever to impose any ban of the kind that is now imposed, that too by a Circular. It is his contention that the Delhi High Court nowhere directed to impose a ban. It only directed consideration of representation. In all, he would seek quashment of the Circular.

THE UNION OF INDIA:

6. The learned Additional Solicitor General of India Sri K. Arvind Kamath, along with the learned Deputy Solicitor General of India Sri H. Shanthi Bhushan, would contend with vehemence that the Union of India cannot be held to be having *de hors* power to issue a circular. According to them, ferocious dogs have become a menace in several places of the country. The dog owners do not take responsibility of keeping dogs in control. It is their admission that the entire issue has sprung from the judgment of the High Court of Delhi directing consideration of the representation. They would admit that no stakeholders as was

undertaken before the High Court of Delhi were heard in the matter. Even to the constitution of Committee of Experts, the learned Additional Solicitor General would submit, on instructions, that the Union of India would not enforce the Circular unless they redo the exercise of hearing all stakeholders in the matter and drawing up an appropriate report from an appropriate Committee. He would submit that the issue need not detain this Court for long or delve deep into the matter. The Union of India would undoubtedly take certain corrective measures, is his submission.

THE INTERVENER - PETA:

7. An intervening application is filed by a Company named People for Ethical Treatment of Animals India ('the Company' for short). The impleading application was not allowed, as the Company had no role to play in the challenge put forth by the petitioners. But the learned senior counsel Smt. Lakshmy Iyengar representing the Company was permitted to assist the Court. The learned senior counsel would take a threshold objection to the petitioners presenting the writ petition. It is her submission that the

petitioners are not even registered breed owners or dog owners. Therefore, the writ petition itself is not maintainable. Apart from the said submission, the learned senior counsel would take this Court through the intervening application to demonstrate that ferocious dogs have undoubtedly become a menace and it is the dog owners or all breeders that are responsible for ill-treatment of dogs, permitting dog fights and also making the dogs subject of gambling by way of dog fights. It is her submission that the Circular in fact tries to impose a ban on these dogs which are being used for illegal purposes. The learned senior counsel would quote several instances of dog bites all over the country, which have either injured the victim or have caused death in certain circumstances. She would further submit that except the interest of animals in the vicinity, the Company has no interest in the petition *per se*.

8. In the light of the submissions of the Union of India that it would not enforce the Circular till appropriate compliance would come about, by hearing necessary stake holders, as was undertaken before the High Court of Delhi, this Court is of the

considered view that the petition should not be closed on the said ground, as there is no withdrawal of the Circular by the Union of India, but it is only deferment of implementation. In that light, I deem it appropriate to answer the challenge, in the peculiar circumstances.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. The afore-narrated facts are not in dispute. The genesis of the issue, is from an order passed by the High Court of Delhi in a Public Interest Litigation in Writ Petition (C) No.15673 of 2023 & C.M.Appl.No.62845 of 2023 decided on 06-12-2023. The Division Bench passed the following order:

"1. Present Public Interest Litigation has been filed seeking directions to the Respondents to ban and cancel the licence to keep dangerous dogs such as Pitbull, Terriers. American Bulldog, Rottweiler, Japanese Tosa, Bandog (Bandog is a cross between American Pit Bull Terrier or American Bulldog and a Neapolitan Mastiff or a Mastiff), Neapolitan Mastiff, Wolf Dog, Boerboel, Presa Canario, Fila Brasileiro, Tosa Inu, Cane Corso, Dogo Argentino and the cross breeds of the above-mentioned dogs.

2. A perusal of the paper book reveals that the petitioner has filed a representation dated 5th October, 2023 with the Secretary, Ministry of Home Affairs is pending consideration.

3. Learned counsel for the Union of India, who appears on advance notice, states that the petitioner's representation dated 5th October, 2023 has been forwarded to Secretary, Department of Animal Husbandry and Dairying by the Animal Welfare Board of India on 31st October, 2023.

4. He states that after consulting all the stakeholders, the Union of India shall decide petitioner's representation dated 5th October, 2023 as expeditiously as possible, preferably, within three months from today.

5. The said statement/undertaking given by the learned counsel for the Union of India is accepted by this Court and the Union of India is held bound by the same.

6. In the event, the petitioner is aggrieved by the decision taken by the Union of India, the petitioner shall be at liberty to file appropriate proceedings in accordance with law.

7. With the aforesaid liberty, the present writ petition in the form of public interest litigation is disposed of along with pending application."

(Emphasis Supplied)

The Division Bench records dog breeds that were alleged to be ferocious and directed consideration of the representation of the petitioners therein dated 5-10-2023 which was forwarded to the Secretary, Department of Animal Husbandry and Dairying. The Division Bench records the submission of Union of India that all stakeholders would be consulted and then the representation would be considered. The said representation is appended to the statement of objections. The representation reads as follows:

"Date: 05.10.2023

To

*THE SECRETARY
ANIMAL WELFARE BOARD OF INDIA
NIAW Campus, 42 Mile Stone,
Delhi-Agra Highway
NH-2, Ballabgarh, Haryana-121 004*

From

*THE LEGAL ATTORNEYS
& BARRISTERS LAW FIRM
Office at K-1, GF Birbal Road Jangpura
Extension New Delhi-110014
Mob:- 7078076786*

"MOST URGENT"

SUBJECT: REGARDING TAKING IMMEDIATE STEPS TO BAN AND CANCEL THE LICENSE TO KEEP PITBULL, TERRIERS, AMERICAN BULLDOG, ROTTWEILER, JAPANESE TOSA, BANDO (BANDO IS A CROSS BETWEEN AMERICAN PIT

BULL TERRIER OR AMERICAN BULLDOG AND A NEAPOLITAN MASTIFF OR A MASTIFF.), NEAPOLITAN MASTIFF, WOLF DOG, BOERBOEL, PRESA CANARIO, FILA BRASILEIRO, TOSA INU, CANE CORSO, DOGO ARGENTINO AND CROSS BREEDS THEREOF WHICH ARE DANGEROUS AND HARMFUL TO THE LIFE OF THE PUBLIC AT LARGE.

SIR/MADAM,

We respectfully bring to your kind attention making the request for concrete actions for including above mentioned breeds and crossbreeds of dogs in the list of dangerous dogs, implement regulations to ban these dogs, revoke licenses for keeping these breeds/ crossbreeds, and impose penalties for breeding them. Bull and Terriers have been categorized as "dog bred for fighting" under the UK's Dangerous Dogs Act, 1991, due to concerns about public safety. Statistic from Time Magazine suggests that while Pitbull and terriers make up only 6% of the dog population in the US, they are responsible for 68% of dog attacks and 52% of dog-related deaths since 1982.

Several legislatures in foreign countries have expressed concerns about the nature of pitbulls, citing factors like agility, stamina, strength, genetic predisposition to aggressiveness, and powerful jaws as reasons for their inclusion in dangerous dog bans Public support for such bans also revolves around the belief that pitbulls can be unpredictable and cause severe harm due to their physical capabilities.

it's crucial to note that bull and terriers are generally aggressive towards other dogs, and recent incidents in Delhi, Ghaziabad have highlighted concerns about attacks on humans.

These banned dogs can potentially be used as weapons, but current penalties for owners are seen as inadequate, especially when these dogs inflict serious harms or fatalities There's also a lack of government data or public records tracking the increase in dangerous dog breeds and taking necessary measures to control or prohibit them.

Other countries, including Australia, Canada, France, Germany, and the USA have implemented bans on these breeds by enacting laws/regulations keeping in view the safety concern of the people.

The Dogs Act of 1871, which remains in force in England, Scotland, and Ireland, empowers courts to control or even destroy dogs. Meanwhile, the Animal Acts of 1971 in England addresses liability for damage caused by dangerous animals, holding keepers accountable with exceptions for non-dangerous species.

Breed Specific Legislation (BSL) is a legal approach in the USA and Canada that either bans or restricts certain dog breeds based on their appearances. Local governments typically enacts BSL, assuming that specific physical characteristics make some breeds more dangerous. This can involve complete bans or regulations like licensing, muzzling and insurance.

In England, the Dangerous Dogs Act 1991 prohibits breeds like Pitbull –Terrier, Japanese Tosa, Dogo Argentina and Fila Brasselirio. The Dangerous Dogs Act 1989 complements the 1871 Act, allowing appeals and enforcement of control orders.

BSL Originated in the 1980s as a response to stereotypes associating certain breeds with criminal activity, particularly among Black individuals.

Breed specific legislation encompasses a range of measures, from complete bans to various restrictions, all of which often result in the euthanasia of many pet dogs in want of concrete law with regard to the above in this country.

Accordingly the applicant filed a writ petition 13011/2023 before the High Court of Delhi where after appreciating the contents of the petition the court disposed-off the petition on 5.10.23 by directing the petitioner/applicant to file the representation to the authorities concerned, considering the matter as being urgent and serious in the light of the above order the applicant petitioner is filling the present representation to you, to take required steps towards banning and cancelling the licenses for such dogs and to save the public from there dangerous actions which has been noticed by several instances of attacking by such dangerous dogs on the public by causing serious harms to them.

In conclusion, we urge and request to make stronger regulations and enforcement regarding the ownership and breeding of dangerous dog breeds to ensure public safety, in line with actions taken by various other countries.

The request urges prompt compliance within 7 days in the interest of Indian Citizens and the Nation."

(Emphasis added)

The representation is submitted by a law firm – the Legal Attorneys and Barristers. It is submitted to the Secretary, Animal Welfare Board of India. What is stated in the representation is several legislations all over the globe like United Kingdom, United States of

America and other nations and also quoted certain instances of United States of America. This is sought to be considered by the Animal Welfare Board of India. The Animal Welfare Board of India communicates it to the Department of Animal Husbandry and Dairying on 31-10-2023. The communication reads as follows:

"F.No.17-36/2023-24/Legal

Date 31.10.2023

To,

*Mrs. Anamika Nigam
Under Secretary
Department of Animal Husbandry and Dairying
Ministry of Fisheries, Animal Husbandry and
Dairying.*

*Subject: Representation of Legal Attorneys &
Barristers Law Firm in regard to Writ Petition (C) No.
13011 of 2023 titled as "The Legal Attorneys & Barristers
Law Firm Vs. Union of India & Ors." before the Hon'ble
High Court of Delhi :- reg.*

Madam,

With reference to the above-cited subject, it is stated that Board is in receipt of representation from the petitioner organisation for consideration of the banning and cancelling the licenses for such dogs and to save the public from there dangerous actions of attacking by such dangerous dogs breeds on the public by causing serious harms to the public.

2. In this regard, petition was filed by the organisation for consideration of the banning and cancelling the licenses for such dogs and to save the

public and has given a detail reasoning based on which they are requesting make policy for stronger regulation and enforcement of ownership an breeding of dangerous dog breeds to ensure etch public safety in line with the action taken by various other countries. However, the aforesaid writ has been dismissed by the Hon'ble High court vide its order dated 05.10.2023 (copy enclosed) as withdrawal with a liberty to prefer a representation before ether appropriate authorities.

3. Further, petitioner organisation has submitted its representation for consideration of the banning and cancelling the licenses for such dogs and to save the public from there dangerous actions of attacking by such dangerous dogs breeds on the public by causing serious harms to the public.

4. Therefore, in view of the above, the above representation is being forwarded for your kind consideration and necessary action."

(Emphasis supplied)

After the said communication, it appears, that a Committee is constituted, though no proceedings of the Committee is placed before the Court. The composition of the Committee is adverted in the statement of objections. The composition is as follows:

"... .."

12. That it is respectfully submitted that, the representation of the petitioner's organization in W.P. (C) No. 13011/2023 and WP C No. 15673/2023 was placed before technical expert committee comprised of the following member:

- (i) Dr. Abhijit Mitra, Animal Husbandry Commissioner, Chairman,*
- (ii) Dr. Abhijit Pawde, Principal Scientist, IVRI, Bareilly.*
- (iii) Ex.Col. Dr. Surinder Saini, Remount Veterinary Corps.*
- (iv) Representative of DGFT.*
- (v) Representative of Customs.*
- (vi) Representative of Central Zoo Authority.*
- (vii) Quarantine Officer, AQCS, Delhi.*
- (viii) Representative from of NLM Division, DAHD.*
- (ix) Representative from Trade Division, DAHD.*
- (x) Dr. Vijay Kumar, Joint Commissioner (LH), DAHD, Member Secretary."*

The composition of the Committee, which according to the 1st respondent is the expert Committee consisted of Central Zoo Authority and representatives from the Trade Division and Animal Husbandry Commissioner, *inter alia*. There is no expert in the Committee who would know about dogs. Bureaucrats have sat and decided about banning of breeds of dogs. The recommendation of

the Committee is what is found in the impugned Circular. The impugned Circular reads as follows:

"D.O.V-11/1/2024-Anlm_Dadf Dated, 12th March, 2024

Sir,

I would like to draw your kind attention on the serious recent issues of death of human being due to dog bites by some ferocious breeds of dogs kept as pet. The Department of Animal Husbandry and Dairying, Government of India has been receiving representation from various citizens, citizen forum and Animal Welfare Organization etc. to ban some of the breeds of dogs to keep them as pet and other purpose. Further, a Writ petition No. 15673/2023 titled as "The Legal Attorneys & Barristers Law Firm vs UOI & Ors" filed before the Hon'ble High Court of Delhi to ban some of the dog breeds. The Hon'ble Court in its order dated 06.12.2023 directed "that after consulting all stakeholders, the UOI shall decide petitioner's representation dated 05.10.2023 as expeditiously as possible, preferably, within 3 months from today".

2. The Department of Animal Husbandry and Dairying constituted an Expert Committee under the Chairmanship of Animal husbandry Commissioner with members from various stakeholder organizations and experts. The Committee has identified the following breeds of dogs as ferocious which are dangerous for human life.

"breeds (including mixed and cross breeds) like Pitbull Terrier, Tosa Inu, American Staffordshire Terrier, Fila Brasileiro, Dogo Argentino, American Bulldog, Boerboel, Kangal, Central Asian Shepherd Dog (ovcharka), Caucasian Shepherd Dog

(ovcharka), South Russian Shepherd Dog (ovcharka), Tornjak, Sarplaninac, Japanese Tosa and Akita, Akbash dog Moscow Guard dog, Cane corso and every dog of the type commonly known as a Ban Dog (or Bandog)"

3. The Committee has recommended that the aforementioned dog breeds including cross breeds shall be prohibited for import, breeding, selling as pet dogs and other purposes. Therefore, it is requested that the local bodies, Department of Animal Husbandry shall not issue any licenses or permit for sale, breeding of dogs breeds as mentioned above and keeping of these dog breeds and shall be banned. The Local Bodies may also issue necessary implementation guidelines in this regard. However, the dogs which have already kept as a pet shall be sterilized so that further breeding may not happen.

4. I would further like to inform that the Central Government has published Prevention of Cruelty to Animal (Dog breeding and marketing) Rules, 2017 and Prevention of Cruelty to Animal (Pet Shop) Rules, 2018. The Implementation of the Rules is vested on the Local Bodies and State Animal Welfare Board as well as Department of Animal Husbandry Department. It is requested to direct the concerned authorities to implement the aforementioned Rules.

With regards,

*Yours sincerely,
Sd/-
(Dr.O.P.Chaudhary)"*

(Emphasis added)

The impugned Circular has several breeds of dogs that would be the subject matter of ban and Local Bodies have been directed to issue necessary implementation guidelines with regard to import, breeding, selling the dogs, that are found in the Circular as pet dogs and their usage for other purposes. The dogs which have already been kept as pet dogs have to be mandatorily sterilized. As observed hereinabove, it is a Circular. Whether a Circular can bring about such a sweeping effect, is what is necessary to be noticed, for which I deem it appropriate to notice, breed ban or restrictions imposed in other countries and the manner of such imposition.

LEGISLATION ELSEWHERE:

11. Dog ban is not alien to any country in the globe, but have happened on promulgation of legislations. It could be breed specific ban or breed specific restrictions. In the United Kingdom, The Dangerous Dogs Act is a breed specific legislation. The Act is notified to prohibit persons from having, in their possession or custody, dogs belonging to certain types of breeds, initially for the purpose of imposing restrictions on fighting. There are about 6 types of dogs in the said legislation and they are as follows:

- (i) Pitbull terrier**
- (ii) Japanese tosa**
- (iii) Dogo Argentino**
- (iv) Fila Brasileiro**
- (v) American XL bully**
- (vi) Cross Breeds of abovementioned dogs.**

(Emphasis supplied)

CANADA: In Canada the legislation is by way of bye-laws in every province. In Ontario province, **Dog Owners' Liability Act** is in place and the breeds are almost similar to what is found in the Dangerous Dogs Act of the United Kingdom. Except permitted by the Act or the Regulations, no person can own a pet/dog. In terms of Bye-law No.6 of Ontario province, it is similar throughout all the provinces.

AUSTRIA: In Austria, Vienna dog licence is in place by regulating dog breeds. Dog owners of specific dog breeds are required to take an examination, if the dog breeds fall under the categories enumerated therein. Without taking licence examination, no dog can be made a pet.

IRELAND: In Ireland, **the Control of Dogs Regulation 1998**, is in place. All the dogs that are now found in the impugned

circular find a place in the Control of Dogs Regulation 1988 of Ireland. The Control of Dogs Regulation has emanated from the Control of Dogs Act of Ireland in 1986. Therefore, it is controlled by legislation.

DENMARK: In Denmark most of the dog breeds, which are more or less similar to the ban imposed in the impugned circular, are banned / restricted but they are banned by way of amendments to the **Dogs Act** and **the Animal Protection Act** by bringing in amendments in the years 2005 and 2006. Therefore, dog ban in Denmark is regulated by legislation.

FRANCE: France has brought in **French Rural Code** since 01-06-1999. The dogs are classified into several categories depending on ferociousness and dangerousness that the dogs project. Most of the dogs that are found in the impugned circular are found in the French Rural Code as well.

GERMANY: In Germany, restrictions on dog rearing, transport and import is regulated by **Dog Transfer and Import Restrictions Act**, which has classified several dogs to be

dangerous in several places of Germany. Most of the dogs classified as dangerous found a place in the impugned circular. But, it is regulated under the Dog Transfer and Import Restrictions Act.

NORWAY: In Norway, the banned specific dog breeds are banned by way of legislation. Prohibition of dangerous dogs is what is in place and it is forbidden to keep, breed or introduce dangerous dogs or to import sperm or embryos from dangerous dogs. There are five dogs classified as dangerous. Those are also found in the impugned circular.

SPAIN: In Spain, specific dog breeds are restricted and regulated by law right from the year 1999. Certain canine species of potentially dangerous animals form a part of the law, depicting them to be potentially dangerous dogs. Here again, the names of the breeds are somewhat similar to what is found in the impugned circular.

SINGAPORE: In Singapore, **dog breeds are restricted and regulated under the Animals and Birds Act of Singapore and the Animal and Birds (Dog Licensing and Control) Rules,**

2007. Specified dogs are found in the second Schedule to the said Rules. Here again the breeds are similar.

AUSTRALIA: In Australia, specific dog breeds are regulated and restricted under **the Animal Management (Cats and Dogs) Act, 2008**. Specific dogs are found in different States of Australia that are subject matter of Regulation or banning as the case would be. Liberal procedure is laid down under the said Act.

NEW ZEALAND: In New Zealand, restriction of specific breed is under **the Dog Control Act**. A chapter is dedicated to dangerous dogs. The classification and its effect is also found in the statute itself. Most of the dog breeds that are found in the said statute are found in the impugned circular.

UNITED STATES OF AMERICA: Even in the United States of America, separate States have separate laws regulating and prohibiting dogs by classifying them as dangerous and potentially dangerous dogs under different regulatory regime in different States. Nonetheless, it is completely regulated by Regulations.

I have thought it appropriate to quote the aforesaid regulatory regime of all the countries where dogs are banned only to drive home that banning of dogs is not alien to law, but banning of dogs everywhere has taken place only by legislations in a manner known to law in those countries. Most of the dog breeds that are now sought to be prohibited by the impugned circular find place in every country's regulatory regime of banning those breeds. As observed, it is by law. By law would mean, by legislation of those countries. It is not that there are no legislations in this country.

LEGISLATIONS IN INDIA:

12. The primary legislation in India is the Prevention of Cruelty to Animals Act, 1960 ('the Act' for short). Under the Act, there are several Rules notified. The reason for promulgation of the Act and the Rules are specifically found in the Act and its regulation in the Rules. Though it is not dog specific, agriculture and animal husbandry are sought to be protected. In furtherance of prevention of cruelty to animals, the Government of India has notified **Prevention of Cruelty to Animals Act, 1960**. It is promulgated

as an Act to prevent infliction of unnecessary pain or suffering on animals. Section 4 of the Act deals with establishment of Animal Welfare Board. The Animal Welfare Board is to be established for the promotion of animal welfare and protecting of animals from being subjected to unnecessary pain and suffering. Section 5 deals with the constitution of the Board. Sections 4 and 5 read as follows:

"....

4. Establishment of Animal Welfare Board of India :

(1) For the promotion of animal welfare generally and for the purpose of protecting animals from being subjected to unnecessary pain or suffering, in particular, there shall be established by the Central Government, as soon as may be after the commencement of this Act, a Board to be called the 3 (Animal Board of India.)

(2) The Board, shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by its name sue and be sued.

5. Constitution of the Board : *(1) The Board shall consist of the following persons, namely:*

- (a) the Inspector General of Forests, Government of India, ex-officio,*
- (b) the Animal Husbandry Commissioner to the Government of India, ex-officio;*
- (ba) two persons to represent respectively the Ministries of the Central Government dealing with Home Affairs and Education, to be appointed by the Central Government;*

- (bb) one person to represent the Indian Board for Wild Life, to be appointed by the Central Government;*
- (bc) three persons who, in the opinion of the Central Government, are or have been actively engaged in animal welfare work and are well-known humanitarians, to be nominated by the Central Government;)*
- (c) one person to represent such association of veterinary practitioners as in the opinion of the Central Government ought to be represented on the Board, to be elected by that association in the prescribed manner;*
- (d) two persons to represent practitioners of modern and indigenous systems of medicine, to be nominated by the Central Government;*
- (e) one person to represent each of such two municipal corporations as in the opinion of the Central Government ought to be represented on the Board, to be elected by each of the said corporations in the prescribed manner*
- (f) one person to represent each of such three organisations actively interested in animal welfare as in the opinion of the Central Government ought to be represented on the Board, to be chosen by each of the said organisations in the prescribed manner;*
- (g) one person to represent each of such three societies dealing with prevention of cruelty to animal as in the opinion of the Central Government ought to be represented on the Board, to be chosen, in the prescribed manner;*
- (h) three persons to be nominated by the Central Government,*
- (i) six Members of Parliament, four to be elected by the House of the People (Lok Sabha) and two by the Council of States (Rajya Sabha).*

(2) Any of the persons referred to in clause 9a) or 6 [clause (b) or clause (ba) or clause (bb) of sub-section (1) may depute any other person to attend any of the meetings of the Board.

(3) The Central Government shall nominate one of the members of the Board to be its Chairman and another member of the Board to be its Vice-Chairman.)

5A. Reconstitution of the Board : [5.A (1) In order that the Chairman and other members of the Board hold office till the same date and that their terms of office come to an end on the same date, the Central Government may, by notification in the Official Gazette, reconstitute, as soon as may be after the Prevention of Cruelty to Animals (Amendment) Act, 1982 comes into force, the Board.

(2) The Board as reconstituted under sub-section (1) shall be reconstituted from time to time on the expiration of every third year, from the date of its reconstitution under sub-section (1).

(3) There shall be included amongst the members of the Board reconstituted under sub-section (1), all persons who immediately before the date on which such reconstitution is to take effect, are Members of the Board but such persons shall hold office only for the unexpired portion of the term for which they would have held office if such reconstitution had not been made and the vacancies arising as a result of their ceasing to be Members of the Board shall be filled up as casual vacancies for the remaining period of the term of the Board as so reconstituted:

Provided that nothing in this sub-section shall apply in relation to any person who ceases to be member of the Board by virtue of the amendment made in sub-section (1) of section 5 by sub-clause (ii) of clause (a) of section 5 of the Prevention of Cruelty to Animals (Amendment) Act, 1982."

There are many persons to be a part of the composition of the Board in terms of Section 5. Two persons from the Ministry; one person from the Indian Board for Wild Life; three persons who are actively engaged in animal welfare work and well-known humanitarians in the opinion of the Central Government; one person to represent veterinary practitioners; two persons to represent modern and indigenous system of medicine; one person from the municipal corporation; one person from any organization of the animal welfare, *inter alia*. Control of stray dogs also would come within the functions of the Board. **Section 10** of the Act deals with the power of the Board to make regulations. **Section 38** of the Act deals with power to make Rules. In furtherance of the power conferred under Section 38, the Government of India has promulgated from time to time three set of Rules. The first one to come about was, **Animal Birth Control (Dogs) Rules, 2001**. The second being, **Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017**. The third one being, **Prevention of Cruelty to Animals (Pet Shop) Rules, 2018**.

13. THE RULES:

I. The Animal Birth Control (Dogs) Rules, 2001 ('ABC' Rules for short):

Certain provisions of the ABC Rules are required to be noticed. Section 2 deals with definitions, 2(f) defines an 'owner', it reads as follows:

"2. (f) "owner" means the owner of an animal and includes any other person in possession or custody of such animal whether with or without the consent of the owner;"

Rule 3 classifies dogs and their sterilization, it reads as follows:

"3. Classification of dogs and their Sterilization:
(1) All dogs shall be classified in one of the following two categories (i) pet dogs, (ii) street dogs.

(2) The owner of pet dogs shall be responsible for the controlled breeding, immunization, sterilization and licensing in accordance with these rules and the law for the time being in force within a specified local area.

(3) The street dogs shall be sterilized and immunized by participation of animal welfare organizations, private individuals and the local authority."

(Emphasis supplied)

Rule 3 deals with sterilization of two kinds of dogs – pet dogs and street dogs. It directs that the owners of pet dogs would be responsible for control, breeding, immunization and sterilization. The street dogs would be sterilized by the Local Authority.

Rule-4 deals with composition of the Committee/formation of the Committee and it reads as follows:

"4. Formation of Committee: A monitoring committee consisting of the following persons shall be constituted by the local authority namely:

- (a) Commissioner/Chief of the local authority, who shall be the ex-officio Chairman of the Committee.***
- (b) A representative of the Public Health Department of the local authority.***
- (c) A representative of the Animal Welfare Department if any of the local authority.***
- (d) A veterinary doctor***
- (e) A representative of the district Society for Prevention of Cruelty to Animals (SPCA)***
- (f) At least two representatives from the Animal Welfare Organizations operating within the said local authority.***

- (g) A Representative of the people who is a humanitarian or a well known individual who has experience in animal welfare in the locality.**

(Emphasis supplied)

Rule-5 deals with functions of the Committee and it reads as follows:

"5. Functions of the Committee: *The committee constituted under rule 4 shall be responsible for planning and management of dog control programme in accordance with these rules. The committee may:*

- (a) issue instructions for catching, transportation, sheltering, sterilisation, vaccination, treatment and release of sterilized vaccinated or treated dogs.*
- (b) authorize veterinary doctor to decide on case to case basis the need to put to sleep critically ill or fatally injured or rabid dogs in a painless method by using sodium pentathol. Any other method is strictly prohibited.**
- (c) create public awareness, solicit co-operation and funding.**
- (d) provide guidelines to pet dog owners and commercial breeders from time to time.**
- (e) get a survey done of the number of street dogs by an independent agency.*
- (f) take such steps for monitoring the dog bite cases to ascertain the reasons of dog bite, the area where it took place and whether it was from a stray or a pet dog.**

(g) Keep a watch on the national and international development in the field of research pertaining to street dogs' control and management, development of vaccines and cost effective methods of sterilization, vaccination, etc."

(Emphasis supplied)

The Committee constituted under Rule 4 would be responsible for planning and management of dog control programme. The composition is a representative from the Public Health Department; Animal Welfare Department; a District Society for Prevention of Cruelty to Animals; two representatives from the Animal Welfare Organizations within the local authority; a representative of the people who is a humanitarian or a well known individual who has experience in the animal welfare in the locality. Therefore, the classification of dogs, formation of a committee and functions of the Committee are all statutorily determined. If the composition of the Committee found in the Act and the Rules *supra* are read in tandem what would unmistakably emerge is, that the impugned circular has emanated from an improperly constituted Committee, which is on the face of it contrary to the Act and the Rules. Therefore, any

recommendation by a Committee which is improperly constituted would be a nullity in law.

II. Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017 (the 'Breeding Rules' for short):

These are Rules which are breeder specific, which are also promulgated invoking the rule making power under Section 38 of the Act. Rule 2(I) defines what is a 'pet shop' it reads as follows:

"2 (I) "pet shop" means a shop, place or premises, including any shop, place or premises in a weekly or other market, where pet animals are sold or housed, kept or exhibited for sale, or where any retail or whole-sale business involving the selling or trading of pet animals are carried out;"

Rule 3 deals with prohibition of breeding of dogs without registration. Rule 13 mandates grant of licence for such registration. Rules 5 and 6 append certain schedule. The Part -I of the schedule deals with facilities provided by a breeder in an establishment. There are about 4 schedules therein.

III. Prevention of Cruelty to Animals (Pet Shop) Rules, 2018 ('Pet Shop Rules' for short):

These Rules deal with establishment, maintenance and care of pet shops. These are narrated only to notice that, dog specific and animal specific Rules have been in place by way of legislations promulgated from time to time by the Government of India.

14. In the teeth of the statute, the Government of India could not have imposed a sweeping ban – a breed specific ban by way of a circular. The impugned circular narrates that it is pursuant to a Committee constituted. The constitution of the Committee is as observed hereinabove. It undoubtedly falls foul of the statute. Therefore, the Circular insofar as it is contrary to the necessary members of the Committee would tumble down like a pack of cards.

15. The High Court of Delhi recorded the undertaking of the Union of India that the representation *supra* would be considered after consulting all stakeholders. It is an admitted fact that no stake holder is consulted. This Court is not of the opinion that every dog owner should be consulted, but the stakeholder would mean the organizations which deal with rights of animals or prevention of cruelty to animals or even the breeding organizations like the Kennel Club of India – the 3rd respondent, in the least,

these ought to have been consulted. The Circular falls foul of necessary consultation of the stakeholder as was necessary in terms of the undertaking before the High Court of Delhi. For the aforesaid reasons, the circular is rendered unsustainable.

RESPONSIBLE PET OWNERSHIP:

16. Attacks by dogs hitherto other animals or even to the human beings is not uncommon anywhere in the globe and not even in this Nation. It is in public domain that every now and then the PETA or individual citizen have raised concern about the dogs which are ferocious or otherwise, indulging in inflicting harm upon citizens. The intervener PETA has placed plethora of material to demonstrate such instances, a few of them I deem it appropriate to notice:

An incident on 20-01-2024 is reported that the dog breed pitbull has attacked a toddler who received 3 fractures and multiples stitches; an American Bulldog attacked a 7 years old girl in Delhi; again, a German Shepherd attacked a 2 years old in Delhi and a 70 years old women in Roorkee was mauled to death by American Bulldog. It is not only the human beings that are

attacked, but 3 pitbull dogs in Bhondsi mauled down a cow. There are several instances where dogs have indulged in biting the private parts of man. All these factors are in public domain.

17. It is not that pitbull or American bulldog or any other pet dog, is a dog that is roaming in the streets. It is a dog owned by pet owners. Therefore, it is the pet owners would become responsible for the safe keep of the citizens and other animals around the area, in which they would own the pet from the jaws of such pet. They are wanting to own the pet which is ferocious or otherwise, it would be the responsibility of such pet owners to oversee the safety of the citizens and animals around. They are to be held to be accountable for any kind of irresponsible pet ownership.

18. These are the factors that will have to be deliberated upon by the Union of India, by bringing in any law to ban certain breeds. It is not only those dogs which are branded ferocious that can indulge in inflicting harm upon the human beings or animals in the surrounding. Any dog can become ferocious. A dog bite is a dog bite, be it from a branded ferocious dog or any other dog. The

appropriately constituted Committee should delve upon the concept of responsible pet ownership to be protected, and irresponsible pet ownership to be penalized.

19. In the considered view of this Court, breed bans have never resulted in responsible pet ownership. Therefore, it is necessary under the statute i.e., the Rules *supra*, to issue certain guidelines with regard to responsible pet owners. The reason to declare these breed of dogs, as dangerous is that, they are ferocious and would pose a potential threat. A blanket psychological thought process of this kind cannot and will not lead to any solution to the problem. It is for the dog owners to act responsibly that their pets would not harm any other citizen/other living beings in the vicinity or anywhere. Thus, pet owners would become solely responsible for the act of their dogs, if they are ferocious or dangerous, and the pet owners have kept them despite their characteristic being projected, they should act responsibly, and responsible pet ownership must emerge as a *sine qua non* to pet ownership, as it is in public domain that dogs are more likely to become aggressive when they are unsupervised, un-nurtured and

not socially conditioned to live closely with human beings and other dogs / animals. It is this that has to be emphasized on pet owners.

20. The Circular upon which the Government of India seeks to bring in the ban would necessarily vanish, for it being completely contrary to law and no stake holders being heard in the matter. As observed in the interim order, it is not that every dog owner should be heard in the matter. Therefore, their stakeholder, at least the Kennel Club of India which is said to be the sole registering Authority is to be heard in the matter. The hearing should not stop with the Kennel Club of India, but **PETA** who is also concerned with the animal welfare, should also be heard in the matter. In the circumstances, the impugned Circular runs counter to law and defeats logic. The upshot of the preceding analysis is the following:

21. SUMMARY OF FINDINGS:

- (i) The High Court of Delhi from which the entire impugned action has sprung has recorded the undertaking of Union of India that they would hear all the stakeholders. It is an admitted fact that none of them are heard.
- (ii) The composition of the Committee is not in consonance with the Rules framed under the Prevention of Cruelty

to Animals Act, 1960. The Union of India could not have imposed the ban without an appropriate recommendation from a properly constituted Committee.

- (iii) The Union of India by the impugned circular could not have imposed a blanket ban, in the teeth of the Rules in force. The Circular travels beyond what is found in the Rules.
- (iv) On all the aforesaid, the Circular cannot but be held to be contrary to law and therefore, requires to be obliterated.
- (v) The obliteration will not come in the way of the Union of India bringing in an amendment to any of the Rules framed under the Prevention of Cruelty to Animals Act, 1960, after following due process of law, as observed in the course of the order.
- (vi) In the event of the re-birth of what is now obliterated, the stakeholders shall be heard. Stakeholders would not mean every pet owner. An organization certifying the breeds being heard would suffice.
- (vii) The Company- **PETA** who has sought to intervene has placed elaborate material rendering assistance to the consideration of the *lis*. **PETA** also shall be heard by the Union of India, in the event the Union of India would bring in a law, as is observed hereinabove.
- (viii) Responsible pet ownership is what is necessary to be considered by the Union of India to be brought in, to make the pet owners accountable and responsible for the acts of the dogs, ferocious or otherwise.
- (ix) Responsibility of the pet owner would not be limited to owning oral responsibility. The pet owner should be made accountable for payment of the entire treatment

of the victim who comes to be injured by the dog, including claim for damages.

22. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) Circular dated 12-03-2024, issued by the 1st respondent stands quashed.
- (iii) The quashment of the Circular will not come in the way of the Government acting in accordance with law, bearing in mind the observations made in the course of the order.

This Court places its appreciation for the able assistance rendered by Ms. Sai Suvedhya R., Law Intern attached to this Court.

**Sd/-
JUDGE**

bkp
CT:MJ