

**04.12.2020**  
*Item no. 10(supp.list)*  
*Dd/aloke*

**Through Video Conference**

**WPA 10138 of 2020**

**The Court on its own Motion**  
**In re : Smuggling and illegal trading**  
**of endangered species of birds.**

*Mr. Saikat Banerjee*  
*... .. For the Registrar General,*  
*High Court, Calcutta*

The news paper report in 'Anandabazar Patrika', a Bengali daily newspaper, on 2<sup>nd</sup> December, 2020, exposed the tip of an iceberg regarding the cruel intrusion into the life of flora and fauna, particularly the birds, in the wake of the winter season. The great challenges to the beautiful fauna life owing to cruel, unethical and illegal activities, in violation of the Constitution and the laws, particularly those relating to animals and birds, were noticed. Therefore, it was deemed appropriate that directions are considered for issuance by this Court, for requisite support for the animal world, in particular, the birds, having regard to the different provisions of the Constitution and the laws relating to animals and birds. It was also noticed that the facts affecting environment and ecological balance would also fall for consideration.

Following the direction of the Chief Justice on the administrative side, this matter has been drawn up as a suo motu writ petition by the Court on its own motion.

The pleadings in the writ petition presented through the learned counsel appearing for the High Court and assisting us in the process, describe the various challenges faced by the birds. As rightly pointed out, birds are perceived as a symbol of freedom because of their ability to fly. For many centuries, birds and their feathers have symbolized life, death, good and bad luck, the future, the past, and other signs.

The material pleadings disclose the sum and substance of the news paper report and also different aspects touching the relevant Constitutional and statutory provisions which deal with the animal life including the fauna population. We, therefore, deem it appropriate to quote the following :-

*"2.The sum and substance of the aforesaid news report is as follows: -*

*It is not uncommon that as soon as winter arrives, illegal smuggling and trading of endangered species of birds like Tia, Moyna, Chandana and Pahari Moyna commences. North Bengal, Jharkhand, Bihar are the epicenters wherefrom such birds are smuggled and traded to cities like Kolkata and Delhi. During winter the wings of the birds become heavier. Consequentially birds lose their capacity to fly smoothly. It thus becomes easier for smugglers to catch such birds with net. Taking advantage of such opportunity, thousands of Tia – Moyna are illegally smuggled and trade flourishes. Hundreds of birds were being smuggled in a bus from Patna to Kolkata on Tuesday night [01/12/2020]. Forest workers of East Burdwan Division stopped the bus on the Durgapur Expressway and recovered more*

than 300 Tia and at least 25 hilly Moyna.

3. In order to effectively deal with the issue of smuggling and illegal trading of endangered species of birds, the provisions of Schedule VII, List III [Concurrent List], Entry 17B of the Constitution of India which speaks of protection of wild animals and birds may be looked into. In addition thereto Articles 48A [Directive principles of State policy] and 51A (g) [Fundamental duties] inter alia speaks of protecting, improving and safeguarding wildlife, reading thus:

48A: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51A (g): to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures

4. The **Wild Life (Protection) Act, 1972** was enacted by the Parliament of India in order to conserve animals, birds, plants and the matters connected therewith. In order to effectively deal with the issue of smuggling and illegal trading of endangered species of birds, the provisions of **sections 2 (1), (16), 5 (c), 8, 38Z, 48A, 49B (1), 50, 51 to 55, Schedule I Part III and Schedule IV entry 11** may be looked into.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) "**animal**" includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs;

(16) "**hunting**", with its grammatical variations

*and cognate expressions, includes,—*

*(a) killing or poisoning of any wild animal or captive animal and every attempt to do so;*

*(b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;*

*(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;*

*5C. Functions of the National Board.—*

*(1) It shall be the duty of the National Board to promote the conservation and development of wild life and forests by such measures as it thinks fit.*

*(2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for—*

*(a) framing policies and advising the Central Government and the State Governments on the ways and means of promoting wild life conservation and effectively controlling poaching and illegal trade of wild life and its products;*

*(b) making recommendations on the setting up of and management of national parks, sanctuaries and other protected areas and on matters relating to restriction of activities in those areas;*

*(c) carrying out or causing to be carried but impact assessment of various projects and activities on wild life or its habitat;*

*(d) reviewing from time to time, the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto; and*

*(e) preparing and publishing a status report at least once in two years on wild life in the country.*

*8. Duties of State Board for Wild Life —It shall be*

*the duty of State Board for Wild Life to advise the State Government,—*

*(a) in the selection and management of areas to be declared as protected areas;*

*(b) in formulation of the policy for protection and conservation of the wild life and specified plants;*

*(c) in any matter relating to the amendment of any Schedule;*

*(cc) in relation to the measures to be taken for harmonising the needs of the tribals and other dwellers of the forest with the protection and conservation of wild life; and*

*(d) in any other matter connected with the protection of wild life, which may be referred to it by the State Government.*

*38Z. Powers and functions of the Wildlife Crime Control Bureau.—*

*(1) Subject to the provisions of this Act, the Wildlife Crime Control Bureau shall take measures with respect to— (i) collect and collate intelligence related to organized wildlife crime activities and to disseminate the same to State and other enforcement agencies for immediate action, so as to apprehend the criminals and to establish a centralised wildlife crime data bank;*

*(ii) co-ordination of actions by various officers, State Governments and other authorities in connection with the enforcement of the provisions of this Act, either directly or through regional and border units set up by the Bureau;*

*(iii) implementation of obligations under the various international Conventions and protocols that are in force at present or which may be ratified or acceded to by India in future;*

*(iv) assistance to concerned authorities in foreign countries and concerned international organisations to facilitate co-ordination and universal action for wildlife crime control;*

(v) develop infrastructure and capacity building for scientific and professional investigation into wildlife crimes and assist State Governments to ensure success in prosecutions related to wildlife crimes;

(vi) advice the Government of India on issues relating to wildlife crimes having national and international ramifications, and suggest changes required in relevant policy and laws from time to time.

(2) The Wildlife Crime Control Bureau shall exercise— (i) such powers as may be delegated to it under sub-section (1) of section 5, sub-sections (1) and (8) of section 50 and section 55 of this Act; and (ii) such other powers as may be prescribed.]

48A. Restriction on transportation of wild life.—

No person shall accept any wild animal (other than vermin), or any animal article, or any specified plant or part or derivative thereof, for transportation except after exercising due care to ascertain that permission from the Chief Wild Life Warden or any other officer authorised by the State Government in this behalf has been obtained for such transportation.]

49B. Prohibition of dealings in trophies, animal articles, etc., derived from scheduled animals.—

(1) Subject to the other provisions of this Section, on and after the specified date, no person shall—

(a) commence or carry on the business as— (i) a manufacturer of, or dealer in, scheduled animal articles; or 2 [ia) a dealer in ivory imported into India or articles made therefrom or a manufacturer of such articles; or] (ii) a taxidermist with respect to any scheduled animals or any parts of such animals; or (iii) a dealer in trophy or uncured trophy derived from any scheduled animal; or (iv) a dealer in any captive

*animals being scheduled animals; or (v) a dealer in meat derived from any scheduled animal; or (b) cook or serve meat derived from any scheduled animal in any eating-house. Explanation.—For the purposes of this sub-section, "eating-house" has the same meaning as in the Explanation below sub-section (1) of Section 44.*

*50. Power of entry, search, arrest and detention.*

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*(1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,— (a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, trophy or 3 [trophy, uncured trophy, specified plant or part or derivative thereof] in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;*

*51. Penalties.—*

*(1) Any person who 1 [contravenes any provision of this Act 2 [(except Chapter VA and section 38J)]] or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to 3 [three years], or with fine which may extend to 4 [twenty-five thousand rupees], or with both: 5 [Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of*

*Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees: Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of the imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.] 6 [(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than 7 [three years] but which may extend to seven years and also with fine which shall not be less than 8 [ten thousand rupees].] 9 [(1B) Any person who contravenes the provisions of section 38J, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year or the fine may extend to five thousand rupees.] (2) When any person is convicted of an offence against this Act, the Court trying the offence may order that any captive animal, wild animal, animal article, trophy, 10[uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof] in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said*



*offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled. (3) Such cancellation of licence or permit or such forfeiture shall be in addition to any other punishment that may be awarded for such offence. (4) Where any person is convicted of an offence against this Act, the Court may direct that the licence, if any, granted to such person under the Arms Act, 1959 (54 of 1959), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a licence under the Arms Act, 1959, for a period of five years from the date of conviction.*

*[(5) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.]*

*51A. Certain conditions to apply while granting bail.—When any person accused of, the commission of any offence relating to Schedule I or Part II of Schedule II or offences relating to hunting inside the boundaries of National Park or wild life sanctuary or altering the boundaries of such parks and sanctuaries, is arrested under the provisions of the Act, then notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) no such person who had been previously convicted of an offence under this Act shall, be released on bail unless— (a) the Public Prosecutor has been given an opportunity of opposing the release on bail; and (b) where the Public Prosecutor opposes the application, the*

*Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.]*

*52. Attempts and abetment.—Whoever attempts to contravene, or abets the contravention of, any of the provisions of this Act or of any rule or order made thereunder shall be deemed to have contravened that provision or rule or order, as the case may be.*

*53. Punishment for wrongful seizure.—If any person, exercising powers under this Act, vexatiously and unnecessarily seizes the property of any other person on the pretence of seizing it for the reasons mentioned in section 50 he shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.*

*54. Power to compound offence.—(1) The Central Government may, by notification, empower the Director of Wild Life Preservation or any other officer not below the rank of Assistant Director of Wild Life Preservation and in the case of a State Government in the similar manner, empower the Chief Wild Life Warden or any officer of a rank not below the rank of a Deputy Conservator of Forests, to accept from any person against whom a reasonable suspicion exists that he has committed an offence against this Act, payment of a sum of money by way of composition of the offence which such person is suspected to have committed. (2) On payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person. (3) The officer compounding any offence may order the*

*cancellation of any licence or permit granted under this Act to the offender, or if not empowered to do so, may approach an officer so empowered, for the cancellation of such licence or permit. (4) The sum of money accepted or agreed to be accepted as composition under sub-section (1) shall, in no case, exceed the sum of twenty-five thousand rupees: Provided that no offence, for which a minimum period of imprisonment has been prescribed in section 51, shall be compounded.]*

*55. Cognizance of offences.—No court shall take cognizance of any offence against this Act on the complaint of any person other than— (a) the Director of Wild Life Preservation or any other officer authorised in this behalf by the Central Government; or 5 [(aa) the Member-Secretary, Central Zoo Authority in matters relating to violation of the provisions of Chapter IVA; or] (ab) Member-Secretary, Tiger Conservation Authority; or (ac) Director of the concerned tiger reserve; or] (b) the Chief Wild Life Warden, or any other officer authorised in this behalf by the State Government 2 [subject to such conditions as may be specified by that Government]; or 2 [(bb) the officer-in-charge of the zoo in respect of violation of provisions of section 38J; or] (c) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the State Government or the officer authorised as aforesaid.]*

*SCHEDULE 1; PART III: BIRDS*

- 1. Andaman Teal (Anas gibberifrons allogularis)*
- 1-A. Assam bamboo partridge (Bambusicola fytchii)]*
- 1-B. Bazas (Aviceda jerdoni and Aviceda leuphotes)]*

1 [1-C. Bengal florican (*Eupodotis bengalensis*)]  
 1-D. Black-necked crane (*Grus nigriocollis*) 1-E.  
 Blood pheasants (*Ithaginis cruentus tibetanus*, *I.c.*  
*kuseri*) 2 [1-F. \* \* \*] 2. Cheer pheasant (*Catreus*  
*wallichi*) 3 [2-A. Eastern white stock (*Ciconia*  
*ciconia boyciana*)]?? 2-B. Forest spotted owlet  
 (*Athene blewitti*) 4 [2-C. Frogmouths (Genus  
*batrachostomus*) 3. Great Indian bustard  
 (*Choriotis nigriceps*) 4. Great Indian hornbill  
 (*Buceros bicornis*) 5 [4-A. Hawks (fam.  
*Accipitridae*)]?? 6 [4-B. Hooded crane (*Grus*  
*monacha*)] [4-C. Hornbills (*Ptiloaeus tickelli*  
*austeni*, *Aceros nipalensis*, *Rhyticeros undulatus*  
*ticehursti*)] [4-D. Houbara bustard (*Chlamydotis*  
*undulata*)] [4-E. Hume's bar-backed pheasant  
 (*Syrmaticus humiae*)] [4-F. Indian pied hornbill  
 (*Anthracoeros malabaricus*)] 5. Jerdon's courser  
 (*Cursorius bitorquatus*) 6. Lammergeier (*Gypaetus*  
*barbatus*) 7. Large falcons (*Falco peregrinus*, *Falco*  
*biarmicus* and *Falco chicquera*) 7 [7-A. Large  
 Whistling teal (*Dendrocygna bicolor*)] 8 [7-B.  
 Lesser florican (*Sypheotides indica*)] 9 [7-C].  
 Monal Pheasants (*Lophophorus impejanus*, *L.*  
*sclateri*) 8. Mountain quail (*Ophrysia superciliosa*)  
 9. Narcondom hornbill (*Rhyticeros (undulatus )*  
*marcondami*) 10[9-A. \*\*\*] 10. Nicobar megapode  
 (*Megapodins freycinet*) 11[10-A. Nicobar pigeon  
 (*Caloenas nicobarica pelewensis*) 12[10-B. Osprey  
 or Fish eating eagle (*Pandion haliaetus*)] 13[10-C.  
 Peacock pheasant (*Polyplectron bicalcaratum*)]  
 11. `Peafowl (*Pavo cristatus*) 12. Pink-headed  
 duck (*Rhodonessa caryophyllacea*) 13. Scalater's  
 Monal (*Lophophorus solateri*). 14. Siberian white  
 crane (*Grus leucogeranus*) 1 [14-A.2 \*\*\*\*] 14B.  
 Tibetan Snow-cock (*Tetraogallus tibetanus*)] 15.  
 Tragopan Pheasants (*Tragopan melanocephalus*,  
*Tragopan blythii*, *Tragopan satyra*, *Tragopan*  
*temmincki*) 16. White-bellied sea eagle (*Haliaetus*

leucogaster) 17. White-eared pheasant (*Crossoptilon crossoptilon*) 3 [17-A. White spoonbill (*Platalea leucorodia*)] 18. White-winged wood duck (*Cairina scutalata*) 4 [19. Swiftlets (*Collocaliaunicolor* and 5 \*\*\*) 20. Hill myna (*Gracula religiosa intermedia*, *Gracula religiosa peninsularis*, *Gracula religiosa indica* and *Gracula religiosa andamanensis*) 21. Tibetan ear pheasant (*Crossoptilon harmani*) 22. Kalij pheasant (*Lophura leucomelana*) 23. Lord Derby's parakeet (*Psittacula derbyana*) 24. Vultures (*Gyps indicus*, *Gyps bengalensis*, *Gypstenuirostris*) 25. White bellied heron (*Ardea insignis*)]

#### SCHEDULE IV

##### 11. Birds

[(other than those which appear in other Schedules)]:

1. Avadavat (*Estrildinae*)
2. Avocet (*Recurvirostridae*)
3. Babblers (*Timaliinae*)
4. Barbets (*Capitonidae*)
5. Barnowls (*Tytonknae*)
6. Bitterns (*ardecidae*)
7. Brown-headed gull (*Larus brunnicephalus*)
8. Bulbuls (*Pycnonotidae*)
9. Buntings (*Emberizidae*)
10. Bustard (*Otididae*)
11. Bustard-Quails (*Turnicidae*)
12. Chloropsis (*Irenidae*)
13. Comb duck (*Sarkidornis melanotes*)
14. Coots (*Rallidae*)
15. Cormorants (*Phalacrocoracidae*)
16. Cranes (*Gruidae*)
17. Cuckoos (*Cuculidae*)
- 17-A Curlews (*Seoalopacinae*)
18. Darters (*Phalacrocoracidae*)
19. Doves including the Emerald Dove (*Columbidae*)

20. *Drongos (Dicruridae)*
21. *Duck (Anatidae)*
22. *Egrets (Ardeidae)*
23. *Fairy Blue Bird (Irenidae)*
24. *Falcons (Falconidae), excepting the Shaheen and Peregrine falcons (Falco peregrinus), the shaker or churrug, shankghar and lagger falcons (F.biarmicus), and the refheaded merlin (F.chicquera)*
25. *Finches including the chaffinch (Fringillidae)*
26. *Falmingos (Phoenicopteridae)*
27. *Flowerpeckers (Dicaeidae)*
28. *Flcatchers (Muscicapidae)*
29. *Geese (Anatidae)*
30. *Goldfinch and allies (Carduelinae)*
31. *Grebes (Pooicipididae)*
32. *Gerons (Ardeidae)*
33. *Ibises (Thereskironithidae)*

5. *It is common knowledge that most Indian families have grown up with birds as pets in their homes, but oblivious to these families, the birds suffer a cruel fate. Snatched from the wild, stolen from nests and left to die while smuggling, a staggering number of exotic birds are sold in local markets after being illegally brought in, by heartless traders. The burning issue at the moment is trade in pet birds. It is very unfortunate that species, though protected, are still trafficked widely. A staggering number of birds are cruelly smuggled in various places, in appalling conditions. Birds are trafficked stuffed and suffocated in the piping of suitcases, PVC pipes. They are stuffed in socks, crammed in shoes and their beaks are taped shut. To catch wild parrots, the hunters take two of them as bait and puncture their eyes. These blind and wounded birds are then left on a sheet, where they cry out for help. Soon hundreds of birds will come for*

*help. As soon as they descend, the hunters throw a sheet or chaadar over them and capture them. The hunters also use natural gums to trap them. The smugglers capture around 100 birds at a time and then transport them to different areas, usually stuffed into small boxes and left without food or water for days. Approximately 60 per cent of the birds die in the process, but the ones that survive cover up for costs within a few sales. Rough estimates state that for every 10 birds smuggled, only one will survive. Exotic birds can go for anything from Rs 400 to a few lakhs, depending on how endangered they are and how legal the transaction is.*

6. *It is also a prevailing practice that tantrics use owls for black magic, especially between October and November. Their bones, blood, claws, skull and organs are used and they are sacrificed during Diwali to bless the family with wealth all year round. Other birds commonly trafficked are the aam tota or Ringneck parrot or Rose-ringed parakeet, even though the punishment includes a fine of Rs 25,000 or a jail term up to three years, or both. But the law isn't implemented. Wildlife Inspectors won't even come if they are called. A visit to any of the places, where such birds are sold will reveal a glimpse into the murky business and the unethical practices indulged in by some shop owners with impunity. Some of the shops do not even have registration numbers. Apart from the terrible conditions that these birds at stores are put through, it's next to impossible to tell whether they are caught in the wild, smuggled, or aviary bred.*

7. *Birds that are smuggled are fraudulently legitimised by saying that they are captive bred in India, which 'technically' makes them aviary bred*

*or exotic birds are not covered under the Wildlife Protection Act. With captive bred birds, the seller can't afford to let them die because the bird can command up to Rs 1-2 lakh. But with wild birds, they will catch 100 at a time and even if 50 die, it doesn't matter because there is no money invested in catching them. It is time that the administration acts on a war footing against such practices and the offenders."*

We have given our thoughtful consideration to the aforesaid pleadings in the context of different statutory provisions which provide the support to the Constitutional salutary need to protect the birds and also to act promptly, vigorously, forcefully and effectively against the wrongdoers. Larger scale capturing of birds using weapons or otherwise and also bringing birds to captivity beyond those permissible under the law, is clearly demonstrated in the suo motu petition.

The migrating birds know no territorial limits and they would fly to better pastures depending upon the change of climate, availability of food and various other reasons including for their existence, procreation etc. This is part of the ecological management of the universe. We, therefore, deem it appropriate to further consider this matter because it has become necessary and expedient to initiate public interest litigation suo motu concerning smuggling and illegal trading of endangered species of birds and for their preservation and protection.

For the aforesaid reasons, we are of the view that this matter will stand registered and continue as Public Interest Litigation suo motu to address various issues, including the following :

*"(i) smuggling and illegal trading of endangered species of birds.*

*(ii) To fix the responsibility for such smuggling and illegal trading of endangered species of birds.*



*(iii) To pass necessary directions upon the appropriate authorities to ensure that no smuggling and illegal trading of endangered species of birds, take place and the violators are taken to task on a war footing."*

The officials and officers enumerated in paragraph 11 of this petition will stand impleaded as respondents in this proceeding. Learned counsel for the High Court takes notice for the respondent no. 14.

Issue notice to respondent nos. 1 to 13 by electronic mode. We also record that learned counsel for the High Court will serve copy of this petition on the learned Advocate General who will render assistance to this Court in his capacity as an advocate apart from appearing on behalf of the State. We are sure that learned Advocate General will appear for respondents nos. 1 to 13 and make requisite submissions having regard to the importance and emergent situation arising in the matter.

Having regard to the urgency of the matter and because of the current winter season, we see that there is urgent need to consider the issuance of further orders without delay.

Let the matter be posted on **08.12.2020** as the first item.

**(Thottathil B. Radhakrishnan, C.J.)**

**(Arijit Banerjee, J.)**

