

08.12.2020
item No. DL 6
Ct. No.1
AD & Saswata

WPA 10138 of 2020
With
IA no. : CAN 1 of 2020
(via video conference)

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 at Calcutta

Mr. Kishore Datta, Ld. AG
... for the State

Mr. Rohit Lakhmani
Mr. Sabyasachi Mukherjee
Mr. Indrajeet Dey
Mr. Kushal Das

... Intervenor in
IA no. CAN 1 of 2020

Mr. Rana Mukherjee
Mr. Arijit Chakrabarti
.... For the intervenor

IA no: CAN 1 of 2020 is an application made in this writ petition by one Rajyashree Mukherjee for being impleaded as a respondent.

We have heard learned advocate for the applicant. Since this writ petition has been initiated by the Court on its own motion, we do not formally add the applicant as a respondent. However, we record that in the course of hearing, the applicant shall be heard.

The application being IA no.: CAN 1 of 2020 is accordingly disposed of.

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We record the submissions of Mr. Rana Mukherjee and Mr. Arijit Chakrabarti, learned advocates, that they propose to file intervention applications.

Taking cognizance of this *suo motu* writ petition, we have minuted an order dated 04/12/2020 making reference to the various provisions of law which are relevant as stated in the writ petition drafted and presented on behalf of the High Court. We had also then heard the submissions of learned advocate Mr. Saikat Banerjee. Resultantly, we had issued notice to the 13 authorities and institutions impleaded as respondents in the array of parties as enumerated in paragraph 11 of the writ petition, also noticing the appearance of Mr. Saikat Banerjee for the Registrar General of this Court. Notices have been served on respondent nos. 1 to 13 by e-mail.

Today learned Advocate General appeared on behalf of the State respondents and made certain submissions which would stand encapsulated as hereunder:

“Control of Illegal Trade of Wildlife and Wildlife articles in West Bengal”

Control of illegal trade in live wildlife and their articles poses a major challenge to the Forest Department of West Bengal. Due to the geographic location of West Bengal and the prevailing socio-economic scenario of the region,

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West Bengal has become a major transit point in the movement of the illicit wildlife and its articles. West Bengal shares its border with Bhutan, Nepal and Bangladesh. It is evident from the series of seizures that the Dooars and the Terai region of North Bengal as well as Kolkata is used as transit route by the miscreants involved in illicit wildlife trade. The North-East and Bhutan seems to be the origin and the produce are destined largely to China via Nepal. The live wildlife like birds, turtles, snakes and other wildlife articles are also being smuggled to Bangladesh from Bihar, Odisha, Jharkhand and other states passing through South Bengal and Kolkata. The Wildlife Wing of Forest Department had seized many wild birds, snakes, turtles, mongoose, hare, brushes and seized many vehicles as well as arrested smugglers and traders.

The Wildlife Wing of the West Bengal Forest Department, in coordination with other enforcement agencies like the Wildlife Crime Control Bureau, the Police Department, Customs, BSF, Coast guards, etc. keeps a strict vigil to prevent such activities. Of late, the Wildlife Wing has been successful in apprehending a number of offenders involved in this trade that has helped in busting of legal rackets involved in such activities, both in the North Bengal and in Kolkata.

The following actions are taken to control wildlife related crime especially illegal trade and smuggling:

1. Creation of Protected Areas such as 16 numbers of Wildlife Sanctuaries and 6 numbers of National Parks.
2. Intensification of Protection of flora and fauna in the state through intensive patrolling of forest areas.
3. Construction of protection camp, watchtower, etc. at strategic locations to keep vigil. Intensive Monsoon Patrolling especially in North Bengal.
4. Provisions of arms and ammunitions to the staff in protection work as well as strengthening of communication & wireless network.
- 5 Officers of non protected areas have been given powers delegated to deal with wildlife crime

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as status of Addl. Chief Wildlife Wardens (Addl. Principal Chief Conservator of Forests), Deputy Chief Wildlife Wardens (Chief Conservator of Forests & Conservators of Forest), Wildlife Wardens (Divisional Forest Officer), Assistant Wildlife Wardens (Assistant Divisional Forest Officers) and exercise the powers delegated to them under the Wildlife (Protection) Act.

6. Notable wildlife conservationists have been designated as Honourary Wildlife Wardens in their designated districts to help forest staff

7. Creation of Forest Protection Committees infringe of forests and organising training and awareness camps for local villagers and urban population.

8. Coordination and Liaising with Police, Wildlife Crime Control Bureau and other enforcement agencies to combat illegal trade of Wildlife and live animals.

9. Establishment of legal cells in forest divisions to provide prosecution support

10. Establishment of vigilance squads in Wildlife Head Quarters at Kolkata.

Actions required to be taken

1. Formation of Inter-State Co-ordination Committee with neighboring states to deal with problems related to Wildlife Crime especially smuggling of wild animals and their articles.

2. Formation of Special Task Force as well as wildlife Squads in each district of the state to effectively deal with the problem.

3. Deployment of police in special camps for protection in National Parks and Sanctuaries, Tiger Reserves and important forest areas.

4. Formation of Special Courts to deal with Forest and wildlife cases.

5. Formal coordination with Bhutan, Nepal and Bangladesh to curb illegal wildlife trade.

6 Modernization of Forest Force and to equip them with all modern equipment, transport and arms.

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The salutary provisions in the Directive Principles of State Policy in Part IV of the Constitution of India and fundamental duties of citizens in Part IVA of the Constitution of India, notwithstanding, we notice the legal history, to some extent, as would be relevant, as of now. The Wild Birds and Animals Protection Act, 1912 which then governed the field stood repealed in its application to West Bengal on the coming into force of the West Bengal Wild Life (Protection) Act, 1959 and the provisions of the Wild Life Protection Act, 1972 (Central Act) which included the repeal and savings of the State Laws through Section 66 thereof. We have also perused the provisions of the Prevention of Cruelty to Animals Act, 1960 and the Rules framed thereunder including those relating to transportation and prevention of cruelty relatable to capture of birds for any purpose as well as the Prevention of Cruelty to Animals (Pet shop) Rules, 2018, (for short, Pet Shop Rules) which came into force on 06.09.2018.

In relation to the primary issue on which this *suo motu* writ petition has been generated, for the time being, we would confine ourselves by noticing the provisions of the Pet Shop Rules

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which, inter alia, prohibit the carrying on or continuing the business of sale or trade in pet animals, whether retail or wholesale. The definition of pet animals in Rule 2(j) of those Rules is so couched that it includes pet birds. A conjoint reading of the provisions of the Pet Shop Rules definitely shows that the activity of pet shops can be carried on only in relation to those pet animals, including pet birds, the ownership of and trade in which is not prohibited by any other law, rules or regulations. Rule 3(i)(a) further provides that no person shall establish or operate a pet shop or any other establishment engagement in sale, purchase or exchange of pet animals by whatever name called, without obtaining a certificate of registration from the competent authority in prescribed form. The activity of a “pet shop” is deducible from the definition of that term in clause (k) of Rule 2(1) of the Pet Shop Rules. It takes within its sweep “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, and includes online platforms over which the sale and purchase of pet

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animals is carried out wherever the context permits". Therefore, there can be no transaction of the nature that would fall within Rule 2(1)(k) of the Pet Shop Rules in any place or premises either on a daily basis, weekly basis or otherwise; be it a market, or not. Rule 6 (2) of the Pet Shop Rules provides statutory prohibition that no person shall be allowed to operate a pet shop on a shanty, shack, pavement or any temporary or make-shift arrangement. These provisions are noted to reinforce the inescapable constitutional and legislative command interdicting the capturing of birds except in strict conformity with the restrictive legislative covenants which are specifically laid down as well as the constitutional values and doctrines which emanate from the fundamental principles of the provisions of a Constitution like the Constitution of India, is intended for cohesive and comprehensive management of the domain or territory to which it relates; be it as part of land, water or air, environment and ecology, which are components which get holistically regulated by its own performance. Migratory birds do not carry passports and do not need visa stamping. The geographical territories or terrain from which the migratory birds may move would not at all be

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relevant to provide protective umbrella of the Constitution of India and the Statues falling under it for the succour to and management of the fauna which fly in of their own. This is how the provision of the Constitution will have to trickle down and operate.

In the aforesaid circumstances, taking note of the stand of the State Government and the facts as indicated in this suo motu writ petition, with the assistance of the newspaper reports and inputs which stand corroborated by the submission of learned Advocate General, in the larger public interest, which includes the interest of supporting the environment, ecology and, in particular, the fauna life, we direct the official respondents to strictly ensure obedience to the laws relating to prevention of cruelty to animals and birds and also the laws governing the prevention of cruelty to captured animals, in particular capturing of birds as well as the activities of dealing with birds, utilising birds which are not eligible to be dealt with in any manner violative of the provisions of Prevention of Cruelty to Animals (Pet Shops), Rules, 2018.

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The Pet Shop Rules, particularly the different clauses in sub-rule 2 of Rule 7 read with Rule 2 (1)(p) read with Clauses (a) & (c) of Section 2 of the Prevention of Cruelty to Animals Act, 1960, clearly establish that an offspring of a bird that has not attained the age at which it clearly acquires independent survival skills to meet its basic needs like food, warmth and safety and, further, birds without mature flight feathers cannot be captured for the purpose of trading in any form.

The contents of this order shall percolate to all Offices and Officers concerned under the control of the official respondents nos.1 to 13 and separate action taken reports regarding the activities carried forward on the basis of this order shall be placed on record by the Principal Chief Conservator of Forests, Director General and Inspector General of Police, West Bengal Police before the next date of hearing.

We record that certain submissions were made to the effect that there may be persons who have in their possession birds of various origins as part of hobbies which are duly certified and authorized in terms of the applicable rules. Such cases will be duly verified by the competent

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authority concerned as and when any such claim
is raised.

Post the matter on 19.01.2021.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)