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BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

Writ Petition Case (Civil) No. 13204/2021

Suo Motu Public Interest Litigation Proceedings initiated by the High Court in the matter of executive and legislative inaction of the State Government in the matter of protection of animal rights

-Against

Respondents

1. Union of India represented by the Secretary, Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying), Government of India, Krishi Bhavan, New Delhi- PIN 110001.
2. The Animal Welfare Board of India, represented by its Chairman, National Institute of Animal Welfare Campus P.O., 42K Stone, Delhi-Agra Highway, NH-2, Village-Seekri, Haryana- PIN 121004.
3. State of Kerala represented by the Chief Secretary, Thiruvananthapuram -PIN 695036.
4. State of Kerala represented by the Secretary, Animal Husbandry Department, Thiruvananthapuram -PIN 695036
5. State of Kerala represented by the Secretary, Local Self Government Department, Thiruvananthapuram -PIN 695036
6. The Kerala State Animal Welfare Board, Thiruvananthapuram.
7. The Kerala Veterinary and Animal Sciences University, Pookode, Lakkidi PO, Wayanad PIN-673576
8. State Police Chief, Kerala, Thiruvananthapuram -PIN 695010.

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SYNOPSIS

Dates of the facts chronologically arranged

1. 01-07-2021:- Minutes of the Honourable Mr. Justice A.K.Jayasankaran Nambiar requesting to initiate a suo motu PIL due to the executive and legislative inaction of the State Government in the matter of protection of animal rights.

2. Order dated 01.07.2021 passed by the Hon'ble Mr. Justice C.T.Ravikumar for initiating suo moto public interest litigation due to the executive and legislative inaction of the State Government in the matter of protection of animal rights.

On 01.07.2021, communication was received from the Honourable Mr. Justice A.K.Jayasankaran Nambiar wherein his Lordship had minuted about a news report about the cruel and inhuman killing of a dog by three minors on Adimalathura beach on the outskirts of Trivandrum and a video was posted on the social media.

His Lordship further minuted that the Prevention of Cruelty Act and the Wildlife Protection Act are founded on -Speciesism-the basic premise of superiority of the human species over all others and of restrictions/control of human actions on the basis of protection of animal rights, which makes animal rights a bi-product of human compassion or benevolence.

His Lordship further stated that just as the worth of a Constitution lies in its ability to uphold minority rights, so too does a planetary order demand a recognition of rights inherent in other living beings as taken under Indian Constitution through the introduction of a Chapter on Fundamental Duties in 1977 and by the Supreme Court in the case of Animal Welfare Board of India v A.Nagaraja & Ors-2014 (7) SCC 547. It is stated that while Art. 48A in the chapter on Directive Principles of State Policy speaks about protection and improvement of environment and safeguarding of forests and wildlife, Art.51(g) obliges every citizen to protect and improve natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures, Art.51A(h) obliges us to develop scientific temper, humanism and the spirit of inquiry and reform and that the Supreme Court has breathed life into these constitutional provisions by interpreting restrictions imposed in furtherance of the said provisions as "reasonable" vis-a-vis the freedom guaranteed to citizens under Art.19. (NR Nair v UOI-A.2001 SC2337) and interpreted the provisions of the PCA Act in the backdrop of the fundamental duties prescribed under Indian Constitution and held that Animals should now be seen as having certain rights, corresponding to the duties that were prescribed for human beings.

His Lordship further minuted that it was held that the five freedom i.e. freedom from hunger, thirst, malnutrition, freedom from fear and distress, freedom from physical and thermal discomfort, freedom from pain, injury and disease and freedom to express normal patterns of behaviour recognized by the Ss.3 and 11 of the PCA Act akin to the rights guaranteed to the citizens of India under Part-III of our Constitution.

His Lordship further stated that the time has come to goad the State and its instrumentalities into taking affirmative action to safeguard the rights of Animals and in a democratic republic as ours, the judiciary cannot afford to remain a passive spectator to executive and legislative inaction in the matter of protection of animal rights by stepping into the arena and that institution of a suo moto public interest litigation would be an ideal step in that direction.

His Lordship requested to consider instituting a public interest litigation, *suo moto*, so as to monitor state action in reported instances of cruelty to animals as also, generally, in the matter of prevention of cruelty to animals by impleading the following authorities as respondents in the matter:

1. The Union of India, represented by the Secretary, Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying), Government of India, Krishi Bhavan, New Delhi-110001.
- 2.The Animal Welfare Board of India, represented by its Chairman, National Institute of Animal Welfare Campus P.O., 42 KM, Stone, Delhi-Agra Highway, NH-2, Village-Seekri, Haryana-121004,
- 3.The State of Kerala represented by the Chief Secretary, the Secretary, Animal Husbandry Department & Secretary, Local Self Government Department.
- 4.The Kerala State Animal Welfare Board.
- 5.The State Police Chief.
6. The Kerala Veterinary and Animal Sciences University.

On 01-07-2021, considering this matter the Hon'ble Mr. Justice C.T.Ravikumar directed to initiate Suo Motu Public Interest Litigation in this matter and place it before the bench of Hon'ble Mr.Justice A.K.Jayasankaran Nambiar.

Hence this petition.

Acts and rules referred

The Constitution of India.

The Prevention of Cruelty to Animals Act.

Dated this the 1st of July 2021

P.G. Ajithkumar
Registrar (District Judiciary)



Dear Chief Justice,

The immediate provocation for this letter comes from a news report that I came across yesterday reporting the cruel and inhuman killing of a dog by three minors on Adimalathura beach on the outskirts of Trivandrum. A video of the incident was also apparently posted on social media much to the disgust of many among our citizenry. While the report states that the Vizhinjam police have, on a complaint preferred by the owner of the dog, registered a case against the perpetrators by invoking certain provisions of the Prevention of Cruelty to Animals Act, it is by now common knowledge that prosecution in such matters is seldom purposive and expeditious.

It is also a matter of concern that many such incidents have been reported by the media in the last couple of years and, while each such instance is deplorable in itself, the sheer number of such cases and the frequency of their occurrence leads one to suspect that such cruelty is now turning habitual. As a people, our approach to animal rights has been far from desirable. Our enacted laws are largely in the nature of prescription of duties that we owe to animals with exceptions carved out for human necessities. The PCA Act and The Wildlife Protection Act are founded on the basic premise of superiority of the human species over all others – Speciesism – and of restrictions/control of human action as the basis for protection of animal rights. This approach virtually makes animal rights a bi-product of human compassion or benevolence. The question that we should ask ourselves now is: “Are we to

continue on this path or are we to recognize the inherent worth of all living beings and respect their claims to inheritance of nature and planet earth?"

As a species, we have amassed large powers that now ensure that we will not be easily displaced from our dominant position on Earth. This enviable position enables us to concede certain rights to other species on the planet and take affirmative action to protect those rights of the other species. It is only then that we can truly claim to be a civilized society. Just as the worth of a Constitution lies in its ability to uphold minority rights, so too does a planetary order demand a recognition of rights inherent in other living beings.

A step in this direction was taken under our Constitution through the introduction of a Chapter on Fundamental Duties in 1977, and by the Supreme Court in the case of *Animal Welfare Board of India v A. Nagaraja & Ors - 2014 (7) SCC 547*. While, **Art.48A** in the chapter on Directive Principles of State Policy speaks about protection and improvement of environment and safeguarding of forests and wildlife, **Art.51 (g)** obliges every citizen to protect and improve natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. **Art.51A (h)** obliges us to develop scientific temper, humanism and the spirit of inquiry and reform. Although the Directive Principles and the Fundamental Duties are not legally enforceable, they are to be taken note of by the State while making laws.

The Supreme Court has breathed life into these constitutional provisions by interpreting restrictions imposed in furtherance of the said provisions as

“reasonable” vis-à-vis the freedoms guaranteed to citizens under Art.19. (See: NR Nair v UOI – A. 2001 SC 2337). Later, in *Nagaraj*, the Court interpreted the provisions of the PCA Act in the backdrop of the fundamental duties prescribed under our Constitution and held that Animals should now be seen as having certain rights, corresponding to the duties that were prescribed for human beings. Accordingly, it was held that Ss.3 and 11 of the PCA Act recognized five freedoms as inherent in all animals viz.

1. Freedom from hunger, thirst and malnutrition
2. Freedom from fear and distress
3. Freedom from physical and thermal discomfort
4. Freedom from pain, injury and disease
5. Freedom to express normal patterns of behavior

It was held that, for animals, the above five freedoms were akin to the rights guaranteed to the citizens of our country under Part III of our Constitution. This shift in approach- from viewing protection of animal rights as achieved through affirmative action to protect rights inherent in animals and not merely through control of human action is reminiscent of the shift that was noticed in protection of fundamental rights of our people during the period between *Gopalan* and *RC Cooper*. We now have to look at the effect of human action on the rights of animals and not merely on control of human action.

Nagaraj also entrusted the protection of animal rights to the State by invoking the doctrine of *parens patriae*. Ideally, the State should now bring in changes to the legislation so as to make it in conformity with the new

approach. Unfortunately, there is no action forthcoming from the legislature. The Animal Welfare Bills of 2011 and 2014 were not passed and remain a dead letter.

On the international front too, the Universal Declaration of Animal Welfare, although adopted by the World Society for Protection of Animals (WSPA) (now called World Animal Protection-since 2014) and recognized by the World Health Organisation of Animal Health (OIE) of which India is a member, is not an instrument that can be universally enforced.

The time has now come to goad the State and its instrumentalities into taking affirmative action to safeguard the rights of Animals. In a democratic republic such as ours, the judiciary cannot afford to remain a passive spectator to executive and legislative inaction in the matter of protection of animal rights. We need to step into the arena, and the institution of a *suo moto* public interest litigation would be an ideal step in that direction. I would therefore request you to consider instituting a public interest litigation, *suo moto*, so as to monitor state action in reported instances of cruelty to animals as also, generally, in the matter of prevention of cruelty to animals.

The following authorities could be impleaded as respondents in the matter viz.

1. The Union of India, represented by the Secretary, Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying), Government of India, Krishi Bhavan, New Delhi – 110001
2. The Animal Welfare Board of India, represented by its Chairman, National Institute of Animal Welfare Campus PO, 42 Km Stone, Delhi –Agra

Highway, NH-2, Village-Seekri, Ballabgarh, Faridabad, Haryana – 121
004

3. The State of Kerala, represented by the Chief Secretary, the Secretary, Animal Husbandry Department & Secretary, Local Self Government Department
4. The Kerala State Animal Welfare Board
5. The State Police Chief
6. The Kerala Veterinary and Animal Sciences University

Thank you,

Yours sincerely,

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

DI-5/37511/ 2021

Sub: Request from the Honourable Mr. Justice A.K.Jayasankaran Nambiar to institute a *suo motu* public interest litigation due to the executive and legislative inaction of the State Government in the matter of protection of animal rights-reg.

Kind attention is invited to the letter from Hon'ble Mr. Justice A.K.Jayasankaran Nambiar along with the enclosures placed at pages 1-13 c.f regarding the subject matter mentioned above.

His Lordship minuted that the immediate provocation for this letter comes from a news report about the cruel and inhuman killing of a dog by three minors on Adimalathura beach on the outskirts of Trivandrum and a video was posted on social media and the reports state that the Vizhinjam police have registered a case by invoking certain provisions of the Prevention of Cruelty to Animals Act.

His Lordship also minuted that it is a matter of concern that while each instance of cruelty to animals is deplorable in itself, the sheer number of such cases and the frequency of their occurrence leads to suspect that such cruelty is turning habitual and that the approach of the people to animal rights has been far from desirable.

His Lordship further states that the Prevention of Cruelty Act and the Wildlife Protection Act are founded on -Speciesism-the basic premise of superiority of the human species over all others and of restrictions/control of human actions on the basis of protection of animal rights, which makes

animal rights a bi-product of human compassion or benevolence and that the question that we should ask is: *“Are we to continue on this path or are we to recognize the inherent worth of all living things and respect their claims to inheritance of nature and planet earth?”*

His Lordship further states that just as the worth of a Constitution lies in its ability to uphold minority rights, so too does a planetary order demand a recognition of rights inherent in other living beings as taken under Indian Constitution through the introduction of a Chapter on Fundamental Duties in 1977 and by the Supreme Court in the case of *Animal Welfare Board of India v A.Nagaraja & Ors-2014 (7) SCC 547*. It is stated that while **Art. 48A** in the chapter on Directive Principles of State Policy speaks about protection and improvement of environment and safeguarding of forests and wildlife, **Art.51(g)** obliges every citizen to protect and improve natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures, **Art.51A(h)** obliges us to develop scientific temper, humanism and the spirit of inquiry and reform and that the Supreme Court has breathed life into these constitutional provisions by interpreting restrictions imposed in furtherance of the said provisions as “reasonable” vis-a-vis the freedom guaranteed to citizens under *Art.19.(NR Nair v UOI-A.2001 SC2337)* and interpreted the provisions of the PCA Act in the backdrop of the fundamental duties prescribed under Indian Constitution and held that Animals should now be seen as having certain rights, corresponding to the duties that were prescribed for human beings.

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His Lordship also states that Nagaraj also entrusted the protection of animal rights to the State by invoking the doctrine of *parens patriae* and ideally the State should bring in changes to the legislation so as to make it in conformity with the new approach, but here is no action forthcoming from the legislature as the Animal Welfare Bills of 2011 and 2014 were not passed and remain a dead letter. The Universal Declaration of Animal Welfare, although adopted by the World Society for Protection of Animals (WSPA) (now called World Animal Protection-since 2014) and recognized by the World Health Organisation of Animal Health (OIE) is not an instrument that can be universally enforced even though India is a member.

His Lordship further states that the time has come to goad the State and its instrumentalities into taking affirmative action to safeguard the rights of Animals and in a democratic republic as ours, the judiciary cannot afford to remain passive spectator to executive and legislative inaction in the matter of protection of animal rights by stepping into the arena and that institution of a suo moto public interest litigation would be an ideal step in that direction.

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4. The Kerala State Animal Welfare Board.
5. The State Police Chief.
6. The Kerala Veterinary and Animal Sciences University.

In the circumstances, it may kindly be considered whether a writ petition (PIL) be initiated *suo motu* by the High Court on the above subject.

Submitted for orders.