

ITEM NO.5

COURT NO.5

SECTION IX, IVA
XIA, XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.691/2009

(Arising out of impugned final judgment and order dated 19/12/2008
in ASWP No. 6257/2006 passed by the High Court of Bombay)

ANIMAL WELFARE BOARD OF INDIA

Petitioner(s)

VERSUS

PEOPLE FOR ELIMINATION OF STRAY
TROUBLES & ORS.

Respondent(s)

(With appln.(s) for intervention and impleadment and interim
relief and office report)
(For final disposal)

WITH S.L.P. (C) No.1627/2009

(With interim relief and office report)

S.L.P. (C) No.1740/2009

(With interim relief and office report)

S.L.P. (C) No.11467/2009

(With office report)

S.L.P. (C) No.13004/2009

(With appln.(s) for permission to file additional documents and
office report)

S.L.P. (C) No.13772/2012

(With office report)

S.L.P. (C) No.4453/2013

(With appln.(s) for impleadment and interim relief and office
report)

S.L.P. (C) No.5899/2013

(With interim relief and office report)

S.L.P. (C) No.5900/2013

(With interim relief and office report)

S.L.P. (C) No.17112/2013

(With interim relief and office report)

S.L.P. (C)...CC 16880/2015

(With appln.(s) for impleadment as petitioner and appln.(s) for
impleadment as party respondent and appln.(s) for c/delay in
filing SLP and office report)

Date: 18/11/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. Raj Panjwani, Sr. Adv.
Mrs. Anjali Sharma, Adv.
Ms. Norma Alvares, Adv.
Mr. Hardeep Singh Anand, AOR
Mr. Rohan Thawani, Adv.
Ms. Vandana Sehgal, Adv.
Mr. Deepak Bashta, Adv.
Mr. Anand Daga, Adv.

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Mr. Mukul Talvar, Sr. Adv.
Mr. Sudhanshu S. Choudhari, AOR

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For Respondent(s) Mr. Tushar Mehta, ASG
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Mr. Kunwar Pal Singh, Adv.
Mr. Gurjyot Sethi, Adv.
Mr. Naveen Kumar, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR
Mr. Arpit Rai, Adv.

Mr. Shreekant N. Terdal, AOR

Mr. Purushottam Sharma Tripathi, AOR
Mr. Ravi Chandra Prakash, Adv.
Mr. Sanjeeb Panigrahi, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mr. Shantanu J., Adv.
Mr. Ranvir Singh Chillar, Adv.
Ms. Sushama Singh, Adv.

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Mr. Shekhar Naphade, Sr. Adv.
Mr. Atul Yeshwant Chitale, Sr. Adv.
Mrs. Suchitra Atul Chitale, AOR
Mr. Tanvi Kakar, Adv.
Mr. Chetan Sharma, Adv.

Mr. Nikhil Nayyar, AOR

Mr. Pukhrambam Ramesh Kumar, AOR
Mr. Sumit Kumar, Adv.

Mr. Basant R., Sr. Adv.
Mr. Karthik Ashok, Adv.
Ms. Liz Mathew, AOR
Mr. M.F. Philip, Adv.

Mr. E.C. Vidyasagar, Adv.
Ms. Jennifer John, Adv.

Mr. Aditya Dhawan, Adv.
Mr. Varinder Kumar Sharma, AOR

Mr. Rakesh Kumar, Adv.
Mr. Mukul Singh, Adv.

Mr. Suryanarayana Singh, Sr. AAG
Ms. Pragati Neekhra, Adv.

Mr. V. Giri, Sr. Adv.
Mr. M. Gireesh Kumar, Adv.
Mr. Sriram P., Adv.

Mr. Raj Panjwani, Sr. Adv.
Mr. Anip Sachthey, Adv.
Ms. Anjali Sharma, Adv.
Ms. Shagun Matta, Adv.

Ms. Mahima Sareen, Adv.

UPON hearing the counsel the Court made the following
O R D E R

All the applications for intervention stand allowed.

Heard learned counsel for the parties and the intervenors, Mr. Dushyant Dave, learned senior counsel, the Amicus Curiae, engaged in Writ Petition (C) No.599 of 2015 [Anupam Trivathi vs. Union of India and Others].

Though this matter was to be finally heard today, yet due to paucity of time, it has not been finally taken up for hearing for the purpose of final disposal. That apart, number of issues have also cropped up including the defensibility of the judgment and orders passed by the High Courts of Bombay, Kerala and Karnataka. We have been apprised that initially in 2006, the Kerala High Court had passed a judgment dismissing the writ petition, which was filed for protection of the stray dogs. Recently, another

Division Bench has passed a judgment on 4th November, 2015, taking the view that the Animal Birth Control Rules, 2001, (for short, 'the 2001 Rules') shall prevail over the provisions contained in Kerala Municipality Act, 1994 and the Kerala Panchayat Act, 1994.

It is submitted by Mr. Shekhar Naphade, learned senior counsel appearing for the Bombay Municipal Corporation that the legislation passed by the State of Maharashtra forming the subject matter of Bombay Municipal Corporation Act, 1888, as amended by Section 191-BA - Control and other provisions relating to dogs in the year 1975, shall withstand the test of repugnancy if challenged as there was assent from the President of India under Article 200 of the Constitution. Be that as it may, we do not intend to enter into the said debate today.

There can be no trace of doubt that there has to be compassion for dogs and they should not be killed in an indiscriminate manner, but indubitably the lives of the human beings are to be saved and one should not suffer due to dog bite because of administrative lapse.

In course of hearing, learned counsel appearing for the petitioners, except the Animal Welfare Board, would pyramid their case on the plinth and foundation that the dogs, who have various uses for human society and have served

the society for centuries and also have constitutional protection under Article 51A of the Constitution of India and the laws made, have to be taken care of. The resistance from the other side is that a bite by a stray dog creates menace in the society and in the name of compassion for dogs, the lives of human beings cannot be sacrificed.

Mr. Raj Panjwani, learned senior counsel appearing for the Animal Welfare Board, supported by Mr. C.A. Sundaram, learned senior counsel in that regard, would submit that the legislation by the Parliament has struck a balance by legislating the Prevention of Cruelty to Animals Act, 1960, (for short, 'the 1960 Act') and the 2001 Rules.

Mr. Dushyant Dave, learned senior counsel, who has been appointed as Amicus Curiae, has interestingly produced certain writings on the stray dogs by Mahatama Gandhi, the Father of the Nation. He has drawn our attention to various paragraphs, but we shall refer to the same at the time of final disposal. The said write-up be kept on record.

For the purpose of certain interim order, we have to *prima facie* understand the provisions of the 1960 Act. Section 2(b) of the said Act defines the "Board" which is established under Section 4 and reconstituted from time to time under Section 5A. Section 2(e) defines "local authority" which means a municipal committee, district board

or other authority for the time being invested by law with the control and administration of any matters within a specified local area. Section 9 deals with the functions of the Board. The said provision reads as under:

"Functions of the Board: The functions of the Board shall be Board

(a) to keep the law in force in, India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time;

(b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more particularly when they are being transported from one place to another or when they are used as performing animals or when they are kept in captivity or confinement;

(c) to advise the Government or any local authority or other person on improvements in the design of vehicles so as to lessen the burden on draught animals;

(d) to take all such steps as the Board may think fit for 11(amelioration of animals)by encouraging or providing for, the construction of sheds, water-troughs and the like and by providing for veterinary assistance to animals:

(e) to advise the Government or any local authority or other person in the design of slaughter-houses or the maintenance of slaughter houses or in connection with slaughter of animals so that unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible, and animals are killed; wherever necessary, in as humane a manner as possible;

(f) to take all such steps as the Board may

think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering.

(g) to encourage by the grant of financial assistance or otherwise, 12 (the formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like) where animals and birds may find a shelter when they have become old and useless or when they need protection:

(h) to co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds;

(i) to give financial and other assistance to animal welfare organisations functioning in any local area or to encourage the formation of animal welfare organisations in any local area which shall work under the general supervision and guidance of the Board;

(j) to advise the Government on matters relating to the medical care and attention which may be provided in animal hospital, and to give financial and other assistance to animal hospitals whenever the Board thinks it necessary to do so;

(k) to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like;

(l) to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals.

(Underlining is ours)"

We have emphasized on clause (f) as it empowers the

Board to ensure that unwanted animals are destroyed by local authorities, wherever it is necessary to do so, either instantaneously or after being rendered insensible to pain of suffering. The significant words are "the Board has to form an opinion".

Section 11 deals with treating animals cruelly. Section 12 provides for penalty of practising *phooka* or *doom dev.* Section 13 of the Act deals with destruction of suffering animals. The said provision is reproduced below:

"13. Destruction of suffering animals.-

(1) Where the owner of an animal is convicted of an offence under section 11, it shall be lawful for the court, if the court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and to assign the animals to any suitable person for that purpose, and the person to whom such animal is so assigned shall as soon as possible, destroy such animal or cause such animal to be destroyed in his presence without unnecessary suffering: and any reasonable expense incurred in destroying the animal may be ordered by the court, if the court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and to assign the animal to any reasonable expense incurred in destroying the animal may be ordered by the court to be recovered from the owner as if it were a fine:

Provided that unless the owner assents thereto, no order shall be made under this section except upon the evidence of a veterinary officer in charge of the area.

(2) When any magistrate, commissioner of police or district superintendent of police has reason to believe that an offence under section 11 has

been committed in respect of any animal, he may direct the immediate destruction of the animal, if in his opinion, it would be cruel to keep the animal alive.

(3) Any police officer above the rank of a constable or any person authorised by the State Government in this behalf who finds any animal so diseased or so severely injured or in such a physical condition that in his opinion it cannot be removed without cruelty, may, if the owner is absent or refuses his consent to the destruction of the animal, forth with summon the veterinary officer in charge of the area in which the animal is found, and if the veterinary officer certifies that the animal is mortally injured or so severely injured or in such a physical condition that it would be cruel to keep it alive, the police officer or the person authorised, as the case may be, may, after obtaining orders from a magistrate, destroy the animal injured or cause it to be destroyed; 22 (in such manner as may be prescribed).

(4) No appeal shall lie from any order of a magistrate for the destruction of an animal."

Section 38 provides for power to make rules. In exercise of power under sub-sections (1) and (2) of Section 38 of the 1960 Act, the 2001 Rules, have been framed. Rule 2(c) of the Rules mentions about the "Board" and gives the same colour and character as in Section 4 of the 1960 Act. The said rule reads as follows:

"Board" means the Animal Welfare Board of India, established under section 4 and as reconstituted under section 5A of the Act."

Rule 4 deals with formation of Committee and Rule 5 deals with the functions of the Committee. The said Rule being relevant, is reproduced below:

"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.

(h) the activities of the Committee shall be brought to the public notice by announcements and advertisements."

Rule 6 provides for obligations of the local authority. Rule 7 deals with capturing/sterilisation/immunisation/release. Rule 8 deals with identification and recording and Rule 9 provides for euthanasia of street dogs. Rule 10 deals with furious or dumb rabid dogs.

As we find, the local authorities have a sacrosanct duty to provide sufficient number of dog pounds, including animal kennels/shelters, which may be managed by the animal welfare organizations, that apart, it is also incumbent upon the local authorities to provide requisite number of dog vans with ramps for the capture and transportation of street dogs; one driver and two trained dog catchers for each dog van; an ambulance-cum-clinical van as mobile centre for sterilisation and immunisation; incinerators for disposal of carcasses and periodic repair of shelter or pound.

Rule 7 has its own significance. The procedure has to be followed before any steps are taken. Rules 9 and 10 take care of the dogs which are desirable to be euthanised.

We may note with profit that Mr. Shekhar Naphade, learned senior counsel appearing for the Bombay Municipal Corporation would contend with vehemence that the Corporation

has a duty under the Act to remove the dogs that create nuisance. As stated earlier, we will advert to the same at a later stage, but for the present it is suffice to say that all the State municipal corporations, municipal committees, district boards and local bodies shall be guided by the Act and the Rules and it is the duty and obligation of the Animal Welfare Board to see that they are followed with all seriousness. It is also the duty of all the municipal corporations to provide infrastructure as mandated in the statute and the rules. Once that is done, we are disposed to think for the present that a balance between compassion to dogs and the lives of human being, which is appositely called a glorious gift of nature, may harmoniously co-exist.

Learned counsel appearing for both the sides are at liberty to file affidavits which may contain the data of the dog bites and the steps taken by the local bodies with regard to destruction/removal of the stray dogs. They are also at liberty to file data pertaining to population of stray dogs. The local authorities shall file affidavits including what kind of infrastructures they have provided, as required under the law. Needless to emphasize, no innovative method or subterfuge should be adopted not to carry out the responsibility under the 1960 Act or the 2001 Rules. Any kind of laxity while carrying out statutory obligations, is not countenanced in law.

A copy of the order passed today be sent to the Chief Secretary of each of the States and the competent authority of Union Territories, so that they can follow the same in letter and spirit.

We would also request all the High Courts not to pass any order relating to the 1960 Act and the 2001 Rules pertaining to dogs. Needless to say, all concerned as mentioned herein-above, shall carry out this order and file their respective affidavits as directed.

Let the matter be listed on 9th March, 2016.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master