
Animal Welfare Board of India V A.nagaraja & Ors

“Whenever there is a conflict between the customs and the law, there are two outcomes of the conflict. One is where the law changes the custom and society and the other is when the customs and society change the law”. The purpose of making a case commentary on this particular case is due to the after-effects of the postponement of the judgment on the public of south India and to study the relevance and compatibility of the judgment. The paper also aims in providing an alternative Even though I stand by and support several viewpoints of the courts, I still consider it would be better for the court to have gone through a harmonious approach. The judgment was solely based on the exhibits submitted by the councils and the previous. I have briefly explained the obnoxious reactions from the public towards the judgment and the order of the government in this paper. According to my observations, the viewpoint of the government hasn't been noted enough rather the validation of the Acts and Orders were widely concentrated. The court was being too much stringent on the previous judgment in such a way that it fails to consider the sentimental feelings of the society and the benefits to them thereof. Hence there were certain curable flows on part of the court though the judgment cannot be said has completely irrelevant.

India is a country with vast divergence, culture, customs and practices which has a direct influence on the eco-system. Though these customs are sources of law many of the customs cannot be in conformity with the statute. The legislature and judiciary take steps in eradicating such practices from the society. The judgment has proved to be a milestone in the perseverance of culture and the safety of the animals. The issues in consideration of the case include one, challenging the Madras High Court judgment on validating the Tamil Nadu Regulation of Jallikattu Act (hereafter TNRJ Act) and the other, challenging the Bombay High Court Judgement validating the 2011 notification whereby bulls were added in the prohibitory list of performing animals.

Jallikattu and Rekla race is represented as a sport for bravery which uses trained bulls and participants. These bulls are subjected to immense cruelty before sending them through the entrance which leads to their violent behavior on the playground. The deaths and injuries during the game show its unhealthy nature. Thus Madras High Court in 2006 banned the practice of Jallikattu and rekla racing, which was upheld by the Supreme Court bench headed by Justice K.S. Radakrishnan in this case. An interim orders were passed by the court since till 2014 permitting both the sports, until the judgement which strictly banned the sports and held that the rights guaranteed under Sections 3 and 11 of Prevention of Cruelty to Animals (hereafter PCA Act) and Articles 51A (g) & (h) cannot be curtailed, except for procedures laid down under Sections 22 of PCA Act, and instructed the government to protect and safeguard the freedoms

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of animals. After the TNRJ Act came into force, the Act was challenged under Art 32 of the constitution. Where the Supreme Court set aside the judgment of the Madras High Court which validated the Amended TNRJ Act, 2009 and held the Act as unconstitutional and violative to PCA Act and upheld the judgment of Bombay High Court which validated the Ministry of Environment and Forest (hereafter MoEF) notification of 2011 including bulls in the list of animals prohibited from being trained.

PARTIES:

In the initial petition i.e., in the writ of Mandamus filed under Art.226 of Indian Constitution, against Deputy Superintendent of Police of 2006, the parties were

1. Petitioner: K. Muniasamy Thevar, then vice-president of Karisalkulam panchayat for whom L. Shaji Chellan appeared before the court

2. Respondent: Deputy Superintendent of Police for whom Government Advocate J. Viswanathan appeared

The judgment was held by Madras High court bench headed by Justice R. Banumathi and Pinki Chandra Ghose.

Later on, in 2014 in the SLP of Animal welfare board vs. A Nagaraja & other (2014) 7 SCC 547 the parties were

1. Petitioner or Appellants: Animal Welfare Board of India (hereafter AWBI) and People for Ethical Treatment for Animals (hereafter PETA). Sunil Kr. Jain, Aneesh Mittal, Sachin Sharma, A.K. Soni, G. Sivabalamurugan, Anis Mohd, L.K. Pandey. Dr. Adish Agarwala appeared.

2. Respondents: A. Nagaraja and other 11 petitions from 2011 to 2014 clubbed together for whom Additional General, A. Mariarputham, Raj Panjwani were the council.

In the appealed case, the son of the respondent who was a participant in the game was killed during the game due to sustaining many injuries on his body.

Procedural facts:

The 2006 and 2014 petition was initially filed in Madras High Court as a writ of Mandamus[2] under Art 226 and in 2007 the division bench consisting of Justices Elipe Dharma Rao and P.P.S. Janarthana Raja reversed the previous judgment against which several SLPs were filed in Supreme Court under Art.136[3], Art 133[4], Art 142[5] and Art. 32[6] and the bench headed

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by Justice K.S. Radhakrishnan granted the leave.

Historical facts:

Jallikattu of Tamil Nadu and Bullock cart racing of Maharashtra were being practiced for over 2500 and 450 years respectively. The term Jallikattu refers to silver or gold coins tied on the bulls' horns. In Tamil Nadu, it is a sport played on the third day of Pongal. On this day a running bull is released into a crowd, where participants either, grab and ride on the bull to stop it, or take the flag attached in the bull's horn[7]. The bulls which perform well in this game are used for breeding and they fetch a high price in the market. Similarly, rekla race of Maharashtra is organized after Makara Sankaranthi, on Chaitra astami. On this day various cart owners organize bullock cart race where bullock carts run miles and the winning team is rewarded.

The roller coaster of the bull games controversy started in the year 2004 with the petition filed by the South Indian Humanitarian League and Blue Cross of India to the Petitions' Committee of the TN state legislature to ban Jallikattu and other sports using bulls. Though the judgment of the said petitions held by Justice FM Ibrahim Kalifulla permitted the "sport" with a rider, that the bulls used in the game should be unharmed. In 2006 judgement held by Madras High Court by Justice R. Banumathi and Pinki Chandra Ghose, by expanding the scope on a writ of mandamus[8] filed against a police officer for willful omission in granting permission for the condonations filed by villagers seeking permission for conducting the game by Ramanathapuram Police the court along with dismissing the writ with reference to the 1996 judgement of Panaji Bench, Bombay High Court, banned conducting all games involving harsh training of animals like rekla race, oxen race and jallikattu. This strengthened the then PCA Act, 1960. Whereas in 2007 the division bench[9] consisting of Justices Elipe Dharma Rao and P.P.S. Janarthana Raja took a harmonious construction and enabled regulatory measures to ensure the safety of the animals instead of previous complete restriction, this order was later on overruled by three judges' bench of Supreme Court.

The apex court in 2008 granted permission for conducting rekla race by limiting the race field distance to 15m radius. The Tamil Nadu government then passed TNRJ Act to do away with this judgment, against which AWBI and PETA filed writ petition challenged in the Division Bench Judgment on the basis of PCA Act, MoEF Notification 2011. Another set of SLPs were filed again the Bombay High Court upholding the MoEF Notification 2011 and the corrigendum issued by the Government prohibiting exhibition and training of animal, of which A. Nagaraja father of a participant who died in the course of game and others, and AWBI and other animal welfare organisation working for the protection of the animals were parties, the court held the final judgement to ban both the games stating that these games as violation to S. 5 to S.11 of the PCA Act and fundamental duties, under Art 51A (g) and (h)[10] of the Constitution.

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Relief:

The relief claimed by the parties were to clarify whether

1. the TNRJ Act was in repugnancy and in violation of PCA Act 1960,
2. Jallikatt and rekla race promotes cruelty in the name of culture
3. The Bombay High Court judgment was justified in upholding the 2011 notification of the central government.

Arguments:

From the judgment, the appellants argued on the basis of physical and mental cruelty faced by the bulls, repugnancy of the Act to PCA Act and many reports, affidavits and photographs from certified authorities, which talks about the animal behavior prior and after the game highlighting the cruelty over bulls during the games. It was also argued that TNRJ Act doesn't have the effect of a law since the President has not asserted it. Furthermore forcing an animal to take part in such game was against Art.51A (g) and Art. 21[11] in addition to being in violation of S.3 and 11 of PCA Act.

Organizers of Jallikattu and rekla race took a standby stating that the game was conducted during the days of the festival which is being practised for years and proper care has been taken by the committee members and the bull owners ensuring its safety and no cruelty as mentioned under S.11(1)(a) is meted out. It was further argued that the presence of collectors, doctors and police officials etc on duty ensures such cruelty doesn't take place and also requested to regulate the event rather than stopping it. These apprehensions were met by TNRJ Act. In addition to this, it was argued by the state that non-applicability of tickets for the event excludes them from being a part of S.22 of PCA Act.

The matter of previous notifications of MoEF was also discussed with reference to N.R. Nair & Others Vs U.O.I[12], where the court formed a committee to discuss the corrigendum of exclusion of dogs from the initial list whereas the same was not done at the present situation.

The outcome of the case:

The Special Leave petition was granted and the case was disposed of, setting aside the Madras High Court order of upholding the TNRJ Act, holding the Act unconstitutional and void, upheld the Bombay High Court judgment validating 2011 notification whereby bull was included in the list of animals prohibited from being exhibited and trained.

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Application:

The judgement, in this case, strengthened the PCA Act, 1960 and elevated the rights of the animals to that of Art 21 and imposed Art 51 of the constitution as a strict obligation upon the citizens. It also held that spectators would also be hurt, since the requirement of 8 feet high barricades were not emulated and guaranteed rights under S.3 and 11 of PCA Act r/w Art.51A (g) & (h) cannot be curtailed, unless as per S. 11(3) and 28 of PCA Act. Also recommended the state and other authorities to take reasonable steps to ensure the protection of the freedoms. The TNRJ Act 2009 was held violative to Art. 254(1).

Analysis

The judgment starts with a brief summary of the case followed by arguments and the holding. The decision of Supreme Court thought was appropriate there were alternative methods available which could have been much more harmonious in nature. The judgment might have strengthened the animal protection workers and raised the status of the animal right to the level of fundamental rights in the constitution. But it has also led to public unrest in the state for three days which ended in the passing of an ordinance. The logical reasoning in the judgment was irrational and it was pleaded by the prosecutor that "if the court can grant permission for slaughtering animals for religious then why not grant permission to conduct a game which doesn't possess any threat to their life".

Regarding the repugnancy nature of the tnjrj act with respect to PCA act, 1960:

It has to be noted that Entry 17[13] of List 3 guarantees the right to frame laws on the said subject to both State and Union government. The PCA Act was enacted in 1960 for this purpose. In 2009 the TN State government passed TNRJ Act which was argued to be repugnant to the 1960 Act. This entry indirectly implies that such laws cannot be made which could be hazardous with respect to the purpose of the entry. The evidence submitted by the AWBI and PETA where cruelty on animals are shown cannot be left blind. The animal which is being taken care of so well and trained require an external pressure to force them to behave in such a manner as in the games, which is certainly in direct conflict with the Act. The repugnancy arises only when there is any conflict between both acts and when there is an overlap between the provisions of the Acts. But here the 2009 Act cannot be repugnant to 1960 because the 2009 Act can be viewed as an extension to that of 1960 Act. Although the recent act permits the exhibition and training of the animal, prohibited in the 1960 Act. But the Act provides strict regulation over the rules and health of the bulls.

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The game is a cruelty not only towards the animals but also towards participants and spectators. The increase in the number of deaths and injured while conducting the game cannot be ignored. The responsibility of State is much wider. Public health being a matter under State list have equal importance as ensuring public interest. Thus the Act which has a direct impact on the health and safety of the public cannot be encouraged. Art 19 (1) (g) has given the right to practice, profess and carry any occupation trade or business and also forbids to force any citizen to practice profession hence the State cannot force the citizen to engage in non-profit trade in the name of Agriculture. Though banning the sports could end the physical and mental torments faced by the bulls it could also affect in the slaughtering of them and leads to their extinction. This is against the Biodiversity Act 2002.

The Court laid down the aspects of Article 51-A (g) and (h), Fundamental Duties on the part of the citizens and extended the scope of Art. 21 to the animals. It is indeed a 'dangerous sport'. Considering the number of people being injured and died and the cruelty and harassment faced. As said by Mahatma Gandhi "The greatness of a nation and its moral progress can be judged by the way its animals are treated". Treating an animal with cruelty for its existence doesn't make an ideal methodology. But instead of banishing regulating is better.

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