

Madras High Court
K. Madhavan vs The District Collector on 4 September, 2008
Dated : 04..09..2008

C O R A M

The Honourable Mr. A.K. Ganguly, Chief Justice

and

The Honourable Mr. Justice F.M. Ibrahim Kalifulla

Writ Petition No.21598 of 2008

K. Madhavan .. Petitioner

versus

1. The District Collector,

Salem, Salem District.

2. The Revenue Divisional Officer,

Sankari, Sankari Tk.,

Salem District.

3. The Tahsildar,

Sankari, Sankari Tk.,

Salem District.

4. The Superintendent of Police,

Salem, Salem District.

5. The Inspector of Police,

Magudanchavadi Police Station,

Magudanchavadi, Salem District. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for a writ of mandamus directing the respondents to to prevent the 'Erudhattam' to be held at Muthu Muniappan Temple, Koodalur Village, Magudavanchavadi P.O., Salem District by considering the petitioner's representation dated 29.8.2008. - - - - -

For Petitioner : Mr. V. Raghavachari

For Respondents : Mr. J. Raja Kalifulla, Govt. Pleader

ORDER

(Delivered by The Honourable the Chief Justice)

Heard the counsel for the parties. This writ petition has been filed by one K. Madhavan in public interest praying for a writ of mandamus to be issued by this Court directing the respondents to prevent the 'Erudhattam' to be held at Muthu Muniappan Temple, Koodalur Village, Magudavanchavadi P.O., Salem District, in view of the representation dated 29.8.2008 sent by the petitioner.

2. In the writ petition, it has been averred that every year in the Tamil month of 'Aavani', in the aforesaid Sri Muthu Muniappan Temple, an event called 'Erudhattam' is conducted and this year, the said event is scheduled to be held tomorrow, i.e., 5.9.2008. It is further averred that people from the surrounding villages take part in the said event and for this purpose, they bring in more than 100 bulls from their respective villages. Such bulls are kept in the temple place in the petitioner's village 15 days before the said event. In the said event, a kind of sport or game is organized in which the bull is tied by its neck with nylon ropes from both sides and the participants hold the ropes. A big mud doll tied in a bamboo is shown in front of the bull, which is for the purpose of frightening the bull. As a result of such strategies being adopted by the villagers, the bull gets angry and attacks the mud doll. In this process, the bull tries to run here and there, but the people who hold the ropes on both sides prevent the bull from running further and in this manner, the bulls are being tortured. The bulls are tethered and brought to their village in a procession, accompanied by firing of crackers and beating of drums and the bulls are not given any food or water, thereby subjecting them to cruelty. It is averred that this kind of a sport involves a risk to the lives of the participants and the spectators inasmuch as the bulls may, under the torture and pain suffered by them, run into the spectators and injure them. It is also averred that the bulls are subjected to whipping, beating and twisting of their tails, pulling of their hind legs etc. As a result of such activities in the said sport, the bulls get injured in the head, eyes and legs. The bulls are also made to drink liquor and therefore, they become aggressive and furious. Further, chilli powder is also thrown into their eyes, as a result of which the bulls run wildly, providing so called amusement to the spectators and in the process, the bulls are injured and there is also a possibility of the spectators getting injured. Therefore, this petition has been filed for a writ of mandamus directing the respondents to ban this kind of sport.

3. When the writ petition came up for admission on 2.9.2008, we directed the learned Government Pleader to take instructions in the matter. The learned Government Pleader, after taking instructions, has produced before us a letter dated 3.9.2008 sent by the Tahsildar, Sankari to the District Collector, Salem. From the contents of the said letter, it appears that a meeting was held among the villagers and the decision of the said meeting was reported by the Tahsildar to the District Collector. The decision seems to be that only one bull will be used in the event and only sandalwood paste will be applied on the forehead of the said bull and that bull will be worshipped and further that no bull race will be conducted, nor will any bull be subjected to cruelty.

4. Learned counsel appearing for the petitioner has produced before us several judgments passed by different High Courts and also of the Supreme Court in order to highlight that all forms of cruelty to an animal should be stopped.

5. Reference in this connection can be made to the provision of Section 11 of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as 'the said Act' in short). It appears that the said Act has been enacted to prevent infliction of unnecessary pain or suffering on animals and Section 11(1)(a) of the said Act provides as follows :- "11. Treating animals cruelly. (1) If any person

(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated; or

he shall be punishable, 5in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.]"

This Court find that if the averments made in the writ petition are true, then the persons who are responsible for infliction of such pain or suffering to the bull come squarely within the prohibition of the aforesaid provision of the said Act.

6. It appears that the Government of Kerala issued a notification which prohibited the owners of circus from subjecting animals to torture and cruelty while giving them training for performing in the circus. The said notification was challenged before a Division Bench of the Kerala High Court and the learned Judges of the Division Bench in the judgment rendered in the case of *Jumbo Circus vs. Union of India* reported in 2000 (2) K.L.T. 625, have upheld the said notification. While doing so, the learned Judges of the Kerala High Court have been pleased to come to the following conclusion :- "In conclusion, we hold that circus animals are being forced to perform unnatural tricks, are housed in cramped cages, subjected to fear, hunger, pain, not to mention the undignified way of life they have to live, with no respite and the impugned notification has been issued in conformity with the changing scenario, values of human life, philosophy of the Constitution, prevailing conditions and the surrounding circumstances to prevent the infliction of unnecessary pain or suffering on animals. Though not homo sapiens, they are also being entitled to dignified existence and humane treatment sans cruelty and torture. In many respects, they comport better than humans, they kill to eat and eat to live and not live to eat as some of us do, they do not practice deception, fraud or falsehood and malpractices as humans do, they care for their little ones expecting nothing in return, they do not proliferate as we do depleting the already scarce resources of the earth, for they practice sex restraint by seasonal mating, nor do they inhale the lethal smoke of tobacco polluting the atmosphere and inflicting harm on fellow beings. All animals except the very lowest exhibit some degree of intelligent behaviour, ranging from learned responses to complex reasoning. Many believe that the lives of humans and animals are equally valuable and that their interests should count equally. Their contribution to the health of humans is invaluable, once it is remembered that nearly every advance in health care and combating human diseases has been based on animal research. Animals also provide models for the study of human diseases. New drugs are tested on animals to help determine their potential for causing cancer or other disease or for harming embryos and fetuses in the womb. Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognise and protect their rights." We are in respectful agreement with the aforesaid conclusion reached by the learned Judges of the Kerala High Court. When the said judgment was challenged before the Supreme Court, by a judgment rendered in the case of *N.R. Nair vs. Union of India* reported in (2001) 6 S.C.C. 84, the Supreme Court upheld the judgment of the Kerala High Court and upheld the notification which was issued by the Government of Kerala to prevent cruelty to animals.

7. In another judgment delivered by the Bombay High Court (Panaji Bench) in the case of *People for Animals through Mrs. Norma Alvares vs. State of Goa* reported in 1997 (4) Bombay Civil Reporter 271, a Division Bench of the Bombay High Court came to a similar conclusion in the matter of preventing cruelty to animals, especially in the context of organizing bull fights for entertaining crowd. While referring to the provisions of the aforesaid Act, the learned Judges observed as follows :- "21. It is thus clear that the enactment of the law to prevent cruelty to the animals is not an end in itself. What is more important is the implementation of that Act and to see to it that the activities which are prohibited under the said Act do not take place in the State and in case of infringement of the provisions of the said Act, to take strict action against the offenders. Likewise, it is also obligatory upon the respondents to see to it that the provisions dealing with the prohibition of certain activities are effectively enforced by preventing such activities. Failure on the part of the

respondents to take preventive measures will certainly amount to tolerance of violation of the provisions of the said Act and such tolerance will render legal provisions contained in the said Act nugatory and also will encourage lawlessness.

22. It cannot be disputed that all animals are born with an equal claim for life without any cruelty to them. Perhaps if this right was given proper recognition by the human-beings, there would have been no necessity to bring on the statute book the said Act. Unfortunately, even though the said Act has been brought in force in the State, still there appears to be either lack of courage or wilful negligence on the part of the respondents to implement the provisions of the said Act and, therefore, in our considered opinion, the petitioners are justified in making grievance about the same. The respondents cannot shirk their responsibilities to prevent the cruelty to the animals. In fact, to prevent such cruelty to animals, it is obligatory upon the respondents to take action under the various provisions contained in the said Act. In paragraph 26 of the said judgment, the learned Judges quoted the views of Justice V.R. Krishna Iyer in his Treatise on Human Rights and made the following very pertinent observations :- 'While we are expressing deep anguish and sigh of great displeasure over torture inflicted on innocent animals in this country and that too despite the Vedas, the Bible, the Koran, the Buddha and Mahavire and the Supreme miracle and revolutionary apostle of Ahimsa, Mahatmaji, Justice Krishna Iyer has warned us that we have forfeited the right to be heirs of a culture of Karuna, Samata and Dharma. Justice Krishna Iyer further reminds us that humanism cannot be halved by denying it to prehuman brethren and compassion is beyond division by refusing it to the Darwinian species; all life is too divinely integral to admit of unnatural dichotomy as man and animal in the wholeness of ecology. Justice Krishna Iyer, therefore, reminds us the message of kindness found in Koran which reads as under : 'There is not an animal on the earth, nor a flying creature on two wings, but they are people like unto you.'

We are in respectful agreement with the aforesaid very valid and pertinent observations.

8. The photographs which have been shown to us by the learned counsel for the petitioner in support of his case made out in the writ petition depict a pathetic sight of a bull being tortured in different ways which have been stated by us in the foregoing paragraphs. This Court fails to understand why people, who claim to be civilized, in the 21st Century, find pleasure in torturing a helpless animal in this fashion. We are sorry to observe that all these things go unhindered in this country in the name of religion, whereas the essence of all religions is tolerance and compassion to all living beings, and there cannot be any religious practice which is totally divorced from kindness and is based solely on cruelty. In any event, when such a matter is brought before the Court, it is the duty of the Court to follow the law and to ensure its compliance, especially the provisions of Section 11(1)(a) of the said Act which have been quoted hereinabove, in order to maintain the rule of law. This Court is of the opinion that there cannot be any custom or usage which is contrary to law, nor should it be allowed to be performed violating the law and when such matters are brought before the Court, the Court must render a decision for implementing the law.

9. Learned Government Pleader has drawn the attention of this Court to the judgment of a Division Bench of this High Court in the case of K. Muniasamy Thevar vs. The Deputy Superintendent of Police, Keelakkarai reported in 2007 (3) L.W. 154. The learned Government Pleader submits that in the said judgment, a complete ban on village sports even such as Jallikattu, Manjuvirattu and Rekla Race was modified by the learned Judges of the Division Bench by allowing such sports to be held in a regulated manner. The Division Bench in that case held that a balance should be struck by regulating the conduct of such sports events by enacting appropriate legislation by the State and by ensuring strict implementation thereof by the District Administration and the police.

10. Keeping in mind the aforesaid decision of our High Court and the decisions rendered by the Bombay High Court, the Kerala High Court and the Supreme Court, we direct that save and except worshipping of a bull by applying sandalwood paste on its forehead, no other act, whereby a bull or any other animal is subjected to cruelty, should be allowed to be performed in the 'Erudhattam' which is scheduled to be held tomorrow at the

Muthu Muniappan Temple, Koodalur Village, Magudavanchavadi P.O., Salem District. We make it clear that worshipping a bull does not mean subjecting that animal to any acts of cruelty.

11. We, therefore, permit the event to be held strictly on the condition that the bull or any other animal which is being worshipped shall not be subjected to any acts of cruelty and it shall not in any way violate the provision of Section 11 of the Prevention of Cruelty to Animals Act, 1960. We direct the District Collector, Salem to take adequate steps to ensure compliance with our order by, if necessary, posting police pickets in the said area. The writ petition is thus disposed of, but there shall be no order as to costs. Consequently, M.P. No.1 of 2008 is closed.

12. Since the festival is going to take place tomorrow, we are directing the operative portion of this order to be made over to the counsel for the parties today itself. Learned Government Pleader is directed to communicate this order to all the respondents for strict compliance.

ab

To

1. The District Collector,

Salem, Salem District.

2. The Revenue Divisional Officer,

Sankari, Sankari Tk.,

Salem District.

3. The Tahsildar,

Sankari, Sankari Tk.,

Salem District.

4. The Superintendent of Police,

Salem, Salem District.

5. The Inspector of Police,

Magudanchavadi Police Station,

Magudanchavadi,

Salem District