

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Chief Justice Thottathil B. Radhakrishnan
AND
The Hon'ble Justice Biswanath Somadder

W.P. 7022 (W) of 2019
(Unlisted)

Human & Environment Alliance League & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Siddhartha Mitra, Sr. Advocate,
Ms. Rituparna Chatterjee
... For the petitioners.

Mr. Sirsanya Bandopadhyay
Mr. Subhendu Sengupta
... For the State.

Mr. Kaushik Chanda, Ld. A.S.G.,
Ms. Debjani Ghosal
... For Union of India.

Heard on: 18.4.2019.

Judgment on: 18.4.2019.

By consent of the parties, the matter is treated as on day's list.

The writ petition has been taken out as a Public Interest Litigation by an organization named, Human & Environment Alliance League. The writ petitioner no. 2 is an individual, who has described himself as the secretary of the said organization.

The issue sought to be raised in the instant writ petition is with regard to protection of the environment, forests and wildlife at large and particularly in order to prevent killing of thousands of wild mammals, birds and reptiles, which are protected under the various schedules of the Wild Life (Protection) Act, 1972. It has been specifically stated by the writ petitioners that such killing takes place annually by hunters from tribal and non-tribal communities during 'Shikar Utsavs', particularly in the districts of Paschim Medinipur, Bankura, Purulia, Jhargram and Murshidabad. The petitioners have stated that they had earlier approached this Court in order to prevent indiscriminate slaughter of thousands of endanger wild animals in the name of ritualistic hunting. The petitioners have also referred to an order dated 10th May, 2018, passed in its earlier writ petition, being W. P. 166 (W) of 2018.

When this Court took up this matter initially, it had directed the respondent no. 3, being the Principal Chief Conservator of Forests, Wildlife and Chief Wildlife Warden, Department of Forests, Government of West Bengal, to file a report in the form of an affidavit on or before the next date responding specifically to the allegations made in the writ petition. Subsequently, when the matter was taken up for further consideration on 12th April, 2019, a report in the form of an affidavit was filed wherefrom it appears that instead of respondent no. 3, the report in the form of an affidavit has been prepared by an Assistant Wildlife Warden working in the office of the Principal Chief Conservator of Forests, Wildlife and Chief Wildlife Warden, Department of Forests, Government of West Bengal.

Without looking into the contents of the report – at the very outset – we must observe – with dismay and disappointment – that even when the First Division Bench of this High Court had issued a specific direction upon the Principal Chief Conservator of Forests, Wildlife and Chief Wildlife Warden, Department of Forests, Government of West Bengal, to file a report in the form of an affidavit, in terms of the order dated 5th April, 2019, the person who has come forward is an Assistant Wildlife Warden who merely works in the office of the said respondent no. 3, namely, the Principal Chief Conservator of Forests, Wildlife and Chief Wildlife

Warden, Department of Forests, Government of West Bengal. The Court's direction was quite specific and in the facts of the instant case, the report in the form of an affidavit ought to have been affirmed by the Principal Chief Conservator of Forests, Wildlife and Chief Wildlife Warden, Department of Forests, Government of West Bengal, instead of an Assistant Wildlife Warden working in his/her office.

Be that as it may, coming now to the averments as contained in the report in the form of an affidavit filed by the Assistant Wildlife Warden, we find the following statement made in paragraph 3: -

“Every year hunting of wild animals takes place on select days in different Districts of South of West Bengal. The Wildlife Wing under the Department of Forests, Government of West Bengal takes all possible precautionary and preventive measures for controlling these hunting activities.”

The above statement makes it clear that it is to the knowledge of the concerned wing of the Forests Department that every year hunting of wild animals takes place on select days in different districts of South Bengal. However, it does not state specifically as to what possible precautionary or preventive measures are taken for controlling these hunting activities.

Paragraph 6 of the said affidavit indicates certain advisories issued by the Wildlife Wing of the Forests Department to the Field formations regarding appropriate actions to be taken in order to prevent atrocities against wild animals during religious festivals.

In paragraph 8 of the said affidavit it has been stated that District Level Forest Officers hold regular meetings with respective Joint Forest Management Committees and other villagers.

Paragraph 9 states, inter alia, that banners are displayed at prominent locations in forest areas. Posters and leaflets are distributed among villagers, school children, etc. in order to make them aware of the disastrous effects of such hunting festivals.

In paragraph 11 it has been stated that the Wildlife Wing of the Department of Forests, Government of West Bengal, has taken steps and such actions which are being prayed for in the instant writ petition. It

is further stated that the Department will not shy away from its duties to prevent killing of wild animals and will take every possible step necessary in addition to the steps already taken in order to prevent any kind of illegal activity in the forests.

Since it is evident from the statement made in paragraph 11 of the report in the form of an affidavit that the Department will not shy away from its duties in order to prevent killing of wild animals and will take possible steps necessary in addition to the steps already taken to prevent any kind of illegal activity in the forests, we wish to draw the attention of the Department of Forests to section 9 of the Wild Life (Protection) Act, 1972, which reads as follows: -

“9. **Prohibition of hunting.** – No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under section 11 and section 12.”

Section 11 of the said Act of 1972, provides for hunting of wild animals to be permitted in certain cases. For convenience, section 11 is reproduced hereinbelow in its entirety: -

“11. **Hunting of wild animals to be permitted in certain cases.**
– (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV, –

(a) the Chief Wild Life Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted:

[Provided that no wild animal shall be ordered to be killed unless the Chief Wild Life Warden is satisfied that

such animal cannot be captured, tranquilised or translocated:

Provided further that no such captured animal shall be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing.

Explanation. – For the purposes of clause (a), the process of capture or translocation, as the case may be, of such animal shall be made in such manner as to cause minimum trauma to the said animal.]

- (b) the Chief Wild Life Warden or the authorised officer may, if he is satisfied that any wild animal specified in Schedule II, Schedule III, or Schedule IV, has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt [such animal or group of animals in a specified area or cause such animal or group of animals in that specified area to be hunted].
- (2) The killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence:

Provided that nothing in this sub-section shall exonerate any person who, when such defence becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made thereunder.

- (3) Any wild animal killed or wounded in defence of any person shall be Government property.”

In order to prevent offences being committed under the Act of 1972 and for detection of such offences, section 50 of the said Act of 1972, empowers the Director or any other officer authorised by him

in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector to enter, search, arrest and detain any person for having committed as offence under the Act of 1972, if he has reasonable grounds for believing that such offence has been committed. For convenience, section 50 of the said Act of 1972, is required to be noticed and is reproduced hereinbelow: -

“50. Power of entry, search, arrest and detention. – (1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act, –

- (a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, [trophy, uncured trophy, specified plant or part or derivative thereof] in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;
- (b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in his possession;
- (c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge

which may preferred against him, arrest him without warrant, and detain him:

Provided that where a fisherman residing within ten kilometers of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized.]

(3) It shall be lawful for any of the officers referred to in sub-section (1) to stop and detain any person, whom he sees doing any act for which a licence or permit is required under the provisions of this Act, for the purposes of requiring such person to produce the licence or permit and if such person fails to produce the licence or permit, as the case may be, he may be arrested without warrant, unless he furnishes his name and address, and otherwise satisfies the officer arresting him that he will duly answer any summons or other proceedings which may be taken against him.

(3A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or [an Assistant conservator of Forests], who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.]

(4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law [under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard].

(5) Any person who, without reasonable cause, fails to produce anything, which he is required to produce under this section, shall be guilty of an offence against this Act.

[(6) Where any meat, uncured trophy, specified plant or part of derivative thereof is seized under the provisions of this section, the Assistant Director of Wild Life Preservation or any other officer of a gazetted rank authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer may arrange for the disposal of the same in such manner as may be prescribed.]

(7) Whenever any person is approached by any of the officers referred to in sub-section (1) for assistance in the prevention or detention of an offence against this Act, or in apprehending persons charged with the violation of this Act, or for seizure in accordance with clause (c) of sub-section (1), it shall be the duty of such person or persons to render such assistance.

[(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or [an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf] shall have the powers, for purposes of making investigation into any offence against any provision of this Act, –

- (a) to issue a search warrant;
- (b) to enforce the attendance of witnesses;
- (c) to compel the discovery and production of documents and material objects; and
- (d) to receive and record evidence.]

[(9) Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.]”

Any person who contravenes any provision of the said Act of 1972 (except Chapter VA and section 38J) or any rule or order made thereunder is liable to be penalized in the manner as prescribed under section 51 of said Act of 1972. Section 51 reads as follows: -

“51 Penalties. –(1) Any person who [contravenes any provision of this Act [(except Chapter VA and section 38J)] or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to [three years] or with fine which may extend to [twenty-five thousand rupees] or with both:

[provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees:

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.]

[(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than [three years] but which may extend to seven years and also with fine which shall not be less than [ten thousand rupees].

[(1B) Any person who contravenes the provisions of section 38J shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year, or with fine which may extend to five thousand rupees.]

[(1C) Any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relate to hunting in the tiger reserve or altering the boundaries of the tiger reserve, such offence shall be punishable on first conviction with imprisonment for a term which shall not be less than three years but may extend to seven years, and also with fine which shall not be less than fifty thousand rupees but may extend to two lakh rupees; and in the event of a second or subsequent conviction with imprisonment for a term of not less than seven years and also with fine which shall not be less than five lakh rupees but may extend to fifty lakh rupees.]

[(1D) Whoever abets any offence punishable under sub-section (1C) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for the offence.]

(2) When any person is convicted of an offence against this Act, the court trying the offence may order that any captive animal, wild animal, animal article, trophy, [uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof] in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

(3) Such cancellation of licence or permit or such forfeiture shall be in addition to any other punishment that may be awarded for such offence.

(4) Where any person is convicted of an offence against this Act, the court may direct that the licence, if any, granted to such person under the Arms Act, 1959 (54 of 1954), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a licence under the Arms Act, 1959 (54 of 1959), for a period of five years from the date of conviction.

[(5) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.]”

The provisions of law – as quoted above – provide ample statutory power to the officers of the Forests Department in order to prevent atrocities against wildlife animals during ritualistic hunting festivals. However, for the purpose of the Court taking cognizance of offences, specific complaints are required to be made in the manner as prescribed under section 55 of the Act of 1972, which reads as follows: -

“55. Cognizance of offences. – No court shall take cognizance of any offence against this Act except on the complaint of any person other than –

(a) the Director of Wild Life Preservation or any other officer authorised in this behalf by the Central Government; or

- [(aa) the Member-Secretary, Central Zoo Authority in matters relating to violation of the provisions of Chapter IVA; or]
 [(ab) Member-Secretary, Tiger Conservation Authority; or]
 (ac) Director of the concerned tiger reserve; or]
 (b) the Chief Wild Life Warden, or any other officer authorised in this behalf by the State Government [subject to such conditions as may be specified by that Government]; or
 (bb) the officer-in-charge of the zoo in respect of violation of provisions of section 38J; or]
 (c) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorised as aforesaid.”

We are of the view that in the facts and circumstances of the instant case, it was incumbent on the part of the concerned forests department officials to have lodged complaint(s) in the manner as prescribed under section 55 of the Wild Life (Protection) Act, 1972. The fact that offences committed under the Wild Life (Protection) Act, 1972, are considered serious enough will be apparent from certain stringent conditions which apply while granting bail to those accused persons as provided under section 51A of the Wild Life (Protection) Act, 1972, which reads as follows: -

“51A. Certain conditions to apply while granting bail. – When any person accused of, the commission of any offence relating to Schedule I or Part II of Schedule II or offences relating to hunting inside the boundaries of National Park or wild life sanctuary or altering the boundaries of such parks and sanctuaries, is arrested under the provisions of the Act, then notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) no such person who had been previously convicted of an offence under this Act shall, be released on bail unless –

- (a) the Public Prosecutor has been given an opportunity opposing the release on bail; and
- (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable ground for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.]”

Taking all the provisions of law – as discussed above – into consideration and in the facts of the instant case, we direct the Principal Chief Conservator of Forests, Wildlife, who is also the Chief Wildlife Warden, Department of Forests, Government of West Bengal, to take immediate steps in the matter for effective prevention of atrocities against wildlife during ritualistic hunting festivals.

In order to give full effect to this order, the respondent no. 3, namely, the Principal Chief Conservator of Forests, Wildlife and Chief Wildlife Warden, Department of Forests, Government of West Bengal, shall be rendered all possible cooperation by District level, Sub-Divisional level and Block level officers, both of the civil administration as well as the police authorities.

The concerned railway authorities shall also render effective cooperation in this regard.

The instant writ petition stands accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties.

(Biswanath Somadder, J.)

(Thottathil B. Radhakrishnan, C. J.)

