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NEW DELHI

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GOVERNMENT OF INDIA  
MINISTRY OF ENVIRONMENT & FORESTS

D.O.No.PPS/Addl. DGF (WL) 2001

Dated the 3<sup>rd</sup> August, 2001.  
PARYAVARAN BHAVAN, C.G.O. COMPLEX  
LODHI ROAD, NEW DELHI-110003

Dear Sir,

I want to invite your attention to my D.O. No. PPS/Addl. DGF (WL)/2001 dated 18<sup>th</sup> May, 2001 in which I had requested you to cancel the Legal Procurement Certificate (LPC) for tigers, panthers, bears and lions held by circuses in their stocks. Since then the Bombay High Court has upheld the stand taken by the Government. A copy of the judgment is being enclosed. However the operation of judgment has been stayed in respect of the petitioner's i.e. Great Royal Circus, Jambo Circus for a period of four weeks. Also, Punjab High Court has directed that Amar Circus should not be disposed of animals in their collection till the pendency of case. Now, there should be no hitch to cancel the LPC of other circuses.

Certain questions are being raised from various levels about implementation of the directives given by the Ministry. For the sake of clarity, it is to mention that the action to cancel the license of LPC will have to be taken by the Chief Wildlife Warden or the officer authorized in this behalf. Once the LPC are cancelled, it is incumbent upon the Chief Wildlife Warden or the officer authorized in his behalf to cancel the license and intimate about the cancellation of the LPC's to the circus as well the Chief Wildlife Warden of all the States, particularly to the State where the circus might be operating if details are available. Getting the original copy of LPC is not necessary for cancellation of LPC. The work of making the endorsement on the original LPC should be done by the authorities of the State where the zoo is operating.

Once orders of cancellation of LPC have been issued, it is also incumbent upon the Chief Wildlife Warden of the State, where the circus is operating to take over the charge of the animals in the custody of the circus, in view of the provisions of Section 40 Sub-section 2 and 39 sub-clause (3) and section 43 of the Wild Life (protection) Act. Once the certificate has been cancelled, the person can neither keep the animals in his possession, custody or control nor transport same. According to Section 39 the animals become Government property.

The Central Government is aware that the Chief Wildlife Wardens do not have the facilities of housing, upkeep and health care of such animals. Therefore rescue centers have been created at Vandalur, Bannerghatta, Tirupadi and visakhapattanam. Action has to be taken to transport the animals expeditiously to these rescue centers. All precautions have to be taken for the safe journey of the animals, particularly their care during transit.

The amount spent by the State Government on taking procession of the animals providing them feed, health care and other facilities before and during the transport and transportation cost will be paid by Government of India. For the purpose, you may kindly approach Shri R.K. Jain, Director (Animal Welfare). Ministry of social justice and Empowerment. He will make necessary arrangements for payment of transportation cost in advance. This Ministry and Central Zoo Authority should be kept informed of the action taken.

Recently in a case, it has been found that animal was in trouble because of inappropriate size of the transportation cage. Therefore, it will be advisable to keep the zoo director in your State involved in the upkeep and transportation and provide the service of zoo veterinarians in the process of transportation. Ministry will ensure that when animal reach the rescue centre, these are taken into charge immediately and no inconvenience is caused to the persons accompanying the animals.

With regards,

Yours Sincerely.  
(S.C. SHARMA)

Chief Wildlife Warden of All States

Endt. On WL (6) 6181/98.

Office of the  
Chief Conservator of Forests (Wildlife)  
Thiruvananthapuram, Dt: 10/8/2001.

Copy forwarded to all Conservator of Forests for attention and report on operation of circus within their jurisdiction.

For Chief Conservator of Forests (Wild life).

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO . 1475 OF 2000

Shri Ajay Shankar & ors.

..Petitioners

Vs

Union of India & Ors.

..Respondants

Mr .Shyam Mehta with Mr. S.K. Chaturyodi i/b Mr. N. Raja fir the petitioners.

Mr. Raj Panjwani with Mr. A.C. Singh for respondents no. 1 and 2.

Mr. R.M. Sawant, Government pleader, for respondents no 3 and 4.

CORAM : H.L. GOKHALE &  
D.B. BHOSALE.JJ

DATE : 12<sup>TH</sup> JULY 2001.

ORAL ORDER : (Per Gokhale, J)

1.Heard Mr. Mehta for the petitioners. Mr. Panjwal appears for respondents No 1 and 2 and Mr Sawant, Government pleader, appears for respondents No.3 and 4

2.The petitioners here in are running three different circus companies known as jumbo known as jumbo Circus, Great Royal Circus and Rambo Circus respectively. Amongst other animals they are having in their custody lions, panthers, tigers and bears. In the present petition, they are challenging the letter dated 6<sup>th</sup> June 2000 issued by the Director (Law) & Member Secretary Government of India, Respondant No 2 herein. The letter is addressed to the Chief Conservator of Forests. (Wildlife) and it is concerning the cancellation of certificate of ownership issued in regard to five categories of animals which are lion, tiger , panther, bear and monkey. These certificates of ownership are issued by the Chief Wildlife warden under section 42 of the wildlife (protection) Act ,1972. The letter informs, the Chief Conservator of Forests of Gujarat that rescue centres have been set up at five places, namely at Tirupati, Visakapattanam, Bangalore jaipur and Vardalur (Chennai) and finally makes a request as follows :

It is therefore requested to cancel all the certificates of ownership issued in regard to these five animals to circuses immediately.

3.There is no dispute that these circus companies have a certificate of ownership with respect to animals falling in these five categories. These certificates were obtained essentially for the purpose of the circus companies. The entire tonor of the petition discloses that. Subsequently it has so happened that the authorities concerned moved under the prevention of cruelty to Animals Act, 1960 and issued the necessary notification under section 22 of that Act and have banned the training and exhibiting of animals. This notification issued on 14<sup>th</sup> October 1998 under section 22 of that Act led to a writ petition to the Kerala High Court and the Judgment of the Kerala High Court

upholding the said notification is reported in the case of N.R. Nair V. Union of India in Air 2000 Kerala at page 340. The judgment of the Division Bench of that High Court uphold that notification. The matter was carried to the Apex Court in Civil Appeal Nos.3609-3620 of 2001 and by its judgment and order dated 1<sup>st</sup> may 2001 in N.,R, Nair Vs Union of India, the Apex Court has dismissed those appeals. The judgment is now available on 2001 SOL case No,328. The letter under challenge in the present petition is a sort of a sequitur to the earlier notification and under this communication, now the Chief Conservator of Forests ys requested to cancel the ownership certificates issued to the Circus companies.

4.Mr. Mehta, learned counsel appearing for the petitioners, does not dispute that these animals were used for the purpose of the circus after obtaining the certificates. He however states that now the circus owners do not intend to train or exhibit these animals. He further states that they do not intend ----them also from one place to another place and to exhibit them and make money. An affidavit has been filled by the 3<sup>rd</sup> petitioner which states that the 3<sup>rd</sup> petitioner intends to buy a land near Pune and to place these animal over there. The affidavit states that those animals have been bought and some of them have been born and along with the circus company and the petitioner keep them.

5.Mr, Mehta submits that the prevention of Circus to Animals Act 1960 provides for a procedure to deprive the person who is owning the animals from his ownership of those animals. The person who is owning those animals has to be prosecuted for the offences notification section 26 of that Act and if convicted under section 19, one can be deprived of the ownership of the animals. From the ownership of the petitioners. The States that --- letter is acted upon, it will lead to depriving the impinged petitioners of their ownership over these animals a procedure not provided for in law.

6.While drawing our attention to the provisions the wildlife (protection) Act 1972, with which we concerned in the present matter, Mr. Mehta points out that the certificate of ownership is issued under section of that Act by the Chief Wildlife Warden if he is of the opinion that the person concerned is in Lawful possessions of these animals. He submits that under this Act. There is no provision of depriving a person concerned of ownership of the animals. For that matter, he submit that there is no specific provision to cancel the certificates under the Act. He therefore submits that the impugned communication or respondent No 2 is bad in law and it will lead to cancellation of ownership certificate which cannot be permitted to be done in the manner it is contemplated.

7.Mr.Panjwani, learned counsel appearing for respondents No.1 and 2, on the other hand points out that these animals were all throughout used for the purposes of the circus companies only. There is no dispute that they were trained and exhibited for the purposes of the circus companies. He submits that now when it is found that the animals are being treated with cruelty and when those activities are prohibited by issuing a notification under section 22 of the prevention of Cruelty to Animals Act, 1960, that it is being contended that the petitioners would like to keep them separately with them. Mr Panjwani as well as Mr, Mehta draw our attention to the observations of the apex Court in the above referred matter where in the apex Court observed as follows:

“It is pertinent to note that even with respect to the animals whose exhibition and training is prohibited, the Act does not prevent the owner from keeping them as domestic pets. Of course, it is going to be difficult to expect someone to have a lion or tiger as pet.”

Mr Mehta states that the above observations do not rule out the possibility that one can keep them as pet. On the other hand, Mr. Panjwani States that from the observations of the Apex Court it is clear that normally the court does not expect one to have a lion or tiger as a pet. In the present matter, we are not concerned with a pet or two but large number of animals. As per the affidavit of one Aditya kumar joshi, Deputy Secretary, Animal Welfare Division affirmed on 26<sup>th</sup> May 2001, the following is the number of animals with each of the petitioners.

S. No.	Petitioner	Lion	Bear	Black Panther	Tiger	Total
1.	Jumbo Circus	16	4	5	10	35
2.	Great Royal Circus	15			12	27
3.	Rambo Circus	15			2	17

Mr, Panjwani submits that there is no question of keeping such large number of these animals as pets. He states that the submission is being made because a dead animal is more valuable: and all these animals were being treated with cruelty in the circus companions and shows photographs in that behalf. Mr Mehta on the other hand, states that any death of any of these animals is to be informed to the authority concerned and in fact it is in the zoos managed by the Governments made at the special rescue centres by spending a huge amount. That things are worse Mr.Panjwani desires this allegation and draws attention to the arrangements made

8. In the aforesaid matter, the apex Court has clearly recorded and refrained from going into the question as to whether any direction can be issued depriving the ownership of the animals since that was not arising in that matter. In the matter before us, however, the same has been squarely raised. The relevant section 42 of the Wildlife (Protection) Act 1972 reads as follows :-

“42 Certificate of ownership the Chief Wild life Warden may for the purpose of --- issue a certificate of ownership in such form as may be proscribed, to any person who in his opinion is in lawful possession of any wild animal or any animal article, trophy or uncured trophy, and may where possible, mark in the prescribed manner such animal article trophy or uncured trophy for the purpose of identification.”

Now if this section provides for issuance of certificate, surely a power to do a particular act includes a power to rescind the particular act. All that the section says is that the certificate is to be issued to a person who, in the opinion of the Chief Wildlife Warden, is in lawful possession of those animals. Mr Mehta therefore submits that the only ground for cancellation can be that the person concerned is not in lawful possession and in his submission, that will relate to the date when the certificate is issued and cannot mean anything subsequent thereto.

9. We are concerned with the Wildlife (Protection) Act 1972 which is connected for the protection of the Wildlife. The overriding objective of the Act is to look after them and to preserve and protect them. The Act is not so much concerned with the rights of the human beings to own the animals or to protect them. The Act is

10. Coming to the present matter we have a situation wherein it is submitted on behalf of the petitioners that now they intend to buy a parcel of land and look after the animals in their own way since they have love and affection for them. The submission of the petitioners that they would like to look after the animals themselves properly and also that they should be compensated in the event they are to be divested of the ownership are the aspects which the authority concerned will have to look into when any such representation is made to it. Where the authority intends to cancel the certificate it will be expected to give a hearing while arriving at the decision to cancel the certificate. A requirement of such a hearing will have to be read under section 42 of the Act because the person concerned is going to be divested of his ownership with respect to those animals and in the event he has spent a good amount to purchase them, surely he should have a --- to make his submission on his ownership his opposition to any such decision and in any case the compensation that he ought to receive. A short reasoned order is something that ought to follow such a hearing. Noodles to state that the authority concerned will take its decision after examining the merits of the representation made to it. At this stage we record the submission of Mr Panjwani that there is no private ownership in the wildlife not are they entitled to any compensation. Mr. Panjwani relies upon a judgment of a single judge of Delhi High Court in the case of A.I. Mobile & A.W. Association V. Union of India – AIR 2000 Delhi 449. On the other hand Mr. Mehta submits that section 39 of the Wildlife (protection) Act, 1972 does not rule out private ownership of Wildlife or else there was no occasion for a certificate of ownership under section 42 of the Act. Both those submissions require a careful consideration and the authority concerned will decide this issue while deciding the representation.

11. This however does not mean that the hearing that to be given first before canceling the certification ownership under, section 42 of the Act. If the Chief Wildlife warden forms an opinion that there is an urgent need to cancel the certificate of ownership, he may do so, but then he will have to hear the person concerned there fore. There can be a post decisional hearing also if there is an urgency which will depend upon the around such as health of the animals, danger to their lives and also that the purpose of retaining the animals in private ownership no longer survives.

12. In the view of the submissions made by the petitioners that they want to keep the animals privately and look after them. Mr. Panjwani has drawn our attention to the arrangement which the respondents No1 and 2 have made as of now. It discloses that quite a good amount has been spent and special arrangements are made at five places. The Consequence of cancellation of the certificate will be that the animals will have to be moved to the places where these rescue centre have been set up. In the event there is an immediate cancellation and the animals of the petitioners are required to be moved, the respondents will inform the petitioners as to where those animals are kept. This is because in that event there will be a post decisional hearing. Mr,. Panjwani states that the petitioner are at liberty to send their doctor and their personal to see as to whether proper arrangement is made a look after the animals and if they are not satisfied, they are at liberty to contribute for their upkeep as well.

13. In view of what is stated in the forgoing paragraphs, we find no reason to interfere with the communication dated 6<sup>th</sup> June 2000 which is challenged in the present petition. The injunction pending admission stands vacated. Petition is dismissed.

14. Mr, Mehta applies for continuation of the injunction which was granted ponding the hearing of this petition. That injunction will continue to remain in operation for a priod of 4 weeks here after.

Authenticated copy of this order be made available to the parties.

(H.L. GOKHALE)

(D.B. BHOSALE)