

MANU/DE/1150/2002

**Equivalent Citation:** 2002(65)DRJ168

**IN THE HIGH COURT OF DELHI**

C.W.P. No. 2491 of 2000

Decided On: 30.07.2002

Appellants: **People for Animals**  
**Vs.**

Respondent: **Union of India (UOI) and Ors.**

**Hon'ble Judges/Coram:**

*S.B. Sinha, C.J. and A.K. Sikri, J.*

**Counsels:**

*For Appellant/Petitioner/plaintiff: Raj Panjwani and Iqbal Shamshi, Advs*

*For Respondents/Defendant: H.S. Phoolka, Sr. Adv., Sanjeev Sachdeva, Adv. for R-1 and Reeta Choudhary, Adv. for R-4*

**Case Note:**

**Wildlife Protection Act, 1972**

**Sections 9, 11 and 12 - Protection of wild animals-Petitioner prayed for issuance of an appropriate writ directing the respondent not to authorize issuance of licenses under the Arms Act, 1959 in respect of guns for sport as well as for crop and cattle protection-Articles 51-A and 48-A enjoin the state with a duty to make an endeavour to protect and improve the environment and to safeguard the wildlife of the country-Statutes which are enacted in furtherance of the Directive Principles must be liberally construed-Govt. to take early decision as to the amendment of the Arms Act-Writ petition disposed of.**

**JUDGMENT**

**S.B. Sinha, C.J.**

**1.** The writ petitioners is a charitable trust. It *inter alia* campaigns for the rights of the animals.

By reason of this writ petition, the petitioner has prayed for issuance of an appropriate writ directing the respondents not to authorize issuance/renewal of licenses under the Arms Act, 1959 in respect of guns for sport as well as for crop and cattle protection.

**2.** The contention of the petitioner in this writ petition is that although the object of the Arms Act is to preserve public security as also maintenance of public order, the basic requirements thereof have been given a go-bye by liberalizing the policy of grant of license of arms. Such liberalization of grant of license in arms led to unhampered distribution, sale and possession of firearms in the country.

It is not in dispute that the Central Government in exercise of its power conferred

upon it under Section 41 of the Arms Act and issued a notification bearing No. G.S.R. 991 dated 13.07.1962 whereby and whereunder it had excluded arms and ammunition of the descriptions specified in column (1) of Schedule II annexed thereto from certain provisions of the Act and subject to conditions mentioned therein. Air Guns, Air Rifles and Air Pistols, which find place at Serial No. 3 of the said Schedule II, have completely been exempted from the purview of the provisions of the Arms Act.

**3 .** The petitioner in this writ petition has questioned the legality of the said notification. According to the petitioner, if the said notification is not set aside, the same would lead to a disastrous result inasmuch by reason thereof guns would be used for killing or maiming of animals or birds.

The petitioner, however, is not against the target practice. As for using air guns for target practice, the petitioner would contend that a separate provision in relation thereto may be made, but it is difficult to comprehend as to why such category of firearms would be made freely available in the market.

**4 .** Firearms, according to the petitioner, are primarily designed and manufactured, *inter alia*, for maiming or killing innocent animals whose habitat has been usurped or for killing fellow human species.

It has been contended by the petitioner that invariably air guns, air rifles and air pistols are used on helpless small animals and birds even by little children and such practice would have an adverse impact on their character as thereby the children would be taught to disregard and treat other species as dispensable.

It has been urged that the said notification dated 13.07.1962 exempting air guns, etc. from the provisions of the Arms Act is arbitrary and in violation of the Articles 14 and 21 of the Constitution of India because it permits a child of any age to possess and use the same, whereas, on the other hand, the same air gun, etc. it is to be used in a Rifle Club, only by a person who has completed 21 years of age as provided under Section 9 of the Arms Act.

A large number of air guns, air rifles and air pistols, the petitioner contended, are easily available and can be purchased from a roadside vendor.

**5 .** Mr. Phoolka, the learned senior counsel appearing on behalf of the respondent No. 1, however, would submit that despite the fact that the Arms Act is a Central enactment, the power to administer the same having been delegated to the State Government, their views have been sought for in this behalf. It is contended that by reason of GSR No. 991 dated 13.10.1962, manufacture, dealership and possession of air weapons have been deregulated and no such licensing is required for possession, manufacture / sale of such weapons subject to the condition that only those air weapon which eject projectiles discharged from such guns or pistols do not perforate a target 12 inches square formed by deal wood boards of even grain, free from knots, planted on both sides, and of thickness of 1/2 inch and 1 inch for air pistols and air guns/rifles respectively.

The learned senior counsel would contend that this Court in a petition of this nature cannot any relief as sought for as thereby amendment of the Arms Act would be necessary if the first prayer is to be granted. The second prayer, according to the learned counsel, relate to the policy decision of the State, where with also the Court may not interfere in exercise of its jurisdiction under Article 226 of the Constitution

of India.

**6.** The Wildlife Protection Act, 1972 (in short, 'the said Act') was primarily enacted for protection of wild animals as specified in the first to fourth Schedule thereof. By reason of the provisions of the said Act, almost all the animals, which are presently found wild in nature, had been protected.

The relevant Sections of the said Act are as under:-

" **9. Prohibition of hunting.**--No person shall hunt any wild animals specified in Schedules I, II, III and IV except as provided under Section 11 and Section 12.

**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 Therefore, permit any person to hunt such animal or cause such animal to be hunted;

(b) the Chief Wild Life Warden or the authorized 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 Therefore, permit any person to hunt such animal or cause such animal to be hunted.

(2) The killing or wounding in good faith of any wild animal in defense 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 defense becomes necessary, was committing any act in contravention of any provision of this Act or any rules or order made there under.

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

**12. Grant of permit for special purposes.**-- Notwithstanding anything contained elsewhere in this Act, it shall be lawful for the Chief Wild Life Warden to grant a permit by an order in writing stating the reasons Therefore, to any person, on payment of such fee as may be prescribed, which shall entitle the holder of such permit to hunt, subject to such conditions as may be specified therein, any wild animal specified in such permit, for the purpose of,--

(a) education;

(b) scientific research;

(bb) scientific management.

Explanation.--For the purposes of Clause (bb), the expression "scientific management" means-

- (i) translocation of any wild animals to an alternative suitable habitat; or
  - (ii) population management of wild life, without killing or poisoning or destroying any wild animals;
- (c) collection of specimens--
- (i) for recognized zoos subject to the permission under Section 38I; or
  - (ii) for museums and similar institution;
- (d) derivation, collection or preparation of snake- venom for the manufacture of life-saving drugs:

Provided that no such permit shall be granted--

- (a) in respect of any wild animal specified in Schedule I, except with the previous permission of the Central Government; and
- (b) in respect of any other wild animal, except with the previous permission of the State Government."

Section 9 of the said Act prohibits hunting of any wild animal except for the purposes specified therein.

The said purposes evidently do not and cannot include 'sport'. Only in the event if an animal becomes dangerous to a human life or a property, by reason of Section 11 of the said Act, the Chief Wild Life Warden or any other person authorized by him in writing may authorize any person in writing to hunt such animal. Save and except such authorization, no animal can be killed or maimed by any person for any other purpose whatsoever far less for sport.

It is not in dispute that animals normally associated with destruction of crops are also protected from hunting under the said Act, as would appear from the following:-

"Wild Animal Wildlife Protection Serial No.  
Act Schedule

(1) Blue Bill	III	14
(2) Wild Pig	III	19
(3) Chittal or Spotted Deer	III	5
(4) Sambhar	III	16
(5) Black Buck	I	2
(6) Chinkara	I	5-B
(7) Hog Deer	III	11

The wild animals associated with destruction of cattle are also protected as would appear from:-

Wild Animal    Wildlife Protection    Serial No.  
Act Schedule

(1) Tiger	I	39
(2) Leopard	I	16-B
(3) Snow Leopard	I	33
(4) Indian Wolf	I	15
(5) Hyena	III	12"

**7.** Having regard to the fact that by reason of the said Act, provisions had been made as a result whereof hunting of animal is prohibited, the provisions of the Arms Act must be construed having regard to the purport and object for which the same had been enacted. If by reason of the provisions of the said Act hunting of a wild animal is prohibited, it does not stand to any reason as to why not only any license Therefore can be granted, but also as to why air rifles, air guns and air pistols (which can be used for such purposes) would be taken out of the purview of the Arms at all.

We may also notice that the Parliament has also enacted the Prevention of Cruelty to Animals Act, 1960 (in short, '1960 Act'). In terms of Section 11 thereof, an embargo has been placed upon every person from causing pain or suffering to any animal. If such air guns, air rifles and air pistols can be used on helpless small animals and in particular birds by any person including children, there cannot be any doubt whatsoever that by reason thereof the provisions of 1960 Act would be violated.

**8.** It is curious to note that different stands have been taken by different Ministries of the Central Government in the respective counter-affidavits. Whereas the Ministry of Environment and Forests and Animal Welfare and Social Justice and Empowerment (Directorate of Animal Welfare) support the petitioner, the Ministry of Home Affairs oppose its stand.

**9.** A Division Bench of this Court noticing the conflicting stands taken by three different Ministries in its Order dated 23.04.2001 directed:-

"We find from the counter affidavit filed by the various respondents that there seems to be no unanimity on several aspects, more particularly in the question of grant of license in respect of some weapons. In view of this peculiar situation, it would be appropriate that the officers of various Ministries meet and discuss the matter and find out if there can be unanimity. Needless to say, while arriving at a consensus, if any, provisions of various statutory enactments holding the field shall be duly taken note of."

**10.** Pursuant to or in furtherance of the said direction, a meeting was held on 06.02.2002, the minutes whereof is in the following terms:-

"The agenda of the meeting is the prayer mainly on the following points in the writ petition filed by the People's for Animals.

(ii) Direct the Central Government not to authorize the issue/renewal of a license of any prohibited arm or ammunition for the purpose of sport (shikar) of the cattle or crop protection from wild animals.

(iii) To quash entry No. 1(3) of notification No. GSR No. 991 dated 13<sup>th</sup> July, 1962 wherein air guns, air rifles and air pistols have been exempted from all regulations and controls under the Arms Act, 1959.

**2.** While initiating discussions it was pointed out by the Chairman that the Ministry of Agriculture is not in favor of scrapping of existing provision of granting license under Section 13 of the Arms Act, 1959 for the purpose of bonafides crop protection and this may be continued. He further explained that the license is primarily issued for the protection of life and property of the individual and the same is not issued for killing wild animals. However, keeping in view the problem of protection of crops from wild animals particularly the blue bulls and to avoid damage to crops which are grown by the farmers by putting a lot of labour and investment, the provision granting license may continue in this regard. This view was agreed by Shri Aseem Kumar, representative of M/o Environment & Forests. However, Shri R.K. Jain, representative of Animal Welfare Division, Ministry of Statistics & Programme Implementation said that he would put up the matter to his seniors for further action in the matter. Shri Aseem Kumar further added that the Wild Life Protection Act, under special circumstances permits killing of wild animals, who have become dangerous.

**3.** Regarding exemption for manufacture and possession of air guns/air rifles and air pistols the Chairman pointed out that these are non-lethal weapons and are mainly used for target practice and not for killing of birds. On this point Shri R.K. Jain suggested that the manufacture, sale and possession of these arms should be regulated as these are being used for killing of the birds for pleasure and shikar purposes. Substantiating his point of view Mr. Aseem Kumar quoted some examples from North East specially from Nagaland where boys t the age of 10 to 15 years go on shooting birds for shikar purposes. He also pointed out that Chief Secretary, Nagaland Government at one time contemplated to regulate sale of these air guns to the general public.

**4.** The Chairman pointed out that stopping of killing of birds by air guns/air rifles/air pistols can be achieved in a big way if awareness programme is taken by the State Governments in schools and colleges to educate people about the value of birds for ecology and respect for wild life rather than putting these weapons under license and control. He further added that this may also be achieved by minimizing the potency of these weapons from 1.1 joules to .75 joules which may not be enough to kill the birds. However, technical advice will have to be taken for the later suggestion from BPR&D. However, aspects concerning regulation of the control of air guns/air pistols would require wider discussions.

**5.** It was further pointed out by the Chairman that if unfortunately Animal Welfare Division persist with their view point regarding ban on issue of license for crop and cattle protection to the farmers in spite of strong views expressed by the Ministry of Agriculture, they may sort out the matter mutually by putting the matter to Group of Secretaries.

**6.** With regard to the regulation on manufacture, sale and possession of air guns, air rifles, air pistols, Chairman was of the view that it is likely to take some time as it required wider consultations with Ministry of Industry, State & UT Governments also as they would be the enforcing authorities. Therefore, more time is required for completing the exercise, and we may seek time from the court."



**11.** This Court, as noticed hereinbefore, thought that if a meeting of responsible Officers comprising of all the three Ministries, which are responsible for enforcement of the Acts, a solution of the problems could be found out. It is really a matter of regret that despite directions of this Court, no fruitful purpose had been served. The attitude of the concerned Ministries to say the least is non-cooperative. The authorities apparently failed to pose unto themselves the right question and find out an answer therefore.

**12.** We may at this juncture also note that a reference had been made during the pendency of this writ petition to the Bureau of Police Research and Development for their advice on certain aspects as regards withdrawal of exemption in respect of air guns, etc., and such advice has been rendered as under:-

"By reducing the muzzle energy of Air guns between 0.7 joules to 1.1 joules at the muzzle will avoid killing of birds, but these air guns will not be good enough for target practice."

Even regrettably no step in this behalf has been taken so far.

**13.** The concerned Authorities also appear to be quite oblivious of the provisions of Article 51A(g) and (h) of the Constitution of India, which are in the following terms:-

**"51-A. Fundamental duties.--**It shall be the duty of every citizen of India-

... ..

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;"

The Officers of the concerned Ministries also being the citizens of India are required to perform their fundamental duties and particularly so when the Executive is enjoined with a duty to implement the provisions of the Acts, which have a direct nexus therewith.

Article 48A, which was inserted by the Constitution (Forty-second Amendment) Act, 1976 reads thus:-

**"48-A. Protection and improvement of environment and safeguarding of forests and wild life.--**The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country."

Article 48A also enjoins the State with a duty to make an endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. If for the said purpose, the law has to be amended, it is to be done, but instead and place of amending the provisions of the Arms Act so as to make it compatible with the provisions of the said Act; the 1960 Act, Arms Rules are being acted upon and furthermore even the said impugned notification has been issued as a result whereof the air rifles, air guns and air pistols are now freely available.

**14.** The learned counsel for the respondent have not been able to satisfy us that having regard to the contradictory and inconsistent stands taken by them as to what concrete action they intend to take in the matter. Their approach appears to be only whiling away the time.

It is really a matter of regret that hardly any action appears to have been taken pursuant to or in furtherance of the meetings held on 02.08.2001 and 05.11.2001.

**15.** The *red tapism* was at its zenith when despite the Orders of this Court, only on 110.05.2002 the Home Secretaries of the State Governments and the Union Territories Administrations were directed to forward their views and comments on:-

- (i) Banning of issuance / renewal of license of any prohibited arm for the purpose of protection of cattle or crop from wild animals;
- (ii) Putting, manufacture / sale / possession of air guns, air rifles and air pistols under license under the Arms Act, 1959.

Although only the provisions of the Arms act vis-a-vis the said Act were required to be interpreted having regard to their language, no action admittedly in that direction had been taken.

**16.** Grant of license for crop and cattle protection vis-a-vis sporting animals stand on different footings. The authorities, in our opinion, must give due regard to the provisions of the said Act and in particular Sections 9, 11 and 12 thereof, as noticed hereinbefore.

A sea-change has taken place even in the matter of grant of license in terms of the provisions of the said Act. The Court while interpreting provisions of different statutes, it is trite, must not only give effect to the provisions thereof, but must interpret the same having regard to the changed scenario and in particular the international covenants, protocols and charters governing the field.

**17.** We may also notice that in Motor General Traders and Anr. v. State of Andhra Pradesh and Ors. AIR 1984 SC 121, it was held that a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution of India.

We, Therefore, are of the opinion that the provisions of the Arms Act must not only be construed having regard to the subsequent legislation, but also keeping in view the provisions contained in Parts IV and IVA of the Constitution of India. The Statutes, which are enacted in furtherance of the Directive Principles as contained in Part IV of the Constitution of India, as also the Fundamental Duties of the citizens as contained in Part IVA thereof must be liberally construed.

When two statutes apparently pose conflicting problems they are required to be read harmoniously. Both the statutes having regard to their importance in their own fields must be construed in such manner that while implementing the other statute the purpose and object for which the other has been enacted is not defeated. The stand taken by the respondent No. 1 herein in the matter of implementation of the provisions of the Arms Act in the opinion of this Court is too technical. It had issued notifications where for it might have the requisite jurisdiction under the said Act, but as emphasized hereinbefore, in doing so it failed/neglected to take into consideration



the salutary provisions of the said Act. While making legislation of this nature, the authorities under one Act must necessarily consider the implications thereof *vis a vis* the other Parliamentary Acts, particularly when the same is meant to protect the species of animals pursuant to or in furtherance of the international covenants, protocols, etc. to which India is a signatory. Protection of environment has a direct nexus with the enactment of the said Act. It, *inter alia*, has been enacted to have endangered species. Some wings of the State represented by respondent Nos. 2 and 3, as noticed hereinbefore, having affirmed affidavits in support of the writ petition and only the Home Department of the respondent No. 1 opposes the same. In this view of the matter, we are of the opinion that the respondent must act in conformity with the provisions of the said Act.

**18.** Our attention has also been drawn to the fact that a writ petition being CWP No. 337/95 is pending before the Supreme Court of India for enforcement of the provisions of the said Act.

However, as the said writ petition has nothing to do with the present writ petition, we direct having regard to the provisions of the Arms Act, not to authorize, issuance or renewal of a license of any prohibited arm or ammunition for the purpose of sport (shikar) or cattle and crop protection from wild animals except under very strict conditions. We also quash entry No. 1(3) of Schedule II of the notification bearing No. GSR No. 988 dated 13.07.1962 issued under Sub-clause (vii) of Clause (b) of Sub-section (i) of Section 2 of the Arms Act by the Central Government whereby and whereunder air guns, air rifles and air pistols have been exempted from all the regulations and controls as provided under Arms Act.

So far as the question of making suitable amendment in the Arms Act is concerned, although this Court cannot issue any direction in this behalf, it will be appropriate if the respondents take an appropriate decision at an early date.

**19.** This writ petition is disposed of with the aforesaid directions and observations. However, it will be open to the parties to file an appropriate application(s), if any other or further direction is considered to be necessary. No costs.

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