



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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MAS/Case No.– 6376/2018

Name of the Complainant : Chairman,
Jayraj Apt. Co-Op. Housing Society,
Survey No.41, Plot No. 2 & 3,
Om Nagar, Ambadi Road, Vasai (W)
Dist.-Palghar-401 202

Name of Respondent : Municipal Commissioner,
Vasai Virar Municipal Corporation,
Opp Virar Police Station, Bazaar Ward,
Virar (E)-401 306

Date : **6th April 2021**

Coram : **M. A. Sayeed, Acting Chairperson / Member**

ORDER

Complainant happens to be the Chairman of Jayraj Apartment Co-Op. Hsg So. Vasai, presenting the problems faced by it in tackling with the menace of the stray dogs, who infact are being indulge by some of the members of the housing society against whom FIR has been registered with Manikpur Police Station.

Reports Ex 'A' & 'B' came to be submitted on record by the respondent through Ld advocate, Priyanka More, contending inter alia that necessary steps viz the sterilization of the stray / street dogs as well as of having vaccinated them with Anti Rabies has been taken & to that extent the issue raised in the complaint is resolved but it appears from the report Ex 'B' that the concerned authority / official team, brought back the stray / street dog in the same area of the housing society which, does not serve the purpose, of the present complaint as the residents would continue to

face the same problem. Copies & photographs to substantiate their contention have been annexed with the report Ex 'B'.

It would not be out of place to mention here that an appropriate platform for dealing with the menace of the stray / street dogs is culled out in a statute – "Prevention of Cruelty to Animals (Establishment & Regulations of Society for Prevention of Cruelty to Animals) Rules, 2001 are reproduced in verbatim :

For our purpose Rule (3) to (5) are relevant and pertinent and reproduced in verbatim as under

3. Society for Prevention of Cruelty to animals in a district - (1) *Every State Government shall by notification in the Official Gazette, establish, as soon as may be and in any event within six months from the date of commencement of these rules, a society for every district in the State to be the SPCA in that district.*

Provided that any society for Prevention of Cruelty to Animals functioning in any district on the date of commencement of these rules shall continue to discharge its functions till establishment of the SPCA in that district under these rules.

(2) *The Managing Committee of the Society shall be appointed by the State Government or the local authority of the district consisting of a Chairperson to be appointed by the State Government or the local authority of the district, as the case may be with the concurrence of the Board and shall consist of such number of other members as may be considered necessary by the State Government or the local authority of the district subject to the condition that*

(i) at least two members shall be representatives of the Animal Welfare Organisations which are actively involved in the work of prevention of cruelty to animals and welfare of animals preferably from within the district; and

(ii) at least two members shall be the persons elected by the general body of members of the Society.

(3) *The duties and powers of the Society shall be to aid the Government, the Board and local authority in enforcing the provisions of the Act and to make such bye-*

laws and guidelines as it may deem necessary for the efficient discharge of its duties.

(4) The Society, or any person authorized by it in this behalf, if it or he has reasonable grounds for believing that any person has committed an offence under the Act, it or such authorized person may require such person to produce forthwith any animal in his possession, control, custody or ownership, or any license, permit or any other document granted to such person or required to be kept by him under the provisions of the Act and may stop any vehicle or enter into any premises in order to conduct a search or inquiry and may seize an animal in respect of which it or such authorized person has reason to believe that an offence under the Act is being committed, and deal with it in accordance with law.

(5) In addition to the powers conferred by these rules, the State Government may, in consultation with the Board, confer such other powers upon any Society for exercising the powers and discharging the functions assigned to it under these rules.

4. Setting up of infirmaries and animal shelters - *(1) Every State Government shall provide adequate land and other facilities to the Society for the purpose of constructing infirmaries and animal shelters.*

(2) Every infirmary and animal shelter shall have -

(i) a full time veterinary doctor and other staff for the effective running and maintenance of such infirmary or animal shelter; and

(ii) an administrator who shall be appointed by the Society.

(3) Every Society shall, through its administrator or otherwise, supervise the overall functioning of the infirmaries and animal shelters under its control and jurisdiction.

(4) All cattle pounds and pinjrapoles owned and run by a local authority shall be managed by such authority jointly with the Society or Animal Welfare Organisations.

5. Regulation of SPCAs

(1) Every Society shall submit its annual report to the Board incorporating therein the activities undertaken by it for the welfare of animals and the steps or measures taken by it to implement various provisions of the Act and the rules made thereunder along with annual accounts duly audited by a chartered accountant or any other body authorised by law within a period of one month from the date of its accounts having been finalised by its managing committee.

(2) The Board shall examine such annual report and the annual accounts submitted by the Society and may give any directions to it for improvement of its functioning including the supercession of the managing committee of the Society with a view to give effect to the provisions of the Act and the rules made thereunder.

Provided that the Board shall give opportunity of personal hearing to the office bearers of the Society or any representative authorised by it before giving direction of its supercession and holding of fresh elections for electing a new managing committee as per bye-laws of the society.

(3) The Board shall give any direction to any Society in the interest of smooth and efficient functioning of the Society including the procedure for holding the election of the managing committee of the Society, utilisation of financial resources and management of assets of the Society with a view to give effect to the provisions of the Act and the rules made thereunder.

At the same time I would like to reflect on the aim and objects of the Prevention to Cruelty Animals Act, 1960 as discussed by Supreme Court in Civil Appeal No. 5387/2014, in SLP (C) No. 11686/2007.

25. *The PCA Act was enacted even before the introduction of Part IV-A dealing with the fundamental duties, by the Constitutional 47th Amendment Act, 1956. Earlier, the then British in India enacted the Prevention of Cruelty Act, 1890 for the human beings to reap maximum gains by exploiting them with coercive methods with an idea that the very existence of the animals is for the benefit of the human beings. During the course of administering the above mentioned Act, many deficiencies were noticed by the Government of India and a Committee was constituted to investigate and suggest measures for prevention of cruelty to animals. Following that, a Bill was introduced in the Parliament and, ultimately,*

the [PCA Act](#), 1960 was enacted so as to prevent the infliction of unnecessary pain or suffering on animals and to amend the law relating to prevention of cruelty to animals.

JUDICIAL EVALUATION

26. [PCA Act](#) is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state of affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of *parents patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

27. [The PCA Act](#), as already indicated, was enacted to prevent the infliction of unnecessary pain, suffering or cruelty on animals. [Section 3](#) of the Act deals with duties of persons having charge of animals, which is mandatory in nature and hence confer corresponding rights on animals. Rights so conferred on animals are thus the antithesis of a duty and if those rights are violated, law will enforce those rights with legal sanction. [Section 3](#) is extracted hereunder for an easy reference:

3. Duties of persons having charge of animals.- It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.” [Section 3](#) of the Act has got two limbs, which are as follows:

i) Duty cast on persons-in-charge or care to take all reasonable measures to ensure the well-being of the animal;

ii) Duty to take reasonable measures to prevent the infliction upon such animal of unnecessary pain and suffering.

Both the above limbs have to be cumulatively satisfied. Primary duty on the persons-in-charge or care of the animal is to ensure the well-being of the animal. 'Well-being' means state of being comfortable, healthy or happy.

29. Section 11 generally deals with the cruelty to animals. Section 11 confers no right on the organizers to conduct Jallikattu/Bullock-cart race. Section 11 is a beneficial provision enacted for the welfare and protection of the animals and it is penal in nature. Being penal in nature, it confers rights on the animals and obligations on all persons, including those who are in-charge or care of the animals, AWBI etc. to look after their well-being and welfare. The relevant portion of Section 11 reads as follows:

"11. Treating animals cruelty.- (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

b) xxx xxx xxx

c) willfully and unreasonably administers any injuries drug or injurious substance to any animal or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any animal; or

d) xxx xxx xxx

e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length or breadth to permit the animal a reasonable opportunity for movement; or

f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonable heavy chain or cord; or

g) xxx xxx xxx

h) being the owner of any animal, fails to provide such animal with sufficient food, drink or shelter; or

i) xxx xxx xxx

j) xxx xxx xxx

k) xxx xxx xxx

l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or;

xxx xxx xxx (2) For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) xxx xxx xxx" [Section 11\(1\)\(a\)](#) uses the expressions "or otherwise", "unnecessary pain or suffering" etc. Beating, kicking etc. go with the event so also torture, if the report submitted by AWBI is accepted. Even otherwise, according to AWBI, the expression "or otherwise" takes in Jallikattu, Bullock-cart race etc. but, according to the State of Tamil Nadu, that expression has to be understood applying the doctrine of ejusdem generis . In our view, the expression "or otherwise" is not used as words of limitation and the legislature has intended to cover all situations, where the animals are subjected to unnecessary pain or suffering. Jallikattu, Bullock-cart races and the events like that, fall in that expression under [Section 11\(1\)\(a\)](#). The meaning of the expression "or otherwise" came up for consideration in [Lilavati Bai v. State of Bombay](#) 1957 SCR 721 and the Court held that the words "or otherwise" when used, apparently intended to cover other cases which may not come within the meaning of the preceding clause. In our view, the said principles also can be safely applied while interpreting [Section 11\(1\)\(a\)](#).

30. Pain and suffering are biological traits. Pain, in particular, informs an animal which specific stimuli, it needs to avoid and an animal has pain receptors and a memory that allows it to remember what caused the pain. Professor of Animal Welfare, D.M.Broom of University of Cambridge in his articles appearing in Chapter fourteen of the Book "Animal Welfare and the Law" Cambridge University Press (1989) says:

"Behavioural responses to pain vary greatly from one species to another, but it is reasonable to suppose that the pain felt by all of these animals is similar to that felt by man".

Suffering has the same function, but instead of informing the animal about stimuli to avoid, which informs it about a situation to avoid. An animal might be regarded as suffering, if it is in pain, distress, or acute or unduly prolonged discomfort. Consequently, to experience the suffering, the animal needs an awareness of its environment, the ability to develop moods that coordinate a behavioral response, and the capacity to change adverse situation or avoid them. Reports submitted by AWBI clearly indicate that Bulls are being treated with extreme cruelty and suffering, violating the provisions of [Section 11\(1\)](#) of the PCA Act. Over and above, [Section 11\(1\)](#), clauses (b) to (o) also confer various duties and obligations, generally and specifically, on the persons in charge of or care of animals which, in turn, confer corresponding rights on animals, which, if violated, are punishable under the proviso to [Section 11\(1\)](#) of the PCA Act.

DOCTRINE OF NECESSITY:

31. [Section 11\(3\)](#) carves out exceptions in five categories of cases mentioned in [Section 11\(3\)\(a\)](#) to (e), which are as follows:

“11(3) Nothing in this section shall apply to-

(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

*(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.” Exceptions are incorporated based on the “doctrine of necessity”.
Clause*

(b) to [Section 11\(3\)](#) deals with the destruction of stray dogs, out of necessity, otherwise, it would be harmful to human beings. Clause (d) to [Section 11\(3\)](#) deals with matters dealt with in Chapter IV, incorporated out of necessity, which deals with the experimentation on animals, which is for the purpose of advancement by new discovery of physiological knowledge or of knowledge which would be useful

for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants, which is not prohibited and is lawful. Clause

(e) to [Section 11\(3\)](#) permits killing of animals as food for mankind, of course, without inflicting unnecessary pain or suffering, which clause is also incorporated 'out of necessity'. Experimenting on animals and eating their flesh are stated to be two major forms of speciesism in our society.

Over and above, the Legislature, by virtue of [Section 28](#), has favoured killing of animals in a manner required by the religion of any community. Entertainment, exhibition or amusement do not fall under these exempted categories and cannot be claimed as a matter of right under the doctrine of necessity.

32. [Sections 3](#) and [11](#), as already indicated, therefore, confer no right on the organisers of Jallikattu or bullock-cart race, but only duties, responsibilities and obligations, but confer corresponding rights on animals. [Sections 3](#), [11\(1\)\(a\)](#) & (o) and other related provisions have to be understood and read along with [Article 51A\(g\)](#) of the Constitution which cast fundamental duties on every citizen to have "compassion for living creatures". Parliament, by incorporating [Article 51A\(g\)](#), has again reiterated and re-emphasised the fundamental duties on human beings towards every living creature, which evidently takes in bulls as well. All living creatures have inherent dignity and a right to live peacefully and right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering etc. Human life, we often say, is not like animal existence, a view having anthropocentric bias, forgetting the fact that animals have also got intrinsic worth and value. [Section 3](#) of the PCA Act has acknowledged those rights and the said section along with [Section 11](#) cast a duty on persons having charge or care of animals to take reasonable measures to ensure well-being of the animals and to prevent infliction of unnecessary pain and suffering.

43. [PCA Act](#), a welfare legislation, in our view, over-shadows or overrides the so-called tradition and culture. Jallikattu and Bullock cart races, the manner in which they are conducted, have no support of Tamil tradition or culture. Assuming, it has been in vogue for quite some time, in our view, the same should give way to the welfare legislation, like the [PCA Act](#) which has been enacted to prevent infliction of unnecessary pain or suffering on animals and confer duties and obligations on persons in-charge of animals. Of late, there are some attempts at certain quarters,

to reap maximum gains and the animals are being exploited by the human beings by using coercive methods and inflicting unnecessary pain for the pleasure, amusement and enjoyment. We have a history of doing away with such evil practices in the society, assuming such practices have the support of culture and tradition, as tried to be projected in the TNRJ Act. Professor Salmond states that Custom is the embodiment of those principles which have commended themselves to the national conscience as the principles of justice and public utility. This Court, in [N. Adithayan v. Thravancore Dewaswom Board and Others](#) (2002) 8 SCC 106, while examining the scope of Articles 25(1), 2(a), 26(b), 17, 14 and 21, held as follows:

“18..... Any custom or usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country.”

44. As early as 1500-600 BC in Isha-Upanishads, it is professed as follows:

“The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species.”

45. In our view, this is the culture and tradition of the country, particularly the States of Tamil Nadu and Maharashtra.

46. [PCA Act](#) has been enacted with an object to safeguard the welfare of the animals and evidently to cure some mischief and age old practices, so as to bring into effect some type of reform, based on eco-centric principles, recognizing the intrinsic value and worth of animals. All the same, the Act has taken care of the religious practices of the community, while killing an animal vide [Section 28](#) of the Act.

INTERNATIONAL APPROACH TO ANIMALS WELFARE

47. We may, at the outset, indicate unfortunately, there is no international agreement that ensures the welfare and protection of animals. United Nations, all

these years, safeguarded only the rights of human beings, not the rights of other species like animals, ignoring the fact that many of them, including Bulls, are sacrificing their lives to alleviate human suffering, combating diseases and as food for human consumption. International community should hang their head in shame, for not recognizing their rights all these ages, a species which served the humanity from the time of Adam and Eve. Of course, there has been a slow but observable shift from the anthropocentric approach to a more nature's right centric approach in International Environmental Law, Animal Welfare Laws etc. Environmentalist noticed three stages in the development of international environmental law instrument, which are as under:

(a) The First Stage: Human self-interest reason for environmental protection

- The instruments in this stage were fuelled by the recognition that the conservation of nature was in the common interest of all mankind.

- Some the instruments executed during this time included the Declaration of the Protection of Birds Useful to Agriculture (1875), Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900), Convention for the Regulation of Whaling (1931) which had the objective of ensuring the health of the whaling industry rather than conserving or protecting the whale species.

- The attitude behind these treaties was the assertion of an unlimited right to exploit natural resources – which derived from their right as sovereign nations.

(b) The Second Stage: International Equity

- This stage saw the extension of treaties beyond the requirements of the present generation to also meet the needs to future generations of human beings. This shift signalled a departure from the pure tenets of anthropocentrism.

- For example, the 1946 Whaling Convention which built upon the 1931 treaty mentioned in the preamble that "it is in the interest of the nations of the world to safeguard for future generations the great natural resource represented by the whale stocks". Similarly, the Stockholm Declaration of the UN embodied this shift in thinking, stating that "man bears a solemn responsibility to protect and improve the environment for present and future generations" and subsequently asserts that "the natural resources of the earth must be safeguarded for the

benefit of present and future generations through careful planning and management". Other documents expressed this shift in terms of sustainability and sustainable development.

(c) The Third Stage: Nature's own rights

- Recent Multinational instruments have asserted the intrinsic value of nature.

- UNEP Biodiversity Convention (1992) "Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic values of biological diversity and its components [we have] agreed as follows:.....". The World Charter for Nature proclaims that "every form of life is unique, warranting respect regardless of its worth to man." The Charter uses the term "nature" in preference to "environment" with a view to shifting to non-anthropocentric human-independent terminology."

48. We have accepted and applied the eco-centric principles in [T. N. Godavarman Thirumulpad v. Union of India and Others \(2012\) 3 SCC 277](#), [T. N. Godavarman Thirumulpad v. Union of India and Others \(2012\) 4 SCC 362](#) and in [Centre for Environmental Law World Wide Fund - India v. Union of India and Others \(2013\) 8 SCC 234](#).

49. Based on eco-centric principles, rights of animals have been recognized in various countries. Protection of animals has been guaranteed by the Constitution of Germany by way of an amendment in 2002 when the words "and the animals" were added to the constitutional clauses that obliges 'state' to respect 'animal dignity'. Therefore, the dignity of the animals is constitutionally recognised in that country. German Animal Welfare Law, especially [Article 3](#) provides far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners' fundamental rights to property and the animals' interest in freedom from unnecessary suffering or pain, damage and fear.

50. Animals Welfare Act of 2006 (U.K.) also confers considerable protection to the animals from pain and suffering. The Austrian Federal Animal Protection Act also recognises man's responsibilities towards his fellow creatures and the subject

“Federal Act” aims at the protection of life and well being of the animals. The Animal Welfare Act, 2010 (Norway) states “animals have an intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain. Section 26 of the Legislation prohibits training an animal to fight with people, the operative portion of the same reads as follows :

“Any person who trains animals and who uses animals which are used for showing, entertainment and competitions, including those who organise such activities, shall ensure that the animals:

a) xxx xxx xxx

b) xxx xxx xxx

c) xxx xxx xxx

(d) are not trained for or used in fights with other animals or people.”

51. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

52. Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals. Five freedoms referred to in UDAW, which we will deal with in latter part of the judgment, find support in [PCA Act](#) and the rules framed thereunder to a great extent.

53. World Health Organization of Animal Health (OIE), of which India is a member, acts as the international reference organisation for animal health and animal welfare. OIE has been recognised as a reference organisation by the World Trade Organisation (WTO) and, in the year 2013, it has a total of 178 member countries. On animal welfare, OIE says that an animal is in good state of welfare if (as indicated by Scientific evidence) it is healthy, comfortable, well nourished, safe,

able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress.

FREEDOM:

54. Chapter 7.1.2 of the guidelines of OIE, recognizes five internationally recognized freedoms for animals, such as:

i) freedom from hunger, thirst and malnutrition;

ii) freedom from fear and distress;

iii) freedom from physical and thermal discomfort;

iv) freedom from pain, injury and disease; and

v) freedom to express normal patterns of behaviour.

Food and Agricultural Organisation (FAO) in its “Legislative and Regulatory Options for Animal Welfare” indicated that these five freedoms found their place in Farm Welfare Council 2009 U.K. and is also called Brambell’s Five Freedoms. These five freedoms, as already indicated, are considered to be the fundamental principles of animal welfare and we can say that these freedoms find a place in [Sections 3 and 11](#) of PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India.

55. Animals are world-wide legally recognised as ‘property’ that can be possessed by humans. On deletion of [Article 19\(1\)\(f\)](#) from the Indian Constitution, right to property is more a fundamental right in India, this gives the Parliament more a leeway to pass laws protecting the rights of animals. Right to hold on to a property which includes animals also, is now only a legal right not a fundamental right. We have also to see the rights of animals in that perspective as well.

56. Rights guaranteed to the animals under [Sections 3, 11](#), etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under [Sections 3 and 11](#) have to be read along with [Article 51A\(g\)\(h\)](#) of the Constitution, which is the magna carta of animal rights.

COMPASSION:

57. [Article 51A\(g\)](#) states that it shall be the duty of citizens to have compassion for living creatures. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others* (2005) 8 SCC 534, this Court held that by enacting [Article 51A\(g\)](#) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen. [Article 51A\(g\)](#), therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for suffering, sympathy, kindness etc., which has to be read along with [Sections 3, 11\(1\)\(a\) & \(m\), 22 etc. of PCA Act](#).

HUMANISM:

58. [Article 51A\(h\)](#) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression “humanism” which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, understand benevolence, compassion, mercy etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of PCA Act as well as in [Sections 3 and 11](#) of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in [Article 51A\(h\)](#). Both [Articles 51A\(g\) and \(h\)](#) have to be read into the [PCA Act](#), especially into [Section 3](#) and [Section 11](#) of the PCA Act and be applied and enforced.

RIGHT TO LIFE:

62. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. [Article 21](#) of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of [Article 21](#) of the Constitution. So far as animals are concerned, in our view, “life” means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals’ well-being and welfare have been statutorily recognised under [Sections 3 and 11](#) of the Act and the rights

framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-ridder, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.

63. Jallikattu and other forms of Bulls race, as the various reports indicate, causes considerable pain, stress and strain on the bulls. Bulls, in such events, not only do move their head showing that they do not want to go to the arena but, as pain is being inflicted in the vadivasal is so much, they have no other go but to flee to a situation which is adverse to them. Bulls, in that situation, are stressed, exhausted, injured and humiliated. Frustration of the Bulls is noticeable in their vocalization and, looking at the facial expression of the bulls, ethologist or an ordinary man can easily sense their suffering. Bulls, otherwise are very peaceful animals dedicating their life for human use and requirement, but are subjected to such an ordeal that not only inflicts serious suffering on them but also forces them to behave in ways, namely, they do not behave, force them into the event which does not like and, in that process, they are being tortured to the hilt. Bulls cannot carry the so-called performance without being exhausted, injured, tortured or humiliated. Bulls are also intentionally subjected to fear, injury – both mentally and physically – and put to unnecessary stress and strain for human pleasure and enjoyment, that too, a species totally dedicated its life for human benefit, out of necessity.

64. We are, therefore, of the view that Sections 21, 22 of the PCA Act and the relevant provisions have to be understood in the light of the rights conferred on animals under Section 3, read with Sections 11(1)(a) &

(o) and Articles 51A(g) and (h) of the Constitution, and if so read, in our view, Bulls cannot be used as a Performing Animals for Jallikattu and Bullock-cart Race, since they are basically draught and pack animals, not anatomically designed for such performances.

REPUGNANCY:

65. We may now examine whether provisions of the TNRJ Act, which is a [State Act](#), is repugnant to the [PCA Act](#), which is a [Central Act](#), since, both the Acts fall under Entry No. 17 in the Concurrent List. Repugnancy between the Parliamentary Legislation and State Legislation arises in two ways:

i) Where the legislations, though enacted with respect to the matters in their allotted sphere, overlap conflict and

ii) Where two legislations are with respect to the same matters in the concurrent list and there is a conflict.

In both the situations, the Parliamentary legislation will predominate in the first by virtue of the non-obstante clause in [Article 246\(1\)](#), and in the second by reason of [Article 254\(1\)](#) of the Constitution. The law on this point has been elaborately discussed by this Court in the case of [Vijay Kumar Sharma v. State of Karnataka \(1990\) 2 SCC 562](#).

66. Instances are many, where the State law may be inconsistent with the Central law, where there may be express inconsistency in actual terms of the two legislations so that one cannot be obeyed without disobeying the other. Further, if the Parliamentary legislation, if intended to be a complete and exhaustive code, then though there is no direct conflict, the State law may be inoperative. Repugnancy will also arise between two enactments even though obedience to each of them is possible without disobeying the other, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field.

67. In [M. Karunanidhi v. Union of India](#) AIR 1979 SC 898, this Court held that, in order to decide the question of repugnancy, it must be shown that the two enactments contain inconsistent and irreconcilable provisions, therefore, they cannot stand together or operate in the same field. Further, it was also pointed out that there can be no repeal by implication, unless inconsistency appears on the

face of those statutes. Further, where two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results. Further, it was also noticed that there is no inconsistency, but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

68. In [Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another](#) (2000) 5 SCC 231, this Court took the view that the repugnancy may arise between two enactments even though obedience of each of them is possible without disobeying the other, if a competent legislature of superior efficacy, expressly or impliedly, evinces by the State legislation a clear intention to cover the whole field and the enactment of the other legislature, passed before or after, would be over-borne on the ground of repugnancy.

69. We may, bearing in mind the above principles, examine whether there is any repugnancy between [PCA Act](#) and TNRJ Act so as to have inconsistent and inconceivable provisions so that they cannot stand together or operate in the same field. Both the legislators trace their legislative power in Entry 17 List III.

“Prevention of Cruelty to animals.”

70. We have to examine whether while enacting the [PCA Act](#), the Parliament has evinced its intention to cover the whole field. To examine the same, we have to refer to the Statement of Objects of the Act, Preamble and other relevant statutory provisions, which would indicate that the Parliament wanted a comprehensive act with the object of promoting message of animal welfare and for preventing cruelty to the animals. The Statement of Objects and Reasons of the Act reads as follows:

“Statement of Objects and Reasons The Committee for the prevention of cruelty to animals appointed by the Government of India drew attention to a number of deficiencies in the Prevention of Cruelty to [Animals Act](#), 1890 ([Central Act No. 11 of 1980](#)) and suggested a replacement by a more comprehensive Act. The existing Act has restricted scope as:

1) it applies only to urban areas within municipal limits;

2) it defines the term 'animal' as meaning any domestic or captured animal and thus contains no provision for prevention of cruelty to animals other than domestic and captured animals;

3) it covers only certain specified types of cruelty to animals; and

4) penalties for certain offences are inadequate.

The Bill is intended to give effect to those recommendations of the Committee which have been accepted by the Government of India and in respect of which Central Legislation can be undertaken. The existing Act is proposed to be repealed.

Besides declaring certain type of cruelty to animals to be offences and providing necessary penalties for such offences and making some of the more serious of them cognizable, the Bill also contains provisions for the establishment of an Animal Welfare Board with the object of promoting measures for animal welfare.

Provisions is also being made for the establishment of a Committee to control experimentation on animals when the Government, on the advice of the Animal Welfare Board, is satisfied that it is necessary to do so for preventing cruelty to animals during experimentation. The Bill also contains provisions for licensing and regulating the training and performance of animals for the purpose of any entertainment to which the public are admitted through sale of tickets.

After discussing the law at length supra above, Supreme Court made following declarations and directions

1) We declare that the rights guaranteed to the Bulls under [Sections 3 and 11](#) of PCA Act read with Articles 51A(g) & (h) are cannot be taken away or curtailed, except under [Sections 11\(3\) and 28](#) of PCA Act.

2) We declare that the five freedoms, referred to earlier be read into [Sections 3 and 11](#) of PCA Act, be protected and safeguarded by the States, Central Government, Union Territories (in short "Governments"), MoEF and AWBI.

3) AWBI and Governments are directed to take appropriate steps to see that the persons-in-charge or care of animals, take reasonable measures to ensure the well-being of animals.

4) AWBI and Governments are directed to take steps to prevent the infliction of unnecessary pain or suffering on the animals, since their rights have been statutorily protected under [Sections 3 and 11](#) of PCA Act.

5) AWBI is also directed to ensure that the provisions of [Section 11\(1\)\(m\)\(ii\)](#) scrupulously followed, meaning thereby, that the person-in-charge or

care of the animal shall not incite any animal to fight against a human being or another animal.

6) AWBI and the Governments would also see that even in cases where [Section 11\(3\)](#) is involved, the animals be not put to unnecessary pain and suffering and adequate and scientific methods be adopted to achieve the same.

7) AWBI and the Governments should take steps to impart education in relation to human treatment of animals in accordance with [Section 9\(k\)](#) inculcating the spirit of Articles 51A(g) & (h) of the Constitution.

8) Parliament is expected to make proper amendment of the [PCA Act](#) to provide an effective deterrent to achieve the object and purpose of the Act and for violation of [Section 11](#), adequate penalties and punishments should be imposed.

9) Parliament, it is expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honour.

10) The Governments would see that if the provisions of the [PCA Act](#) and the declarations and the directions issued by this Court are not properly and effectively complied with, disciplinary action be taken against the erring officials so that the purpose and object of [PCA Act](#) could be achieved.

11) TNRJ Act is found repugnant to [PCA Act](#), which is a welfare legislation, hence held constitutionally void, being violative or [Article 254\(1\)](#) of the Constitution of India.

12) AWBI is directed to take effective and speedy steps to implement the provisions of [PCA Act](#) in consultation with SPCA and make periodical reports to the Governments and if any violation is noticed, the Governments should take steps to remedy the same, including appropriate follow-up action.

Thus it can be seen that the Civic Authority is under an obligation to coordinate with the concerned departments of the State, thereby ensuring due & proper compliance & implementation of the Rules & Law discussed in detail supra above.

With these observations, the main stake holder departments are called upon to ensure a due & proper implementation of the aim & object of the Act of 1960, in consonance with the guidelines laid down by Supreme

Court supra above & report compliance to this Commission in accordance with the provisions u/s. 18 (e) of the of the Protection of Human Rights Act, 1993.

Office of the Ld Secretary attached with this Commission to forward the copy of the order for information & necessary action, to the office of the concerned Ld Municipal Commissioner as well as to the office of Ld Additional Chief Secretary, Urban Development Dept. , Mantralaya, Mumbai for proper compliance, in accordance with the provision u/s. 18 (e) of the Protection of Human Rights Act, 1993 r/w Regulation 22 to 24 of the Maharashtra State Human Rights Commission, (Procedure), Regulations, 2011.

Ordered accordingly.

(M. A. Sayeed)
Acting Chairperson / Member