

Moot problem 6

Protection of Animals & Welfare Society (PAWS) v. Union of Nalanda

Dravida Nadu is a State in the Union of Nalanda. The State is known for its rich cultural heritage, language, art, literature and science. There are many unique practices and festivals prevalent in the state from times immemorial, one of which is 'Jallikkattu', the festival of bull taming, where bulls are let out of the cages tied to a 50 m rope and a team of players would hold the bull by force and tame it within a specified period. The sport is considered to have been popular during Dravida Classical Period and had its origin as a yadava festival commemorating Lord Krishna's fight with the seven bulls in order to win a swayamvar. Originally the yadava boys had to fight with a bull in order to marry a yadava girl and a festival for this purpose was held in the yadava villages. With the passage of time the sport became a symbol of bravery and prize money was offered and the festival turned into a major event attracting thousands of spectators and participated by all communities. Jallikkattu often results in major injuries to the bulls as well as to the players, Over 200 people have died from the sport during 1990 – 2010.

Animal rights activists were raising protests against Jallikkattu for quite many years which resulted in the passing of the Dravida Regulation of Jallikkattu Act, 2009. The Act brought in the following regulations:

- a) No person shall conduct Jallikkattu without the prior permission of the Collector.
- b) The organiser is responsible to take all precautionary steps for the orderly conduct of the event, including double barricades in the area where the bulls pass through, to avoid injury to spectators; testing of the animals by the Animal Husbandry Department to ensure that performance enhancement drugs are not administered to the animals etc.
- c) The organisers are required to deposit Rupees Two lakhs with the Collector for the benefit of the victims in case of accident or injury during the event.

In 2011, the Ministry of Environment and Forests issued a notification that banned the use of bulls as performing animals. However Jallikkattu continued to be held in Dravida nadu under the Dravida Regulation of Jallikkattu Act 2009. The animal activists continued their propaganda and argued that the regulations are insufficient

to prevent cruelty towards the bulls and filed a petition before the supreme court challenging the constitutional validity of the 2009 Act. Animal Welfare submitted a report before the court stating that the Acts of cruelty on the bulls during this sport included ear cutting, mutilation, poking bulls with knives and sticks, using irritants, nose ropes, beating and agitating bulls etc. The organisers of Jallikattu submitted that the sport is closely associated with village custom and tradition, does not amount to cruelty to animals and that it will not be in public interest to ban the entire event, merely on account of some instances of violation.

The Supreme Court upheld the challenge and struck down the Act thereby banning Jallikattu in Dravida Nadu. The Supreme Court held that any historical, cultural or religious significance attributed to Jallikattu would be superseded by the Prevention of Cruelty to Animal Act 1960, it being a Parliamentary legislation. Jallikattu was held to be violative of the rights of the animals under S.3 of the PCA Act and amounts to cruelty to animals under S.11 of the PCA Act. The Court also declared the five freedoms of animals namely, freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behavior.

In January 2016, the Ministry of environment and Climate Change issued a notification under Section 22 of the PCA Act 1960 in supersession of the notification issued by it in 2011. The notification permitted holding of Jallikattu in the State of Dravida Nadu subject to safety conditions and without violation of the rights of animals under PCA Act as well as the rights spelt out in the Supreme Court Judgment. The Minister at a press conference revealed that the notification is in tune with the religious and cultural sentiments of the people of Dravida Nadu and that Jallikattu is often associated with temples and is a village cultural practice from times immemorial. Moreover the event earns considerable revenue for the State.

Protection of Animals & Welfare Society (PAWS) challenged the notification as being violative of the principles of delegated legislation as well as against the constitutional principles of Separation of Powers. Union of Nalanda contented that

the Supreme Court judgment prescribing fundamental freedoms for animals linking it to Article 21 and granting constitutional status for rights of animals needs to be reconsidered as it is inconsistent with the established jurisprudence that animals are things and not persons in the eye of law. The following issues arose out of the challenge.

- (i) Whether the 2016 notification is ultra vires the parent Act, namely PCA Act?
- (ii) Whether the notification issued in clear violation of the judgment and order of the Supreme Court amounts to contempt of Court?
- (iii) Whether by virtue of the notification, the executive has usurped the judicial power and hence violated Separation of Powers which is part of basic structure of the Constitution.
- (iv) Whether the notification is violative of Article 51(g) of the Constitution?

Counsel may argue on both sides. Allowed to frame additional issues.

The laws of Union of Nalanda is same as that of Union of India

Annexure

Government Order dated 07.01.2016

The Central Government, hereby specifies that the following animals shall not be exhibited or trained as performing animal, with effect from the date of publication of this notification, namely:— 1. Bears 2. Monkeys 3. Tigers 4. Panthers 5. Lions 6. Bulls

Provided that bulls may be continue to be exhibited or trained as a performing animal, at events such as Jallikattu in Dravida Nadu in the manner by the customs of any community or practiced traditionally under the customs or as a part of culture, in any part of the country subject to the following conditions, namely:—

- (i) such event shall take place in any District where it is being traditionally held annually, at such place explicitly permitted by the District Collector or the District Magistrate;

- (ii) In Jallikattu, the moment the bull leaves the enclosure, it shall be tamed within a radial distance of 15 metre;
- (iii) Ensure that the bulls are put to proper testing by the authorities of the Animal Husbandry and Veterinary Department to ensure that they are in good physical condition to participate in the event and performance enhancement drugs are not administered to the bulls in any form; and
- (iv) ensure that the rights conferred upon the animals under section 3 and clause (a) and clause (m) of sub-section (1) of section 11 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960) and five freedoms declared by the Hon'ble Supreme Court in its order dated 7th May, 2014 in Civil Appeal No. 5387 of 2014 are fully protected during such events:

Provided further that any event of Jallikattu or bullock cart races so organised shall be held with the prior approval of the District Authorities concerned:

Provided also further that the Jallikattu or bullock cart races so organised shall be duly monitored by the District Society for Prevention of Cruelty to Animals and State Animal Welfare Board or the District Authorities as the case may be, ensuring that no unnecessary pain or suffering is inflicted or caused, in any manner, whatsoever, during the course of such events, or in preparation thereof.