HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writs No. 14085/2017

Kennel Club Of Rajasthan, Through Its Secretary, Virendra Sharma S/o Sh. Hukum Chand Sharma, R/o C-3, Ramnikunj, New Colony, Panch Batti Jaipur, Rajasthan.

----Petitioner

Versus

1. The Union Of India Through Principal Secretary, Ministry Of Environment Forest Climate Change, Indira Paryavaran Bhawan, New Delhi.
2. State Animal Welfare Board, State Of Rajasthan, Through Its Member Secretary.
3. Director, Department Of Animal Husbandry, State Of Rajasthan

----Respondents

For Petitioner(s)	:	Mr. Lokendra Singh Kachhawa
For Respondent(s)	:	Mr. RD Rastogi, Additional Solicitor General with Mr. Vedant Agrawal Mr. Kunal Jaiman for Mr. NM Lodha, Advocate General

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HON'BLE MR. JUSTICE M.N. BHANDARI
HON'BLE MR. JUSTICE DINESH CHANDRA SOMANI

Judgment

14/05/2018

By this writ petition, a challenge is made to the Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017 (in short **"the Rules of 2017"**) which was notified by the Notification dated 23rd May, 2017.

The challenge to the Rules of 2017 is in the hands of a society registered under the Societies Registration Act, 1958 (for short **"the Act of 1958"**). It is stated that the society is mainly involved in arranging "Dog Show" and further activities pertaining

thereto. It is even to encourage people to adopt stray dogs, love and compassion towards dogs and so on. The challenge to the Rules of 2017 has been made for want of competence of the Central Government by referring Entry 15 of List II of Seventh Schedule of Constitution of India. The Central Government could not have made legislation on subject concerned by the said Entry. On the aforesaid ground itself, a prayer is made to struck down the Rules of 2017. An order to this effect has been passed by the Madras High Court in a pending writ petition and no interference therein was made by the Apex Court on an appeal preferred by the Central Government.

Learned counsel for petitioner-club further submits that even if it is assumed that the Central Government has competence to legislate then as per Section 38(1)(a) of the Prevention of Cruelty to Animals Act, 1960 (for short **"the Act of 1960"**), the rules and regulations made by the Central Government or by a committee under Section 15 of the Act of 1960 need to be laid before Parliament as soon as it is made. It is before both the Houses of Parliament and if any modification or amendment is suggested, then to be carried out. The respondents have failed to lay the Rules of 2017 before both the Houses of Parliament and, therefore, mandate of Section 38(1)(a) of the Act of 1960 has not been followed.

Coming to the Rules of 2017, learned counsel submits that definition of "breeder" given under Rule 2(1)(c) of the Rules of 2017 includes even sale of dogs and pups. The petitioner-club is not involved in sale of dogs and pups but is trading therein thus could not have been governed by the Rules of 2017.

A further reference of Clauses 5 and 6 under Second Schedule appended to the Rules of 2017 has been given, which are in conflict with other provisions regarding breeding of dogs, etc. In view of the above, challenge to the definition of "breeder" given under Rule 2(1)(c) of the Rules of 2017 as well as Clauses 5 and 6 of the Second Schedule have been made. A prayer is, accordingly, made to struck down the Rules of 2017.

Learned Additional Solicitor General Shri RD Rastogi has opposed the petition. He submits that subject matter is within the competence of the Central Government as it falls in the Concurrent List given in Seventh Schedule of the Constitution of India. The rules were made for prevention of cruelty under Entry 17 of List III of Seventh Schedule.

Learned counsel for petitioner-club has tried to mislead the court by referring Entry 15 of List II of Seventh Schedule which is not governing the subject matter of prevention of cruelty of animals but preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice. Rules of 2017 have been made for prevention of cruelty of dogs thus is well within the competence of the Central Government apart from the State. Accordingly, second ground to challenge the Rules of 2017 is not tenable.

He further submits that challenge to the definition of "breeder" given under Rule 2(1)(c) of the Rules of 2017 is for no reason if petitioner-club claims them to be not covered by it, being traders only. The petitioner-club is, in fact, involved in breeding of dogs, that too, by involving cruelty. The breeding is permitted with definite interval and method is provided under the Rules of 2017. This is to prevent cruelty on dogs and is not suitable for the

petitioner-club. They want maximum breeding from the dogs so as to sale it and to earn profit. It may be at the cost of cruelty. If they are simply arranging "Dog Show", then there was no reason to question Clauses 5 and 6 of the Second Schedule of the Rules of 2017. It is pertaining to breeding of dogs.

It is further clarified that no judgment has been rendered by the Madras High Court on the issue raised herein, rather, an interim order was passed and has not been interfered by the Apex Court on the concession recorded by the Additional Solicitor General appeared therein. The petitioner-club has projected interim order to be a judgment of the Madras High Court and upheld by the Apex Court. Therein, challenge to the Rules of 2017 was not made. It was challenged to other Rules of 2017 thus even no assistance from the interim order of the Madras High Court can be taken. A prayer is, accordingly, to dismiss the writ petition.

We have considered rival submissions made by learned counsel for the parties and perused the record.

A challenge to the Rules of 2017 has been made, firstly, on the ground that it is without legislative competence. A reference of State List under Seventh Schedule of the Constitution of India has been given. The List II under Seventh Schedule is for the State and Entry 15 therein is for preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice. The said Entry does not govern prevention of cruelty on animals, rather, it is governed by Entry 17 of List III of Seventh Schedule. The Government of India has power to frame the rules for prevention of cruelty on animals. In view of the above, we are unable to accept first ground raised by

learned counsel for petitioner-club to challenge the validity of the Rules of 2017.

The another issue raised by learned counsel for petitioner-club is in reference to Section 38(1)(a) of the Act of 1960. He submits that rules made by the Central Government were required to be laid before both the Houses of Parliament. In the instant case, Rules of 2017 were not laid before Parliament.

The perusal of writ petition does not show pleading on the aforesaid issue. It is not stated that rules were not laid before Parliament so as to be replied by the respondents. Hence, issue aforesaid cannot be raised in absence of pleadings as essentially it is dependent on the facts i.e. whether the Rules of 2017 were laid before Parliament or not.

The requirement of Section 38(1)(a) of the Act of 1960 is not to seek approval or permission from Parliament before affecting the rules, accordingly, we are unable to accept the second argument in absence of pleadings in the writ petition. It is, however, necessary to refer certain judgments cited by learned counsel for respondents. Wherever a provision exists to lay rules before both the Houses of Parliament, it is considered to be directory in nature. A reference of judgment of the Apex Court in the case of **M/s. Atlas Cycle Industries Ltd. & Ors. Vs. State of Haryana, reported in (1979) 2 SCC 196** would be relevant. Paras 22 and 32 of the said judgment are quoted hereunder for ready reference:

> "22**.** Now at page 317 of the aforesaid Edition of Craies on Statute Law, the questions whether the direction to lay the rules before Parliament is mandatory or merely directory

and whether laying is a condition precedent to their operation or may be neglected without prejudice to the effect of the rules are answered by saying that "each case must depend on its own circumstances or the wording of the statute under which the rules are made". In the instant case, it would be noticed that sub-section (6) of Section 3 of the Act merely provides that every order made under Section 3 by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made. It does not provide that is shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made under Section 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to laying contained in sub-section (6) of Section 3 of the Act falls within the first category, i.e.

"simple laying" and is directory not mandatory. We are fortified in this view by a catena of decisions, both English and Indian. In **Bailey** v. **Williamson**, where by Section 9 of the Parks Regulations, Act 1872 passed on June 27, 1872 "to protect the royal parks from injury, and to protect the public in the enjoyment of those royal parks and other royal possessions for the purpose of innocent recreation and exercise" it was provided that any rules made in pursuance of the first schedule to the Act shall be forthwith laid before both Houses of Parliament, if Parliament be sitting, or if not, then within three weeks after the beginning of the then next ensuing session of Parliament; and if any such rules shall be disapproved by either House of Parliament within one month of the laying, such rules, or such parts thereof as shall be disapproved shall not be enforced and rules for Hyde Park were made and published on September 30, 1872 when Parliament was not sitting and in November 18, 1872, the appellant was convicted under Section 4 of the Act for that he did unlawfully act in contravention of Regulation 8 contained in the first Schedule annexed thereto by delivering a public address not in accordance with the rules of the said Park but contrary to the Statute, and it was inter alia contended on his behalf that in the absence of distinct words in the statute stating that the rules would be operative in the interval from the time they were made to the time when Parliament should meet next or if Parliament was sitting then during the month during which Parliament had an opportunity of expressing its opinion upon them, no rule made as supplementing the schedule could be operative so

as to render a person liable to be convicted for infraction thereof unless the same had been laid before the Parliament, it was held overruling the contention that the rules became effective from the time they were made and it could not be the intention of the Legislature that the laying of the rules before Parliament should be made a condition precedent to their acquiring validity and that they should not take effect until they are laid before and approved by Parliament. If the Legislature had intended the same thing as in Section 4, that the rules should not take effect until they had the sanction of the Parliament, it would have expressly said so by employing negative language.

32**.** From the foregoing discussion, it inevitably follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub-section (6) of Section 3 of the Act should render the order void. Consequently non-laying of the aforesaid notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification. Accordingly, we answer the aforesaid question in the negative. In view of this answer, it is not necessary to deal with the other contention raised by the respondent to the effect that the aforesaid notification being of a subsidiary character, it was not necessary to lay it before both House of Parliament to make it valid."

Learned counsel for respondents has further made reference of other judgments of the Apex Court in the case of **Prohibition & Excise Supdt. A.P. & Ors. Vs. Toddy Tappers Coop. Society, Marredpally & Ors., reported in (2003) 12 SCC 738** and also in the case of **Quarry Owners' Association Vs. State of Bihar & Ors., reported in (2000) 8 SCC 655**. Relevant Para 55 of the judgment in the case of Quarry Owners' Association (supra) is also quoted hereunder for ready reference:

> "55. However, since we have upheld the impugned notifications issued by the State to be within the ambit of delegation and that delegation is not excessive as there are enough guidelines and control over the State Government, notwithstanding its check on the State under sub-section (3) of Section 28, it would not have any effect on its validity. But we make it clear that when a statute as under sub-section (3) of Section 28 requires its placement, it is the obligation of the State Government to place such with this specific note before each House of State Legislature. Even if it has not been done, the State shall now do place before each House of the State Legislature at the earliest, the notification dated 28-9-1994 and will also do so in future while framing rules or issuing any notifications under the Rules framed under sub-section (1) of Section 15 of the Act."

In view of judgments aforesaid, even if factual issues would have been raised by the petitioner-club for non-compliance of Section 38(1)(a) of the Act of 1960, it could have been answered

on facts and in reference to the judgments cited by learned counsel for respondents. The provision of Section 38 of the Act of 1960 cannot otherwise be taken to be mandatory.

Learned counsel for petitioner-club has challenged the definition of "breeder" given under Rule 2(1)(c) of the Rules of 2017 and otherwise Clauses 5 and 6 of the Second Schedule appended to the Rules of 2017.

So far as Clauses 5 and 6 of Second Schedule of the Rules of 2017 are concerned, it is for the breeding of the dogs. The petitioner-club has nowhere stated that they are involved in breeding of dogs but said to be involved in arranging "Dog Show" and other activities than breeding. It could not be clarified as to why those rules have been challenged. It is stated that petitioner-club is involved in trading of dogs and not sale of dogs. It is necessary to clarify that trading of dogs is nothing but sale of dogs thus petitioner-club has rightly been covered by the definition of "breeder". As per Rules of 2017 under challenge what is required by the petitioner-club is mainly to have registration from the State Board. The registration is required for the purpose sought to be achieved and, accordingly, we do not find any ground to challenge validity of the definition of "breeder" or other clauses of the Rules of 2017.

Learned counsel for respondents at that stage submits that presumption of validity of legislation always remains unless shown otherwise. He has given reference of the judgment of the Apex Court on the issue aforesaid. It is in the case of **Dharmendra Kirthal Vs. State of Uttar Pradesh & Anr., reported in (2013) 8 SCC 368** and in the case of **Bhavesh D. Parish & Ors.**

Vs. Union of India & Anr., reported in (2000) 5 SCC 471 apart from **B. Banerjee Vs. Smt. Anita Pan, reported in (1975) 1 SCC 166**.

In the light of judgments referred to above, presumption of validity of legislation has to be drawn in favour of the respondents. It is moreso when challenge to the validity in reference to Constitution of India or the Act of 1960 has not been accepted by this court.

Accordingly, we do not find any merit in the writ petition. It is thus dismissed.

(DINESH CHANDRA SOMANI),J (M.N. BHANDARI),J

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