

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.20158 of 2021

Date of Decision: 07.04.2022

Abhishek BhatejaPetitioner

Vs

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Anurag Chopra, Advocate
for the petitioner.

Mr. Dheeraj Jain, Senior Panel Counsel
for respondents No.1 and 3.

Mr. Mohinder Singh Nain, Advocate
for respondents No.2 and 4.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction, especially in the nature of certiorari for quashing the impugned order dated 07.03.2017 as well as order dated 26.04.2018 passed by respondent No.4, whereby visiting time for the animal lovers has been re-scheduled thereby allowing the animal lovers/volunteers to visit SPCA, Chandigarh for two hours in the summers i.e.

10.00 A.M. to 12.00 P.M. in the morning and for two hours in the evening between 6.00 P.M. to 8.00 P.M. During winters visiting time from 10.00 A.M., to 12.00 P.M. in the morning and from 5.00 P.M. to 7.00 P.M. in the evening for volunteers has been scheduled. According to the petitioner, re-scheduling of time is less public friendly and has deprived animals in need of urgent treatment and thus has hampered the welfare of animals further leading to failure of the main objective for setting up the Animal Welfare Board.

[2]. Petitioner has also sought mandamus directing the respondents to adjudicate upon the representations dated 04.04.2021 and 02.08.2021 filed by the petitioner addressing the grievance faced by the volunteers/rescuers and animal lovers at the hands of supervisors and staff deputed at SPCA, Chandigarh. Petitioner has also prayed for staying the operations of impugned orders dated 07.03.2017 and 26.04.2018 during pendency of the present writ petition.

[3]. Petitioner claims himself to be a volunteer and donates regularly at the Society for Prevention of Cruelty to Animals (SPCA), Chandigarh. Petitioner has also participated in various animal welfare and awareness activities coordinated by the Field Inspector, Society for Prevention of Cruelty to Animals (SPCA) Chandigarh. Petitioner also promotes adoption of street

animals and encourages other people to promote and support the Government shelters like Society for Prevention of Cruelty to Animals (SPCA), Chandigarh. Feeling aggrieved by the impugned orders, the petitioner has preferred this petition.

[4]. In the very nature of prayers made in the writ petition, *locus standi* of the petitioner to maintain the present writ petition would fall at second pedestal because welfare of the animals particularly the ailing animals is of paramount consideration. Article 51-A(g) of the Constitution of India enjoins upon every citizen of India to have compassion for living animals and the subject "Prevention of Cruelty to Animals" falls under Entry 17 of the Concurrent List. Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as the 'PCA Act') has the preamble i.e.

"An act to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals."

[5]. Section 3 of the aforesaid Act casts duty upon every person having charge of an 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 and thus, provides, for constitutional mandate under Article 51-A(g) of the Constitution of India. Section 11 provides for punishing the person who commits cruelty to animals and

Section 22 provides restrictions on exhibition and training of performing animals. The Rules framed under the Act form an exhaustive legislative scheme for the prevention of cruelty to animals. The Act also provides for establishment of the Animal Welfare Board for promotion of measures of animal welfare.

[6]. The Animal Welfare Board of India (AWBI) was set up in accordance with Section 4 of the PCA Act and the said Board is an advisory body to Government of India and makes various recommendations and gives valuable advice to the Government on the matters pertaining to cruelty to the animals. The AWBI from time to time issues advisories and circulars whenever necessary to various government authorities, local authorities and other organizations for proper implementation of PCA Act and rules framed thereunder. The main role assigned to the Board i.e. AWBI is to prevent any unnecessary pain or sufferings to the animals and to keep law in force in India for the prevention of cruelty to Animals. The AWBI has issued the following circulars/letters to various functionaries of the Government, Local Authorities and other organizations:-

- "i. On 16-6-2020, a letter was issued by AWBI to the Director of Animal Husbandry of all the States/UTs to establish the State Animal Welfare Board, if not established and make it functional or activate the District Society for Prevention of Cruelty to*

Animals (SPCAs) in order to comply with the Hon'ble Supreme Court of India.

ii. On 30-6-2020, a letter was issued by the AWBI to the Additional Chief Secretary/Principal Secretary/Secretary of Animal Husbandry and Veterinary Service of all the States and UTs to establish District SPCAs and register Animal Welfare Organization which will function in the District with the AWBI.

iii. On 28-6-2021, a letter was issued by AWBI to the Additional Chief Secretary/Principal Secretary/Secretary of Animal Husbandry and Veterinary Service of all the States and UT's requesting them to initiate necessary action for making effective utilization to open or equip at least one hospital in urban area with specialized facilities for veterinary treated along with the mobile ambulance facilities which can be render 24 X 7 service in the state.

iv. On 23-8-2021, a letter was issued by the AWBI to the Director of Animal Husbandry of all the States/UTs requested to established or activate District Society for Prevention of Cruelty to Animals (SPCAs) and register the animal welfare organizations which are functioning in the District with the AWBI. It was also requested to forward a copy of the notification issued regarding the Establishment/Constitution/Re-Constitution of Government SPCAs and present status of each SPCAs functioning in the district along details of Nodal Officers.”

[7]. In the present case, the AWBI has received various complaints regarding the present conditions prevailing in the

SPCA, Chandigarh. The complaints are in respect of conditions of animals, who are being kept in the Society for Prevention of Cruelty to Animals (SPCA) Chandigarh. According to inspection conducted by a team comprising of Member, AWBI and veterinary surgeon on 31.10.2020 and 02.11.2020, some glaring irregularities were noticed. A detailed report was prepared wherein various recommendations were made. Relevant observations made by the Inspecting Team are necessary to be quoted hereasunder:-

(i) The SPCA is recognized by the AWBI and was run by the volunteers until it was taken over by the Chandigarh Administration in the year 2016 as a consequence of various complaints received in the context of conditions of the animals which are being kept there.

(ii) The President of the SPCA is the Deputy Commissioner of Chandigarh, Vice President is the Director of Animal Husbandry, Honorary Secretary is the Joint Director of Animal Husbandry and the Executive Secretary is the veterinary officer. One Dr. Bhangoo is the Joint Director who was found present during inspection, and was associated in the process of inspection.

(iii) The Inspecting Team found that all the records of the SPCA are supposed to be computerized, but the same was not found to be the factual position. The SPCA has two ambulances, but only one ambulance was found to be functional. Only one driver was found on duty. Both the ambulances cannot be utilized at a given time. The

Supervisors and Field Inspectors of SPCA are not qualified, skilled or trained for their respective positions. There are allegations against the Field Inspector of SPCA, Chandigarh in the past for serious financial misdemeanors.

(iv) The Inspecting Team has also found that on an average the SPCA used to take care of 250 animals in a month. It is funded by the Department of Animal Husbandry with an annual budget of Rs.70 lakhs. 90% of the funds go towards the salary of the employees and remaining 10% is spent on medicines and food of the animals. In the current year, number of animals has gone closure to 400 plus, including 120 large animals and 180 dogs, 100 plus birds and other animals. The SPCA has substantially large number of animal patients in summers due to maggot infestation. Current budget is Rs.70 lakhs out of which Rs.60 lakhs is for salary head and 90% of the remaining amount is used for monthly electricity bills, phone bills, water bill and fuel charges.

(v) According to Prevention to Cruelty to Animals Rules 2001, the managing body of the SPCA should have at least two members of the Animal Welfare Organizations, who are actively involved in the work of prevention of cruelty to animals and welfare of animals. The Board is predominantly of Animal Husbandry personnel and doctors. There is an instinct of bias within the Department with no checks and balances and there is a lack of civil society representation.

(vi) Chartered Accountant Mr. Prem Garg is also a member of the Committee and an ex-employee of Animal Husbandry Department. There is unethical and a conflict of interest as the Chartered Accountant is a part of the

Governing Body which is in violation of the SPCA Rules. SPCA has a Bank account in which donations have been received to the tune of Rs.35 lakhs which is not being used. Bulk of the money is going towards salary and very small amount is being spent on food and medicines. Even during COVID-19, emergency fund was not used for the welfare of the animals.

(vii) The stand of Dr. Bhangoo was that the milk, meat, daliya and rice are being fed to small animals according to diet suggested by the Doctors. The observation of the Inspecting Team was that the dogs were extremely malnutrition. The cats were kept in small cages with no access to litter. Cats cannot be fed only on dalia. There is no specialized section for animals needing special care. Only a room with solid flooring with no sunlight is allotted for paralysed dogs and cats. Extremely high mortality rate of blind dogs was noticed.

(viii) One out of four veterinary doctors is the executive secretary and he does not visit the society. Only three veterinarian are the part of Committee and more than often failed to visit the site. The visits are done only for 10-15 minutes and that too for verifying the record.

(ix) Very often the treatment and surgeries are conducted by non-veterinary staff of the shelter. The SPCA, Chandigarh gets complex cases very often without a prior history for which well qualified experienced surgeon is required to be deputed or hired to perform duties with a reasonable salary.

(x) There is a lack of blood work and X-rays. Blood tests like CBC and biochemistry along with X-rays are done

on discretionary basis without any procedure in place due to lack of budget. They are simply avoided and many animal patients are deprived of these tests.

(xi) The volunteers and donors shared that they are only allowed within the facility for two hours each in the morning and evening and the same is harassment to them. There are many pigeons stuffed into a cage with no space to fly or move around. There is a need to build aviary for accommodating the birds. No record has been maintained for the treatment of birds.

(xii) There were total 83 cases of wildlife that were admitted to SPCA in the last financial year and a large number of wild animals died. The SPCA is not equipped to take care of wildlife and should not be treating them. They had many eagles in one concrete covered room and other wildlife birds in small cages. The staff said Sukhna Wildlife Sanctuary is working with them on building cages for wild birds, however it was found that no such thing was happening. सत्यमेव जयते

(xiii) The animals are totally dependent upon green fodder supplied by volunteers. This should be in addition to what SPCA should be procuring for the welfare from the own budget for large animals everyday. The SPCA cannot be dependent upon volunteers for everyday essentials.

(xiv) Dry fodder is being stored for large animals. The condition of storage of fodder was very bad. It was damp and smelt rancid. The animals could get poisoned and may fall ill, if they consumed such type of stuff.

(xv) The SPCA has tie-up with a pet hospital in

Panchkula where the dogs are taken. Large animals are taken to clinic in Mohali. In reality it was found that in fact the dogs are not being taken to pet hospital in Panchkula. As per record of almost five years, one case was referred to Balongi (Mohali Distt. Polyclinic) and that too for a small animal. The rest of the cases have been taken to other private or government veterinary facilities by the volunteers themselves.

(xvi) The tile work at SPCA is of poor quality. Sizable depressions have been noted at the shelter. Though Dr. Bhangoo shared with the Inspecting Team that the sewerage system is linked to the city sewerage system, however the volunteers shared with the Inspecting Team that during monsoon, the SPCA experiences flooding in lot of areas.

(xvii) There are no rehab and adoption rules and policy on abandoned pedigree dogs in shelter. A different type of policy is needed for these dogs, cats, cattle etc. as they are vulnerable to exploitation and cannot be rehabilitated on the streets. Genuine focus on sterilization and rehabilitation of these animals should be mandatory for the organizations. Adoptions are carried out on a discretionary basis with a personal bias of shelter employees and board members. The organization lacks guidelines on the pre-adoption, post-adoption, timely follow-up and verification. This should be formulated in detail.

(xviii) Ultimately, the Inspecting Team made number of recommendations thereby showing need to set up a Monitoring Committee for SPCA including representation from the AWBI, Civil Society as well as an animal welfare organizations. The constitution of the SPCA was amended

in the year 2012, but still it is not notified. This has to be done on a war footing.

(xix) There should be at least one doctor preferably a surgeon, who is a permanent employee. There should be one Deputy Supervisor, even if it is an honorary position, who can work past 5 P.M. and should be put incharge of identifying requirements needed for running of the shelter. One of the recommendations was for addition of specified medicines in addition to the list of medicines already shared by Dr. Bhangoo.

(xx) Prior notice is also recommended on volunteers meeting so that an AWBI member can attend the same whenever possible. Euthanasia Policy needs to be instituted immediately along with adoption policy.

(xxi) The Inspecting Team also found that Mr. Mohan Singh Ahluwalia from AWBI has been visiting the SPCA regularly. He is accompanied by a member of the Animal Husbandry Team. It was shared that the SPCA staff as well as volunteers are used for his personal work. He has failed to submit any inspection report so far. Action needs to be taken as this is not a good reflection on AWBI.

[8]. On the basis of aforesaid facts, this Court issued notice of motion on 27.10.2021 by passing the following order:-

“The case has been taken up for hearing through video conferencing.

Learned counsel for the petitioner submits that Society for Prevention of Cruelty to Animals (SPCA) Chandigarh is a recognized and approved society by

Animal Welfare Board of India. On receipt of numerous complaints regarding condition in which animals are being kept in the society in Chandigarh, a report was submitted by Animal Welfare Board of India, wherein serious lapses have been noticed in SPCA Chandigarh. Supervisors and Field Inspectors of SPCA are found to be not qualified, skilled or trained for their respective positions. Managing Body of SPCA does not have two members of Animal Welfare Organizations, who are actively involved in the work of prevention of cruelty to animals and welfare of animals in the area. It has also been noticed that society has a Chartered Accountant namely Mr. Prem Garg who has been made member of the Committee. He has no background of the subject. It has also been noticed that there is no specialized section for animals needing special care. Only a room with solid flooring with no sunlight has been allotted to paralysed dogs and cats, thereby increasing high mortality rate of blind dogs also. Treatment is being provided by non-veterinarian staff including surgeries by non-veterinarian staff of the shelter. The grievance of the petitioner is that the impugned orders Annexures P2 and P3 in the context of restricting the animal lovers from visiting at any time for taking care of ailing animals have been passed without taking into consultation Animal Welfare Organizations and other animal lovers/stake holders, who have been actively involved in the welfare of the animals.

Notice of motion: 30.11.2021.

At this stage, Mr. Dhereaj Jain, Advocate accepts notice on behalf of respondents No.1 and 2.

Let respondents No.2 and 4 be served through standing counsel on behalf of U.T.

Notice re:stay as well.”

[9]. In due course the matter came to be listed on 06.1.2022. Petitioner and respondents No.2 and 4 were at variance in respect of inspection conducted by the Inspecting Team by associating the authorities of SPCA, Chandigarh. According to learned counsel for respondent No.2 and 4, the inspection was conducted only in the presence of Dr. Kanwarjit Bhangu, Joint Director and the said report was never communicated to respondents No.2 and 4. According to learned counsel for the petitioner the inspection was conducted after associating the authorities of SPCA, Chandigarh. Learned counsel for respondents No.1 and 3 took a stand that report dated 31.10.2020 and 02.11.2020 prepared after inspection by Ms. Anjali Gopalan, Managing Trustee was duly communicated to the Administrator and even a reminder was also sent thereafter. The order dated 06.01.2022 reads as under:-

“The case has been taken up for hearing through video conferencing.

Learned counsel for the petitioner relies upon report dated 31.10.2020 and 02.11.2020 prepared by Animal Welfare Board of India after inspection of premises of Society for Prevention of Cruelty to Animals (SPCA). The said report was prepared by Ms. Anjali Gopalan, Managing Trustee of the aforesaid Board.

According to learned counsel for the petitioner, the

inspection was conducted after associating the authorities of SPCA, Chandigarh.

Learned counsel for respondents No.2 and 4, however, refutes the same and submits that the aforesaid inspection was conducted only in the presence of Dr. Kanwarjit Bhangu, Joint Director and the said report was never communicated to respondents No.2 and 4.

At this stage, learned counsel for respondents No.1 and 3 submits that report dated 31.10.2020 and 02.11.2020 prepared after inspection by Ms. Anjali Gopalan, Managing Trustee was duly communicated to the Administrator and even a reminder was also sent thereafter.

Learned counsel for respondents No.2 and 4 seeks time to verify the aforesaid fact.

In the meanwhile, respondents No.1 and 3 may also file their reply in the context of communication addressed to the Administrator in compliance of aforesaid report.

Learned counsel for respondents No.1 and 3 seeks a week's adjournment to do the needful in the context of filing required reply.

Adjourned to 14.01.2022.

To be shown after the urgent list.”

[10]. Written statement filed by respondents No.2 and 4 is suggestive of the fact that an attempt has been made to challenge the locus of the petitioner to maintain this writ petition. Much stress has been made about the conduct of the petitioner.

Society is claimed to be well managed by expert staff including veterinary doctors. The volunteers only give calls to the staff regarding the injured animals or the animals suffering from the deceases and it is the staff of the Society that brings such animals to the Society. The volunteers only come for the purpose of feeding the animals and at times, they feed the animals against the norms and the instructions of the veterinary doctors of the Society. The impugned orders have been passed only after decision in the meeting of the members of the AWBI and SPCA. The orders were passed taking into account the totality of facts and circumstances and overall welfare of the animals.

[11]. Along with reply filed by respondent No.3 there is a document Annexure R-3/2 i.e. letter dated 05.07.2021 addressed by the Animal Welfare Board of India to the Administrator, Chandigarh on the subject of forwarding the inspection report of District SPCA Chandigarh for effective implementation of the provisions of the Animal Birth Control (Dogs) Rules, 2001 for sterilization and immunization of the strays dogs. There is no remedial measures taken in pursuance of that letter till date.

[12]. In the aforesaid letter, it has been written that Dr. Bhangoo said that a doctor for wildlife is to be hired by

December. This should happen after they have permission to treat wildlife if they don't have it already and this should be done only after proper enclosures are built for housing wildlife. Rectification of the shortcomings were sought by the Board. Vide Annexure R-3/3 dated 08.10.2021, the Board has again asked for expediting the issue already referred vide Annexure R-3/2.

[13]. Learned counsel for the petitioner has also referred to the photographs of ailing animals and the conditions in which animals are lodged in different cages. Learned counsel also relied upon number of news items appearing in leading newspapers to show that there is acute shortage of veterinary doctors for which stop-gap arrangement is being done to tackle the absence of veterinary officer at the government run animal shelter Society for Prevention of Cruelty to Animals (SPCA) in Sector 38, Chandigarh. 47% of the animals brought to the shelter home died during treatment according to one RTI information. Animal rights activists have raised their concern over the absence of veterinary doctors at the government run animal shelter. They have also pleaded that there is urgent need for critical care and the same is being done by non-veterinary doctors/staff at the moment.

[14]. A short reply by way of affidavit of Dr. Kanwarjit Singh,

Joint Director-cum-Honorary General Secretary, SPCA, Sector 38, Chandigarh has been filed on behalf of respondents No.2 and 4. As per this reply, there were two Resident Doctors, who reside on the second floor of the building of SPCA to provide 24 x 7 services. However one of the Doctor has resigned in the recent past i.e. on 01.02.2022 and the SPCA has also sent the requirement as regards the second doctor to the Contractor. Post of Field Inspector was available in the earlier NGO, but after taking over of the SPCA by the Administration in the year 2015, the nomenclature of the post of Field Inspector has been changed to that of Clerk as the post of Field Inspector is not available on DC rates. The services of the staff deputed at the SPCA is outsourced through contractor. The contract is being awarded on yearly basis through Government guidelines.

[15]. As per the aforesaid reply, Prem Garg, Chartered Accountant is a nominated member of governing body of SPCA and had never been an employee of the Animal Husbandry Department, Chandigarh. He was an active member of the earlier SPCA too, which was running as a private NGO. He is looking after the accounts of SPCA voluntarily. Being member of governing body, he must be signing the account statements of SPCA also. In the past, meeting were convened on need basis and to avoid communication gap between executive committee

and animal lovers. But the participation of the volunteers in meeting is the minimum.

[16]. The aforesaid reply filed on behalf of respondents No.2 and 4 also contains reply to the recommendations contained in the inspection report. Along with the reply, documents Annexures R-4/10 to R-4/16 have also been attached. Perusal of Annexure R-4/10 would show that a letter of Intent for award of tender for providing human resource manpower services to SPCA, Sector 38, Chandigarh was floated. It was only a tender and no employment was made thereafter since 26.09.2019. Similar perusal of Annexure R-4/13 would show that a letter of Intent for award of manpower contract of 23 nos. outsourcing services for SPCA, Sector 38 Chandigarh was issued. Letter was issued to one of the service agency informing that its agency has been selected as the successful bidder for providing 23 persons as per detail in the tender at the rate quoted by it. Item No.1 was in respect of two veterinary doctors to be taken through outsourcing agency, but till date no such doctors have been provided by the outsourcing agency.

[17]. Rival stand taken by the parties can only be addressed and answered if the representations filed by the petitioner and other animal lovers are effectively adjudicated by the addressee. Apparently, the petitioner has sent representations dated

04.04.2021 (Annexure P-10), 02.08.2021 (Annexure P-11). Besides this an e-mail (Annexure P-12) has also been sent by one Shaguna Dhawal on 25.04.2021 to the Deputy Commissioner-cum- President SPCA, Sector 38 West Chandigarh highlighting the present state of health of SPCA Chandigarh. It would be just and appropriate to request the addressee of these representations to take all corrective steps for the welfare of the animals lodged in SPCA, Sector 38, Chandigarh. The timing schedule as per the impugned orders needs to be revisited as per the time schedule prevailing before passing the impugned orders. This is so particularly in view of the state of affairs prevailing in the SPCA Chandigarh as per inspection report and the facts which have been brought on record of the present case.

[18]. I deem it appropriate to dispose of this writ petition at this stage with a request to the addressee of the representations (Annexures P-10 to P-12) to pass appropriate orders in accordance with law and till then allow the animals lovers and social organizations to feed the animals and to take care of them as per the norms and prevailing situation prior to passing the impugned orders. If the competent authority comes to the conclusion that fixing of new time schedule for visits of animals lovers/volunteers needs to be re-fixed, then new schedule be

fixed after providing reasonable opportunity to all the stakeholders including the animal lovers and volunteers in accordance with law. Till such time, the operation of the impugned orders shall be kept in abeyance so as to allow the animal lovers/volunteers and other organizations to have recourse to the time schedule as was prevalent prior to passing of the impugned orders.

April 07, 2022

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Whether speaking/reasoned

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Whether reportable

Yes/No



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