ANIMAL WELFARE BOARD OF INDIA
Ministry of Fisheries, Animal Husbandry and Dairying, Govt. of India
NIAW Campus, 42 Mile Stone, Delhi-Agra Highway
NH-2, Ballabhgarh, Haryana-121004
Email: animalwelfareboard@gmail.com : Website: www.awbi.in

F. No. 3-5/2021-2022/PCA Date: 15.06.2021

To

1. The Chief Secretary of all States/UTs
2. The Director General of Police of all States/UTs

Subject : Request to ensure proper implementation of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017- regarding.

Sir/Madam,

The Animal Welfare Board of India is a statutory body established under Section 4 of the PCA Act 1960. The function of the Board includes the promotion of animal welfare generally for the purpose of prevention of cruelty and to advise Government or local bodies on any matter connected with animal welfare or the prevention of unnecessary pain or suffering.

2. It is stated that the Hon'ble Supreme Court in the matter of ***GauriMaulekhi Vs. Union of India &Ors., WP 881 of 2014 and Akhil Bharat KrishiGoseva Sang Vs. Union of India &Ors.,WP 210 of 2015*** formed a committee which was consist of all the concerned states and the representatives of the petitioners. Based on the suggestion/ recommendation of the committee and with the guidance as well as the direction of the Apex Court, the Government of India has notified the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 in exercise of the power conferred under Section 38A of the Prevention of Cruelty to Animals Act, 1960.

3. Further, it is stated that Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 were formulated to resolve the difficulties which were being faced in various litigation pendingacross the country, in which the custody of the animals during the pendency of the litigation were raising doubt and confusion.

4. As per the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017and Section 35 of the Act, for Treatment and Care of rescued animals,if the Magistrate thinks it fits in his wisdom, the animals cannot be released to the offender during the pendency of litigation, the vehicle and animals may be seized and handed over the animals to some local Pinjarapoles or Gaushala or Animal Shelter Houses.Also, the expenditure incurred by such shelter

house in Caring and Maintaining the rescued animals during the pendency of the litigation has to be borne by the Accused Owner and the Transporter.

5. It is also pertinent to mention that the Hon'ble Supreme Court of India has given exhaustive direction in various cases in regard to the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 which are as under:-

I. Inthe case of**State of UP v Mustakeem (Criminal Appeal No. 283-287/2002); Pinjrapole Deudar v. ChakramMoraji Nat (1998) 6 SCC 520; M.P. v. Islam (2007) 15 SCC 588**) mandates to the Ld. Trial Courts, how the interim custody application of the accused owner should be decided in case of allegations are of committing cruelty to the Animal. It provides that the condition in which the animal was found at the time of inspection and seizure; and the possibility of the animal being again subjected to cruelty; is relevant factor while deciding the interim custody Application of the accused owner. It is in those cases where interim custody cannot be given to the accused, Ld. Magistrate gives interim custody of the Animals to the Shelter House during the pendency of litigation and cost of which must be bear by the accused owners and transporter as per Section 35 of the Act.

II. In the case of **State of*UP v Mustakeem* (Criminal Appeal No. 283-287/2002)** on 22.02.2002, the Hon'ble Supreme Court had expressed the view in the matter that in a case of cruelty against animals, when there is apprehension of slaughter, the case property animals must not be given into custody of the accused during pendency of the trial.

III. In the case of ***Bharat Amratlal Kothari v. DosukhanSamadkhan Sindhi*** reported in **(2010) 1 SCC 234** the Supreme Court held that when animals are filled in trucks in a cruel manner and being transported, seized by police on complainant's report and sent to pinjrapole. The owner of animals claiming custody of animals in such circumstances, normally cost of maintenance and treatment of animals under Section 35(4) would be payable by the persons claiming custody and not by the complainant.

IV. In the case of ***Pinjrapole Deudar v. ChakramMoraji Nat*** reported in **(1998) 6 SCC 520**the Supreme Court held that in deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the pinjrapole, the following factors will be relevant:

a. the nature and gravity of offence alleged against the owner;
b. whether it is the first offence alleged or he has been found guilty of offences under the Act earlier;
c. if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution;
d. the condition in which the animal was found at the time of inspection and seizure;
e. the possibility of the animal being again subjected to cruelty;
f. whether the pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and
g. whether the pinjrapole has a good record of taking care of the animals given under its custody.

6. In addition to the above, the AWBI has recently through various incidents has found out that these rules are not properly implemented and the concerned official fails to make basic caution during the seizure as well as handling of the case property animals, sometimes they even fail to maintain proper records of the seized animals. Also, when the police make a seizure under section 34 of the PCA Act,1960 based on the NCR or complaint from any person regarding animal cruelty, the seized animals are mostly handed over to the complainant viz. NGO or animal activists or person directly, without following proper procedure, proper record and veterinary examination which is in direct violation of Section 34 of PCA Act, 1960 and in various cases it has been found that these animals are either sold off and found dead or missing.

7. The AWBI has also issued an advisory dated 13.03.2020 stating that the Board has not authorized any person or organization to carry out the inspection to investigate the cruelty-related matters and if any animal cruelty is happening, the same may be brought to the notice of the Board. However, the same is being done by various personnel or AWO and it is advised to the concerned official to not partake in such unlawful inspection of premises, residences, institute etc. unless it is as per the provision of the PCA Act, 1960 or for any other law for the time being in force.

8. Therefore, in view of the above, it is requested to kindly issue necessary direction to the erring officials to properly implement the provision of Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 and to maintain a full record of seized animals. Also, no unnecessary seizure on frivolous complaint may be made from the houses/residences of the citizens unless concerned police official thinks that an offense under PCA Act, 1960 has been committed and upon such seizure, the provisions of the PCA Act, 1960 and Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 may be followed diligently.

Yours sincerely,

(Dr. O. P. Chaudhary) 16.6.21
Chairman

Copy for necessary action and information:

1. The District Magistrate of All States/ UTs.
2. The Municipal Commissioner of all States/UTs
3. Chairman, AWBI