

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR. JUSTICE A.K. JAYASANKARAN NAMBIAR
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY**

MONDAY, THE 6th DAY OF APRIL, 2020/17th CHAITHRA, 1941

W.P.(C). TMP-28 OF 2020

PETITIONER:

N.Prakash, S/o. A. Narayana Rao, Aged 56,
Residing at Prajith Vihar Ayini Nada Road,
Maradu P.O Ernakulam-682304

Petitioner in Person

RESPONDENTS:

1. State of Kerala, represented by its Secretary to Government of Kerala,
Department of Home, Secretariat, Thiruvananthapuram 695 001
2. The City Police Commissioner/District Police Chief,
Kochi City, Ernakulam-682011

By Sri. Ranjith Thampan, Addl. Advocate General
Sri. P. Narayanan, Sr. Government Pleader,

This Writ Petition having come up for orders on 06/04/2020, the Court on the same day passed the following:-

A.K. JAYASANKARAN NAMBIAR, J.

&

SHAJI P. CHALY, J.

WP(C).TMP-28 OF 2020

Dated this the 6th day of April, 2020

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

The enforcement of a lockdown period, in the wake of the COVID-19 pandemic, has brought with it a fair share of litigation before this court, reminding us, once again, that there can never be a lockdown of the judicial institution, and that its doors must always be opened to the knocks of hapless citizens.

2. Today, however, we have been called upon to respond to the desperate purrs of three felines, whose owner, the petitioner before us, alleges that he was denied a vehicle pass to venture out and purchase “Meo-Persian” biscuits for his cats. Appearing before us through video conferencing, he submits that, as a pure vegetarian, he does not cook non-vegetarian food in his house and, over the years, his cats have been fed with the above biscuits and they cannot do without them. He states that one packet of 7 kilograms of “Meo-Persian” Biscuits would see his feline friends through the rest of the lockdown period, and that the said biscuits are available for purchase at the Cochin Pet

Hospital that is some distance away from his home. His request for an online pass was, however, rejected by the police authorities without assigning any reasons.

3. In his writ petition, the petitioner relies on the provisions of the Prevention of Cruelty to Animals Act, as also the judgment of the Supreme Court in ***Animal Welfare Board of India v A. Nagaraja - 2014 (7) SCC 547*** to contend that animals too have rights, including a fundamental right to life, relatable to Article 21 of our Constitution, and hence the police authorities cannot refuse him a pass for procuring cat food. He also points out that, in the guidelines issued by the Central Government in the Ministry of Home Affairs, “animal feed and fodder” have been included as “essential items” in respect of which movement is permitted during the lockdown period.

4. We have heard the petitioner, Sri. N.Prakash and Sri. Ranjith Thampan, the learned Additional Advocate General, in the matter.

5. Over the last seven decades of working our democratic Constitution, we have focused, primarily, on the rights available to our citizens. We have conveniently forgotten that the human species is not alone on this planet and that there are other claimants to the bounty that nature has to offer. It was only after two and half decades of giving to ourselves our Constitution that, We The People of India, amended it, to insert therein a chapter on Fundamental Duties. Article 51 A (g), in Part IVA of our Constitution, mandates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. To inculcate a healthy respect for other living

creatures, and to recognise the rights enuring in them, is thus no longer a matter of choice for our citizenry, but a solemn duty under the Constitution that governs us all.

6. Although there are provisions in our penal code that make it a punishable offence to kill or injure any animal, it was the enactment of the Prevention of Cruelty to Animals Act in 1960 that made express provisions for the welfare of animals. In the light of the Constitutional amendment that introduced Article 51 A (g), a further need was felt for a renewed interpretation of the provisions of the 1960 Act. The decision of the Supreme Court in *Nagaraja (Supra)*, manifests this shift in judicial thinking, from one of merely safeguarding animal welfare, to recognizing a right and dignity in animals to live lives free from cruelty. Taking cue from the guidelines issued by the World Health Organisation of Animal Health (OIE), of which our Country is a member, it was held that the five internationally recognised freedoms for animals viz. (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, find a place in Sections 3 and 11 of the PCA Act and they are for animals, similar to the rights guaranteed to the citizens of this country under Part III of our Constitution. It was observed that the rights and freedoms guaranteed to the animals under Sections 3 and 11 of the PCA Act have to be read along with Articles 51 A (g) and (h) of the Constitution which is the magna carta of animal rights.

7. The above short elucidation of the legal position in our country, on the subject of animal rights, should suffice to recognise the right of the petitioner herein, to obtain a pass from the police authorities for procuring food for his feline friends.

8. Sri. Ranjith Thampan, the learned Additional Advocate General, would submit that, in view of the clear inclusion of “animal feed and fodder” as “essential items” in respect of which movement is permitted during the lockdown period, it would suffice if the petitioner carries a self declaration stating that his movement to Kadavanthara is for procuring animal feed. Taking note of this submission, we allow the writ petition by directing the respondents to permit the petitioner to travel to Kadavanthara, Kochi, to procure the said item of cat food, on his producing a self-declaration stating the purpose of his travel, along with a copy of this judgment.

Before parting with this case, we might observe, in a lighter vein, that while we are happy to have come to the aid of the felines in this case, we are also certain that our directions will help avert a “CATastrophe” in the petitioner’s home.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

**SHAJI P. CHALY
JUDGE**

Shaji P. Chaly, J. (Concurring):

I have gone through the judgment of my learned brother and fully concur with the same, however being curious and interested in the seminal question of right to life of an animal under the Constitution of India raised, it persuades me to write a few sentences.

2. In this regard, a reference to the provisions of Prevention of Cruelty To Animals Act 1960, is relevant. The Act was brought into force on and with effect from 01.04.1961 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. An animal is defined under Section 2(a) to mean any living creature other than a human being. Section 11 deals with cruelty to animals and sub-section 1(h) is relevant to the context which reads thus;

11 (1) (h) *“being the owner of any animal fails to provide such animal with sufficient food, drink or shelter;”*

Section 11 is a penal provision, and thereby, on the owner depriving the animal food and shelter, such an owner is liable to be punished with fine in accordance with the periodicity of the offence. Therefore taking into account the aforementioned provision it is unequivocal that the owner of an animal is enjoined with a duty coupled with an obligation and responsibility. That said, in my considered view, a right is generated to the owner of the animal which could be referable to Article 21 of the Constitution of India. Viewed in that manner, the right to life protected there under can be extended to the liberty of a citizen to rear an animal and make his/her life more meaningful and thus satisfy his/her desire without causing any manner of prejudice to the rights

enjoyed by the others. Now, it would also be worthwhile to refer to the judgment of the Apex Court in ***Animal Welfare Board of India v. A Nagaraja - (2014) 7 SCC 547***, which dissented cruelty meted out to animals in a sporting event called "Jallikettu". Paragraph 51 is relevant to the context, which reads thus;

"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."

We are also not oblivious of the duty conferred on every citizen under Part IV A of the Constitution of India, dealing with fundamental duties. **Article 51 A (g)** is relevant in this regard which reads thus:

"(g) To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."

Therefore, the said fundamental duty obligates every citizen to have compassion for living creatures and more so on a person rearing a pet.

3. Moreover the petitioner has a specific case that he is a vegetarian and non-vegetarian food is not cooked in his house and the cats reared by him are used to the packed non- vegetarian cat food available at a particular store at Kochi City. Therefore evaluating the situation in the context, the choice of the petitioner not to cook non-vegetarian food is a well protected facet under Article 21 of the Constitution of India and he has no choice than to procure food from outside. These cluster of legal circumstances leads me to a sound conclusion that over and above the right to life conferred on the animals by the Apex Court in the judgment in ***Animal Welfare Board***

[supra], every citizen has a right to enjoy his life and liberty conferred under Article 21 of the Constitution of India by having a choice of rearing pets. So much so, a citizen's choice to rear pets is traceable to his fundamental right to privacy as recognised by the Apex Court in Puttaswamy's case, which in turn is a facet of his right under Article 21.

4. It is also relevant to note that the Government of India, understanding such a precarious situation, issued a notification on 03.04.2020 exempting transportation of food for animals from the COVID-19 Lockdown restrictions. True, the freedom of movement is restricted taking into account the spread of the pandemic and that the authorities are conferred with power to restrain people from venturing out unnecessarily and appropriate directives and advisories are issued by the Central and the State Governments.

Therefore, we will have to strike a balance with respect to the choice available to the petitioner and the reasonable restriction imposed by the Government as said above in the larger interest of the nation and the directions are to be modulated accordingly.

SHAJI P. CHALY
JUDGE