

\$~35.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 23rd October, 2020

+ W.P.(C) 6372/2020

**KHODIYAR ANIMAL WELFARE
TRUST & ANR.**

..... Petitioners

Through: Mr. Rajshekhar Rao, Mr. Kshitij
Maheshwari & Mr. Karthik Sundar, Advocates

versus

**MINISTRY OF ENVIRONMENT
FOREST AND CLIMATE CHANGE**

..... Respondent

Through: Mr. Rajesh Gogna, CGSC with
Mr. Akshya, Mr. Karan Chhibber & Mr. Vedansh
Anand, Advocates.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN**

JUDGMENT

: **D.N.PATEL, Chief Justice (Oral)**

Proceedings in the matter have been conducted through video conferencing.

1. This public interest litigation has been preferred with the following prayers:-

“(a) Issue an appropriate writ, order or direction, in the nature of mandamus, directing the Respondent to include other vulnerable exotic animals/birds species in the definition of “exotic live species” in Part I (a) of the Advisory for dealing

with import of exotic live species in India and declaration of stock dated 11th June 2020;

(b) Direct the Respondent to clarify the nature and extent of immunity contemplated by the Advisory as also whether it would cover other vulnerable exotic live species which are not mentioned in the Appendices to the CITES;

(c) Pass any other or further order/s as this Hon'ble Court may deem fit and proper."

2. Petitioner No.1 is an establishment involved in maintenance of rescue shelters for animals of Indian origin as well as exotic species. It was registered at Ahmedabad on 9th October, 2019 under the Bombay Public Trusts Act, 1950 *vide* registration No.E/22724/Ahmedabad. It was established by a group of like minded persons who have been involved in the promotion of animal welfare and wildlife protection activities since several years with an objective of protecting, improving and serving the natural environment including wildlife, and promoting compassion towards animals and welfare of animals.

3. Petitioner No.2 is a wildlife enthusiast and was conferred with the Amrita Devi Bishnoi Wild Life Protection National Award by the Government of India in 2008 and he has served as a member in various boards and committees as stated in the memo of the writ petition.

4. It is submitted by the learned counsel for the petitioners that an **Advisory** has been issued by the respondent No.1/Ministry of Environment, Forest and Climate Change for dealing with the Import of Exotic Live Species in India and declaration of stock, entitled as "Advisory for Dealing with Import of Exotic Life Species in India and Declaration of Stock" (hereinafter referred to as "Advisory"). It is also submitted by the learned

counsel for petitioners that the aforesaid **Advisory** was accompanied by a press release dated 11th June, 2020 which are in the public domain.

5. It is submitted by Mr. Rajshekhar Rao, learned counsel for the petitioners that –

(a) The **Advisory** does not sufficiently specify the nature of protection offered and thereby discourages the people from declaring their stock; and

(b) The **Advisory** limits the operation only to those exotic species that are mentioned in Appendices I, II and III of the “Convention on International Trade in Endangered Species on Wild Fauna and Flora” (hereinafter referred to as the “**CITES**”) whereas many other threatened species also requires protection which are left out from the ambit of the **Advisory**.

6. The aforesaid two difficulties have given birth to the present writ petition in larger public interest with an objective of ensuring that there is a proper record of keeping of even those vulnerable exotic animals and birds species which are not mentioned in the Appendices I, II and III to the **CITES** and as such to ensure that such species are also protected.

7. We have issued notice and the learned counsel appearing for the respondent has filed counter affidavit. It is submitted by the learned counsel for the respondent that so far as inclusion of other vulnerable exotic animals and birds species are concerned, it is implementing the provisions of the International Convention – **CITES**. It is submitted by the learned counsel for respondent that at present the scope of the **Advisory** issued is limited to

the species included in Appendices I, II and III of the **CITES**. It is further submitted by the learned counsel for respondent that the suggestion of the petitioners to enlarge the scope of the **Advisory** to all exotic live species which are listed in Wild Life (Protection) Act, 1972 is acknowledged. The relevant part of para 8AA to 9E reads as under:

“8AA to 9E: In response to the corresponding Para of this Petition, it is submitted that the scope of the Advisory is presently limited to only such species listed in Appendix I, II and III of CITES (excluding those listed in Wild Life (Protection) Act, 1972) considering India's commitment to the CITES Convention. It may be recalled that there is already a very high degree of protection to threatened species in the country that are notified in various schedules of Wild Life (Protection) Act, 1972. However, for those critically endangered, endangered, vulnerable and threatened species that are found elsewhere in the world and are listed in the Appendices I, II and II of CITES, no systematic provision with regard to safe upkeep, welfare, monitoring or futuristic conservation-development planning has been available in the country.

The suggestion of the Petitioner to enlarge the scope of the Advisory to all Exotic live species is acknowledged. It is reiterated, however, that the present objective of the Advisory on Exotic Species is to provide additional focus on global efforts to conservation of such species that are threatened or that may be subject to over exploitation to affect survival or that needs protection in any CITES Party country. As such the provisions of CITES, to which India is a Party, and which provides a very comprehensive global platform, have been presently taken into account for framing the provisions of the Advisory.”

(emphasis supplied)

8. So far as immunity to be attached with the Voluntary Declaration Scheme is concerned, it is submitted by the learned counsel for respondent

that a declarer will be certified and recognized as genuine owner by the local forest and wild life authority. It is further submitted by the learned counsel for the respondent that the **Advisory** would enable the wild life authority to have a unified information system available regarding the stock of exotic species at various levels and take appropriate steps for the conservation and development from time to time. It is further submitted by the learned counsel for respondent that the declarer would not be required to produce any documentation in relation to the exotic live species if the same has been voluntarily declared within six months from the date of issuance of the **Advisory**. Once the six months' period is over, there is certified stock information with the wild life authorities and necessary follow up action, with regard to the welfare of existing exotic wild life stock as well as future strict monitoring of the provisions of **CITES** will be in place. For ready reference para 9G of the counter affidavit reads as under:

“Para 9 G: In response to the corresponding Para of this Petition, it is submitted that most of such exotic species, that are critically endangered, endangered, vulnerable and threatened are already listed in the various Appendices of CITES, and as such coverage of CITES with regard to threatened species that need additional efforts is already very comprehensive. Further, it is also reiterated that the intent of the Advisory on conservation is to build country-wide awareness and confidence to genuine wildlife enthusiasts and conservationists by providing that the declarer would not be required to produce any documentation in relation to the exotic live species if the same has been voluntarily declared within six months of the date of the Advisory. It will be abundantly clear from this scheme to all that once this six-month period is over there is certified stock information available to the wildlife authorities, and necessary follow-up action both with regard to welfare of the existing exotic wildlife stock as well as future strict monitoring of the CITES provisions will be in place. This

will help wildlife conservation and development, and legal compliance of CITES, immensely. The suggestion of the Petitioner to enlarge the scope of the Advisory to all Exotic Live Species has already been responded to in previous paragraphs and shall be considered by the answering Respondent.”

(emphasis supplied)

9. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that India is a signatory to “Convention on International Trade in Endangered Species on Wild Fauna and Flora” (CITES). The object to be achieved by the aforesaid International Convention reads as under:

“The Contracting States,

Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

Recognizing that peoples and States are and should be the best protectors of their own wild fauna and flora;

Recognizing, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

Convinced of the urgency of taking appropriate measures to this end;”

(emphasis supplied)

10. There are various Articles of this International Convention including definitions etc. and Article XIV narrating the “Effect of this International Convention on Domestic Legislation and International Conventions” as well as Article XV – “Amendments to Appendices I and II” and Article XVI - “Appendix III and amendments thereto”. The aforesaid International

Treaties having Appendices I, II and III as stated in Annexure P-5 (collectively) to the memo of this writ petition.

11. In pursuance of the aforesaid International Convention (CITES), for better understanding and for proper implementation, the Government of India has issued an **Advisory** to streamline the process for import and possession of exotic live species in India. A Press Release was also issued on 11th June, 2020 by Ministry of Environment, Forest and Climate Change for Dealing with Import of Exotic Live Species in India and Declaration of Stock. For ready reference, Press Release issued alongwith the **Advisory** (Annexure P-2 collectively of this writ petition) reads as under:

“Government issues advisory to streamline the process for import and possession of exotic live species in India.

Exotic live species are animal or plant species moved from their original range (location) to a new one. These species are introduced to a new location most often by people. Many citizen of the country have kept CITES (Convention of International Trade in Endangered Species) enlisted exotic animal species in their possession but there is no unified information system available of such stock of species at the State/Central level. Ministry of Environment, Forest and Climate Change has decided to collect stock information from the holders of such species through voluntary disclosure in next six months.

The registration will be done for the stock of animals, new progeny, as well as for import and exchange. This will help in better management of the species and guide the holders about proper veterinary care, housing and other aspects of well-being of the species. The database of exotic animals will also help in control and management of zoonotic diseases on which guidance would be available from time to time to ensure safety of animals and humans.

The declarer would not be required to produce any documentation in relation to the exotic live species if the same

has been declared within six months of the date of issue of the advisory. For any declaration made after 6 months, the declarer shall be required to comply with the documentation requirement under the extant laws and regulations.

Holders of such species have to visit the website (www.parivesh.nic.in) and fill up the requisite forms in order to complete the stock registration process.”

(emphasis supplied)

12. The **Advisory** issued by the Ministry of Environment, Forest and Climate Change (Wild Life Division), Government of India with following background:

“ADVISORY FOR DEALING WITH IMPORT OF EXOTIC LIVE SPECIES IN INDIA AND DECLARATION OF STOCK

Background

Exotic live species are animal or plant species moved from their original range (location) to a new one. These species are introduced to a new location most often by people.

Considering the significance of import and export of exotic live species, this Ministry is issuing an advisory to streamline the process for import and possession of exotic live species in India. The following are proposed:

- *Developing an inventory of exotic live species in India through Voluntary Disclosure Scheme to streamline CITES compliance.*
- *Procedure for Import of exotic live species.*
- *Registration/Declaration of progenies of the imported exotic live species,*
- *The processes under this Advisory shall be dealt online through the Parivesh Portal.”*

13. For ready reference, Article I (a) and (b) of **Advisory** reads as under:-

“I. Developing an inventory of exotic live species in India through Voluntary Disclosure Scheme.

a) The phrases “exotic live species” used in this advisory shall be construed to mean only “the animals named under the Appendices I, II and III of the Convention of International Trade in Endangered Species (CITES) of Wild Fauna and Flora” for the purpose of this advisory and does not include species from the Schedules of the Wild Life (Protection) Act 1972.

b) It is stated through this advisory that the declarer would not be required to produce any documentation in relation to the exotic live species if the same has been declared within six months of the date of issue of the advisory. For any declaration made after 6 months of the date of issue of this advisory, the declarer shall be required to comply with the documentation requirement under the extant laws and regulations.

c)

d)

e)

f)

g)

h)

i)

j) ”

(emphasis supplied)

14. In view of the aforesaid provisions, it appears that a Voluntary Disclosure Scheme has been introduced by the Central Government which gives an option to all the citizens of India to voluntarily declare their stock of exotic species enumerated in Appendices I, II and III of the **CITES** – International Convention, if at all they are in possession thereof, within six months from the date of issuance of **Advisory** i.e. w.e.f. 11th June, 2020 (Annexure P-2 collectively to the memo of this writ petition). As per the Scheme, the declarer will submit themselves to the provisions of the Scheme and thereafter maintain a statutory record as prescribed under the Scheme for any addition or reduction in the declared stock of exotic species, which

W.P.(C) 6372/2020

Page 9 of 23

will enable the Government to have a unified information system for the stock of exotic species at the State or Central Government level.

15. The window of six months for voluntary disclosure by allowing immunities only to those declarers who opt to file their voluntary disclosure declaration within six months from the date of issuance of the **Advisory**. Immunity is not provided to the declarers opting to disclose the stock once the period of six months is over from the date of issuance of the **Advisory**. The immunity contained in Clause I (b) of the **Advisory** as stated hereinabove for the declarers is not further clarified in the said **Advisory**. The petitioner is seeking directions so far as immunity is concerned, under the Voluntary Disclosure Scheme that there shall be no investigation into the acquisition or possession of exotic species once the declarer voluntarily discloses as per the Scheme. As per petitioners, once the declaration is made within a period of six months, the declarer should not be subject to any civil or criminal inquiry under any other law for the time being in force, especially about the ownership, possession, trade, transportation, breeding, act of keeping, buying, selling and exhibiting such exotic animals.

16. We are in full agreement with the arguments canvassed by the petitioner. Once the immunity is granted under the Voluntary Disclosure Scheme, the respondent cannot investigate about the ownership, possession, trade, transportation, breeding, act of keeping, buying, selling and exhibiting such exotic animals/birds which are voluntarily disclosed by the declarer. The declarer would not be required to produce any documentation in relation to the exotic live species if the same has been declared within six months from the date of issuance of **Advisory** as per Part I Clause (b) of the Voluntary Disclosure Scheme. After six months' period is over, from the

date of issuance of the **Advisory** the declarer shall be required to comply with the documentation requirement under the extant laws and regulations.

17. It has been held by the Hon'ble Supreme Court in **Hiralal Hari Lal Bhagwati v. CBI reported in (2003) 5 SCC 257** that once there is a Voluntary Disclosure Scheme which is availed of (in that case, "Kar Vivad Samadhan Scheme, 1998"), then directing the declarant and chasing him in other proceedings is highly unreasonable, arbitrary and initiation and continuance of such proceedings lack *bona fides*. The relevant paras read as under:

"30. In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field i.e. the Customs Act, 1962 the appellants have been thereinunder wholly discharged and the GCS granted immunity from prosecution. It is a well-established principle of law that the matter which has been adjudicated and settled need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable. The true fact and import of the Kar Vivad Samadhan Scheme, 1998, in our view, is that once the said Scheme is availed of and all the formalities complied with including the payment of the duty, the immunity granted under the provisions of the Customs Act, 1962 also extends to such offences that may prima facie be made out on identical allegations i.e. of evasion of customs duty and violation of any notification issued under the said Act.

xx

xx

xx

xx

40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained

necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Penal Code, 1860 does not arise. We have read the charge-sheet as a whole. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The Kar Vivad Samadhan Scheme certificate along with Duncan [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] and Sushila Rani [(2002) 2 SCC 697 : (2002) 2 Apex Decisions] judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process.

xx

xx

xx

xx

44. It appears that despite the statement of settlement having been filed under Section 88 of the Act of 1998, an FIR was lodged and a case was registered on 6-1-1999 on the basis of which, later on a charge-sheet was also submitted. On the one hand final settlement was made after determining the tax liability on the premise that the appellants were neither

convicted nor criminal proceedings were pending, relating to any offence under Chapter IX or XVII IPC, yet the criminal proceedings are being prosecuted which is apparently against the very spirit of the Scheme promulgated under the Finance (No. 2) Act of 1998. If a person against whom criminal proceedings were pending, relating to offence under Chapter IX or XVII IPC or who stood convicted under any of the provisions of those chapters, he would not have been eligible to seek benefit under the Scheme and after accepting that position and the due settlement, there was no occasion to initiate and continue the criminal proceedings, which could bring about the conviction of the same persons, in case prosecution ended successfully in favour of the State and against the appellants. If such a condition is provided that on a particular date a criminal proceeding should not be pending against a person nor should he have been convicted of an offence, as a condition precedent for a settlement, and on that basis a settlement is brought about, it does not mean that later on, one could turn around and get the declarant convicted for a criminal offence too, after settlement of the liability. More so, when in view of Section 90 sub-section (4) of the Scheme the declarant is obliged to withdraw an appeal or proceedings regarding tax liability pending before the High Court or the Supreme Court, which had also been done in the case in hand. That is to say that on one hand the declarant is not permitted to pursue the remedy, regarding tax liability, which is already pending before the courts of law, as they are either deemed to be withdrawn by operation of law or they have to be withdrawn by a positive act of the party and yet prosecute such persons for their conviction as well. The declarant could not be dragged and chased in criminal proceedings after closing the other opening making it a dead end. It is highly unreasonable and arbitrary to do so and initiation and continuance of such proceedings lack bona fides."

(emphasis supplied)

18. Thus, Voluntary Disclosure Scheme invites the declarers, in public interest, by conferring immunity to them for a limited period (here six

months) to promote the voluntary disclosure. Once such voluntary disclosure is made within the time limit prescribed, no inquiry or action can be initiated by the respondent for possession, breeding or transportation of the exotic species within India by the officers of any Government agency or Department whether of Central Government or State Government. Such action of subsequent inquiry by the Government after voluntary disclosure would be wholly illegal, arbitrary, unreasonable, unsustainable and would defeat the very purpose of the Voluntary Disclosure Scheme. Consequently, once the declarer voluntarily declares stock of exotic species in terms of the Advisory, subjecting him after such declaration to any penal or confiscatory measures under any enactment, with regard to such timely and voluntarily declared stock of live stock species would be highly unreasonable, illegal and will be contrary to the legitimate expectations.

19. It is submitted by the learned counsel for petitioner that another writ petition with regard to the interpretation of the Advisory was also preferred before the Allahabad High Court being P.I.L. CIVIL No. - 12032 of 2020. *Vide* judgment and order dated 20th July, 2020, it has been observed in paras 8, 9, 10, 11, 12 and 14 as under:

“8. The petitioner by seeking the directions as prayed in the petition is questioning the validity of the immunity promised under the voluntary disclosure scheme. According to the petitioner, the assurance of immunity contained in the scheme shall not come in the way of any investigations into acquisition or possession of exotic species, if the investigating agency intends to investigate the same on apprehension that the exotic species declared by a person might be one smuggled into India. According to the petitioner, if the direction as sought is not granted, the same may lead to discriminated and arbitrariness. A declarant who is in domestic possession of any exotic animal/
9. An earlier PIL Civil No. 22903 of 2019 : Dinesh Chandra vs.

Union of India and others, filed by the very same petitioner against the same respondents was dismissed vide a detailed judgment dated 30.08.2019. It is not in dispute that the said judgment attained finality and binds the parties, as the same has not been challenged by any of the parties. It was inter alia observed that :-

"37. From the aforesaid, it is very clear that exotic birds/animals do not come under the purview of Wild Life Protection Act, 1972. There is no provision under the Wildlife (Protection) Act, 1972 to issue licence or permission for dealing in exotic birds. There are no Rules and Regulations and procedures for keeping, breeding, buying, selling and exhibiting such animals (exotic animals) within country which have been bred in India. No documents are specified and no permission are required as per Customs Act for keeping, breeding buying, selling and exhibiting such animals (exotic animals) within country which have been bred in India. Animals have been bred in captivity in India, Customs Act does not have role in it.

47. It is well settled that the Court must be extremely careful to see that under the guise of redressing public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. Thus, it cannot direct the government to initiate legislation or interfere in the matters of governmental policy, except in cases of violation of fundamental rights.

48. From the aforesaid, we are of the view that the Central Government has consciously kept the exotic animals/ exotic birds out of the purview of Wildlife (Protection) Act, 1972 by not including them in its Schedules, and has thus permitted their domestic trading, possession and captive breeding in India. Such legislative intent and decision of the Government can neither be interfered with in writ jurisdiction, nor can any direction be given to the

Government in this regard to amend Wildlife (Protection) Act, 1972 or Customs Act, 1962. At the point of Import/Export, a Customs/DRI officer has jurisdiction to detect and prevent International Trade, i.e., import/ export of live animals and birds into or out of India, if found in violation of the provisions of Customs Act, 1962 read with the 'CITES' and Foreign Trade Policy. Thus, any live animals and birds, while being smuggled through the Indian Customs Frontiers, can be seized at the point of Import/Export by DRI/Customs and the concerned persons can be subjected to penal and confiscatory provisions in accordance with the provisions of the Customs Act, 1962. There is no restriction on domestic trade, keeping, captive, breeding, buying, selling and exhibiting 'exotic animals/exotic birds' within India, either under the Wildlife (Protection) Act, 1972 or under the Customs Act, 1962 or under the Foreign Trade (Development & Regulation) Act, 1962 or CITES. Any person in possession of 'exotic animals/exotic birds' within India, is not bound to comply with the requirements of Section 11C to 11F of the Customs Act, 1962 regarding intimation of place of storage, precautions to be taken in acquiring, maintaining accounts or sale, as they are not notified under Section 11B. Similarly, mere 'acquisition', 'purchase', or 'possession' of the exotic animals or exotic birds within India, shall not invite any penal consequences under the Customs Act, 1962 or Wildlife (Protection) Act, 1972."

49. For all the reasons mentioned above, the present Public Interest Litigation petition is hereby dismissed without costs."

(emphasis supplied)

10. The said judgment dated 30.08.2019 was much before the issuance of the subject Voluntary Disclosure Scheme,

announced and published on 11.06.2020 by the Central Government through the Ministry of Environment, Forest and Climate Change. So far as any smuggling activities if noticed at the point of Import/Export, a Customs/DRI officer would continue to have jurisdiction to detect and prevent International Trade, i.e., import/export of live animals and birds into or out of India, if found in violation of the provisions of Customs Act 1962 read with the 'CITES' and Foreign Trade Policy, and any live animals and birds, while being smuggled through the Indian Customs Frontiers, can be seized at the point of Import/Export by DRI/Customs and the concerned persons can be subjected to penal and confiscatory provisions in accordance with the provisions of the Customs Act, 1962.

11. There is no change in the legal position stated in the said judgment dated 30.08.2019 even in respect of domestic trading, possession, transportation and captive breeding of exotic species within India, at least for a period of six months from the date of introduction of the present "voluntary disclosure scheme" as the Clause (b) of Part I of this voluntary disclosure scheme also provides that -- "the declarer would not be required to produce any documentation in relation to the exotic live species if the same has been declared within six months of the date of issue of the advisory."

12. After expiry of this six months' window, the Scheme clearly states that- "...For any declaration made after 6 months of the date of issue of this advisory, the declarer shall be required to comply with the documentation requirement under the extant laws and regulations."

13.....

14. Accordingly, such action as suggested by the Petitioner, if taken by any government agency or department, whether of Central or State, would be in teeth of this "voluntary disclosure scheme". It is settled law that Government shall speak in same voice. The Central Government, Ministry of Environment, Forest and Climate Change, through Wildlife Division has already introduced the "voluntary disclosure scheme" in wider public interest by announcing immunity for a limited window of six months to promote and invite voluntary disclosure declaration from all concerned. The scheme so introduced by

the Central Government shall be promoted by all the departments in wider public interest. During this limited interregnum of six months, any inquiry or action against procession, breeding or transportation of exotic species within India by officers of any government agency or department, whether of Central or State, would be wholly illegal, arbitrary, unreasonable, unsustainable and would defeat the purpose of the voluntary disclosure scheme. In this period of six months, whosoever declares the stock of exotic species and thereby submits himself to registration and further requirements of the scheme, shall have immunity from any inquiry into source of licit acquisition or possession of the voluntarily declared stock of exotic species. Consequently, dragging the declarant and chasing him for subjecting him to any penal or confiscatory measures under any enactment in connection with such timely and voluntarily declared stock of exotic species would be highly unreasonable, arbitrary and illegal, being contrary to legitimate expectation.”

(emphasis supplied)

20. It is further submitted by the learned counsel for petitioner that, against the aforesaid judgment of the Hon’ble Allahabad High Court, SLP(C) 11659/2020 was dismissed by the Hon’ble Supreme Court vide order dated 13th October, 2020.

21. We are in full agreement with the aforesaid decision rendered by the Allahabad High Court, especially with the meaning of the immunity attached therein, to the effect that the declarer would not be required to produce any documentation in relation to the exotic live species if the same has been declared within six months from the date of issuance of the **Advisory** and no civil or criminal inquiry can be conducted by the respondent after the declarer has voluntarily disclosed the stock of live exotic species, especially about the ownership, possession, trade,

transportation, breeding, act of keeping, buying, selling and exhibiting of the exotic species etc.

22. So far as widening the scope of **Advisory** for the inclusion of other exotic live species other than which are enumerated in Appendices I, II and III of the **CITES** – International Convention, it appears that in the aforesaid International Convention Article XIV reads as under:

“Effect on domestic legislation and international conventions

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:

(a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or

(b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.

2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.

3. The provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external Customs control and removing Customs control between the parties thereto insofar as they relate to trade among the States members of that union or agreement.

4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the

present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.

5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.”

(emphasis supplied)

23. In view of the aforesaid Article XIV to be read with affidavit filed by the respondent No. 1, especially in para 8L and 8AA to 9A, it has been expressed by the respondent that suggestion of the petitioner to enlarge the scope of the **Advisory** to all exotic live species is acknowledged because there are still other vulnerable exotic live species which are not mentioned in the Appendices I, II and III to the International Convention – CITES. Thus, the further **Advisory** can always be issued by the respondent keeping in mind the provisions of Article 48A and to be read with Article 51A(g) of the Constitution of India which are about protection and improvement of the environment and to safeguard the forest and wild life of the country. This

obligation of the State extends to protecting exotic live species, beyond the Appendix to the **CITES** - International Convention. It has been held by the Hon'ble Supreme Court in **Indian Handicrafts Emporium & Ors. v. Union of India & Ors. reported in (2003) 7 SCC 589** in para Nos.57, 58, 59 and 62 as under:

“57. India being a sovereign country is not obligated to make law only in terms of CITES; it may impose stricter restrictions having regard to local needs.

58. In John Vallamattom v. Union of India [(2003) 6 SCC 611 : JT (2003) 6 SC 37] this Court speaking through the Hon'ble Chief Justice of India held: (SCC p. 624, para 30)

“Furthermore, India being a signatory to the Declaration on the Right to Development adopted by the World Conference on Human Rights and Article 18 of the United Nations Covenant on Civil and Political Rights, 1966, the impugned provision may be judged on the basis thereof.”

59. Referring to Article 1 of the Declaration on the Right to Development and Article 18 of the United Nations Covenant on Civil and Political Rights, 1966, this Court following Kapila Hingorani v. State of Bihar [(2003) 6 SCC 1 : JT (2003) 5 SC 1] observed that the provisions of law must be judged keeping in view the international treaties and conventions, stating: (SCC p. 625, paras 33-35)

“33. It is trite that having regard to Article 13(1) of the Constitution, the constitutionality of the impugned legislation is required to be considered on the basis of laws existing on 26-1-1950, but while doing so the court is not precluded from taking into consideration the subsequent events which have taken place thereafter. It is further trite that the law although may be constitutional when enacted but with passage of time the same may be held to be unconstitutional in view of the changed situation.

34. Justice Cardozo said:

‘The law has its epochs of ebb and flow the flood tides are on us. The old order may change yielding place to new, but the transition is never an easy process.’

35. Albert Campus stated:

“The wheel turns, history changes.” Stability and change are the two sides of the same law coin. In their pure form they are antagonistic poles; without stability the law becomes not a chart of conduct, but a game of chance: with only stability the law is as the still waters in which there is only stagnation and death.”

xx

xx

xx

xx

62. That the appellants used to trade in ivory stands admitted. They, thus, would come within the purview of the definition of trader also is undisputable. The manner in which despite legal ban on trade a person may not take recourse to illegal trading is a matter which squarely falls within the purview of the legislative competence. It is now well settled that Parliament can not only enact a law for avoidance or evasion of commission of an illegal trade but also may make law to see that the law is not evaded by taking recourse to machination or camouflage. The loopholes, if any, in such matters can and should be plugged. “Means affecting means” principle as adumbrated in United States v. Darby [312 US 100 : 85 L Ed 609 (1941)] is an illustration on the point. Both substantial and procedural provisions can be made to make a law in furtherance of the object for which the Act has been enacted and to see that what is sought to be prohibited directly may not be achieved by the traders indirectly.”

(emphasis supplied)

24. In view of the aforesaid observation of the Hon’ble Supreme Court, the respondents are not obliged to make laws only in terms of **CITES** and can widen the scope of restrictions, having regard to the local conditions and circumstances.

25. The aforesaid aspects of the **CITES** – International Convention and the judgment delivered by the Hon’ble Supreme Court will be kept in mind by the respondent, while considering the issuance of further **Advisory**, by widening the scope of the present **Advisory** dated 11th June, 2020 so as to include other vulnerable exotic live species, other than which are referred to in Appendices I, II and III in the **CITES** – International Convention.

26. In view of the aforesaid clarifications, the writ petition is hereby disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

OCTOBER 23, 2020

ns

