

**Serial No. 02**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

PIL. No. 15 of 2021

Date of Order :28.10.2021

Miss. J.S.Wahlang

Vs. The Union of India & 2 Ors.

**Coram:**

**Hon'ble Mr. Justice Ranjit More, Chief Justice**

**Hon'ble Mr. Justice H.S.Thangkhiew, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. J.Borah, Adv.

For the Respondent(s) : Dr. N.Mozika, Sr. Adv. with  
Ms. T.Sutnga, Adv. for R 1 & 2.  
Mr. B.Bhattacharjee, AAG with  
Ms. R.Colney, GA for R 3.

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| i)  | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press:          | Yes/No |

**Per R.More, (CJ)**

1. Heard learned counsels appearing for the respective parties.
2. The present Public Interest Litigation has been filed by the petitioner with a prayer to declare as void *ab initio* the Voluntary Disclosure Scheme dated 11-06-2020 introduced by the Wildlife Division, Government of India pursuant to an advisory issued by the Ministry of Environment, Forest and Climate Change and to issue directions DRI to seize all exotic birds and animals found within or being transported through the State of Meghalaya, whether or not any disclosed under the said disclosure scheme and to take consequential penal action against all concerned. The petitioner submits that

the very fact that these exotic birds and animals are in the State of Meghalaya gives rise to the presumption that they have been illegally smuggled to India and should thus, be seized for confiscation. He submitted that the various orders passed by different High Courts in this regard, some of which have also been approved by the Hon'ble Supreme Court by dismissing the SLPs are erroneous. He further submits that the Voluntary Disclosure Scheme ought to be declared void *ab initio* on the ground that it is not backed by any statutory provision and that immunity against penalty on account of disclosure made under the scheme which has been provided is against public interest.

3. The petitioner submitted that the Voluntary Disclosure Scheme was issued by the Wildlife Division, Government of India, pursuant to an advisory issued by the Ministry of Environment, Forest and Climate Change on 11-06-2020 under the heading "Government issues Advisory to streamline the process for import and possession of exotic live species in India." The main purpose of the Voluntary Disclosure Scheme was stated 'to collect stock information for persons who have in their possession "exotic live species" i.e., exotic live birds and animals within India through such voluntary disclosure'.

4. The validity of the immunity granted under the scheme was challenged by one Dinesh Chandra before the High Court of Allahabad, Lucknow Bench in P.I.L. (Civil) No. -12032 of 2020, wherein the Court vide order dated 30-07-2020 had inter alia held the following:

*"14. ....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*

*declares 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.*

*15. For the above – mentioned reasons, no such directions as sought by the petitioner can, thus, be issued.*

*16. The writ petition filed by the petitioner has no merit and is, accordingly, **dismissed** but without any order of cost.”*

5. Thus, the Hon’ble High Court of Allahabad, Lucknow Bench has already laid to rest the issue of validity of immunity granted to the declarants under the Voluntary Disclosure Scheme. The same was challenged before the Hon’ble Supreme Court of India by the petitioner thereof, which was dismissed by the Hon’ble Supreme Court vide order dated 13-10-2020, passed in SLP (C) No(s). 11659/2020, thereby confirming the order of the Hon’ble High Court of Allahabad, Lucknow Bench.

6. The Division Bench of the Rajasthan High Court in D.B.Civil Writ Petition No. 7491/2020 Vivek Swami vrs. Union of India inter alia held that “The petitioner or any other applicant seeking to avail the Voluntary Disclosure Scheme within time prescribed by making voluntary declaration of such exotic live species in his domestic possession and subjecting himself to future regulatory requirements, shall be entitled to the immunity promised under the scheme and thus, should not act on the basis of any apprehension, such as seizure, summons, confiscation, inquiry in relation to such declared exotic species in domestic possession neither under Customs Act, 1962 nor any other law”.

7. The above observations of the Rajasthan High Court have also been confirmed by the Hon'ble Supreme Court by giving a finding that there is no ground to interfere in the said order of the Rajasthan High Court and dismissed the SLP (C) No(s). 12879/2020 by its order dated 14-12-2020.

8. Even prior to the introduction of the impugned Voluntary Disclosure Scheme, the Hon'ble High Court of Allahabad, Lucknow Bench in the Public Interest Litigation filed by said Mr. Dinesh Chandra had dealt in great detail the provisions of the Customs Act, 1962, Wildlife Act and Circulars issued by the Government. After due consideration, it was held that domestic stock, captive breeding, sale, purchase, transportation etc. of exotic birds and animals within India was not in contravention of any of these laws. Import or export of exotic birds and animals at the point of entry and exit in India i.e. at the customs borders is governed by the Customs Act, 1962 and seizure can be effected at that time.

9. Similarly, in Criminal Writ Petition, No. 807 of 2019 titled Anil Naidu vs. Union of India & Ors. the Hon'ble Bombay High Court, Nagpur Bench inter alia held that perusal of Section 123 of the Customs Act, 1962, would reveal that it has no application to the exotic species of birds and animals and thus, owners or persons claiming ownership or are in possession of such exotic species are not required to establish that they are smuggled in India.

10. Thus, the issue raised in this Public Interest Litigation are not *res integra*. They are already decided by binding precedents. We are in complete agreement with these decisions. They cannot again be reopened.

11. The contentions of the petitioners are without any merits as already held by the Hon'ble Allahabad High Court. The question of presumption of

exotic birds and animals as having been illegally smuggled does not arise since the exotic birds and animals are not notified under Section 123 of the Customs Act. The provision of Chapter IVA of the Customs Act which provides for detection of illegally imported goods and prevention of their disposal thereof comprising of Section 11A to 11G are also inapplicable. Admittedly, the Central Government has not notified the exotic birds and animals in question under Section 11B of the Customs Act. There are safeguards in place to detect the illegally smuggled goods at the point of entry and exit which are regulated under the Customs Act. Even the Foreign Trade Policy and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) aid in prevention of illegal smuggling of exotic species. It is also trite that not all exotic species are necessarily imported. On account of captive breeding, it is possible to find exotic birds and animals in India, outside their native origin. Thus, neither there is any statutory presumption exist to presume that all the exotic species in the domestic area are imported in India nor there is a legal requirement which compels domestic keeper, breeder or transporter of such exotic species to produce any proof of valid importation or documents establishing his licit acquisition. As already held by the Allahabad High Court, seizure of exotic species in domestic area on mere surmises or merely on the basis of statements recorded by Customs or Wildlife Authorities would be contrary to the provisions of the Customs Act, 1962 or even Wildlife Act. Hence, no such directions to seize exotic species found within or being transported through the State of Meghalaya can be issued. There is no prohibition, restriction or regulation to sale, purchase, possession or breeding of the exotic species within India under the provisions of the Customs Act, 1962 or

even the Wildlife Act. Seizure of these exotic species would be contrary to the provisions of the Customs Act, 1962 and no such direction can be issued.

12. Public Interest Litigation is without any merit and is therefore dismissed.

**(H.S.Thangkhiew)**  
**Judge**

**(R. More)**  
**Chief Justice**

Meghalaya  
28.10.2021  
"Samantha PS"

