

**IN THE HIGH COURT OF KERALA**

**AT ERNAKULAM**

**BALAKRISHNAN Vs. Union of India**

**Present :**

***K. NARAYANAKURUP &***

***K.V. SANKARANARAYANAN, JJ.***

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O.P.Nos.155, 1066, 2187, 1141, 5086, 6378, 6148, 6032,  
2029, 5616, 486, 2636, 6229, 8173, 9483, 3845, 430, 6352,  
2460 & 11729 of 1999  
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Dated this the 6<sup>th</sup> June, 2000.

**J U D G M E N T**

**NARAYANAKURUP, J.**

By virtue of the powers conferred under sub clause (ii) of Sec.22 of the Prevention of Cruelty to Animals Act, 1960 (For short 'the Act'), the Govt. of India had issued a notification dated 2-3-1991 banning the training and exhibition of five animals, viz. Bears, monkeys, tigers, panthers and dogs. Subsequently, a corrigendum dated 7-8-1991 was issued by which the ban on training and exhibition of dogs was withdrawn. The validity of the said notifications were challenged by the Indian Circus Federation (ICF), New Delhi by filing Civil Writ Petition No.890/91 before the High Court of Delhi. The High Court of Delhi by order dated 20-3-1991 stayed the operation of the notification dated 2-3-1991. Later, the High Court of Delhi after hearing the writ petitioner at length, by its order dated 21-8-1997 ordered that:

"That Government may take up the Notification dated 2-3-1991 for consideration afresh. It may take into consideration such materials as may be available with it or it may choose to collect through any of the authentic agencies or such other agency or committee of experts as it may choose to appoint. The petitioners and such other organisations, as may volunteer themselves, will be at liberty to place before the Government of India for its consideration such materials as they may deem relevant and having bearing on the issue involved."

Pursuant to the aforesaid order of the Delhi High Court the Govt. of India constituted a committee consisting of:

1. Addl. IFG (WL) - Chairman
2. Director, Wildlife Institute of India, Dehradun - Member
3. Member Secretary, Central Zoo Authority - Member
4. Shri. S.C. Dey, Add. IGF (Rtd) - Member
5. Director, Animal Welfare - Member Secretary.

The said committee after hearing all the affected parties submitted its report to the Central Government. The Central Government on the basis of the report of the COMMITTEE < THE ADVICE TENDERED BY THE Animal Welfare Board of India and the materials placed before it and that which was filed before the High Court of Delhi, issued a notification dated 14-10-1998 specifying that the following animals shall not be exhibited or trained as a performing animal with effect from the date of publication of the notification: bears, monkeys, tigers, anthers and lions. The Indian Circus Federation thereafter filed an application under Section 151 of the CPC in the above Writ Petition before the High Court of Delhi praying that the notification dated 14-10-1998 be stayed during the pendency of the writ petition. Simultaneously another writ petition No.6490/98 was filed by the All India Circus Employees Union before the High Court of Delhi challenging the said notification. In the meantime, the applicatio under Section 151 C.p.C. filed in Civil Writ Petition No.890/91 came up for hearing on 16-12-1998 on which date the High Court of Delhi dismissed the application for stay filed by the ICF and prima facie upheld the validity of the notification dated 14-10-1998.. Later, the Circus Employees Union filed an application dated 9-2-1999 bearing CM No.2213/99 in Civil Writ Petition No.6490/98 seeking to withdraw the said writ petition. Consequent on the said application for withdrawal, the writ petition was dismissed as withdrawn vide order dated 12-3-1999. The present batch of writ petitions were filed before this court in the year 1999 evidently to over-reach the order dated 16-12-1998 by which the High Court of Delhi had upheld the validity of the notification dated 14-10-1998 which is marked as Ext.P1 in all these writ petitions. A learned Single Judge before whom the writ petitions came up for hearing, referred the matter to the Division Bench "having regard to the national importance and any interference with the above order will affect large number of persons inside and outside the State." According, the petitions were placed before us for hearing. The challenge in these original petitions is directed against the validity of Ext.P1 notification dated 14-10-1998 by which the exhibition and training of animals specified therein have been banned as performing animals with effect from the date of publication of the notification.

2. We heard learned Senior Counsel Mr. Pathrose Mathai and Mr. S.K. Chaturvedi for the petitioners and learned Senior Counsel Mr. Raj Panjwani for the respondents in extenso.

3. Learned Senior Counsel appearing for the petitioners submitted that the Govt. of India issued the impugned notification dated 14-10-1998 unsupported by adequate materials and the said notification was not preceded by a hearing to the petitioners and that it is discriminatory and violative of Article 14 of the Constitution of India in so far as it is intended to ban exhibition and training of animals in circus only without bringing the zoos within its ken and that it offends the fundamental right of the petitioners to carry on their occupation as guaranteed under Article 19(1) (g) of the Constitution of India and for the foregoing reasons the notification is liable to be struck down as illegal and unconstitutional. Per contra learned Senior Counsel Mr. Raj Panjwani appearing for the respondents submitted that the impugned notification is perfectly valid and well within the powers of the authority who issued the said notification and the same is not liable to be struck down for all or any of the grounds canvassed by the petitioners. It was also contended that the petitioners having approached this court suppressing material facts which has a bearing on the case, they are liable to be non-suited at the threshold on that short ground. On an anxious consideration of the rival contentions, we are of opinion that the writ petitions are liable to be dismissed as devoid of merit.
  
4. The first contention advanced by the learned counsel for the petitioners and on which considerable stress was laid relates to the absence of materials available with the Government justifying the issuance of the impugned notification imposing the ban. From a scrutiny of the materials placed before us, we are of opinion that the said contention has no legs to stand. As already noticed, the Delhi High Court after hearing Civil Writ Petition No.890 of 1991 filed by the Indian Circus Federation had passed an order dated 21-8-1997 giving liberty to the petitioners (ICF) and such other organisations as may as may volunteer themselves to place before the Govt. of India for its consideration such material as they may deem relevant and having a bearing on the issue involved. Pursuant to the aforesaid order, the Govt. of India appointed a committee as we have noted earlier in this judgment. The committee invited certain animal welfare organisations besides the ICF to place before it such materials as they may deem relevant and having a bearing on the issue involved. The ICF, Animal Welfare Board of India and various animal welfare organisations submitted the following materials:
  1. A letter from the Royal Society for Prevention of Cruelty to Animals (RSPCA) stating that the book "Animal in Circuses and Zoos, Chiron's World" was neither sponsored nor published by the RSPCA by way of endorsing its conclusions.
  2. Animal in Circuses, the RSPCA's conclusion from the Report.
  3. Animals in Circuses.
  4. "Science to the Rescue", a critical analysis of Dr. Marthekeily Worthington Report. "Animal in Circus" written and researched by Mr. William Johnson.
  5. 'The Rose Tinted Menagerie' by Mr. William Johnson.

6. Information compiled by 'Kindness to Animals and Respect for Animals.'
7. 'Report on Circuses in India' prepared by Beauty Without Cruelty.
8. "Act of Cruelty" - an article written by Mr. William Johnson.
9. 'Kingpole' autumn issue published by Circus Friends Association, June and September, 1977.
10. Documents/books/papers/reports reference in the affidavit filed on behalf of the respondents.
11. A letter from the World Society for Protection of Animals regarding "Animals suffering in Circuses."
12. Video Cassettes provided by ICF & AWOs.

Besides, ICF provided the Committee a copy of the book titled - "Animals in Circuses and Zoos, Children's World" by Dr. Marthekiley Worthington. The Committee not only examined the above said material but also heard the counsel for the ICF Ms. Geeta Mittal on 22-11-1997. After detailed deliberations and on going through all the material placed before it the Committee felt that following issues are to be looked into:-

1. Basic objective of the circus and whether it helps to create conservation awareness or a feeling of living in harmony with nature or is merely a show of tricks to thrill and excite public ?
2. Whether the claim put in the books "Animals in Circuses and Zoos, Children's World" by Dr. Marthekiley Worthington that the animals could be trained humanly is correct and logical?
3. Can circuses prevent sufferings during transport of "animals from the place to another ?
4. Whether the claim of the circuses that they are contributing towards conservation of endangered species is tenable.

The Committee while dealing with the issues involved observed as follows:

"After detailed deliberations and critically examining the material placed before it, the Committee is of the view that cruelty inflicted on animals cannot be evaluated and measured in quantitative terms. Therefore, the objective for which a particular activity is being undertaken is an important yardstick, eg. Research for medical purposes and animal husbandry which benefits the society at large needs to be continued even if it involves

some cruelty. However, activities which are not essential to the progress and welfare of the society but merely to subserve as entertainment or exhibiting spectacles, can easily be curtailed. The (unnatural) tricks or performances which are against the basic nature of animals, and which lead to abnormal behaviours, need to be discontinued.

The ICF has mainly put its reliance on the study titled "Animals in circuses and Zoos, Chiron's World" by Dr. Marthe Kiley Worthington, said to be an animal behaviour expert, which was commissioned by RSPCA to carry out an independent, scientific study of circus animals in comparison with animals in Zoos and other husbandry systems and in the wild. The results of the investigations are summarised in this book and the observations are mainly out of visits to circuses and zoos located in western countries and that too mostly in U.K. No circus/zoo in India appear to have been visited by Dr. Kiley. However, the RSPCA has categorically stated that they have not endorsed the conclusions made by the author and the views expressed in the book can at best be considered as the views of an individual and not as views of RSPCA. The "People for Animals" has provided a copy of the critical analysis of the Kiley Worthington Report, "Animals in Circuses" commissioned by the Bellerive Foundation and Care for the Wild. Written and researched by William Johnson (Annexure-XII). The analysis has highlighted various omissions and contradictions. It has been brought out that show business and education are inherently incompatible, particularly since circuses are unlikely to give objective accounts of their animal keeping and training techniques, their involvement in animal dealing etc. Dr. Kiley has dealt in the book at length about the unimpeachable credentials of the circus community in ensuring property upkeep and maintenance of the animals under their charge. However, as has been rightly pointed out by RSPCA, it has failed to appreciate that upkeep and maintenance are not confined merely to timely provision of adequate quantity and quality of appropriate food and water to the animals but also involves appropriate housing which provides the animals enough space for movement and exercise and also to meet their biological requirements and social interactions.

The report throughout its length has tried to keep the zoos at par with circus but it has failed to appreciate the total changes in the zoo ethics of late. Zoos play an important role in ex-situ preservation of species particularly conservation of rare and endangered species. Contrasting differences in the case of zoos and circuses are that the latter have capture, transportation, training, rehearsal and performance, whereas the former have capture/seizure & translation..... Also in case of circuses, the animals are constantly transported from one place to another in varying climatic and other factors, which have an adverse impact on the animals on display mostly in unnatural environment.

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The Committee strongly felt that the circuses may never be able to achieve the standards of housing and upkeep of animals that the modern zoo provides and would have to provide even better standards in future.

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The report by Dr. Marthekiley Worthington also brings out that adequate running and exercise yards are necessary for keeping the animals fit and to avoid behavioural anomalies amongst animals kept in circuses. It is learnt that hardly any circus in maintaining such exercise yard in the country.

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The Committee is also not convinced that the circuses contribute to the conservation of endangered species. It is of the view that breeding in circuses is only accidental, or incidental, and in no way helps a national conservation programme. It needs to be pointed out that inbred stocks lose their heterogeneity and vigour

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The history of human evolution reveals that tigers, panthers and bears are different from the animals which were domesticated by the mankind. The behaviour of these animals is not only unpredictable but they are also quite shy and try to keep away from the human beings.

This fact has also been admitted to some extent by Dr. Marthekiley Worthington in her book. The bears love climbing trees and probe into the soil and develop stereotypic behaviour when they are kept in small and dingy cases. The Committee felt that it is not possible to provide such facilities in circuses. Monkeys are social animals and there is not justification for keeping the isolated monkeys in captivity.

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The ICF placed reliance mainly on the fact that many European countries are allowing display of animals in the circuses. Even if their contention is accepted, the ethos and preception of the people of this country is much different from their Western counter parts. We, in our country, see the same soul being represented in all the living beings on this planet. It is because of this ideology that a provision has been made in the Constitution of India to have love and compassion for all the living beings. It may, therefore, not be appropriate to be guided by, or blindly follow what is being practiced in other parts of the world.

It was noted in the report that the Government of India have already decided to close the zoos that are not congenial to the health of animals and a number of ill-planned zoos (at least 25% have been derecognised as the cages are dingy and lack enough space or movement of animals to meet their biological requirements. It was also noted that the mobile zoos have been refused permission keeping in view the stress that animals were subjected to during the transportation and the size of enclosures in which the animals have to be confined. At this stage, it will be convenient to refer to the relevant extracts of the material which was placed before it:-

#### 1. RSPCA'S CONCLUSIONS FROM THE REPORT

"Accommodation for the animals is clearly shown to be grossly inadequate, providing extremely cramped space and a highly impoverished environment. Despite the introduction of new codes of practice by the Association of Circus Proprietors early in the period of study, which require the provision of exercise areas, the data show that big cats are still confined to their transport wagons for over 90% of the time, where they have between 0.17 and 0.45 cubic meters of space per animal - a frightening small figure. Elephants are shown to be leg-shackled fore and hind on boards for over 60% of the time, where "they are able to lie down with difficulty".

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The RSPCA can see no way in which suffering associated with the keeping of animals in circuses can be totally eliminated; the very nature of the circus business imposes such constraints on the way in which animals are kept that there must always be significant levels of stress. However, it is apparent from this study that there are some aspects of animal husbandry in circuses where improvements can be made, which should to some degree reduce the levels of environmental deprivation and other stresses endured by the animals. In the interests of animal welfare, the RSPCA must pursue all possible means of achieving such improvements, until such time as animals are no longer used in circus entertainment.

## 2. Wildlife Department Briefing Animals in Circuses

One study based on the principle of analysis of time budgets which has been undertaken in the circus environments was done in 1988 - 89 by Dr. Marthekiley - Worthington, then of Edinburgh University. She observed the behaviour of 275 animals of 14 different species in circuses over a total of more than 1200 hours, and noted the proportion of time spent in different activities, including abnormal and stereotypic behaviour.

Some of the results of this research are given below, but the overall conclusion is that in all the animals studied there were significant levels of abnormal and/or stereotypic behaviour, indicative of boredom, frustration, or other causes of long term stress.

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There have been no significant improvements in the captive environments of other species of animals, many of which continue to live within the small confines of the 'beast wagon', with only limited access to small, barren exercise areas.

Travelling circuses are inherently restricted in the amount of space they can provide for animals. All the structures in which animals are housed or exercised

have to be easily transportable, and fit within the confines of a standard lorry unit. In many cases, particularly with animals such as the big cats and bears which are a potential danger to the public, the transport cage or 'beast wagon' is their permanent home, where a space of less than 2.5 metres square per animal is normally provided. Static circuses (of which there is currently only one in the U.K.) are equally restricted by the space available in their permanent facilities.

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The society believes the use of animals for any form of entertainment cannot be justified where distress or suffering is likely to be caused.

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3. Views of the Animal Welfare Society contained in their letter dated 10-9-1997.

As per Art.48A of the Constitution "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. As per Art.51A(g), "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for all living creatures.

The AWBI is very much convinced that in course of training of animals used in Circuses, the animals are being subjected to intense suffering, both physical and mental, with the use of electric whips, beating, starvation and the like which actually breaks the spirit, disturbs the conditioning of its mind and subjugates it by an external force.

All forms of cruelty committed against circus animals very much violate different clauses under Sec.11 of the PCA Act at every stage.

Circus using animals is a very perverse form of entertainment. The circus animal obeys the commands of the Ring Master only out of fear. Its performance is not a voluntary or a natural act of a free animal. It is neither happy nor does it enjoy doing it. The animals are starved till they listen to their masters whereby the animals are so conditioned that only when they obey to their mater, they will be given some food and that too in circuses not sufficient amount of food is given, as otherwise it is felt that the animal may become either lazy or put weight which would hamper the feats they are expected to perform. Thereby the animals are made into docile robots.

4. Views of the Animal Welfare Board of India contained in their letter dated 20-11-1997.



The Circus Federation has claimed that their animals are better off than the Zoo animals.

Wild animals are territory conscious and would like to settle down at one place but circus animals are constantly on the move.

Wild animals dislike being started at. Sometimes if they are well fed and rested, they can be indifferent to the starting humans or they will retreat into the rear portion of the enclosures in the Zoos but circus animals have nowhere to go retreat. Not only are they exposed to the gazing eyes, but three or four times a day before a shrieking and clamouring audience, under hot dazzling lights, with noisy bands blaring and drums beating, they must perform the tricks they have been taught.

Hence it cannot be gainsaid that circus animals are better off than Zoo Animals.

It may be a fact that veterinary attention is readily available to the circus animals. But this is not born out of love or concern for the animals but with an ulterior motive. The animal gets hurt and injured in the beatings/thrashings during the training and rehearsals and animals with outward signs of limping and bandages cannot be presented on the stage as the truth will be out. Therefore, the animal must be treated immediately and healed as quickly as possible. Hence all the veterinary care.

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It is made out that only positive reinforcement, love and affection in handling of animals are involved in training. "You can't train animals by cruelty", they say.

It really all acts were done by kindness, then the animals world will have a free will in the circus ring . But no manager could possibly run his show unless he knows for certain the animals would perform their tricks to the perfect timing of the clock.

A trainer has to ensure that his animals will perform without hesitation, at the precise moment of command. He therefore, cannot rely on the animals co-operation, which may or may not be forthcoming . He has to use a more certain merciless method of compulsion. One trainer has been quoted as saying that there are only 3 weapons with which to enforce this viz. 1) fear, 2) hunger and 3) pain. There can be no doubt that all vertebrate creatures are capable of feeling these three sensations. Therefore, inspite of all appearances to the contrary, not kindness but "Fear", is and must be the mainspring behind all performance.

Mild talk, the power of the human eye and gentle persuasion will not convince the animals that it will be good to obey.

Here are some of the confessions from World famous Trainers.

Alfred Court, who became one of the most famous trainers of wild animals, published a book titled WILD CIRCUS ANIMALS.

"If an animal attacks, he must be given a severe enough correction for him to realise from the first encounter that he is not that strong.

I clenched my hand round the club and struck at the head with all my strength..... The bear had been struck where I had aimed, above the nostrils and between the eyes. Bloodflowed from its mouth, its paws stiffened in a last convulsion and it collapsed.

I had twenty-six animals: in training I should eliminate the disappointing ones and there would be a replacement if an animal was killed or badly crippled.

A tiger immediately received four or five lashes..... He got a whack whip are indispensable.

I seized one of the heavy stools and flung it with all my strength at the beast's head. It went sprawling knocked out.

It was my turn to be brutal, terribly brutal and brutal I was. All the clubs I had left in the cage were broken one by one on the tiger's head; lashes came down like an avalanche, each cutting deep into the tiger's shining coat.

I landed a heavy blow on her hand with the whip-butt. The grip of this, reinforced by double ring of copper, was like a mace.

The iron stool hit him harder than I had intended snapping his leg."

Energetic and instant correction is indispensable. On page 61 we read, "For six months some black panthers tried to get the better of me. One was killed; the five others were finally tamed. So I persist in my claim that Javanese panthers are not to be tamed with lumps of sugar."

The subduing of wild beasts is merely the result of merciless thrashing when they are young - van Aburn (Trainer and Showman).

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Hunger is the trainer's strongest and meanest weapon. "A lion was kept for 5 days without food or drink during training" with trident and whip. House of Commons Enquiry."

Based on the above said report of the committee, the Central Government issued the impugned notification dated 14-10-1998 banning the animals specified therein from

being exhibited or trained as performing animals. Therefore, by no stretch of imagination can it be said that the impugned notification is not based on relevant materials. On the contrary, there is plethora of materials as detailed above which would go to show that the animals are confined in cages and their transportation is also done in cages and that they are subjected to all forms of appalling and wanton cruelty to subdue them and to ensure that they will perform the desired feat without any hesitation at the precise moment of command. Therefore we have no hesitation in holding that the Government issued the impugned notification after forming an opinion upon consideration of the report which in turn is based on relevant materials. Hence, we have no hesitation in rejecting the contention of the learned counsel for the petitioners based on absence of materials.

5. To hold otherwise would tantamount to substitute the opinion of the expert body, viz the Central Government on the subject with the guise of exercising judicial review will be extremely loath to interfere with the decision made by the expert bodies. Vide Geetha Timbers v. State of Kerala (1990(1) KLT 402 (FB). In (1984) 3 All E.R. 935 at page 950 Lord Diplock observed as follows:

"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality' the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well established heads that I have mentioned will suffice."

The above passage has been approved and adopted by the Supreme Court in Ranjit Takur v. Union of India (AIR 1987 SC 2386 wherein the Supreme Court observed that judicial review generally speaking, is not directed against a decision, but is directed against the 'decision making process'. The Supreme Court in M/s. Dwarakadas Marfatia & Sons v. Bombay Port Trust (1989) 3 SCC 293, after referring to the decision in Chief Constable of the North Wales Police v. Evans, (1982)3 All E.R. 141, held as follows:

"In our opinion, it is necessary to remember that judicial review, in the words of Lord Brightman in that case, is not concerned with the decision, but with the decision making process. As observed by Prof. Dias in Jurisprudence (5<sup>th</sup> edn. at p.91) unless the restriction on the power of the court is observed, the court would under the guise of preventing the abuse of power, be itself guilty of usurping power which does not belong to it. It is, therefore, necessary to bear in mind the ways and means by which the court can control or supervise the judicial action of any authority which is subject to judicial control. In this connection, it is necessary to refer to the observations of Lord Justice Templeman in Re Preston v. IRC and the observations of Lord Justice May in Regina v. Chief Constable of the Merseyside Police. It is not within the purview of a court to

substitute a decision taken by a constituted authority simply because the decision sought to be substituted is a better one. Learned Additional Solicitor General, in our opinion, is, therefore, right in contending that the appellant should not be allowed to contend that the decision of the Bombay Port Trust to allot the plot to the major holder is not one of the feasible means of achieving the objectives of the development. It was not open to the appellant to contend that the Bombay Port Trust could have framed a better policy in a way in which both the goals development and non eviction of existing tenants, could have been achieved."

Of late, the Hon'ble Supreme Court in *Mansukhlal Vithaldas Chauhal v. State of Gujarat* (1997) 7 SCC 622 reiterated the aforesaid principle in the following words:

"The court does not sit as a court of appeal but merely reviews the manner in which the decision was made particularly as the court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The court posted out that the duty of the court is to confine itself to the question of legality.

To put it otherwise, the concern of the court should be whether a decision making authority exceeded its powers?; committed an error of law; committed breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached; or abused its powers. Of course, if the decision making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the will interfere. See in this connection *Padfield v. Minister of Agriculture, Fisheries and Food* (1968 AC 997. From the abundant and relevant material which was before the Government, it cannot be said that by issuing the said notification, it had reached a decision which no reasonable Tribunal would have reached or that it has abused or exceeded its powers or committed any error of law of committed breach of rules of natural justice. We accordingly reject the argument of the learned counsel on the first count.

5. Secondly, it was contended that the impugned notification is vitiated in that it was not preceded by a hearing to the petitioners thereby violating the principles of natural justice. We are unable to accede to the aforesaid argument of the learned counsel. In our considered opinion, the petitioners do not have a right of hearing before the issuance of a statutory notification by an authority unless it has been specifically provided for in the Statute itself. Neither sub-clause (ii) of Section 22 of the Act nor the order dated 21-8-1997 passed by the Delhi High Court contemplates that any notice is to be issued or opportunity of hearing is to be granted before the exercise of the statutory power by the Central Government for banning exhibition or training of animals by a notification. It is trite that issuance of statutory notification is "subordinate legislation" and is not subject to the rules of natural justice, unless provided for in the Statute. The view we are taking is fortified by no less an authority than the decision of the Supreme Court reported in *Eachardas Porwal v. State of Maharashtra* (1981) 2 SCC 722, *Union of India and another v. Cynamide India Ltd. And another* (1987) 2 SCC 72C and *M.R.F. Ltd. V. Inspector,*

Kerala Govt. and others (1998) 8 SCC 227) wherein it has been held that notice or hearing cannot be insisted upon unless provided for in the Statute. It is settled law that the principles of natural justice cannot be imported in the matter of legislative action. Accordingly, we hold that the contention raised by learned counsel for the petitioners that the impugned notification is vitiated in that it was not preceded by a hearing is wholly untenable and not liable to be countenanced. It must at once be noted that even though notice and hearing is not required by law, the committee heard all those who had appeared before it and submitted the material. It cannot be said that the ICF which has been heard by the committee was not representing the interests of the circus establishments which would include the petitioners - employees as well. Individual employees could have presented their views had they chosen to do so before the committee. However, not a single employee in his individual capacity submitted a scrap of paper before the committee or before the Government. The reason was not that the employees were unaware of the proceedings, but because the ICF was representing their interests. In this connection we may recall that the High Court of Delhi in its order dated 21-8-1997 had clearly allowed all concerned to submit before the Government all materials relevant to the issue. In fact, All India Circus Employees Union was aware of this. Individual employees having failed to avail of this opportunity, though not legally required, cannot at this stage, challenge the notification on the ground of violation of the principles of natural justice. In any event, no prejudice has been caused to the petitioners on this count. Therefore, we negative the contention advanced based on violation of the principles of natural justice.

6. That takes us to the third contention, viz, the impugned notification is discriminatory in so far as it is intended to ban exhibition and training of animals in circus only without bringing the zoos within its ken. The endeavour of the petitioners appears to be to equate circuses with zoos. According to them, if zoos can keep animals, why not circuses? In our considered opinion, the comparison sought to be made out is unrealistic and inexpedient. Whereas the sole motto of circus is monetary gain for the owner of circus company in the name of entertainment, the zoos on the other hand are meant for conservation and education purpose. This need is of more priority than the greed of the circus companies. Among the two conservation techniques - exsituand insitu, zooz are excellent places for captive breeding. Captive breeding helps animals to proliferate their species in protection, which is not the case in circus. Zoos play an important role and also they are the only hope in preserving the species, when under rare circumstances animals are infected in Wild (Sancturies & National Parks) due to some factors. Thu zoos help in preventing the extinction of the said species. Another contrasting difference in the case of zoos and circus is that the latter has the following stages namely capture, transportation, training, rehearsal and performance, whereas the former has only capture/seizure and translocation. Also in case of circus, the animals are constantly transported from one place to another (climatic factors and any other factor not being taken into consideration which will have an adverse impact on the animals) and displayed in the most un-natural environment, but whereas in zoos efforts are made by the Government to put the animals in as much as possible an envrronment that will not have any adverse impact on the animal. Also the concept of open enclosures in zoos is gaining good momentum. This can be very much understood in terms of space provided to

animals in zoos and in circus. Wild animals are territory conscious and would like to settle down at one place; but circus animals are constantly on the move. Wild animals dislike being started at. Sometimes if they are well fed and rested, they can be indifferent to the staring humans or they will retreat into the rear portion of the enclosures in the zoos but circus animals have nowhere to retreat. Not only are they exposed to the gazing eyes, but three or four times a day before a shrieking and clamouring audience, under hot dazzling lights, with noisy bands blaring and drums beating, they must perform the tricks they have been taught. Hence it cannot be gainsaid that circus animals are better off than zoo animals. All good zoos have realised and recognised the need for wild animals to live in open enclosures with caves or shady trees, under which they can rest or retreat. In this age, when there is so much concern for the preservation of wildlife, setting up of enclosures, open zoos, safari parks and sanctuaries, where wild animals can live in conditions closely approximating to their wild existence as humanly as possible, circuses using wild animals have become an anachronism. (c.f. advice received by the Government from the Animal Welfare Board of India.)'

The inevitable conclusion, therefore, is that animals in zoos cannot be equated with animals in circuses and the contention to the contrary raised by the petitioners is devoid of merit and is accordingly rejected.

7. The petitioners have a further contention that the impugned notification is arbitrary as it prohibits training and exhibition of animals only when the public are invited through sale of tickets, as specified in Section 21 of the Act, whereas, it does not prohibit training and exhibition of animals where the public can be admitted without sale of tickets. We are afraid we cannot give our stamp of approval to this contention for the following reasons: Chapter V of the Act deals with performing animals. Section 21 defines the word 'exhibit' to mean "exhibited at any entertainment to which the public are invited through sale of tickets. Thus, persons who exhibit animals against sale of tickets are covered under this chapter and those persons who may choose to exhibit animals against sale of tickets are covered under this chapter and those persons who may choose to exhibit animals without sale of tickets would fall under Section 11 of Chapter III of the Act. Sub Clause (a) of Sub-section (1) of Section 11 of the Act makes it an offence "if any person beats, kicks, overdrives, overloads, tortures or otherwise treats any animals so as to subject it to unnecessary pain or suffering or cause or being the owner permits any animal to be so treated." Once the exhibition of the specified five animals is prohibited under sub-section (ii) of Section 22 of the Act on the ground of prevention of infliction of unnecessary pain or suffering by the circus, the same yardstick would have to be applied in the case of a person who exhibits or trains animals for a show where the public is invited without the sale of tickets. Thus, the impugned notification cannot be said to be arbitrary or discriminatory on the aforesaid ground.

8. It was then contended that the impugned notification invades the fundamental right of the petitioners to carry on their trade or business under Art.19(I) (g) of the Constitution of India. This argument, in our opinion, proceeds on a fallacious premise which cannot be countenanced in the eye of law. The words 'trade' or 'business' as used in Article 19(1)(g) do not permit carrying on of an activity whether commercial or otherwise, if it results in

infliction of unnecessary pain and suffering on the specified animals. No person has any right, much less a fundamental right to carry on a trade or business which results in infliction of unnecessary pain or suffering nor a right to carry on a trade or business in an activity which has been declared by law as an offence. Neither the owners nor the employees of circus have a fundamental right to carry on trade or business in training and exhibiting endangered animals as the said trade is of such an obnoxious and pernicious activity geared towards mere entertainment which cannot be taken in the interest of general public to be a trade or business in the sense in which it is used in Art.19(1)(g) of the Constitution of India. We are supported on this by the decision of the Supreme Court in *Khody Distilleries Ltd. V. State of Karnataka* (1995 (1) SCC 574) wherein it has been held in unmistakable terms that the citizens do not possess the rights enumerated under Article 19(1)(g) of the Constitution absolutely and is subjected to reasonable restrictions embodied in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1) (a) to (g) are to be read along with the qualifications and restrictions. Even the rights guaranteed under the constitutions of other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to \*6) f Art. 19 of the Constitution of India. Dealing with the imposition of ban on trade of imported ivory and articles made therefrom, a Full bench of the Delhi High Court in *M/s. Ivory Traders and Manufacturers Association and others v. Union of India* (1997 Deli 267) ruled as follows:

"No citizen has a fundamental right to trade in ivory or ivory articles, whether indigenous or imported. Assuming trade in ivory to be a fundamental right granted under Article 19(1)(g), the prohibition imposed thereon by the impugned Act is in public interest and in consonance with the moral claims embodied in Art.48A of the constitution; and the ban on trade is not violative of Article 14 of the Constitution and does not suffer from any of the malafides namely, unreasonableness, unfairness and arbitrariness ."

In the light of the above discussion, it has only to be held that the petitioners have no fundamental right to carry on a trade or business in exhibiting or trading of animals covered by the impugned notification. The prevention of unnecessary pain and suffering to animals, its impact on any of the rights under clause (1) of article 19 or 21 is merely incidental, indirect, remote or collateral. There is a direct and proximate nexus between the prohibition of training and exhibition of the specified animals and the object sought to be achieved as stated in the preamble of the Act, i.e., prevention of infliction of unnecessary pain and suffering on animals. Thus, the anvil of Article 19 or 21 will not be available for judging its invalidity. The result therefore is that the impugned notification is not liable to be struck down on the ground of violation of fundamental right under Article 19(1)(g) of the Constitution of India.

9. Assuming training and exhibition of the notified animals is to be a fundamental right under Article 19(1)(g), the prohibition imposed thereon by the impugned notification is in public interest in tune with the moral claims embodied in Articles 48 and 51(g) of the Constitution of India and is permissible under Article 19(2) thereof. The Apex Court in the decision reported in 1998(8) SCC 227 (*MRF Ltd. V. Inspector Kerala Govt.* and

others) has ruled that while considering the reasonableness of the restrictions, the court has to keep in mind the directive principles of State policy. Under Article 48A of the Constitution, the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. The Directive Principles of State Policy are not enforceable but are nevertheless fundamental in the governance of the country and have to be applied by the State in making the laws. They are essential articles of faith of the country and as such the legislature, the executive and the judiciary have to follow them unless there is likely to be an infringement of any express provision of the Constitution. They have to be regarded as the "wisdom" of the nation manifested in the 'paramount' law of the country. While Art.48A declares that it is the duty of the State to protect the environment and wild life of the country, Art.51(A)(g) declares to have compassion towards living creatures. Therefore, it is the moral duty of the State to make laws in furtherance of the duties as contained in Art.51A(g). Fundamental duties are at par and have the same force as that of the Directive Principles. Of course, the duty as such is not legally enforceable in the Courts; but if the State makes a law to prohibit any act or conduct in violation of any of the duties, the courts would uphold that as a reasonable restriction on the relevant fundamental right, just as they did uphold any law implementing a Directive Principle under the Constitution of 1949, i.e. before the insertion and expansion of article 31C. In this context, it would be useful to refer to the observations of the Supreme Court reported in Chandra Bhavan v. State of Mysore (AIR 1970 SC 2042 wherein the Supreme Court held as follows:

"If it is a fallacy to think that under our Constitution there are only rights and no duties. The provisions in Part IV enables the Legislatures to impose various duties on the citizens. The mandate of our Constitution is to build a welfare society and that object may be achieved to the extent the Directive principles are implemented by legislation."

If so, in determining the constitutionality of such laws, when enacted, the Court should have regard to the Directives as well as the fundamental duties along with the fundamental rights. The courts may also look at the duties while interpreting equivocal statutes which admit of two constructions; and also uphold the constitutionality of a statute the object of which is in consonance with a provision in Art.51A - vide Mohan v. Union of India (1992) Supp. (1) SCC 594). Viewed in the above perspective, the impugned notification has to be upheld as one in furtherance of the object of the fundamental duty of a citizen to have compassion for animals and to refrain from inflicting unnecessary pain and suffering on them.

10. It was further contended that the impugned notification has violated the petitioners' fundamental right to life guaranteed under Art.21 of the Constitution of India. Here again, we find no substance in the contention raised. In our considered opinion, right to life guaranteed under Art.21 does protect livelihood, but its application cannot be extended or stretched to the trade, business or avocation which is injurious to public interest or has insidious effect on public morals or public order. Accordingly, we reject the submission based on Article 21.



11. The petitioners have contended that in the absence of rules being framed to regulate exhibition, training, transportation and housing of animals, the power to issue the impugned notification is arbitrary. We do not find any merit in this contention as the power to issue the notification is independent of the rules. In Delhi Science Forum's case (1996) 2 SCC 405 the Supreme Court observed as under:

"There is no dispute that no such rules have been framed as contemplated by Section 7(2)(E) of the Act. But in that event it cannot be held that unless such rules are framed, the power under sub-section (1) of Section 4 cannot be exercised by the Central Government. The power has been granted to the Central Government by the Act itself, and the exercise of that right by the Central Government cannot be circumscribed, limited or restricted by any subordinate legislation to be framed under Sec.7 of the Act."

In any event, the question of framing rules in respect of these five animals can only arise if the pain and suffering which these animals undergo in course of exhibition and training can be considered to be necessary. In the absence of such necessity, irrespective of the rules, the Government is well justified in prohibiting their exhibition and training.

12. To cap it all, petitioners are guilty of suppression of material facts from this court. This issue regarding ban on specified animals has been pending since 1991 and by no stretch of imagination can it be expected that the petitioners - employees of circus establishments - were not aware of the said proceedings. It is expected of them to have approached this court after making a full disclosure of the entire facts and circumstances of the case and with clean hands which they have not done. Therefore, this is a fit case in which this court can legitimately decline jurisdiction and non-suit the petitioners.

13. In conclusion, we hold that circus animals are being forced to perform unnatural tricks, are housed in cramped cages, subjected to fear, hunger, pain, not to mention the undignified way of life they have to live, with no respite and the impugned notification has been issued in conformity with the changing scenario, values of human life, philosophy of the Constitution, prevailing conditions and the surrounding circumstance to prevent the infliction of unnecessary pain or suffering on animals. Though not homosapiens, they are also beings entitled to dignified existence and humane treatment sans cruelty and torture. In many respects, they comport better than humans, they kill to eat and eat to live and not live to eat as some of us do, they do not practice deception, fraud, or falsehood and malpractices as humans do, they care for their little ones expecting nothing in return, they do not proliferate as we do depleting the already scarce resources of the earth, for they practice sex restraint by seasonal mating, nor do they inhale the lethal smoke of tobacco polluting the atmosphere and inflicting harm on fellow beings. All animals except the very lowest exhibit some degree of intelligent behaviour, ranging from learned responses to complex reasoning. Many believe that the lives of humans and animals are equally valuable and that their interests should count equally. Their contribution to the health of humans is invaluable, once it is remembered that nearly every advance in health care and combating human diseases has been based on animal research. Animals also provide models for the study of human diseases> new drugs are tested on animals to help determine their potentials for causing cancer or other

disease or for haring embryos and fetuses in the womb. Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognise and protect their rights. In this context, we may ask why not our educational institutions offer a course on "Animal Rights Law" with an emphasis on fundamental rights as ha been done by the Harvard Law School recently. If humans are entitle to fundamental rights, why not animals? In our considered opinion, legal rights shall not be the exclusive preserve of the humans which has to be extended beyond people thereby dismantling the thick legal wall with humans all on one side and all non-human animals on the other side. While the law currently protects wild life and endangered species from extinction, animals are denied rights, an anachronism which must necessarily change.

Thus, on the whole, in the light of the foregoing discussion, we are satisfied that the impugned notification

W2hich is under challenge in this batch of writ petitions does not suffer from any of the infirmities alleged and the same has only to be upheld. Accordingly, we uphold the notification dated 14-10-1998 and dismiss these writ petitions.

Sd/-

K. Narayana Kurup, Judge.

6<sup>th</sup> June, 2000.

Sd/-

K.V. Sankaranarayanan, Judge.