Swetab Kumar vs Ministry Of Environment, Forest And ... on 27 March, 2023

Author: Krishna Murari

Bench: Sanjay Karol, Krishna Murari

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. 390 OF 2023

WITH

I.A. NO. 50614 of 2023 :- Application for clarification of the order dated 08.08.2022

IN

WRIT PETITION (CIVIL) NO. 540 OF 2022

SWETAB KUMAR … PETITIONER(S)

VERSUS

MINISTRY OF ENVIRONMENT, FOREST
AND CLIMATE CHANGE AND ORS. … RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

This Miscellaneous Application has been filed by the petitioner seeking clarification of our order dated 08th August, 2022 to the effect that the mere filing of declaration under the notification dated 11.06.2020 does not preclude the Competent Authority from taking steps under Chapter VB of the Wild Life (Protection) Act,1972 by means of amendment brought in the Act by Wild Life (Protection) Amendment Act, 2022 and it shall be open for the Competent Authority to prosecute the said declarants and also take consequential steps of seizure and confiscation of the inventory declared under the said Advisory.

2. In order to bring clarity it may be necessary to narrate a few background facts:-

> Before the Wild Life (Protection) Amendment Act, 2022 was enforced, Ministry of Environment, Forests and Climate Change issued a Notification dated 11.06.2020 which was in the form of an Advisory dealing with import of exotic live species of animals and birds in India and declaration of stock. The said Advisory became the subject matter of challenge before various High Courts of the country on somewhat identical grounds. The Advisory came to be upheld by all the High Courts.

3. A Writ Petition under Article 32 of the Constitution of India in the nature of Public Interest Litigation was filed before this Court as well challenging the legality and validity of the aforesaid Notification dated 11.06.2020. The said Writ Petition came to be dismissed by making certain observations vide order dated 08.08.2022, the clarification whereof is being sought by the petitioner by means of the present application.

4. In the said Advisory, the object of the issuance of the same was postulated as one being for streamlining the process of import, export and possession of exotic live species. The Judgments rendered by different High Courts in challenge to said Advisory held the Advisory to be a Amnesty Scheme. It may also be relevant to point out that the Advisory was optional and permitted making declarations up to and including 15.03.2021.

5. By our order dated 08.08.2022, while concurring with the view of different High Courts, we had observed as under:-

> "..... Once a declaration within the window of six months as provided under the Advisory is made, the exotic live species, including its progeny, the declarant or transferee(s) are fully exempt from explaining the source of exotic live species. The exotic live species which is declared or its progeny, are not liable to confiscation or seizure by any Central Agency or State Agency. Consequently, the declarant or the transferee(s) of such declarant will be immune from prosecution under any civil, fiscal and criminal statute by any Central or State Agency. Any other interpretation would lead to absurdity."

6. Now, by the amending Act, exotic animals as listed in the appendices to CITES are brought within the purview of the said Act. The amending Act, introduces Chapter VB to enforce provisions of CITES and animals listed in the appendices to CITES find place in newly added Schedule IV to the said Act.

7. Learned counsel for the petitioner in support of the application seeking clarification contends that in view of the amending Act, the effect of the Advisory, order of four different High Courts as well as our order dated 08.08.2022 stand stricken off or overruled.

8. We have perused the amending Act. The scheme of Section 49M is that, under sub-Section(1) every person in possession of a species listed in Schedule IV is required to report details of such

animal to the Management Authority, which, as per sub-Section(2), is required to satisfy itself that the animal has not been possessed by contravention of any law and only after such satisfaction the authority shall issue a registration certificate permitting retention of such animal. If the Authority is not so satisfied, sub-Section(8) makes such possession illegal. As a consequence, the animal stands forfeited to the Central Government under Section 48Q and the person concerned is liable to prosecution under Section 51 of the said Act. This is bound to affect a large number of citizens especially pet owners, traders, farm owners, breeders and bona fide enthusiasts.

9. Further, the legal position to be taken into consideration is that an Amendment Act cannot post facto criminalize possession. This proposition does not require much deliberation and is well settled that retroactive criminal legislation being violative of Article 20(1), one of the fundamental rights guaranteed under part III of the Constitution is prohibited.

10. Reference may be made to the judgment in the case of T.Barai Vs. Henry Ah Hoe1, this Court while expounding the provisions of Article 20(1) observed as under :-

> "22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound 1 (1983) 1 SCC 177 reason and common sense. This finds support in the following passage from Craies on Statute Law, 7th Edn., at pp. 38889:
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> "A retrospective statute is different from an ex post facto statute. "Every ex post facto law..." said Chase, J., in the American case of Calder v. Bull [3 US (3 Dall) 386: 1 L Ed 648 (1798)] "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of

> conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

11. Reference can also be made to a recent decision dated 23.08.2022 rendered by a three-Judge Bench of this Court in the case of Union of India and Anr. Vs. M/s. Ganpati Dealcom Pvt. Ltd. , Civil Appeal No. 5783 of 2022.

12. In the said case, while considering the question whether the prohibition of Benami Property Transaction Act, 1988 as amended by Benami Transactions (Prohibition) Amendment Act, 2016 has a retrospective application or is prospective in nature held that concerned authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of 2016 Act and as a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed.

13. The matter can be viewed from yet another angle. Many people come to possess animals as pets from the open market and possibility of producing a paper trail, especially after several years, is next to impossible. It could well be contended that Section 49M treats those who took benefit of an optional scheme i.e., the Advisory, as against those who did not, despite the fact that the latter were never put to notice of the consequences envisaged under Chapter VB, Section 49 M and 49 Q thereof being pertinent. When the Advisory was issued, the same was optional, aimed essentially at regulation of import/export and the public at large was not put to notice that failure to opt therefor would lead to penal and other consequences affecting their right to possess the animal.

14. Having gone through the amending Act, in order to achieve the desired object of amending Act, of enforcing provisions of CITES, we are of the considered opinion that the respondent must provide the option of Advisory to the citizens at large for a further reasonable period by putting them to notice of the consequences of failure to make such registration/declaration.

15. We take note of the fact that Rules as envisaged under Section 49M (9) have not yet been framed and in essence the provisions of Section 49M thus, have not become operative. The respondent Authorities should, therefore while framing the Rules, take into consideration the same.

16. In view of the aforesaid facts and discussion, the order dated 08.08.2022 passed by this Court calls for no modification or clarification as sought by the petitioner.

17. Since vide order dated 08.08.2022 it has been held that Advisory was an Amnesty Scheme and declarants are immune from prosecution, the same would obviously mean that declarants are immune from prosecution or action under any future laws and amendments incorporated in the Wild Life(Protection) Act, 1972.

18. In the end, we strongly recommend that before the respondent frames and publishes Rules under Section 49M(9) of the amended Act, shall consider extending the Advisory dated 11.06.2020 to the citizens at large for a further period of minimum six months or such further period which may be deemed appropriate with putting the public at large to caution that, if the scheme is not availed of

and no declaration is made, the person concerned and the inventory in the possession of the person shall be liable for action as per Chapter VB of the Wild Life (Protection) Act, 1972 irrespective of the date of which the inventory in question has come in the possession of such person.

19. With the aforesaid observations, the Miscellaneous Application stands dismissed.

.....,J.

(KRISHNA MURARI) .....,J.

(SANJAY KAROL) NEW DELHI;

27th MARCH, 2023