



GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Report No.261

**Need to Regulate Pet Shops and
Dog and Aquarium Fish Breeding**

August 2015

न्यायमूर्ति अजित प्रकाश शहा
भूतपूर्व मुख्य न्यायाधीश, दिल्ली उच्च न्यायालय
अध्यक्ष
भारत का विधि आयोग
भारत सरकार
14वाँ तल, हिन्दुस्तान टाइम्स हाऊस,
कस्तूरबा गाँधी मार्ग
नई दिल्ली-110 001



Justice Ajit Prakash Shah
Former Chief Justice of Delhi High court
Chairman
Law Commission of India
Government of India
14th Floor, Hindustan Times House
Kasturba Gandhi Marg
New Delhi – 110 001

D.O. No.6(3)/279/2015-LC(LS)

28 August, 2015

Dear Shri Sadananda Gowda ji,

The Law Commission of India received a letter from the Animal Welfare Board of India in May this year, seeking guidance regarding the Central Government's authority to enact rules regulating certain animal shops and breeders. Though at first the Commission felt it difficult to take up the issue for study, on receipt of several representations from across the country, it was felt prudent to go into the matter in detail.

The issue relates to the question as to whether the Government is empowered to notify three sets of rules regarding pet shops, dog breeding and aquarium fish breeding. The Ministry of Environment, Forests and Climate Change, in consultation with Ministry of Law and Justice had pleaded helplessness in notifying these rules quoting the absence of enabling provision in the Prevention of Cruelty to Animals Act, 1960. The recommendation of the Commission in the matter is sent herewith in the form of Commission's **Report No.261** titled "**Need to Regulate Pet Shops and Dog and Aquarium Fish Breeding**", for consideration by the Government.

In his letter dated 24 August 2015, one Ex-Officio Member, Shri P K Malhotra, Law Secretary, has expressed his view that "it may not be appropriate on the part of the Law Commission to give any Report on the subject" as the Department of Legal Affairs is reviewing its advice given in 2012 on the matter. While the Commission has taken this letter on record, it is of the view that even if the Department is reviewing its earlier advice, the present Report will only act as a supporting document. Further, so much of manpower and efforts will go waste if the report is not issued after completion. Moreover, it is the prerogative of the Government to accept or not to accept the Report. Another Ex-Officio Member, Dr. Sanjay Singh, Secretary, Legislative Department, suggested certain changes to the Report, which were carried out. However, he has returned the Report without affixing his signature.

With warm regards,

Yours sincerely,

Sd/-

[Ajit Prakash Shah]

Shri D.V. Sadananda Gowda
Hon'ble Minister of Law and Justice
Shastri Bhawan
New Delhi – 110 015

Report No.261
Need to Regulate Pet Shops and
Dog and Aquarium Fish Breeding

Table of Contents

| Chapter | Title | Pages |
|----------------|--|--------------|
| I | BACKGROUND TO THE REPORT | 1-10 |
| A. | Introduction | 1-3 |
| B. | Representations received by the Commission | 3-9 |
| C. | Present Report of the Commission | 9-10 |
| II | LEGAL FRAMEWORK GOVERNING PET SHOPS, DOG BREEDING AND AQUARIUM FISH BREEDING IN INDIA | 11-26 |
| A. | Question 1 | 13-19 |
| B. | Question 2 | 19-26 |
| III | RECOMMENDATIONS | 27-28 |

CHAPTER I

BACKGROUND TO THE REPORT

A. Introduction

1.1.1 In May 2015, the Law Commission of India (“the Commission”) received a letter from Major General (Retd) Dr R.M. Kharb, the Chairman of the Animal Welfare Board of India (“AWBI”), which is a statutory body established under the Prevention of Cruelty to Animals Act, 1960 (“the PCA Act”). The letter from the AWBI Chairman sought guidance regarding the Central Government’s authority to enact rules regulating certain animal shops and breeders.

1.1.2 The AWBI had drafted three sets of rules regarding pet shops (“Pet Shop Rules, 2010”), dog breeding (“Dog Breeding, Marketing and Sale Rules, 2010”), and aquarium fish breeding (“Aquarium Fish Breeding and Marketing Rules”), and sent it onward to the Animal Welfare Division of the Ministry of Environment, Forests and Climate Change (“MoEF”) for scrutiny. But the Animal Welfare Division, MoEF indicated that it was not empowered to notify such rules under the Prevention of Cruelty to Animals Act, 1960 (“the PCA Act”).

1.1.3 MoEF had also sought the opinion of the Ministry of Law and Justice (“MLJ”) on the issue, a copy of which was also forwarded to the Commission. According to the MLJ, the PCA Act is silent with respect to pet shops, dog breeding and aquarium fish breeding, and that rules cannot be framed unless there is an enabling provision that confers power on the Central Government to do so. The MLJ further noted that, although section 38 of the PCA Act provides that “the Central Government may make rules providing for all or any of the following matters, namely: . . . (l) any other matter which has to be, or may be prescribed,” there must still be a specific enabling/substantive provision regarding the matter to be regulated, and section 38 does not mention pet shops, dog breeding, or aquarium fish breeding.

1.1.4 On his part, the AWBI Chairman pointed out that the Government had earlier notified rules regarding performing animals, slaughter houses, animal birth control, draught and pack animals, and the licensing of farriers, and therefore, requested guidance from the Commission regarding the rules in question relating to pet shops, dog breeding, and aquarium fish breeding.

1.1.5 In its response to the AWBI Chairman dated 28 May 2015, the Commission expressed its inability to take up the study on the subject at that time. However,

the Commission received several representations around the same time, urging it to take up the issue, and, therefore, the Commission decided that it would be prudent to examine the issue in further detail.

B. Representations received by the Commission

1.2.1 The Commission received a large number of representations on the issue from animal rights and animal welfare organisations from across the country. A summary of the information relating to pet shops, dog breeding and aquarium fish breeding based on information received through representations as well as news reports, is provided in the following paragraphs.

1.2.2 The Wildlife (Protection) Act, 1972 (“WPA”), prohibits sale of certain animals¹ in pet shops. However these sales are continuing.² All kinds of animals can be found for sale in animal markets across the country, and they are kept in terribly inhumane conditions. Puppies are drugged to prevent them from crying, large birds are stuffed into small cages and fish become stressed and sometimes die because of confinement, crowding, contaminated water and unnatural

¹ Animals mentioned in Schedule I and II of the Wildlife (Protection) of the Act, 1972.

² See Jose Louies, *Taming the Wild: An Overview of Pet Trade in India*, in WWF-INDIA, ILLEGAL WILDLIFE TRADE IN INDIA 3 (2014), available at http://awsassets.wwfindia.org/downloads/traffic_panda_8_oct.pdf; *HC Seeks Status of Rules on Regulating Sale of Animals, Birds*, New Indian Express (Apr. 14, 2015), http://www.business-standard.com/article/pti-stories/hc-seeks-status-of-rules-on-regulating-sale-of-animals-birds-115041400770_1.html.

temperatures.³ Other common harmful practices include de-beaking birds, docking the tails of dogs, selling unweaned pups, and de-clawing kittens.⁴ Animal breeding is also cruel. Many animals do not survive the trauma of being transported in small cages without adequate water or food, and estimates suggest that, overall, 40% of animals die in captivity or transportation.⁵ Moreover, even star tortoises and other protected animals are sold openly,⁶ and wild animals (including parakeets, munias and mynas) are caught and sold in complete violation of the WPA.⁷

1.2.3 It is estimated that for every bird sold in the market, two die *en route*. Fledglings are stolen from their nests and smuggled to market in cartons and tiny boxes, and some are even rolled up inside socks during transport to cities. Captive birds' wings are crudely clipped with scissors to prevent them from flying.⁸ The

³ *Animals Used for Entertainment*, PETA <http://www.petaindia.com/issues/animals-in-entertainment/> (last visited Aug. 5, 2015).

⁴ *Cruelty in Pet Shops: Plea to Law Panel for Rules*, Times of India (July 3, 2015), <http://timesofindia.indiatimes.com/city/delhi/Cruelty-in-pet-shops-Plea-to-law-panel-for-rules/articleshow/47918728.cms>.

⁵ *Cruelty in Pet Shops: Plea to Law Panel for Rules*, Times of India (July 3, 2015), <http://timesofindia.indiatimes.com/city/delhi/Cruelty-in-pet-shops-Plea-to-law-panel-for-rules/articleshow/47918728.cms>.

⁶ *Animals Used for Entertainment*, PETA <http://www.petaindia.com/issues/animals-in-entertainment/> (last visited Aug. 5, 2015).

⁷ *Cruelty in Pet Shops: Plea to Law Panel for Rules*, Times of India (July 3, 2015), <http://timesofindia.indiatimes.com/city/delhi/Cruelty-in-pet-shops-Plea-to-law-panel-for-rules/articleshow/47918728.cms>.

⁸ In *Abdulkadar Mohamad Azam Sheikh v. Gujarat* (2011), a similar issue was raised before the Gujarat High Court. See also *Chief Forest Conservator (Wildlife) v. Nisar Khan*, (2003) 4 S.C.C. 595; *Sansar Chand v. Rajasthan*, (2010) 10 S.C.C. 604. In these cases, the Court has looked at the illegal trade of wildlife.

birds are doomed to a lifetime in cramped cages in which they can hardly stretch their wings.

1.2.4 Despite the WPA, which bans the trade and trapping of all indigenous birds, and Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”),⁹ which restricts the trade in foreign birds, a black market in birds thrives openly, involving many of the country’s estimated 1,200 species.¹⁰ Laws designed to protect India’s birds are well intentioned but rarely enforced. In addition, there is a clandestine network of extremely well-organized persons, from pet-store owners to other dubious sellers, who use the internet to service their clients.¹¹ ‘Wildlife pet lovers’ spend exorbitant amounts to get such exotic pets, so much so that the global illegal pet trade industry is estimated to be worth millions of US dollars.¹²

⁹ The United Nations Convention on International Trade In Endangered Species of Wild Fauna And Flora (CITES) came into effect in order to protect rare and endangered species of wild fauna and flora against over-exploitation. The convention ensures that international trade does not pose a threat to the survival of species in the wild. The convention also provides strict regulation of exports of those species threatened by trade. Even the keeping of a permissible bird must be in conformity with the provisions of Section 11 of the Prevention of Cruelty to Animals Act, which stipulates that any person who keeps and confines any animal in any cage which does not measure sufficiently to permit the bird a reasonable opportunity of movement or does not provide the bird with sufficient food, drink and shelter shall be guilty of treating that bird cruelly.

¹⁰ Pallava Bagla, *India’s Black Market in Birds Threatening Rare Species*, NAT’L GEOGRAPHIC (Oct. 2, 2002), http://news.nationalgeographic.com/news/2002/10/1002_021002_indiabirds.html.

¹¹ See Jose Louies, *Taming the Wild: An Overview of Pet Trade in India*, in WWF-INDIA, ILLEGAL WILDLIFE TRADE IN INDIA 3, 3 (2014).

¹² See Jose Louies, *Taming the Wild: An Overview of Pet Trade in India*, in WWF-INDIA, ILLEGAL WILDLIFE TRADE IN INDIA 3, 3 (2014).

1.2.5 People for the Ethical Treatment for Animals (“PETA”) India submitted that India had a “multi-crore but essentially unregulated pet trade,” growing at a rate of about 20% per year, with the Indian pet-care market alone estimated to reach about Rs 800 crore in 2015. PETA pointed out that there were thousands of breeders and pet shops in the India market, but no specific law protected the animals they used. Without any regulations, pet shops suffered from various problems, such as “poor housing [for animals], terrible [animal] hygiene, cruel breeding practices, a lack of veterinary care, cruel transport, high rates of morbidity, illness, disease, untrained workers, [and] rough handling”. Further, the poor conditions in pet shops and a lack of basic veterinary care “also place pet shop employees and general public at risk of contracting zoonotic diseases such as salmonellosis and psittacosis”. Besides the terrible conditions, pet shops also trade in animals and birds that are protected under law, e.g., under WPA and CITES.

1.2.6 In his representation, Shri Sharath Babu R, Honorary Wildlife Warden Bangalore, and the Environment Advisor, Bruhath Bangalore Mahanagara Palike, Forest Cell, pointed out that because pet shops and breeders are not regulated, there are a host of problems. Birds, animals and fish are sold in an unscientific and cruel manner; there are no records of

sale/purchase or inventory of species; endangered species are freely sold; the pet shop industry is not taxed, and so on.

1.2.7 Blue Cross of Hyderabad, in its representation to the Commission, pointed out that many animals sold in pet trade are illegally captured or bred; animals in pet shops (there are over 3 lakh pet shops in India) are confined to unnatural and unsuitable conditions and develop severe irreversible psychological problems; and protected wildlife are sold in open markets without any record-keeping or inventories.

1.2.8 Blue Cross of India Madras pointed out that the rules under question were made after extensive consultations with many in the trade and industry and members of the kennel clubs as well as veterinarians and other professionals.

1.2.9 In its representation, Friendicoes-SECA said that no pet shop in Delhi or across the country gives a receipt for the sale of animals, and that varied prices are quoted for the same breed depending upon opportunity. Further, it said that since pet shops do not pay any kind of service or value added tax, huge losses were being caused to the government, especially since the industry turnover ran into several thousand crores per year (Rs.

80,000 crore, as cited by several representations). It said that there was an urgent need to regulate this trade, and set specific rules on what could be sold and how it could be sold.

1.2.10 PFA Balotra (Rajasthan) provided some insights into pet trading practices in India. Its representation said that there are approximately 450 pet shops in Delhi alone, and every tier-II city in the country has at least 200 shops where live animals of various species can be bought as pets. Besides these, there are websites where trading of pets happens on a large scale. Some shops also offer “home delivery” or “book in advance” options. According to its representation, there is no licensing authority for these shops: for example, the (Delhi) Municipal authority licenses only meat shops; the Animal Husbandry Department licenses only cattle; the Forest Department does not regard pet shops as being within its mandate. As a result, pet shops end up obtaining licenses to operate as medical stores, general merchandise stores, pet supplies stores, etc., but in practice, continue to store and sell live animals. Its representation also pointed out that while dog breeders are specifically required to obtain a registration certificate from AWBI, none of them in fact obtain such certificates, and their practices continue unregulated.

1.2.11 PFA Fatehabad unit, besides several others, drew attention to the practice of disposal of waste from pet shops. Waste from pet shops is allowed to mix with household waste that pollutes the neighbourhood as well as the ground water. Dead animals are dumped with household waste or buried in the neighbourhood, which leads to more contamination, and no post mortem is conducted to rule out infectious diseases that could spread to humans. They suggest that the spread of avian/bird flu may have a close relation with the manner in which animals are indiscriminately bred and sold in the country.

C. Present report of the Commission

1.3.1 The 20th Commission took note of the letter from AWBI and the various representations received by animal rights and animal welfare organisations throughout the country in this regard. The Commission recognised the need to examine whether the Central Government is empowered to issue rules under the relevant legislation for the purpose of regulating pet shops, dog breeding and aquarium fish breeding. In light of this, the Commission has undertaken the present study on **“Need to Regulate Pet Shops and Dog and Aquarium Fish Breeding”** in order to provide the Government with its views on the scope of its

powers, and examine the necessity of regulating such practices.

1.3.2 In order to undertake the present study, the Commission formed a sub-committee comprising the Chairman; Ms Dipika Jain, Associate Professor; Mr Brian Tronic, Assistant Professor; and Ms Swati Malik, Research Associate, Jindal Global Law School; and Ms Sumathi Chandrashekar, Consultant, Law Commission of India, which finalised this report.

CHAPTER II
**LEGAL FRAMEWORK GOVERNING PET SHOPS,
DOG BREEDING AND AQUARIUM FISH
BREEDING IN INDIA**

2.1 The Ministry of Environment, Forest and Climate Change had published draft pet shop rules prepared by Animal Welfare Board of India¹³ in 2010. According to the Preamble to the Draft Pet Shop Rules, 2010, as available on the website of MoEF (a slightly different version of which is also available on the website of AWBI¹⁴):

“[L]ive animals are often showcased, exhibited and traded like commodities in pet shops or other shops selling animals alive. The ways in which many animals and birds are handled or managed are not always ideal. Many pet shops are established next to butcher shops where, carcasses of slaughtered animals/ birds are hung for sale in full vision of the live animals waiting to be sold. Cages are often crammed with animals or birds and exhibited outside the shops along with hoardings or in front of shops in open sun light. There is presently no deterrent law specific to ensure humane handling and comfort to animals in pet shops. The power to close shops lies with local bodies who grant permission to open shops (license). These rules are

¹³ Section 9 of the Prevention of Cruelty against Animals Act, 1960 states that the functions of the Board shall be to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more particularly when they are being transported from one place to another or when they are used as performing animals or when they are kept in captivity or confinement. Section 10 states that the Board may, subject to the previous approval of the Central Government, make such regulations as it may think fit for the administration of its affairs and for carrying out its functions.

¹⁴ ANIMAL WELFARE BOARD OF INDIA, DRAFT PET SHOP RULES, 2010, available at <http://www.awbi.org/awbi-pdf/draftpetshoprules.pdf>.

made to ensure that live animals sold as pets or as commodity, receive proper care and stress free humane treatment so long as they are in the possession of shop keepers.”¹⁵

2.2 These rules, once notified, would be enforced in all pet shops in India. Similarly, the rules relating to dog breeding and aquarium fish breeding would be enforced on respective breeders. However, the Ministry of Law and Justice found that Centre did not have the authority to enact these rules under the Prevention of Cruelty to Animals Act, 1960.

2.3 As a result of the same, the following legal questions have been raised:

1. Has Parliament delegated power to the Central Government under the Prevention of Cruelty to Animals Act, 1960 to frame rules to regulate pet shops, dog breeding and aquarium fish breeding, and other wildlife not governed by the Wildlife Protection Act, 1972?
2. How has the rule making power of the Centre been construed by the courts?

¹⁵MINISTRY OF ENVIRONMENT AND FORESTS, DRAFT PET SHOP RULES 2010, *available at* <http://www.moef.nic.in/downloads/public-information/Pet%20Shop%20Rules%202010.pdf> (last accessed on Aug. 12, 2015, 3.30 pm)

A. Question 1.

2.4.1 In its response to MoEF on the issue, as discussed above, the MLJ suggested that, because pet shops, dog breeding, and aquarium fish breeding are not listed in section 38(2) of the PCA Act among the enumerated areas of regulation, the PCA Act does not confer authority on the Central Government to regulate them. However, the AWBI's proposed rules appear to fall under section 38(2)(c) and 38(2)(l) of the PCA Act, which empower the Central Government to make rules concerning "the conditions to be observed for preventing the overcrowding of animals; the period during which, and the hours between which, any class of animals shall not be used for draught purposes" and "any other matter which has to be, or may be prescribed."

2.4.2 More importantly, section 38(1) confers *general* power on the Central Government to make rules to carry out the purposes of the PCA Act.¹⁶ Section 38(2) of the PCA Act lists specific areas that the Central Government may regulate, but these are merely non-exclusive examples, and this list cannot be read to limit the generality of the Central Government's authority.¹⁷

¹⁶ See Prevention of Cruelty to Animals Act § 38(1): "The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act."

¹⁷ See Prevention of Cruelty to Animals Act § 38(2): "In particular, and *without prejudice to the generality of the foregoing power*, the Central Government may make rules providing for all or any of the following matters, namely . . ." [emphasis added].

Thus, despite the fact that pet shops, dog breeding or aquarium fish breeding are not listed in section 38(2), the Central Government can make rules regulating these issues as long as the rules are intended to carry out the purposes of the Act.

2.4.3 The purpose of the PCA Act, as stated in its preamble, is “to prevent the infliction of unnecessary pain or suffering on animals.” The purpose of the PCA Act can be further ascertained from the various forms of “cruelty” listed under section 11(1). This section covers the following under the purview of cruelty:

- (a) Beating, kicking, over-riding, over-driving, over-loading, torturing, causing unnecessary pain or suffering;
- (b) Employing any animal which is unfit to be so employed;
- (c) Wilfully and unreasonably administering any injurious drug or injurious substance;
- (d) Conveying or carrying an animal in such a manner as to subject it to unnecessary pain or suffering;
- (e) Keeping or confining any animal in any cage or receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement;

- (f) Keeping for an unreasonable time any animal chained or tethered upon an unreasonably heavy chain or chord;
- (g) Neglecting to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement;
- (h) Failing to provide an animal with sufficient food, drink or shelter;
- (i) Abandoning any animal without reasonable cause in circumstances which render it likely that it will suffer pain by reason of starvation or thirst;
- (j) Wilfully permitting any animal to go at large in any street while the animal is affected with a contagious or infectious disease, or without reasonable excuse permits any diseased or disabled animal to die in any street;
- (k) Offering for sale or without reasonable cause, having any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill treatment;
- (l) Mutilating any animal or killing any animal (including stray dogs) through strychnine injections in the heart or any other unnecessarily cruel method;
- (m) Solely with a view to providing entertainment:

- (i) confining or causing to be confined any animals (including tying an animal as bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal; or
 - (ii) inciting any animal to fight or bait any other animal.
- (n) Organizing, keeping, using or acting in the management of any place for animal fighting or for the purpose of baiting any animal or permitting or offering any place to be so used or receiving money for the admission of any other person to any place kept or used for any such purposes;
- (o) Promoting or taking part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting.

2.4.4 The preamble of the AWBI's Draft Pet Shop Rules, 2010 makes clear that the proposed rules fall under the purposes of Act — "In the last decade, with the liberalization of the economy and the increase in purchasing power, several new trades have come into being. One of these is the mushrooming, and yet ***unregulated pet trade in live animals, that are capable of experiencing discomfort, pain, hunger and thirst*** just as humans do. Live animals are exhibited and traded like commodities in pet and pet

product shops. These Rules are intended to **ensure their humane handling, and to regulate this trade.** Since the mute cannot complain, the responsibility to ensure compassionate and empathetic handling is greater. **Since pet shops are commercial establishments, they have to be regulated with licenses, and parameters of operational standards.** Uniform practices and procedures have to be prescribed, and adhered to by those partaking in the profits derived from this brand of commercial activity. Consequently, the Pet Shop Rules have been formulated”¹⁸ [emphasis added].

2.4.5 The rules on pet shops, dog breeding and aquarium fish breeding are also justified under the principles of the Indian Constitution. Article 51A(g) of the Constitution states that “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”¹⁹

2.4.6 It must also be noted that the PCA Act has a built-in check to ensure that the Central Government does not exceed its authority when drafting rules.

¹⁸ ANIMAL WELFARE BOARD OF INDIA, DRAFT PET SHOP RULES, 2010, available at <http://www.moef.nic.in/downloads/public-information/rev-draft-pet-shop-rules.pdf> (last accessed on Aug. 12, 2015).

¹⁹ India Const. art. 51A(g).

Section 38A provides that all rules and regulations must be laid before each House of Parliament.²⁰

2.4.7 Section 3 of the PCA Act further substantiates the purpose of the Act. The section provides for the duties of persons having charge of animals, and states that, “It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.”

2.4.8 Regarding the issue of species covered under the WPA,²¹ there is a clear and complete prohibition on the trade or rearing of such species and therefore, the provisions of the WPA must be strictly enforced to ensure their implementation. The present opinion, therefore, in its reference to the rules on pet shops, dog breeding and aquarium fish breeding, relates only to

²⁰ Prevention of Cruelty To Animals Act, 1960, § 38A.

²¹ Section 39(1) states that every wild animal (other than vermin) is considered state property, and Section 39(3) provides that no person is allowed to (a) acquire or keep in his possession, custody, or control, (b) transfer to any person, whether by way of gift, sale or otherwise, or (c) destroy or damage such Government property without previous permission from the Chief Wild Life Warden. According to Section 40(2) of the Act, no person shall “acquire, receive, keep in his control, custody or possession, sell, offer for sale, or otherwise transfer or transport any animal specified” in Schedule I or Part II of Schedule II of the Act, unless granted an authorization to do so by “the Chief Wildlife Warden or the authorised officer.” (Schedule I and Schedule II of the Act lists animals that are protected under the WPA.) Further, Section 43(a) further prohibits the trade, commerce, and transfer of certain rare and endangered wild animals. Additionally, the Act, under Section 49, prohibits the purchasing or acquiring of any captive or wild animal from anyone except a licensed dealer or person otherwise authorized to sell the animal.

those species that are not regulated or prohibited under the WPA.

2.4.9 Based on this analysis of the legal position, the representations received by the Commission in this regard, as well as the large number of reports on the issue, it appears that the provisions of the law are violated with impunity by pet shops and breeders. In these circumstances, the Central Government must seriously take cognizance of the issue and regulate the trade in pet shops, and practices followed in dog breeding and aquarium fish breeding.

B. Question 2.

2.5.1 This interpretation is supported by a leading treatise, which explains how to construe delegated rulemaking authority:

“A normal feature of enabling Acts is first to grant the power to make rules etc., in general terms, e.g., ‘to carry out the purposes of this Act’ and then to say that ‘in particular and without prejudice to the generality of the foregoing provisions’, such rules etc., may provide for a number of enumerated matters. If power is conferred to make subordinate legislation in general terms, the particularization of

topics is construed as merely illustrative and does not limit the scope of the general power.”²²

2.5.2 Similarly, discussing the scope of authority delegated by the Industrial Employment (Standing Orders) Act, 1946, the Supreme Court stated, “Section 15(1) confers wide powers on the appropriate Government to make rules to carry out the purposes of the Act; and s. 15(2) specifies some of the matters enumerated by clauses (a) to (e), in respect of which rules may be framed. It is well-settled that the enumeration of the particular matters by sub-s. (2) will not control or limit the width of the power conferred on the appropriate Government by sub-s. (1) ...”²³ The Court reiterated this in *Afzal Ullah v. Uttar Pradesh*,²⁴ where it considered the delegation of authority under the United Provinces Municipalities Act. Section 298(1) of the said Act stated that a board was empowered to make any bye-laws “consistent with this Act,” while Section 298(2) dealt with bye-laws which can be made in specific situations (e.g., markets, slaughterhouses, sale of food). The Court held that: “It is now well-settled that the specific provisions such as are contained in the several clauses of s. 298(2) are merely illustrative and they cannot be read as restrictive of the generality of

²² JUSTICE G.P. SINGH, PRINCIPLES OF STATUTORY INTERPRETATION 1008–09 (12th ed. 2010) (and cases cited therein).

²³ *Rohtak and Hissar Districts Electric Supply Co. v. U.P.*, (1966) 2 SCR 863.

²⁴ (1964) 4 SCR 991

powers prescribed by s. 298(1) ... If the powers specified by s. 298(1) are very wide and they take in within their scope bye-laws like the ones with which we are concerned in the present appeal, it cannot be said that the powers enumerated under s. 298(2) control the general words used by s. 298(1). These latter clauses merely illustrate and do not exhaust all the powers conferred on the Board ...”

2.5.3 In addition, the Supreme Court has made clear that the express text of a statute is not determinative of the scope of authority it delegates, but rather the purpose (inferred from the statute’s text) must also be considered. In *Commissioner of Central Excise and Customs v. Venus Castings Ltd.*,²⁵ the Court noted that, “In holding whether a relevant rule to be ultra vires it becomes necessary to take into consideration the purpose of the enactment as a whole, starting from the preamble to the last provision thereto.” Similarly, in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar*,²⁶ the Court stated that “the question whether a particular piece of delegated legislation ... is in excess of the power ... conferred on the delegate has to be determined with reference ... to the specific provisions contained in the relevant statute conferring the power

²⁵ (2000) 4 SCC 206.

²⁶ (1984) 4 SCC 27.

to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment.” The Court noted that a subsidiary body has the proper authority so long as “the rules or regulations made by it have a rational nexus within the object and purpose of the Statute.”²⁷ The Court applied a three-pronged test to uphold the regulation in that case: (1) whether the provisions of the regulations fall within the scope and ambit of the power conferred on the delegate; (2) whether the regulations made are to any extent inconsistent with the provisions of the enabling Act; and (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution.²⁸

2.5.4 For a delegation of legislative authority to be valid, the legislative policy and principle must be adequately laid down.²⁹ But this is not an onerous requirement—the legislative policy can be determined from the text of the statute in question. In *Makhan Singh v. State of Punjab*,³⁰ for example, the Supreme Court

²⁷ (1984) 4 SCC 27; see also *General Officer Commanding-in-Chief v. Subhash Chandra Yadav*, (1988) 2 SCC 351 (rules “must also come within the scope and purview of the rule making power of the authority framing the rule”).

²⁸ JUSTICE G.P. SINGH, PRINCIPLES OF STATUTORY INTERPRETATION 1012 (12th ed. 2010) (and cases cited therein).

²⁹ *Tata Iron and Steel Co. Ltd. V. Workmen*, (1972) 2 SCC 383; see also *Makhan Singh v. State of Punjab*, (1964) 4 SCR 797 (“[I]f the legislature lays down its legislative policy in clear and unambiguous terms and leaves it to the delegate to execute that policy by means of making appropriate rules, then such delegation is not impermissible.”).

³⁰ *Makhan Singh v. State of Punjab*, (1964) 4 SCR 797 (“Not only is the legislative policy broadly indicated in the preamble to the Act, but the relevant provisions of the impugned section itself give such detailed and specific guidance to the rule making authority that it would be idle to contend that the Act has delegated essentially legislative function to the rule making authority.”).

looked to both the preamble of The Defence of India Act, 1962 and the list of particular delegated powers in Section 3(2) to determine the legislative policy and uphold the general grant of rulemaking authority in Section 3(1). Similarly, in *D K Trivedi v. State of Gujarat*,³¹ the Court found sufficient guidelines for exercising rulemaking power under Section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957 by looking at the object for which the power was conferred and the illustrative matters set forth in other sections.

2.5.5 In the UK, courts have similarly held that the doctrine of *ultra vires* “ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.”³² A subsidiary body (like the MoEF) is empowered “to do not only that which is expressly authorized but that which is reasonably incidental to or consequential upon that which is in terms authorized.”³³ Other cases use similar language. In *Commissioners of Customs and Excise v. Cure & Deeley Ltd.*,³⁴ it was held that “a court

³¹ 1986 AIR SC 1323.

³² *Attorney General v. Fulham Corporation*, [1921] 1 Ch. 440, 450 (Chancery Div. 1920).

³³ *Id*

³⁴ [1962] 1 Q.B. 340.

is bound before reaching a decision on the question whether a regulation is *intra vires* to examine the nature, objects, and scheme of the piece of legislation as a whole, and in the light of that examination to consider exactly what is the area over which powers are given by the section under which the competent authority is purporting to act.”

2.5.6 Indian courts have also deliberated on the specific issue of the scope and meaning of the Prevention of Cruelty to Animals Act, 1960. In the case of *AWBI vs A Nagaraja*,³⁵ the Supreme Court considered whether *Jallikattu* and bullock-cart races in Tamil Nadu and Maharashtra violate the PCA Act. The Court noted that the Act is a welfare legislation and, as such, should be liberally construed in favour of the weak and infirm.³⁶ The Court also stated Section 11 of the Act, which prohibits cruel treatment, “is a beneficial provision enacted for the welfare and protection of the animals and it is penal in nature. Being penal in nature, it confers rights on the animals and obligations on all persons, including those who are in-charge or care of the animals . . . to look after their well-being and welfare.”³⁷ After considering in-depth reports of how animals are treated during these events, the Court held that the *Jallikattu*, bullock-cart races, and similar

³⁵ *Animal Welfare Board of India vs A Nagaraja & Others*, (2014) 7 SCC 547

³⁶ *Id.* at ¶ 33.

³⁷ *Id.* at ¶ 37.

events *per se* violate Sections 3, 11(1)(a), and 11(1)(m)(ii) of the Act. The Court rejected arguments that these events were part of local culture and tradition because the PCA Act, being a welfare legislation, “over-shadows or overrides the so-called tradition and culture.”³⁸ The Court reiterated, “every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.”³⁹

2.5.7 The Court also observed, among other things, that AWBI and state and central governments must take steps to (a) see that the persons-in-charge of the care of animals, take reasonable measures to ensure the well-being of animals; and (b) to prevent the infliction of unnecessary pain or suffering on the animals. The Court further noted that it expected that Parliament, “would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honour.”⁴⁰

2.5.8 In the present case, rules regarding pet shops, dog breeding, and aquarium fish breeding clearly fall within and have a rational nexus to the object and

³⁸ *Id.* at ¶ 54.

³⁹ *Id.* at ¶ 61.

⁴⁰ *Id.* at ¶ 91.9.

purpose of the Prevention of Cruelty to Animals Act, i.e., they are intended to prevent cruelty and harm to animals. Neither are the rules inconsistent with the enabling Act, nor do they infringe any fundamental rights or constitutional provisions. Thus, the MoEF has authority to make these rules.

CHAPTER III

RECOMMENDATIONS

3.1 In light of the above discussion, the Commission is of the opinion that firstly, based on an analysis of the legal position, the representations received by the Commission, and the large number of reports on the issue, it appears that the provisions of the law are violated with impunity by pet shops and breeders. In these circumstances, the Commission recommends that the Central Government must seriously take cognizance of the issue and regulate the trade in pet shops, and practices followed in dog breeding and aquarium fish breeding. Secondly, rules regarding pet shops, dog breeding, and aquarium fish breeding clearly fall within and have a rational nexus to the object and purpose of the Prevention of Cruelty to Animals Act, and the MoEF has authority to make these rules.

3.2 Given the gravity of the issue, and the fact that the rules on pet shops, dog breeding and aquarium fish breeding have been drafted in consultation with

stakeholders and lying pending since 2010, the Commission recommends that the rules be notified and implemented at the earliest.

Sd/-
[Justice A.P. Shah]
Chairman

| | | |
|--|--|---|
| Sd/- [Justice S.N. Kapoor] Member | Sd/- [Prof. (Dr.) Mool Chand Sharma] Member | Sd/- [Justice Usha Mehra] Member |
|--|--|---|

--
[P.K. Malhotra]
Member (Ex-officio)

--
[Dr. Sanjay Singh]
Member (Ex-officio)

Sd/-
[Dr. G. Narayana Raju]
Member-Secretary