

Uttaranchal High Court

Mrs Gauri Maulekhi vs State Of Uttarakhand And Another on 14 August, 2018

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No.198 of 2016

Mrs. Gauri Maulekhi

..... Petitioner

Versus

State of Uttarakhand & others

... Respondents

Ms. Gauri Maulekhi, petitioner, in person.

Mr. Paresh Tripathi, CSC, for the State.

Mr. Sanjay Bhatt, Standing Counsel for the Union of India.

Mr. Arvind Vashisth, Sr. Advocate assisted by Mr. I.A. Khan, Adv. for the respondent nos.3 and 4.

Dated: August 14, 2018

Coram: Hon'ble Rajiv Sharma , J.

Hon'ble Manoj Kr. Tiwari, J.

Per: Hon. Rajiv Sharma, J.

1) This petition has been filed in the nature of public interest litigation. Petitioner has sought the following reliefs: -

"I. Issue an appropriate writ, order or direction to the respondent Nos. 1 and 2, to prohibit the usage of battery cage facilities and declare the same as illegal: Instead, enough space be allowed for the housing of each egg laying hen in which the following can be ensured:- (i) The bird can fully spread its wings, stand up straight, turn round without touching another bird or the side of the cage. (ii) The bird has access to a perch and enough vertical height to allow bird to perch without colliding in the roof. (iii) The bird has access to a nest box.

II. Issue an appropriate writ, order or direction to the respondent Nos. 1 and 2, to ensure that there is no violation of Section 1(1) of the Prevention of Cruelty to Animals Act 1960, in the housing of broiler birds.

III. Issue an appropriate writ, order or direction to the Respondents Nos. 1 and 2, to ensure that transport of poultry birds is in compliance with the provisions of the Prevention of Cruelty to Animals Act 1960 and Rules framed thereunder. The violations may be booked under the appropriate provisions of the statutes and such a district-wise mission may be monitored by the Chief Secretary of Uttarakhand.

IV. Issue an appropriate writ, order or direction to the Respondent Nos. 1 to ensure that all illegal meat shops/slaughterhouses be shut down immediately. Moreover, every food business operator be liable to ensure that poultry products, if any, have been sourced from a legal and duly registered Egg Farm/slaughterhouse."

2) Case of the petitioner, in a nutshell, is that the State Government, though, has issued the communication on 18.4.2013 (Annexure No.5) but the same, till date, has not been enforced in letter and spirit. It is also the case of petitioner that Chapter VII of the Transport of Animal Rules, 1978 has not been strictly enforced by the State Government. Petitioner has also drawn the attention of this Court to the recommendations made by the Law Commission of India in its 269th Report which is at page no.208 of the paper book. On the issue of Transportation and House-keeping of Egg-laying hens (layers) and Broiler Chickens, the Law Commission has stated as under:-

"Indian ethos has always considered animals quintessential aspect of human living. Kautilya's Arthshastra talks extensively of animal welfare. For example, it prohibited killing or injuring protected species and animals in reserved parks and sanctuaries. Village headman was responsible for preventing cruelty to animals and a person found treating an animal cruelly could be restrained in any manner."

Animals find mention in religion, folk tales and mythology, in direct and indirect ways. They define ways of existence and life events. It is believed that animals can communicate and have sentiments as well. It is also significant that humans always had a symbiotic relation with the animals.

Worldwide, the chickens have been commercially trait selected for two reasons, that of egg production (layers) and meat production (broilers). The Law Commission in this report has examined the issues pertaining to both, the layers and broilers. Specifically in layer birds, the issues relate to disposal of male chicks and housing of egg laying hens. In case of broilers, the issue of trait selection, housing, transport and slaughter of the birds, have been examined."

3. The Law Commission, in its 269th Report, has discussed the legal provisions regulating the transport of animals as under: -

"2.15 The Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 (hereinafter referred to as the FSSR) [Notification - F.No. 2-15015/30/2010 dated 01.02.2011] has been framed under section 92(2)(o) read with section 31 of the Food Safety and Standards Act, 2006 (hereinafter referred to as the FSSA). The FSSR lays down certain guidelines for the Pre-Slaughter Handling of Animals especially with respect to the transport of animals. The guidelines contained in Part IV Rule 6.4 (a)(1) provide, inter alia, - Only healthy animals in good condition after verification and certification by a qualified veterinary inspector would be transported; transportation of Animals from endemic areas of a disease to non-endemic areas with a provision for protective vaccination and quarantine for 30 days,

before further transportation, would be necessary; female animals in advanced stages of pregnancy would not be transported; all animals must be treated humanely and sufficient space to stand or lie must be provided while being transported; light feeding, watering facilities must be provided at regular intervals along with an attendant handling first aid and loading during extreme temperatures must be avoided; Inspection for safety, such as, checking for undamaged floors, walls, ensuring suitability such as covering to avoid weather conditions etc, before loading the animals is mandatory."

4. The Report has also discussed the international obligations and globally recognized poultry rights as under: -

"2.18 World Organization for Animal Health (OIE) defines Animal welfare as: Animal welfare means how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour and is not suffering from unpleasant states such as pain, fear, and distress. Good animal welfare requires disease prevention and veterinary treatment, appropriate shelter, management, nutrition, humane handling and humane slaughter or killing. Animal welfare refers to the state of the animal; the treatment that an animal received is covered by other terms such as animal care, animal husbandry, and humane treatment.

2.19 India is a member of World Organization for Animal Health (OIE). The OIE guiding principles on animal welfare which include the universally recognised Five Freedoms, published in 1965 to promote the right to welfare of animals under human control. According to this concept, an animal's primary welfare needs can be met by providing:

Freedom from hunger, malnutrition and thirst;

Freedom from fear and distress;

Freedom from physical and thermal discomfort;

Freedom from pain, injury and disease; and Freedom to express normal patterns of behaviour."

5. According to the the Food and Agriculture Organization of the United Nations, India is the third largest producer of eggs in the world producing more than 65 billion eggs. The poultry industry has turned lucrative and highly competitive.

6. Paragraphs 3.4 to 3.7 of the Report of Law Commission read as under: -

"3.4 The hens used for the production of eggs in the egg industry are reared in small, barren wire cages called battery cages, a name given due to the arrangement of cages placed side by side. The battery cages are so small that the animals are unable to stand up straight or spread their wings without touching the sides of the cage or other hens or turning in a complete circle without any impediment. The floor space available to each hen is approximately 623.7 cm² which is almost the area of a sheet of A4 size paper. The most common cages hold 5-10 birds. A typical egg farm in our country contains thousands of cages with tens of thousands of birds, stacked multiple tiers high, lined in multiple rows.

3.5 This method of stocking the hens, leads to sore feet, minor and major abrasions, broken bones and other bodily injuries to the birds. It also increases the risk of diseases in the flock.³⁴ The People for Ethical Treatment of Animals (PETA) has forwarded information on the conditions of poultry in India and has addressed various issues relating thereto. The Commission has taken into consideration the same while formulating the 'Draft Rules'. In addition, climatic conditions such as temperature and humidity play an important role in attaining maximum production. Higher temperatures would lead to low productivity therefore the birds are usually kept at constant temperatures in poultry farms in India. The downside to this is that the birds would be more susceptible to diseases even with small changes in climatic conditions, affecting the chances of their survival. Consequently, they are fed antibiotics to boost immunity.

3.6 With a view to curtail the cruel practices of confining birds in battery cages, it is necessary to have a distinction between the produce obtained from healthy farming of hens in cage free environment and the produce obtained from battery cage farming. Towards this end, certification by the Animal Husbandry Departments of the States, recognising that the poultry farms follow the practice of cage free egg farming, is desirable. This would enable the consumer to select the produce obtained from healthy farming and will result in discouraging battery cage farming.

3.7 It is also important that the feed used must be nutrient rich and devoid of antibiotics as it affects the consumer food quality standard which is required to be maintained across countries. There are no statutory regulations, at present to prescribe the standard, quality and quantity of food for poultry in India which leads to rampant use of antibiotics in the poultry feed."

7. The Parliament has enacted the Act called Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as the Act, 1960).

8. Chapter III deals with cruelty to animals generally.

9. Section 11 defines cruelty to animals as under:-

"11. Treating animals cruelly: (1) If any person

(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes, or being the owner permits, any animal to be so treated; or

(b) (employs in any work or labour or for any purpose any animal which, by reason of its age or any disease) infirmity; wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to 14(any animal) or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by 15(any animal;) or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(e) keeps or confines any animal in any -cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of (any animal) fails to provide such animal with sufficient food, drink or shelter; or

(i) without reasonable cause, abandons any animal in circumstances which tender it likely that it will suffer pain by reason of starvation thirst; or

(j) wilfully permits any animal, of which he is the owner, to go at large in any street, while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or

(k) offers for sale or without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other illtreatment; or (1) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections, in the heart or in any other unnecessarily cruel manner or;) [(m) solely with a view to providing entertainment

(i) confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object or prey for any other animal; or

(ii) incites any animal to fight or bait any other animal; or]

(n) [] organises, keeps uses or acts in the management or, any place xxxx for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting:

he shall be punishable 19(in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend, to one hundred rupees or with imprisonment for a term which may extend, to three months, or with both.) (2) For the purposes of section (1) an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence; Provided that where an owner is convicted permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine. (3) Nothing in this section shall apply to -

(a) the dehorning of cattle, or the castration or branding or noseroping of any animal in the prescribed manner, or

(b) the destruction of stray dogs in lethal chambers 20[by such other methods as may be prescribed] or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

10. Section 35 provides for treatment and care of animals. It reads as under:-

"35. Treatment and care of animals : (1) The State Government, may by general or special order appoint infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorise the detention therein of any animal pending its production before a magistrate.

(2) The magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animals concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a pinjrapole, or if the veterinary officer in charge of the area in which the animal is found or such a veterinary officer as may be authorised in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

(3) An animal sent for care and treatment to an infirmary shall not, unless the magistrate directs that it shall be sent to a pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as may be authorised in this behalf by rules made under this Act.

(4) The cost of transporting the animal to an infirmary or pinjrapole and of its maintenance and treatment in an infirmary, shall be payable by the district magistrate, or, in presidency-towns, by the commissioner of police;

Provided that when the magistrate so orders on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

(5) Any amount payable by an owner of an animal under sub-section (4) may be recovered in the same manner as an arrear of land revenue, (6) If the owner refuses or neglects to remove the animal within such time as a magistrate may specify, the magistrate may direct that the animal be sold and that the proceeds of the same be applied to the payment of such cost.

(7) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale be paid to him."

11. Section 38 empowers the Central Government to frame rules.

12. The Central Government has also framed rules called Transport of Animals Rules, 1978 (hereinafter referred to as the Rules, 1978). The mode of transport of dogs and cats, monkeys, cattle, equines, sheep and goats, poultry by rail, road and air is provided in the rules.

13. Chapter VII of the Rules of 1978 deals with transport of poultry by rail, road and air. According to Rule 77, in transport of poultry by rail, road or air, (a) the container shall be properly cleaned and sterilised before the poultry is placed in them, (b) poultry shall not be exposed to the sunlight, rain and direct blast of air during transport and

(c) poultry shall not be transported when the temperature exceeds 25 degree Celsius or when the temperature falls below 15 degree Celsius.

14. Rule 78 of the Rules of 1978 provides that chicks and poults shall be packed and dispatched immediately after hatching and shall not be stored in boxes for any length of time before dispatch. Chicks or poults are required to be fed or watered before and during transportation. The care is required to be taken to carry the boxes in a level position so that chicks are not in danger of falling over on to their backs. Rule 79 provides that the poultry to be transported shall be healthy and in good condition and shall be examined and certified by a veterinary doctor for freedom from infectious diseases and fitness to undertake the journey. The poultry transported in the same container shall be of the same species and of the same age group. The poultry shall be properly fed and watered. The male stock shall not be transported with female stock in the same container. In transport of poultry by road, the container shall not be placed one on the top of the other and is required to be covered properly in order to provide light, ventilation and to protect from rain, heat and cold air. Rule 83 and 84 of the Rules read as under: -

"83. Containers for transportation - In transport of poultry by rail, road or air -

(a) containers used to transport poultry shall be made of such material which shall not collapse or crumble and they shall be well ventilated and designed to protect the health of poultry by giving it adequate space and safety.

(b) the containers shall be so designed as to render impossible for birds to crowd into the corners during transportation, and to avoid the danger of boxes being stocked so close together as to interfere with ventilation.

(c) all the containers shall be clearly labelled showing the name, address and telephone number of the consignor and the consignee.

(d) the minimum floor space per bird and the dimension of the containers for transporting poultry shall be as specified in the Table below, namely :

TABLE S.No.	Kind of Poultry	Minimum Height in cm	Minimum Length in cm	Minimum Width in cm	Minimum Depth in cm
i.	Month old chickens	75	60	30	18
ii.	Three month old chickens	230	55	50	35
iii.	Adult sock (excluding geese and turkeys)	480	115	50	45
iv.	Geese and youngs	900	120	75	75
v.	Chicks	60	45	12	80
vi.	Poult	60	45	12	60

84. Special requirement of containers for chicks and poults - In transport of poultry by road, rail or air: -

(a) wire mesh or a net of any material shall not be used as a bottom for the containers.

(b) the container shall be properly secured to avoid pilferage

(c) the following instruction shall be printed on a label and fixed to the lid or printed directly on sides, namely "Care in Transit".

(d) the consignee shall be informed about the train, transport or flight number and its time of arrival well in advance

(e) poultry shall not be transported continuously for more than 6 hours and whole batch shall be inspected at every 6 hours interval.

(f) the transportation shall not remain stationary for more than 30 min and during this period, it shall be parked in shade and arrangements shall be made for feeding and watering

(g) all precautions against fire shall be taken and provision of fire extinguishers in transport shall be provided."

15. The Law Commission has also drafted the Prevention of Cruelty to Animals (Broiler Chicken) Rules, 2017 vide Annexure Nos.1 and 2 of the Law Commission's Report No.269.

16. The Union of India was impleaded as party respondent on the basis of the Impleadment Application No.10966 of 2017. The application was allowed by this Court on 1.9.2017. Order dated 1.9.2017 reads as under: -

"Mrs. Gauri Maulekhi, petitioner in person. Mr. Rajeev Singh Bisht, Brief Holder for the State of Uttarkahand.

Mr. Sanjay Bhatt, Advocate appearing on behalf of newly impleaded respondents.

Heard.

Impleadment application is allowed. Let necessary impleadment be incorporated within three days by way of filing amended memo of parties.

Learned Brief Holder to get specific instructions in the matter.

The case of the petitioner is that Law Commission has made recommendations in regard to the matter, which is the subject matter of the writ petition.

Learned counsel for the newly impleaded respondents to make submission before this Court as to what is the stand of the Government in regard to the recommendations made by the Law Commission of India by the next date of posting.

List this case on 20.09.2017."

17. Thereafter, Mr. Sanjay Bhatt, learned Standing Counsel for the Union of India appeared before the Court on 28.10.2017 and made a statement that the matter is under active consideration before the Government of India to consider the report of the Law Commission.

18. A specific query was made to Mr. Sanjay Bhatt, Standing Counsel for the Union of India today by the Court whether the Rules, as per the recommendations made by the Law Commission, have been framed or not. He submits that the same are under process.

19. The Delhi High Court in the case of People for Animals v. M D Mohazzim & Anr., held that: "...birds have fundamental rights including the right to live with dignity and they cannot be subjected to cruelty by anyone (...) human beings have no right to keep them in small cages for the purposes of their business or otherwise."

20. Ordinarily, this Court will not direct the Union of India for framing of Rules but since, in the present case, the recommendations have already been made by the Law Commission in its 269th Meeting, we deem it fit to request the Union of India to frame the Prevention of Cruelty to Animals (Egg Laying Hens) Rules well as the Prevention of Cruelty to Animals (Broiler Chicken) Rules.

21. Accordingly, the present petition is disposed of by issuing the following mandatory directions: -

A. The respondent-State is directed to strictly enforce the letter dated 18.4.2013 (Annexure No.5) in letter and spirit forthwith. Usage of battery cage facilities is banned throughout the State of Uttarakhand. Sufficient space should be allowed for the housing of each egg laying hen to permit the bird to spread its wings, stand up straight, turn round without touching another bird or the side of the cage. The bird must have access to nest box.

B. The State Government is directed to ensure that while transporting the poultry, the containers are properly cleaned and sterilised before the poultry is placed in them.

C. The poultry shall not be exposed to the sunlight, rain and direct blast of air during transport.

D. There shall be a ban on transportation of poultry when the temperature exceeds 25 degree Celsius or when the temperature falls below 15 degree Celsius.

E. The day-old chicks and turkey poults shall be packed and dispatched as per Rule 78 of the Transport of Animal Rules, 1978. The chicks or poults shall be properly fed and watered before and during transportation.

F. The State Government is directed to ensure that the containers used to transport poultry shall be made of such material which shall not collapse or crumble and they shall be well ventilated and designed to protect the health of poultry by giving it adequate space and safety. The size of the container should be as prescribed under Rule 83(d) of the Rules of 1978.

G. The wire mesh or a net of any material shall not be used as a bottom for the containers.

H. No poultry shall be transported continuously for more than 6 hours and whole batch shall be inspected at every 6 hours interval. The transportation shall not remain stationary for more than 30 min and during this period, it shall be parked in shade and arrangements shall be made for feeding and watering.

I. All precautions against fire shall be taken and provision of fire extinguishers in transfer is also ordered to be provided.

J. The Union of India is requested to consider framing the Prevention of Cruelty to Animals (Egg Laying Hens) Rules well as the Prevention of Cruelty to Animals (Broiler Chicken) Rules, on the basis of the recommendations made by the Law Commission in its 269th Meeting within six months.

22. The Court places on record its appreciation for the assistance rendered to it by the petitioner who appeared in person.

23. All pending applications stand disposed of accordingly.

(Manoj Kr. Tiwari, J.) (Rajiv Sharma, J.) Rdang