

THE ANIMAL WELFARE BOARD OF INDIA & ORS. A

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 23 of 2016)

FEBRUARY 02, 2018 B

[DIPAK MISRA, CJI AND R. F. NARIMAN, J.]

Reference to larger Bench – Writ petitions filed to quash and set aside a notification dated 7th January, 2016 issued by Union of India and to direct the Respondents to ensure compliance with order passed by Supreme Court in A. Nagaraja case – While the writ petitions were pending, the 2017 Act was passed – Writ petitions amended to include prayers to set aside the said Act – Held: Writ petitions involve substantial questions relating to interpretation of the Constitution of India and thus, need to be authoritatively decided by a Constitution Bench of 5 Judges – Papers be placed before the Hon’ble Chief Justice of India to constitute a Bench of 5 Hon’ble Judges – Constitution of India – VIIth Schedule, List III, Entry 17 and Arts. 14, 21, 29, 48, 51A(g)(h) – The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017 – Doctrine of pith and substance. C D E

Animal Welfare Board of India v. A. Nagaraja and Ors.
(2014) 7 SCC 547 : [2014] 6 SCR 646 – referred to.

Case Law Reference

[2014] 6 SCR 646 referred to Para 3 F

CIVIL ORIGINAL JURISDICTION: Writ Petition (C) No. 23 of 2016.

Under Article 32 of the Constitution of India.

WITH

W. P. (C) No. 24/2016, W. P. (C) No. 25/2016, W. P. (C) No. 26/2016, W. P. (C) No. 27/2016, W. P. (C) No. 88/2016, W. P. (C) No. 1011/2017, W. P. (C) No. 1059/2017, S.L.P. (C) No. 3528/2018, W. P. (C) No. 1193/2017, S.L.P. (C) Nos. 3526-3527 of 2018, W. P. (C) No. 1188/2017 G

- A K. K. Venugopal, AG, Ms. Pinky Anand, ASG, Sidharth Luthra, Anand Grover, Ms. Meenakshi Arora, V. Giri, Shekhar Naphade, A. Sharan, Mukul Rohatgi, Rakesh Dwivedi, Mr. Subramaniom Prasad, Shyam Divan, Senior Advocates, Balraj Dewan, Ms. Anjali Sharma, Ms. Sujeeta Srivastava, Ms. Aparna Bhat, Mayank Sapra, Ms. Joshita Pai, Ms. Supriya Juneja, Ms. Drishti Harpalani, Aditya Singla,
- B Purushottam Sharma Tripathi, Ajit Sharma, Ms. Shrinidhi Rao, Subodh S. Patil, Ms. Nitya Ramakrishnan, Shadan Farasat, Ms. Rudrakshi Deo, Ms. Bhumika Aggarwal, Ms. Sumita Hazarika, Ms. Bhumika Aggarwal, Ms. Ispita Behura, Manas Gaur, Sachin Patil, Nishant Ramakantrao Katneshwarkar, Ms. Gauri Rasgotra, Sumit Attri, Karan Khanna,
- C Ms. Nikhita Shenoy, Vikash Kumar Jha, Ms. Svadha Shanker, M/s. Cyril Amarchand Mangaldas Balendu Shekhar, Hemant Arya, Ravi Gopal, Ms. Kirti Dua, Rohit Bhatt, Ms. Arunima Dwivedi, R. Nedumaran, Gurmeet Singh Makker, Naresh Bakshi, Arpit Rai, C. K. Sasi,, Mrs. Geetha Kovilan, Vishnu Sharma, N. Rajaraman, Ms. Uma Prasuna, Ravindra Keshavrao Adsure, Bijan Kumar Ghosh, P. Soma Sundaram,
- D Y. Arunagiri, Mayil Samy, K. Mutuhu Ganesa Pandian, Ananda Selvam, Ompal Shokeen, Anil Kumar Mishra-i, Amit Anand Tiwari, Ms. Vishakha, Shashwat Singh, Prabu Rama Subramanian, Sabarish Subramanian, William Vinoth Kumar, Deepak Anand, M. Y. Deshmukh, C. Paramasivam, Y. Arunagiri, Rakesh K. Sharma, Vinodh Kanna B.,
- E A. Sriram, Ankur S. Kulkarni, M/s. Lemax Lawyers & Co., M. Yogesh Kanna, Ms. Manisha T. Karia, Ms. Soumya, Ms. Nidhi Nagpal, Shashank Mangal, Anurag Pandey, Ms. Reena Pandey, Kunwar Ratnesh Ratn, Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Mamta Singh, Ms. Shodhika Sharma, Ms. Uttara Babbar, Ms. Akanksha Choudhary, Ms. Bhavana Duhoon, Abhay Anil Anturkar, Ms, Kalyani Tulankar,
- F Dr. R. R. Deshpande, Adv. M/s. Abhay Anturkar & Associates Advs. for the appearing parties.

Applicant-In-Person

The Judgment of the Court was delivered by

- G **R. F. NARIMAN, J.** 1. The present batch of writ petitions was originally filed to quash and set aside a notification issued by the Union of India on 7th January, 2016, and to direct the Respondents to ensure compliance with this Court's judgment reported as **Animal Welfare Board of India v. A. Nagaraja and Ors.** (2014) 7 SCC 547.

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2. However, while these writ petitions were pending, The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, which received the Presidential assent on 31st January, 2017, was passed. The writ petitions were then amended so as to include prayers to set aside the aforesaid Tamil Nadu Amendment Act on several grounds. A

3. After hearing the Petitioners and the Respondents for some time, we are of the view that these writ petitions need to be authoritatively decided by a Constitution Bench of 5 learned Judges, as the writ petitions involve substantial questions relating to the interpretation of the Constitution of India. The questions, which require reference to a Bench of 5 learned Judges, apart from the other questions raised in the writ petitions, are set out hereinbelow: B C

i. Is the Tamil Nadu Amendment Act referable, in pith and substance, to Entry 17, List III of the Seventh Schedule to the Constitution of India, or does it further and perpetuate cruelty to animals; and can it, therefore, be said to be a measure of prevention of cruelty to animals? Is it colourable legislation which does not relate to any Entry in the State List or Entry 17 of the Concurrent List? D

ii. The Tamil Nadu Amendment Act states that it is to preserve the cultural heritage of the State of Tamil Nadu. Can the impugned Tamil Nadu Amendment Act be stated to be part of the cultural heritage of the people of the State of Tamil Nadu so as to receive the protection of Article 29 of the Constitution of India? E

iii. Is the Tamil Nadu Amendment Act, in pith and substance, to ensure the survival and well-being of the native breed of bulls? Is the Act, in pith and substance, relatable to Article 48 of the Constitution of India? F

iv. Does the Tamil Nadu Amendment Act go contrary to Articles 51A(g) and 51A(h), and could it be said, therefore, to be unreasonable and violative of Articles 14 and 21 of the Constitution of India? G

v. Is the impugned Tamil Nadu Amendment Act directly contrary to the judgment in **A. Nagaraja** (supra), and the review judgment dated 16th November, 2016 in the aforesaid case, and whether the defects pointed out in the aforesaid two judgments could be said H

A to have been overcome by the Tamil Nadu Legislature by enacting the impugned Tamil Nadu Amendment Act?

4. Let the papers be placed before the learned Chief Justice to constitute a Bench of 5 Hon'ble Judges.

B Divya Pandey

Matter placed before Hon'ble CJI to constitute a five-judge Bench.