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W.P(C)No. 24 OF 2004

ITEM No.203

Court No. 3

SECTION X
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(Civil) No.24/2004.

AMARNATH SONKAR & ORS.

Petitioner (s)

VERSUS

UNION OF INDIA & ANR.

Respondent (s)

[With Appln(s). for stay and Office Report]
(For Final Disposal)

Date : 11/02/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner (s)Mr. K.N. Bhat, Sr. Adv.
Mr. Aniruddha P. Mayee, Adv.
Mr. Sanjeev Kumar Chaudhary, Adv.

For Respondent (s)Mr. K. Radhakrishnan, Sr. Adv.
Mrs. Kiran Bhardwaj, Adv.
Mr. B.K. Prasad, Adv.
Mr. Shreekant N. Terdal, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Writ Petition is allowed in terms of the Signed Order.

(Subhash Chander) (V.P. Tyagi)
Court Master Court Master

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.24 OF 2004

Amarnath Sonkar & ors.....Appellants

Versus

Union of India & Anr.....Respondents

O R D E R

The challenge in this petition filed under Article 32 of the Constitution of India is to an order dated 31st July 2001 issued by respondent-Ministry of Railways directing that in no case coaching stock, viz., SLR/VPs/VPHs/VPU/VPXs/NMGs etc. should be used for transportation of pigs. It further states that relevant rules of transport of animals would be amended and issued separately in due course.

The aforesaid order, it is evident, was passed as a result of a letter dated 22nd June 2001 written to Member Traffic, Ministry of Railways by then Minister of State for Social Justice and Empowerment, Mrs. Maneka Gandhi bringing to the notice of the officer that pigs are being transported by parcel trains/vans on Northern Railway which is in gross violation of the Rules, i.e., Transport of Animals (Amendment) Rules, 2001 issued under Section 38 of the Prevention of Cruelty to Animals Act 1960. It was pointed out in that letter that the pigs are loaded mainly on Moradabad and Delhi Divisions of Northern Railway for destinations in the North East/Eastern Sector in extremely cruel conditions and, therefore, it was suggested that it should be ensured that the transportation of animals by railway should be

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strictly as per the Rules. The impugned order dated 31st July 2001 also records the anxiety of the Railway Board about strict compliance being made of Chapters VII, VIII and IX of the aforesaid Rules for booking, loading and transportation of poultry, pigs and animals. It is one thing to direct compliance of Rules and it is another thing to stop the transportation even as per the Rules, without providing for alternate mode of transportation. The order directing that the pigs shall not be transported in parcel vans was made on 31st July 2001 and despite more than four years having passed, no arrangement and/or alternate arrangement has been made for transportation of the livestock. The result is a total stoppage of transport by the railway which is abdication of their obligation. It is evident that the operative objectionable part of the order dated 31st July 2001 was made arbitrarily and without proper application of mind.

Even in the counter affidavit filed, nothing of substance has been stated. It has not been explained as to what led to the immediate stoppage of transportation of livestock by parcel vans. It has also not been explained as to what steps have been taken thereafter for the transportation of pigs. Whether any steps have been taken for amendment of the Rules has also not been stated though the affidavit was filed as late as in October 2004. We had permitted the respondents, in December 2004, to file additional affidavit placing on record the latest position. The respondents have, however, opted not to file any additional affidavit/documents.

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Chapter VIII of the Rules framed under the Prevention of Cruelty to Animals Act 1960 deals with transportation of pigs by rail or road. There can be no objection in transportation of pigs by rail on compliance of such of the part of the rules which is required to be complied by the consignor. Some of the obligations under the said Chapter are on the railways. It is, of course, for the railways to comply with their obligations. Blanket order prohibiting transportation of pigs by parcel vans without providing for adequate alternate is wholly arbitrary and illegal.

In view of the aforesaid, we make the rule absolute and quash the direction contained in the order dated 31st July 2001 to the effect, "Board also desires that in no case coaching stock viz. SLR/VPs/VPHs/VPU/VPXs/NMGs etc. should be used for the transportation of pigs".

The petition is allowed accordingly. The petitioners will also be entitled to the cost of the petition.

.....J.
[Y.K. SABHARWAL]

New Delhi.....J.
February 11, 2005.[P.P. NAOLEKAR]