

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

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12434/2003

(From the judgement and order dated 10/02/2003 in LPA No. 183/2000 of The
HIGH COURT OF J & K AT JAMMU)

ASHOK KUMAR

Petitioner(s)

VERSUS

STATE OF J.&K. & ORS.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment and prayer for interim relief)(For final disposal)

WITH SLP(C) NO. 14356-14357 of 2003

(With appln(s) for permission to submit additional document(s))

(With prayer for interim relief)(For final disposal)

Date: 22/11/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE DR. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s)

Mr.Sanjay Parikh,adv.

Mr. R.Dutta,Adv.

Mr. A.N.Singh,adv.

Ms. Anitha Shenoy,Adv.

Mr. Alok K.Agarwal,adv.

Mr. Naveen Chawla,adv.

Mr.Ramesh Jairath,adv.

Ms. Manjula Gupta,Adv.

For Respondent(s)

Mr.Rajiv Dutta,Sr.Adv.

Ms. Indu Sharma,adv.

Mr. P. Parmeswaran, Adv.

Mrs Anil Katiyar , Adv

Mr. S.P.Singh, Mr.G.M.Kawoosa,

Mr. N.Ganpathy and

Mr. Ashok Mathur, Advs.

Mr. Anis Suhrawardy , Adv

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UPON hearing counsel the Court made the following

O R D E R

The need to preserve wildlife to maintain an ecological balance in the world has been emphasized repeatedly in several fora including this Court. It is in that context that the animal Chiru is sought to be protected. There is more than sufficient evidence that it is being slaughtered indiscriminately because its fur is needed for weaving shahtoosh.

In 1977, Chiru had been included as protected animal under the Wildlife (Protection) Act 1972. The Convention on International Trade in Endangered Species on Wild Fauna and Flora (CITES) also emphasized the need to protect this animal by its convention which was amended to include Chiru in 1979. In the meanwhile, the State of Jammu and Kashmir had also

and with enacted the Jammu and Kashmir Wildlife (Protection) Act, 1978,
the Act. The animals effect from 2002 included Chiru in Schedule 1 to
. Indeed, mentioned in Schedule 1 to the Act have been specially protected
ies, animal articles there is a complete prohibition on dealing in troph
etc. derived from the specified Scheduled animals under Section 49A of
the Act.
ration to be In order to implement this prohibition Sec.49B requires a decla
facturing given by each person carrying on business or occupation of manu
ec.49A(1)(a) or dealing in or carrying on any of the activities mentioned in S
of the Act.

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The declaration is required to be made within sixty days from the date on
which 2002 amendment came into force. Section 49 B(2) requires the Chief
Wild Life Warden to take action on the declarations in terms of Section 40 of
the Act. The action includes the holding of an enquiry and the preparation of
an inventory whereof the records are to be kept. In order to carry out his /
her duties the Chief Wildlife Warden or the authorized officer is entitled to
and has been empowered under Sec.50 to enter, search arrest and detain
persons suspected of violation of the provisions of the Act. For this purpose,
they may also take the assistance of the police under Sec.50A. The
mandatory nature of the requirements of the Act have been emphasized by

Sec.51 which deals with penalties imposable of which we may note Sec.1A which provides:

"(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a terms which shall not be less than one year but which may extend to seven years and also with fine which may extend to twenty thousand rupees but shall not be less than five thousand rupees."

Dealers or traders have recourse to a higher authority in case any action is taken contrary to their interest. There is specific provision for appeal under Sec.45 of the Act.

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Despite the inclusion of Chiru in the State Act with effect from 2002, no declarations were filed at all. There was also sufficient evidence that the trade in the articles of the animals included specifically in Schedule was continuing unabated. Our attention has been drawn by the petitioner to figures showing seizure of Shahtoosh from 1992-2004. These seizures have continued even after 2002. For example, in June 2002 150 Kgs of raw wool was seized in Gunji district, in August 27 Kgs were seized in Kalapani. Again on 6th April 2003 raw wool of 215 kgs was seized. Shahtoosh shawls and scarves were also seized at various parts and locations in India. This is quite apart from the figures given regarding the seizure of Chiru articles

from other parts of the world. CITES in its report prepared on 2nd to 14th October 2004 has also noticed that despite the fact that the State of Jammu and Kashmir had enacted a law, the legislation was not being enforced. This 2004 report had also endorsed an earlier report given by CITES in which it had categorically stated that though a case had been made out by the State that no animals were being killed as the wool of Chiru which got stuck on bushes was gathered was incredible. It was said:

"Anyone who cared to visit the terrain of the Tibetan Plateau, observe the lack of bushes, view the piles of skinned carcasses discovered by anti-poaching personnel or examine the heaps of skins and bundles of wool seized by Forest Police and Customs in China and India would immediately realise such explanations to be falsehoods, designed to reassure and dupe potential customers in countries far distant from where the slaughter of the Chiru was taking place."

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In this background, a writ petition by way of Public Interest Litigation had been filed before the State of Jammu and Kashmir by the present petitioners. This was done because it does not appear to be in dispute that the trade in the Shahtoosh is basically carried out in the State of Jammu and Kashmir. The High Court disposed of the writ petition by concluding that there was no total prohibition imposed on trade in Shahtoosh under Sec.49B of the Wildlife Protection Act, 1972 and that trade

in Shahtoosh could be carried out provided it is regulated under Sec.49B (3) of the Central Act. It is also said that State Government regulations would allow the art and artisan to survive. The High Court also held that there was no evidence that the animal had ever been killed in the State of Jammu and Kashmir.

Being prima facie satisfied that the High Court was wrong in its conclusions and having overlooked the nature of the prohibition in the State Act as well as the evidence on record, this Court had entertained the appeal preferred by the petitioner from the decision of the High Court. We had issued various directions from time to time calling upon the State to enforce the provisions of the State Act by calling upon all dealers and traders in Shahtoosh to furnish declarations in terms of Sec.49B. The State of Jammu and Kashmir has filed an affidavit in which they have stated that they have done so. This Court had also issued a further direction on 16.11.2004 directing the State Government to publicise this Court's order through electronic media and radio within a time frame period of four weeks. According to the State this has also being done.

However, no steps were taken for the purpose of seeing that the provisions of the State Act were carried out. Despite the fact that the State had said that certain declarations had been given by some dealers/traders, no further action appears to have been taken on such declarations. By way of

illustration we note that in the list of declarations given along with second affidavit filed by the State Government, the State Government has mentioned that persons have admitted holding 36 kgs of Shahtoosh wool and also 76.5 kgs of Shahtoosh wool. Both these persons were clearly traders and yet they appear to have made declarations that the wool was bonafide need. No further steps appear to have been taken on the basis as to what appears to be a questionable declaration. We may incidentally note that as far as the wool is concerned according to the petitioner the women's shawls require about 100 gms. which in turn requires 300-400gms of raw wool which requires three Chiru to be killed. Men's shawls are approximately three meters by 1.5 meters which means that five Chiru are killed. Therefore such large quantities of raw wool therefore would appear to suggest that a large number of animals have been killed.

The Secretary, Ministry of Environment and Forest is personally present today. He has reiterated that there has been no killing of Chiru within the State of Jammu and Kashmir and in fact Chiru which do come to Jammu and Kashmir are small in number and are kept in sanctuaries. It was also said that due to a devastating fire in April 2005 in the office of the Forest Department of the Chief Wildlife Warden, the records pertaining to the declarations have been destroyed. It is therefore stated that though the

efforts to implement the Acts were being taken, the progress was necessarily slow. Having regard to the facts of the case, we direct the State Government:

1. to publish notices both electronically and in newspapers as previously directed for all traders to submit their declarations if not already submitted with the warning that in default of submissions of declaration, action will be taken under the State Act;

2. If any records are available of any declarations having been already made, the Chief Wildlife Warden or any authorized officer will, in terms of the Act, process such declaration forthwith and issue a certificate only if such officer is satisfied that it comes within the phrase of 'bonafide use' as provided in section 49B of the State Act. If there is any reason to suspect such bonafides, steps must be taken to confiscate the Shahtoosh;

3. Surveys must be carried out and spot inspections done by the Chief Wildlife Warden or an authorized officer. The police are directed to render such assistance as may be requisitioned by such officer for the purpose of carrying out the provisions of the Act.

4. Those persons who are found to be carrying on trade or dealing in Shahtoosh without the necessary certificate shall be proceeded against under the provisions of Sec.49B(7) read with Sec.50 of the Act.

5. The Secretary will submit a report to this Court as to the progress made to carry out this Court's direction by the 3rd week of January 2006.

Further presence of Secretary is dispensed with.

List the matters in the 3rd week of January, 2006.

[SUMAN WADHWA]

COURT MASTER

[MADHU SAXENA]

COURT MASTER