

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-2609 of 2019

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal

Muhammad Asim & another.....Petitioners
Versus
The Sindh Wildlife Department & others.....Respondents

Date of hearing: 30.04.2019

Sardar Faisal Zafar, Advocate for the Petitioners.
Mr. Jawad Dero, Addl. A.G. a/w Ms. Nighat, State Counsel.
Mr. Rasheed Ahmed, Deputy Sanctuary Warden,
Sindh Wildlife Department, Government of Sindh present.

Muhammad Ali Mazhar, J: The learned counsel for the petitioners argued that the petitioners have been issued the dealership licences of birds valid upto 30.06.2019 but their licences were cancelled vide general notification dated 11.02.2019 issued by Secretary Forest & Wildlife Department, Government of Sindh and in pursuance thereof the petitioners were communicated by the Conservator Wildlife, Government of Sindh, Karachi vide letter dated 04.03.2019 with the subject 'Ban on Trapping and Dealing Animals of Wild Origin'. The notification was issued in view of the alarming decline of wild animals e.g. birds, reptiles and mammals in Sindh. It was further stated that the petitioners were granted dealer permits for trading of trapped animals which is now cancelled. A request was also made in the same letter to the petitioners not to continue trade in all species of wild origin through trapping, however, it was further clarified in the same letter that the notification is not applicable to species of captive bred and fancy birds.

2. The learned counsel for the petitioners argued that the first schedule appended to the Sindh Wildlife Protection Ordinance, 1972 deals with the game animals, whereas the second schedule germane to protected animals. He further argued that the petitioners are trading in those birds which are not wild animals and the notification has been issued in violation of Article 18 of the Constitution. It was further contended that even the dealer permits issued under Section 13 of the aforesaid Ordinance are not required by the law to be issued for those animals or birds which do not fall within the schedules. He contended that the petitioners are dealing in only those birds which do not fall under the first schedule and second schedule of the aforesaid Ordinance.

3. The learned Additional Advocate General Sindh, with the assistance of Deputy Sanctuary Warden, Sindh Wildlife Department, Government of Sindh fully supported the notification and the conditions imposed in it. He further argued that no fundamental right of the petitioners has been infringed while issuing the notification by the Wildlife Department.

4. Heard the arguments. Both the petitioners have also attached their Form-I (Birds Dealer Permit) issued by Conservator Wildlife, Government of Sindh, Karachi. As a sample, the terms and conditions of the Form-I are reproduced as under:

“2/- This licence valid upto 30th June 2019, is issued to him. The licence holder shall entitled to buy sell (birds i.e. Maina, Bulbul, Pididi, Chirya, Gandum, Lal, Jal) other than those mentioned in schedule I & II or otherwise deal with birds.

3/- He shall maintain such register or record of his dealings in such manner as may be prescribed, and shall produce them for inspection at any reasonable time when all upon to do so.”

5. The impugned notification was issued under Clauses (iii) and (v) of Section 7 of the Sindh Wildlife Protection Ordinance, 1972. The notification is reproduced as under:

“Government of Sindh
Forest & Wildlife Department

Karachi, dated the 11th February, 2019

NOTIFICATION

No.SO-IV(F&WL)/2-23/2019: Under the provisions of section 7 read with sub-section (iii) & (v) of the Sindh Wildlife Protection Ordinance, 1972 the hunting & poaching of the wild animals (including all kind of birds) through the use of net, snare, bhagwa or any other trap is strictly restricted. The permits (if any) previously issued by Sindh Wildlife Department for trapping of any kind of birds are hereby cancelled forthwith. The transportation and trade of all kinds of wild animals and birds is strictly prohibited. The wild animals and birds so confiscated shall be released in nature without un-necessary delay through transparent prescribed procedure. The offences shall be prosecuted and penalized as per the provisions of Sindh Wildlife Ordinance, 1972.

SECRETARY FOREST
& WILDLIFE DEPARTMENT”

6. The aforesaid Ordinance was promulgated for preservation, conservation and management of wildlife in Sindh. Under Clause (iii) of Section 7, it is provided that no person shall hunt any wild animal by means of a set-gun, drop spear, deadfall, gun trap, explosive projectile, bomb, grenade, baited hook, net, snare or any other trap, an automatic weapon, or a weapon of a caliber used by the Pakistan Army or Police Force or by means of a projectile containing any drug or chemical substance having the property of an anaesthetizing, paralyzing, stupefying or rendering incapable an animal whether partly or totally, whereas in Clause (v), it is provided that no person shall use, or have in his possession any net, snare, bhagwa, poison or like injurious substance for the purpose of hunting a game animal.

7. It is clear from the tenor of the impugned notification that it was issued due to alarming decline of wild animals in Sindh and the licence previously issued if any has been cancelled to protect such species. There is no outright ban on the trade or business of the petitioners. Even in the letter dated 04.03.2019 it is clarified that the impugned notification is not applicable to species of captive bred and fancy birds.

8. Though Article 18 of the Constitution proclaims that every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business but it is always subject to such qualifications if any as may be prescribed by law. Nothing in this Article prevents the regulation of any trade or profession by a licensing system or the regulation of trade, commerce or industry in the interest of free competition. This right is not an absolute right but it is regulated with certain restrictions. The Constitution gives the fundamental right of freedom of trade, business or profession but only restriction which can be placed on trade or business is to conduct such business in accordance with the law of the land. The power to regulate necessarily includes even a power to prohibit. It implies a power to foster, to protect control and restoration. If the Constitution gives to the Legislature the power to regulate a trade by a licensing system, it must follow that the power to prohibit vests in the Legislature.

9. The restriction through the impugned notification in our view does not in any way infringes or contravenes any fundamental right of the petitioners rather it was issued under the dominion of law in the larger public interest and for the preservation, conservation and management of wildlife in Sindh but at the same time no restrictions have been imposed to species of captive bred and fancy birds.

10. As a result of above discussion, this petition is dismissed in limine alongwith pending application.

Judge

Judge