

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT**  
**JODHPUR**

**D.B. CIVIL WRIT PETITION (PIL) NO.6176/2014**

Mahaveer Bishnoi  
Vs.  
State of Rajasthan & Ors.

Date of Order     ::     06.01.2016

**HON'BLE MR. JUSTICE GOVIND MATHUR**  
**HON'BLE MS.JUSTICE NIRMALJIT KAUR**

Mr.Deepak Bishnoi     ]  
Mr.Mahaveer Bishnoi     ], counsel for the petitioner.  
Mr.S.S.Ladreacha, Addl. Advocate General for the State.

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[PER HON'BLE NIRMALJIT KAUR, J.]

The present writ petition, said to be in public interest, has been filed by the President, Legal Cell of Vishnoi Mahasabha Van Evam Vanya Jeev Raksha Samiti with the prayer to restrain the respondents from organizing Tonga Race from village Mundiad to Kharnal and from Kharnal to Nagaur on the occasion of Ganeshji-Ka-Mela and Veer-Tejaji-Ka-Mela.

It is contended by learned counsel for the petitioner that the race so organized is a cruelty towards the animals in the light of the provisions of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as "the Act of 1960") and therefore, the same should be immediately stopped.

The factual background giving rise to this public interest litigation is that every year on the 9<sup>th</sup> Shukla day of the month of Bhadrapad the Gram Panchayat, Mundiad organises a fair known as 'Ganesh Mela' and on the next day, the Gram Panchayat, Kharnal organises a fair in memory of folk deity 'Veer Tejaji'. On these two days, the concerned Gram Panchayats with the cooperation of Municipal Council, Nagaur holds 'Tonga Race'. The 'Tonga Race' that takes place on 9<sup>th</sup> Shukla day of Bhadrapad covers a distance of 17 kms. from village Mundiad to Kharnal and the race on the next day passes through a distance of 19 kms. between village Kharnal and the town of Nagaur. The distance of 19 kms. between Kharnal and Nagaur is part of National Highway 65. As per the petitioner, the 'Tonga Race' on both the days happens in presence of thousands of persons and the participating Tonga Riders (Coachmans) with an anxiety to win the race commit cruelty with the animal pulling the tonga. It is stated that the horses used in pulling the tonga during the Tonga Race, run on hard surface and that is not only difficult, painful but also highly stressful. The Coachman often whip the horse to enhance his speed. To substantiate the statement, several photographs are also placed on record showing that beside the Coachman, 3-4 other persons are also riding the Tongas while the Coachman is giving hunter blows to the horse. The photographs also disclose huge presence of crowd following the Tongas with motorcycles, jeeps, cars, three wheelers etc. A huge crowd is also present to witness the 'Tonga Race' which causes traffic hazard as well as

problem of law and order. During the course of hearing, learned counsel appearing on behalf of the petitioner pointed out that several representations have been submitted to various social organisations requesting the District Administration Nagaur to ban the 'Tonga Race' but in vain. It is also pointed out that in the years 2000 and 2004 Coachmans viz. Shri Kutub Pehalwan and Shri Puthida Pehalwan died while participating in the 'Tonga Race'. In the year 2006 one young lady wife of Shri Rajendra Patodia died and one Mrs. Bhagwati Tiwari suffered serious injuries. In the year 2011, Shri Narpat son of Nemichand Khatik died during the course of 'Tonga Race'. While placing reliance upon the judgment of Hon'ble Supreme Court in Animal Welfare Board of India v. A. Nagaraja, (2014)7 SCC 547, it is asserted that the 'Tonga Race' is an avoidable non-essential human activity organised by ignoring the welfare of horses and solely for human pleasure. The race inherently involve pain and suffering which involves both physical and mental components including fear and distress. The 'Tonga Race' also causes huge strain and stress which is nothing but cruelty as defined under Section 11 of the Act of 1960.

In the reply filed by the State, it is submitted that the Tonga Race is an important cultural event of District Nagaur and is a part of folk tradition wherein animals play a vital role and therefore, it cannot be banned or regulated. The stand of the respondent State and its functionaries as stated in reply to the writ petition reads as under:-

“That the case in hand is regarding 'Tanga Race' (i.e.

Horse Chariot Racing) in the festival of Ganeshji and Tejaji Fair in Kharnal, which lies in District Nagaur. The festival of Tejaji fair is celebrated in Rajasthan in the memory of Veer Tejaji, a folk deity held in high regard by the local people. The annual event is celebrated on the 11th day of the bright fortnight of the Bhadrapada month of Hindu calendar. On this day grand fairs are organized in various parts of the state which are attended by people, especially those from the rural areas in large numbers. The wondrous locales of Rajasthan plays host to a variety of vivacious festivities through the year. The vibrant Nagaur fair is one such colorful jubilation. Each year, in January and February, Nagaur throws its doors open to hundred and thousands of merchants dealing in domesticated bovine animals. The fair is an assortment of bullocks, camels, cows, and horses, merchants sporting attire in striking hues, haggling traders and visitors, brimming with enthusiasm and excitement. Thus, the culture of District Nagaur is basically full of folk tradition wherein 'animals' play a pivotal role in their day today life. Animals are used in traditions, chariots and in festivals; they play a vital role in celebrations. This fair is being celebrated from ancient times and the same cannot be banned or regulated in form of banning the modes of celebrations of the people.”

Beside the above, it is also stated that the District Administration is taking all necessary care to tackle the problem of traffic and also to ensure that no cruelty is caused to the animals. To substantiate the contention, the document dated 2.9.2014 passed by the Sub Divisional Magistrate, Nagaur is referred imposing certain conditions for participation in 'Tonga Race'. The conditions so imposed read as under:-

- “1. तांगा दौड़ आयोजनकर्ता/तांगा मालिक पशु क्रूरता निवारण अधिनियम 1960 की धारा 11(1) में वर्णित प्रावधानों का उल्लंघन नहीं करेंगे।
2. तांगे में कोचवान के अलावा एक व्यक्ति से अधिक व्यक्ति नहीं बैठेंगे।
3. कोचवान द्वारा दौड़ के वक्त हॉर्न/चाबुक/डंडे का उपयोग नहीं करेंगे।
4. तांगा दौड़ प्रत्येक चरण में एक साथ चार (4) किमी से अधिक की नहीं होगी।
5. दौड़ के वक्त तांगे के साथ कोई भी ओपन हूड जीप/बाईकर्स साथ में नहीं चलेगें एवं ना ही वाहनों पर उच्च ध्वनि के यंत्रों का उपयोग किया जायेगा।
6. दौड़ के पहले पशुपालन विभाग के चिकित्सकों द्वारा घोड़ों का स्वास्थ्य परीक्षण करवाना होगा।
7. राष्ट्रीय राज मार्ग पर यातायात में व्यवधान पैदा नहीं करेंगे।
8. दौड़ के दौरान संचालक अपने स्वयं सेवकों द्वारा व्यवस्था बनाये रखेंगे।
9. मोटर वाहन अधिनियम 1988 के प्रावधानों की पालना की जावेगी।”

When the matter was listed before the Court on 01.07.2015, learned counsel appearing on behalf of the office bearers of Akhil Bhartiya Shri Veer Tejaji Janma Sthali Sansthan, Kharnal submitted that Veer Tejaji Mela is organised in memory of folk deity Veer Shri Tejaji. Veer Tejaji was a legendary folk hero and he is considered as one of the measures 11 incarnation of Lord Shiva. Veer Shri Tejaji was born on Friday Magh Shukla 14 Vikram Samvat 1130 in a chart family of Kharnal in District Nagaur. Details with regard to Shri Veer Tejaji as stated reads as under:-

“(iv) During Teja's period the country was ruled by small republics which were in constant struggle with each other. There were conflicts between Nagavanshis and Aryans. Nagavanshis were bent upon to destroy the Aryans. According to Hindu mythology, during Mahabharata

period, Parikshita the successor of Yudhishthira, was the ruler of Hastinapura. Parikshit was cursed by a sage's son to die after snake bite. On hearing this, the king forswore the throne for his son Janamejaya and spent his last days listening to the discourses of Sage Suka on Bhagwat. As prophesied, Snake king Takshaka bit Parikshit leading to his death. In fact Takshaka was a Nagavanshi king who killed Parikshit.

(v) It is said that when Tejaji was in village paner to bring his wife Pemal, Lachha Gujari told Teja that thieves have taken away all her cows and there is no body in this village to help her. Teja mounted his mare Lilan and started alone to fight with dacoits, who had taken away Lachha's cows. Teja found that dacoits who had stolen the cows of Lachhan Gujari were Meena sardar's people. Teja, who was made for helping others, decided to bring those cows. The myth is that he encountered a snake burning in fire that was saved by Teja. That snake cursed Teja and wanted to bite. Tejaji became martyr on 28th August, 1103 while bravely fighting with Meenas.

(vi) Recognizing the faith and belief of rural community of Rajasthan, the Postal Department, Government of India released a special commemorative Stamp on folk-deity Veer Teja at Kharnal in Nagaur District on Teja Dashmi i.e. Thursday 7<sup>th</sup> September, 2011 and State Government observe holiday on Teja Dashami.

5. That it is in these historical back ground and belief Veer Teja festival at village Kharnal is being organized since time immemorial. Devotees comes from Rajasthan, Hariyana, Punjab, Utter Pradesh, Gujrat and Madhya Pradesh to pay tributes at Kharnal (Birth Place) and sursura i.e. place of martyr. Since mare "Leelan" (Female Horse) savari of Teja ji, sacrificed herself for Tejaji while fighting with Meenas force, as in the case of Horse "Chetak" for Maharana Pratap fighting with Mughal Force. It is, therefore, according to religious belief and faith of rural people a chariot race with mare and horses is organized and conducted since time immemorial, during Tejaji and Ganesh Ji fair."

After taking note of the Act of 1960 enacted by the parliament with introduction that animals are an integral part of the Indian economy and therefore, liable to be exploited by human beings for reaping maximum gains, the Division Bench after

hearing the matter found that at present, there was no systematic study with regard to the cruelty extended to a horse during Tonga Race, although, at several places including Lucknow, Uttar Pradesh, the Tonga Race had been stopped by the Government keeping in mind the cruelty suffered by the horse pulling Tonga and accordingly, after taking into consideration the material placed on record, the Court deemed it proper to direct the State of Rajasthan through the Collector, Nagaur to approach the Animal Welfare Board of India to conduct a complete study as to whether the Tonga Race amounts to cruelty towards animal as prescribed under the Act of 1960 or not? The petitioner as well as all other parties interested were also given liberty to furnish all the necessary facts and details with regard to the event in question to the Animal Welfare Board of India on or before 15.08.2015 with a direction to complete the investigation and thereafter, submit the report before this Court.

In pursuance to the said order dated 01.07.2015, the District Magistrate, Nagaur has placed on record the report submitted by the Animal Welfare Board of India forwarded to him vide their forwarding letter dated 28.10.2015. As per this letter, the method of study included evaluation of the information provided and the material evidence on Tonga Races in Nagaur district, which was made available in the form of photographs, a field welfare (mental and physical health) assessment of horses and ponies involved in such races, desk studies of the scientific articles and evaluation of the impact of races on the welfare of equines, the existing legal

provisions, the landmark judgments of High Courts and Supreme Court of India on similar issues as well as the electronic and print media reports on casualties involving horses and humans during such events. On the basis of the information available, the Authorised Researchers comprising of (1) Dr.(Maj.) Sudheesh Nair, Assistant Professor, Department of Surgery & Radiology, College of Veterinary & Animal Sciences, Kerala Veterinary and Animal Sciences University, (2) Dr. Manilal Valliyate, Co-opted Member, AWBI/Member, Kerala State Animal Welfare Board/Director of Veterinary Affairs, People for the Ethical Treatment of Animals (PETA) India and (3) Dr. Naresh Chandra Upreti, Honorary Animal Welfare Officer, AWBI/Chief Operating Officer, Animal Rahat, evaluated as under:-

“Forcing horses to run on hard concrete/tarred road may result in injuries and diseases of the hoof, tendons, ligaments, bones and joints, with painful, irreparable and irreversible changes such as:-

- (a) **Laminitis:** on hard surfaces the metal shoes produces high frequency vibrations which severely affect the sensitive laminae of the hoof and causes inflammation of the laminae, leading to acute lameness, an extremely painful condition. Untreated acute laminitis often results in chronic laminitis highly compromising the quality of life of the animal.
- (b) **Tendonitis** (inflammation of the tendons), **teno-synovitis** (inflammation of tendon and tendon sheath), **fracture of bones, arthritis** (inflammation of joints), **avulsion of hoof** etc. due to repetitive movements and overuse. Often these conditions are chronic in nature and not treatable or curable.

These conditions are very common when horses are forced to work or run on hard concrete/tarred road, even if improved foot trimming and shoeing practices are followed.”

It is important to refer to some of the relevant excerpts of the report, which explain and highlight the quantum of cruelty inflicted on the horses during the tonga races. They read:-

“An imbalanced cart, which is common during races, will put more physical pressure on the animal not only to apply more power using the breast region to pull the cart and the weight but also to bear the unbalanced weight of the cart and weight on his body causing tremendous distress and discomfort. Because of the unbalanced weight there could be more upward physical pressure at the girth region due to tightening of the girth strap and at the withers there could be a downward pressure due to the additional weight on the saddle tree and pads.....”

“Since there is no defined track on a highway or road for Tonga Races and since there are no control over the oncoming vehicles, the chances of accidents seriously injuring the animals and the coachman are very high.....”

“Horses are prey animals, and they become frightened very easily. Any honk of a horn or other sudden noise created by the vehicles or spectators can make them suddenly bolt or jump in fear resulting in accidents. The blinkers on face halter prevent the horses from seeing things on sides. The partial vision and a sudden threatening noise are deadly mixture for accidents.....”

The welfare of horses in Nagaur was assessed by the Board and they found that “all the seven horses examined

by them were having healed lesions on corner of lips and this may be because of the use of spiked bits and/or vigorous pulling of the rein to make the horse run faster during the Tonga Races. Two out of the seven horses assessed were having lesions either on the point of knee or other body part. Few animals also had lesions on other parts of the body such as breast, hip, legs etc. All the seven horses examined were having swelling of flexor tendons and fetlock joints on hind limbs and three of them were having swelling of flexor tendons and fetlock joints on all four limbs. The swelling indicate the inflammation of tendons, ligaments and joints and is caused by repetitive use and over use of these body parts and when forced to run.....”

The report goes on to say that “on hard surfaces the metal shoes produces high frequency vibrations which severely affect the sensitive laminae of the hoof and causes inflammation of laminae, leading to acute lameness. This can subsequently put more pressure on the joints, tendons and ligaments leading to osteoarthritis, enosynovitis and chronic lameness. The very act of forcing horse to race on hard concrete/tarred road causes them to suffer and there is no way it can be prevented even if the foot trimming and shoeing practices are improved, as the key risk factor continues to exist-racing on concrete/tarred road.”

The report has also relied upon the opinion of Maj. Gen. (Retd.), AVSM, Chairman, Animal Welfare Board of India with regard to the use of horses in cities. It is opined by him as under:-

“During the Tonga Races on a National Highway, the horses may struggle to make their way through the chaos of heavy traffic and have to tolerate the sound of screeching brakes and deafening horns, which they may find terrifying. Moreover, the spectators on the road side jumping and shouting may frighten the horse and cause distress. There is also a possibility that the horses could go deaf hearing high pitch sounds during the Tonga race.”

The scientific review on the basis of the entire evidence and information is expressed in the following terms:-

“The scientific review prove beyond doubt that, forcing horses to run on hard surfaces will put undue stress on the bones, joints and soft tissues of the leg, has adverse impact on the foot of the animal, and would lead to further deterioration of the existing poor foot health. Majority of the horses in Nagaur, used especially for races and the working equines in the country already have conformational defects and abnormal gait, and already suffer from high prevalence of pathological abnormalities associated with lameness. Using them for entertainments such as races will subject them to undue pain and suffering.”

Finally, the report concluded that:-

- “1. Cruelty to horses is inherent when they are forced to run on hard concrete or tarred road, amidst chaos of heavy traffic,

the sounds of screeching brakes and deafening horns and the spectators on the road side shouting, all that the horses may find frightening and distressing.

2. Horses used for racing in Nagaur district already suffer from faulty conformation and pathological abnormalities of the foot particularly due to poor foot care and farriery practices and events such as horse races will only aggravate the existing foot conditions and will make the horses suffer.
3. Casualties such as serious injuries and death of horses and people are common during Tonga Races, and that such events are organised solely for the purpose of entertainment causing unnecessary pain and suffering to the horses and thus, violate the provisions of the Prevention of Cruelty to Animals Act, 1960.
4. Horse races comes under the purview of the Performing Animals (Registration) Rules, 2001 and all such events are illegal, provided the organiser or the horse owners have the required permission from the Prescribed Authority as per the law, the Animal Welfare Board of India or the Turf Authority.”

From the above, we have no choice but to conclude that horses who are forced to run on hard concrete road amidst speeding vehicles shouting spectators suffer mentally as well as physically. The desk research done during the study also indicates that no regulation can protect horses from cruelty and misery

faced by them during the Tonga Races. Fear is worse than physical pain and the horses are terrorized by the entire atmosphere, which is created during the Tonga Races by the sheer presence of vehicles and large crowd yelling and screaming. In these circumstances, we cannot but agree with the report submitted by the Animal Welfare Board of India that “Tradition” is never a sufficient justification for cruelty, and a cruel tradition should never be allowed to define a culture. Traditions, like everything else, can – and must- evolve.” Neither does this tradition has any religious significance. It simply arises out of economic gain to reap maximum money benefit, which results in the animal exploitation by using coercive methods and inflicting unnecessary pain, which is nothing but an evil practice.

The Act of 1960 was enacted by parliament with introduction that “animals are an integral part of the Indian economy. Animals have been and are being used in various fields, specially agriculture, transportation and amusement, etc. To reap maximum gains they have been exploited by human beings by using coercive methods and by inflicting unnecessary pain. In order to prevent cruelty to animals the then British Government in India enacted the Prevention of Cruelty to Animals Act, 1890 (11 of 1890). During the course of administering this Act many deficiencies were found. To put the law on sound footing the Government of India appointed a Committee to investigate and suggest measures for the prevention of cruelty to animals. The said Committee drew attention to a number of deficiencies in the

1890 Act and suggested its replacement by a more comprehensive Act". The object of the Act of 1960 is to prevent cruelty to the animals and further to regulate their welfare. It also provides measures to control experimentation on animals and further declare certain type of cruelty as offence demanding punishment. As per clause (a) of Section 2 of the Act of 1960 'animal' means any living creature other than a human being. The definition of 'captive animal' and 'domestic animal' is given in clauses (c) and (d) respectively of Section 2 of the Act of 1960. Section 11 of the Act of 1960 prescribes several eventualities/treatment which is termed as 'cruelty' and according to that if any person 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 animals to be so treated, is a cruelty.

The Apex Court in the case of Animal Welfare Board of India Vs. A.Nagaraja & Ors., reported in (2014) 7 Supreme Court Cases 457 held that animal welfare laws have to be interpreted keeping in mind the welfare of animals and species best interest subject to just exceptions out of human necessity. The exceptions clarified that there are unavoidable activities though these cause pain and suffering to animals but there are certain activities which are avoidable and which are not exceptions under Sections 11(3) and 28 of the Act of 1960 and which do not arise out of human necessity. They violate Section 3 and 11 of the Act of 1960 and therefore, cannot be permitted. While holding that AWBI was right

in its stand that Jallikattu, bullock cart race and such events violate Sections 3, 11(1)(a) and 11(1)(m)(ii) of the Prevention of Cruelty to Animals Act, 1960, the Apex Court upheld the notification of the Central Government, vide which, bullock cart races were banned in State of Tamil Nadu, Maharashtra or elsewhere in the country and observed that State is required to respect animal dignity. Para 61 of the said judgment expresses that:-

“61. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.”

Although, the Sub-Divisional Magistrate, Nagaur imposed certain conditions for participating in the Tonga Race, however, the evaluation of the conditions shows that it is absolutely impracticable to control the suffering caused to the horses during the Tonga Races. We, therefore, hold that Animal Welfare Board of India (AWBI) was right in stand to ban the Tonga Race being organized in Nagaur district and such events are in violation of Sections 3, 11(1)(a) and 11(1)(m)(ii) of the Prevention of Cruelty to Animals Act, 1960. Consequently, it is held that horses cannot be used for the Tonga Races in the State of Rajasthan.

Besides, giving a finding that a Tonga Race was a violation of provisions of Prevention of Cruelty to Animal Act, 1960, AWBI after thorough research also reported that most of the horses in Nagaur are tethered outside the house of the owner without any

shed. Some of the horses are kept inside a dark shed that does not have proper ventilation. Often the horses are found to be kept on filthy and unhygienic environment. The feeding practices were found to be unhygienic and unscientific. It is also reported that that horses not groomed regularly are susceptible to be infested with external parasites such as ticks, lice, fleas etc. and were observed on hidden and warm body parts of the horses such as inner aspect of the ear, besides elbow, mane, inside the thigh region, under the tail base etc. Ectoparasites especially ticks are carriers of potentially life threatening blood protozoan diseases, and a heavy infestation may also lead to anemia. The biting also causes constant irritation and distress to the animals. Presence of ectoparasites on the bodies of animals indicates that, the basic management practice of grooming not being practiced by the owner. Thus, on the one side, the horses were being exploited for economic benefit and on the other side, their maintenance is neglected to the extent which resulted in their sickness, ill-health, pain, agony which is torture in itself.

As per Section 3 of the Prevention of Cruelty to Animals Act, 1960, it will be the the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering. However, in the report of AWBI, it is noticed that there were lot of shortcomings and violation of Section 3 of the Act of 1960 as per the study conducted by it in the district of Nagaur.

We, therefore, make the following declarations and directions:-

- (1) The Collector, Nagaur and any other functionaries of the State of Rajasthan shall not permit any organisation, institution, body or person to hold 'Tonga Race' in the State of Rajasthan including the district Nagaur;
- (2) The State of Rajasthan is directed to take appropriate steps to see that the persons-in-charge or care of animals, take reasonable measures to ensure the well-being of animals. It shall be ensured that horses are maintained, kept in good light and ventilation; sheds have enough space; their hygiene is taken care of; sufficient fodder & clean water is made available; hoofs of the horses are clean with proper horses-shoe etc.; the horses suffering from arthritis etc. should not be forced to ply on the streets;
- (3) The State must ensure the implementation of the Prevention of Cruelty to Animals Act, 1960 in its letter and spirit; and is scrupulously followed.

The writ petition is disposed of with the aforesaid directions.

**[NIRMALJIT KAUR], J.**

**[GOVIND MATHUR], J.**

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