

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.36 OF 2011
with
NOTICE OF MOTION (L) NO.160 OF 2013
WITH
CHAMBER SUMMONS NO.109 OF 2012

Animals and Birds Charitable Trust
and Others.

.. Petitioners

Vs

Municipal Corporation of Greater Mumbai
and Others.

.. Respondents

—

CHAMBER SUMMONS NO.109 OF 2012

IN

PUBLIC INTEREST LITIGATION NO.36 OF 2011

Animals and Birds Charitable Trust
and Others.

.. Petitioners

Vs

Municipal Corporation of Greater Mumbai
and Others.

.. Respondents

and

People for the Ethical Treatment of
Animals (India), an Animal Activist NGO.

.. Applicants/
Interveners

—

NOTICE OF MOTION (L) NO.160 OF 2013

IN

PUBLIC INTEREST LITIGATION NO.36 OF 2011

Ashwashakti Co-op.Society (Proposed),
Through Mr. Subodh Thakkar.

.. Applicant/
(Org. Respondent No.8)

In the matter of -

Animals and Birds Charitable Trust
and Others.

Vs

Municipal Corporation of Greater Mumbai
and Others.

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.. Petitioners

.. Respondents

Shri Feroz J. Bharucha, along with Shri Mayur Bhojwani and Shri Hasan Farooqui i/by Manilal Kher Ambalal & Co for the Petitioner

Shri Birendra Saraf, Senior Counsel along with Ms. K.R. Punjabi for Respondent No.1 BMC.

Shri Milind More, Additional Government Pleader for Respondent Nos.2 and 3.

Shri Gulana A. Mistry along with Ms. Monil Punjabi i/by Apex Law Partners for the Respondent Nos.4 and 5.

Shri P.I. Ramchandani for the Respondent No.6.

Shri Rajiv Singh along with Shri Yuvraj K. Singh, Manini Bharati and Shri Vividh S. Tandon i/by Solomon & Co for the Respondent No.8.

Shri J.P. Sen, Senior Counsel along with Shri Mihir Mody and Shri Rushin Kapadia i/by M/s. K. Ashar & Co for the Respondent No.9.

Shri Shiraz Rustomjee, Senior Counsel and Ms. Shreya Parikh for Intervenor (People for Animals).

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CORAM : A.S. OKA & A.K. MENON, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 16TH FEBRUARY 2015

DATE ON WHICH JUDGMENT IS PRONOUNCED : 8th JUNE 2015

JUDGMENT (PER A.S. OKA, J)

. By this Public Interest Litigation, the attention of this Court is invited to the plight of the horses and ponies used for victorias and horse carriages in the City of Mumbai. It is pointed out that the

victorias/horse carriages are being used in the City of Mumbai only for joyrides and not as a mode of public conveyance. The attention of the Court is also invited to the conditions of horse stables in the City of Mumbai. The substantive prayer clause (A) of the Public Interest Litigation reads thus:

“(A) For a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction of this Hon'ble Court ordering and directing the 1st and 2nd Respondents herein to phase out and eventually prohibit the use of horses and ponies for carriages, joy rides, etc in the City of Mumbai as is ultra vires Article 51A(g) of the Constitution of India.”

2. There are other prayers made in the alternative. The prayers made in the alternative can be summarized as under:

- (i) For issuing a writ of mandamus to initiate appropriate proceedings under Sub-section (4) of Section 394 and Section 471 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act of 1888”);
- (ii) For issuing a writ of mandamus directing the Municipal Corporation of City of Mumbai to initiate appropriate proceedings under Sections 394 and 471 of the said Act of 1888 against those individuals who

keep the horses and ponies in contravention of the provisions of the said Act of 1888;

- (iii) A writ of mandamus directing the Mumbai Municipal Corporation to initiate proceedings against the stables/sites where the horses and ponies are kept which do not have a valid licence;
- (iv) For issuing a writ of mandamus directing the Mumbai Traffic Police and the State of Maharashtra to ensure that victorias/horse carriages which are not licensed under the provisions of the Bombay Public Conveyance Act, 1920 (for short “the said Act of 1920”) are allowed to ply in the City of Mumbai ;
- (v) For issuing a writ of mandamus directing the Police Department and the State to ensure that before a horse is granted license to ply under Section 8 of the said Act of 1920, he is in a fit condition;
- (vi) For issuing a writ of mandamus directing the Fourth Respondent (The Bombay Society for Prevention of Cruelty to Animals) to ensure that all horses and

ponies are shod in compliance with Rule 3 of the Prevention of Cruelty to Draught and Pack Animals Rules, 1965 (for short “the said Rules of 1965”); and

- (vii) For issuing a writ of mandamus for ensuring compliance of Rules 6(i) and 6(iii) of the said Rules of 1965.

3. The first Petitioner claims to be a Charitable Trust which is duly registered in New Delhi. The Second to Fourth Petitioners are the Trustees of the First Petitioner. The first Respondent is the Municipal Corporation of Greater Mumbai constituted under the Mumbai Municipal Corporation Act, 1888. The Second Respondent is the Mumbai Traffic Police and the Third Respondent is the State of Maharashtra. The Fourth Respondent is the Bombay Society for Prevention of Cruelty to Animals established under the Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001. The Fourth Respondent has been charged with the duties and powers to aid of the Government, the Animal Welfare Board and the Local Authorities in enforcing the provisions of the Prevention of Cruelty to Animals Act, 1960 (for short “the said PCA Act”). The Fifth Respondent is the Animal Welfare Board of India set up under Section 4 of the PCA Act with the aim of

promoting animal welfare. The sixth Respondent is the representative of the Licensed Carriage Owners and the Seventh Respondent is the representative of the Licensed Carriage Drivers. The Eighth Respondent is a proposed Society of Licensed horse carriage owners, horse owners, stable owners and attendants.

4. There is a Chamber Summons being Chamber Summons No.109 of 2012 filed by the People for the Ethical Treatment of Animals (India) (for short "PETA") for intervention. The said intervenors are supporting the Petitioners. The Chamber Summons No.127 of 2012 has been filed by the People for Animals for intervention. Even the said Applicant is supporting the Petitioners. There is a pending Notice of Motion for grant of interim relief filed by the Eighth Respondent. The interim relief is of grant of permission to allow plying of victorias by the owners of the horses whose Applications for renewal of licenses are under consideration of the Second Respondent.

FACTUAL DETAILS AND AFFIDAVITS:

5. It will be necessary to make a reference to the few factual aspects set out in the Public Interest Litigation.

6. The First Petitioner made an Application under the Right to Information Act, 2005 seeking information about the licences granted to the stables of horses and ponies used for pulling the carriages and joyrides in the City of Mumbai. The information was furnished by the First Respondent Mumbai Municipal Corporation. The Municipal Corporation stated that a licence under Section 394 of the said Act of 1888 is issued for horses' stables. It was, however, contended that the subject of granting permission to keep the horses for entertainment/horse rides/joy carts does not come within the purview of the Public Health Department of the said Corporation. It was stated that the prosecutions have been lodged against the four horse stables from "D" Ward Office. It was stated that there were four horse stables existing in the City of Mumbai which are unlicensed for which the prosecutions have been lodged. The Municipal Corporation forwarded to the Petitioners special conditions which are incorporated in the licenses granted for keeping the horses. The Petitioners are relying upon the photographs annexed as Exhibits B-3, B-4 and B-5 taken at the stables at Nariman Point and Peela House. It is contended that in the said stables, the horses are consistently standing in their own dung for hours. It is stated that the dung is thrown into dustbins and is allowed to flow into the drains. It is pointed out that the stables are maintained in a very unhygienic condition. It is pointed out that the dung of the horses and ponies can cause tetanus on coming in contact

with a human wound. It is pointed out that there is a violation of Section 471 as well as 384 of the said Act of 1888. It is pointed out in the Petition that the horse stables in the City of Mumbai are very cramped. The photographs have been annexed to show the cramped condition of the horse stables.

7. It is pointed out that a majority of the horses and ponies used for carriages in the City of Mumbai do not have proper stables or a shelters to live in.

8. The Petitioners have referred to the provisions of the said Act of 1920 and have contended that since 1973, no new licenses have been issued under the said Act of 1920 but only old licenses are being renewed. It is contended that under the said Act of 1920, if the Police Commissioner finds that any horse is unfit to ply, he may not only refuse to grant licence but also suspend the existing licence. It is contended that the survey conducted by the First Petitioner shows that 87% of the horses and ponies in three stables in the City of Mumbai suffer from various ailments and abnormalities. It is pointed out that no action is taken of suspension of licenses by the Police Commissioner by exercising the powers under the said Act of 1920. It is contended that 44 carriages have been plying in the City of Mumbai without obtaining a license under the said Act of 1920. It is pointed out that the

licenses can be issued to horses used for carriages but there is no provision for grant of licenses for horses/ponies used for joy rides. It is pointed out that in contravention of the license conditions, more than three people are very often carried in the horse carriages/victorias.

9. Various instances of cruelty to horses and ponies used for victorias and joyrides have been set out in the Petition. A large number of photographs have been annexed to the Petition. It is pointed out that the horses are forced to overwork and they regularly suffer from various injuries. The instances of accidents suffered by the horse carriages/victorias used for joyrides are pointed out in which the horses have suffered injuries. It is pointed out that the standards laid down under the said Rules of 1965 are violated. It is also pointed out that even the provisions of the Prevention of Cruelty to Animals (Licensing of Farriers) Rules, 1965 have been violated. It is pointed out that no horse or pony is registered under the Performing Animals (Registration) Rules, 2001. Various public safety concerns have been highlighted in the Petition. It is pointed out that the carriages drawn by the horses are used in congested streets having a very heavy vehicular traffic, as a result, there have been a large number of accidents in which the horses and people travelling in the carriages have suffered injuries.

10. It will be necessary to make a reference to the stand taken by the various Respondents by filing reply. There is a reply filed by Shri Shashikant B. Bhandalkar, Senior Inspector of Police, serving in Public Land Conveyance Licence Branch at Mumbai. Reliance is placed on the Public Conveyance Regulations, 2009 enacted by the Commissioner of Police in exercise of the powers under Section 35 of the said Act of 1920. In Paragraph 9 of the said affidavit, it is stated that no new licenses are being issued since 1973 for plying hack victorias in the City and, therefore, number of victorias have gone down to 130 from about 800 in the year 1973. It is pointed out that the area and time restrictions have been imposed on the plying of victorias in the City of Mumbai. A chart showing the said restrictions has been annexed.

11. There is an affidavit filed by Shri Suresh Kashinath Madane on behalf of the Municipal Corporation of City of Mumbai. Shri Madane is the Assistant Health Officer of the Municipal Corporation. In Paragraph 4 of his affidavit, he has referred to the order of this Court in Writ Petition No.2565 of 2005 under which all the cattle stables were directed to be shifted outside Mumbai. In Clause (b) of Paragraph 4, he has given details of the horse stables situated in Mumbai with reference to five different wards. He has stated that a total 10 stables are in the City of Mumbai in which 158 horses are kept. He has stated that none of the stables are now possessing any valid license under

Section 394 of the said Act of 1888. He has set out the details of the action taken against the owners of the horse stables. There is a counter affidavit dated 12th April 2012 filed by the Second Petitioner dealing with the affidavits of the State Government and the Mumbai Municipal Corporation.

12. In the PIL, there are allegations made against the Fourth Respondent and especially as regards the state of affairs in the hospital for animals run by it. The allegations of mismanagement in the hospital have been denied in the affidavit dated 12th April 2012 filed by the Colonel Jagdish Chandra Khanna, the Secretary of the Fourth Respondent. He has stated that the victoria horses which are admitted to the Fourth Respondent's hospital are found to suffer from lameness and hoof abnormalities due to the pitiable conditions in which they are forced to work.

13. The Eighth Respondent has filed an affidavit-in-reply of one Indu Palani. In Paragraph 4 of the affidavit, the said Respondent has challenged the locus of the Petitioners. It is contended that the Fourth Petitioner is in the business of construction who is having vested interest in the Ambedkar Nagar Slum Redevelopment Scheme where stables are maintained by the horse owners. It is alleged that the members of the Animal Welfare Board of India (Fifth Respondent)

owing allegiance to Smt. Maneka Gandhi, who is one of the Intervenors, along with the members of the Fourth Respondent want to hand over open land available in the hospital of the Fourth Respondent to professional builders for development.

14. It is stated in the affidavit-in-reply of the Eighth Respondent that the said Respondent is a proposed Society of horse owners, victoria owners, stable owners and attendants driving the horses. It is stated that its members ply the horse victorias for public in various areas. Some of the members of the Eighth Respondent are in the business of providing pony rides to the children at various places in Mumbai. It is stated that approximately 700 persons are directly associated with the business as owners, attendants, drivers and stable boys. It is alleged that the livelihood of appropriately 700 families is depending upon the business relating to horses in the City of Mumbai. Various details of the categories of the horses used have been set out in the reply. It is contended that as per the report of the Veterinary Officer of the Municipal Corporation, most of the horse stables are found to be in a good and satisfactory condition. It is contended that certain stables have been given licenses under Section 394 of the said Act of 1888. The details of the owners of the horses and other persons involved in the business in connection with the horses have been set out in the said affidavit. The said Indu Palani has also filed separate

affidavits by way of reply to the various affidavits filed by the Intervenor and other parties.

15. The People for Ethical Treatment of Animals (for short "PETA") is one of the Intervenor. In the affidavit dated 2nd April 2013 filed by Shri Sarfaraz Sayed on behalf of the PETA, a reliance has been placed upon a report dated 25th March 2013 on the Assessment of horses in Mumbai. A copy thereof has been annexed to the affidavit.

16. There is an affidavit filed by Dr. Manilal Valliyate, the Director of Veterinary Affairs of PETA. Reliance is placed upon the decision taken by the Municipal Corporation of New Delhi of prohibiting the horse drawn carriages for any purpose. Reports on surprise inspection of three horse stables in the City made in July 2013 have been annexed to the said affidavit. Even to the said affidavit, there is a counter affidavit filed by Smt. Indu Palani on 21st August 2013,

17. There is an affidavit filed by Shri Dilip Vishnu Raut, the Police Inspector, Incharge of Public Land Conveyance Licence Branch at Bandra East, Mumbai. In the said affidavit dated 12th December 2013, a stand has been taken that from 1973, no new victoria licenses have been issued. It is stated that operation of the victorias in the City is

now restricted to only few areas. It is stated that the motor vehicles in Mumbai have been increased by 203% between 1991 to 2001. He has stated that the horse carriages in the City of Mumbai are hazardous to both people and animals. It is stated that the use of horse carriages in the city creates tremendous traffic congestion. It is stated that the use of the horse carriages in the City of Mumbai causes cruelty to the horses and leads to a public nuisance. It is stated that the conclusion of the traffic department of the Mumbai Police is that the use of horse carriages should be prohibited in the City of Mumbai.

18. To another affidavit of Dr. Manilal Valliyate, the Director of Veterinary Affairs of PETA, a report dated 11th September 2014 on the Inspection of Stables in Mumbai which is authorized by the Animal Welfare Board of India (AWBI) has been annexed which shows pathetic condition of the horse stables in the City of Mumbai. He has filed further affidavit dated 17th September 2014 setting out various illegalities in plying of victorias in the city of Mumbai. There are number of other affidavits on record filed by persons who are not parties including an affidavit of Dr. Phiroze Khambata, practicing as an equine veterinarian.

19. It will be necessary to make a reference to the order dated 2nd May 2014 passed by the First Court by which the Joint

Commissioner of Police (Traffic) was directed to hear the parties and to take an appropriate decision. Accordingly, Dr. B.I. Upadhyay, the Joint Commissioner of Police (Traffic) has filed an affidavit dated 21st January 2015. The decision taken by him is that instead of completely prohibiting the use of horse carriages, plying thereof could be permitted and regulated only on few roads and only during the specified hours. He has annexed a copy of the order dated 16th May 2014 passed by him fixing the time and areas for the use of hack victorias. Shri Dilip Vishnu Raut, Police Inspector, Incharge of Public Land Conveyance Licence Branch of Traffic Police has filed an affidavit dated 14th February 2015 in which he has reiterated that the use of horse victorias for joyrides in the busy, highly congested and already crowded roads in Mumbai is a traffic hazard and also it causes danger to the members of the public. There are affidavits filed by Shri Vikas Khatwani describing various instances of accidents involving horse carriages. The affidavit of Shri Rachel Koyama describes the condition of the stables. Shri Koyama represents People for Animals which is also an Intervenor. In fact, Shri Koyama has filed three different affidavits annexing various photographs showing the manner in which the horses are being treated in Mumbai. There is an affidavit dated 4th October 2015 filed by Shri Sarfarz Sayed on behalf of PETA to which investigation report on the horse victorias in the City of Mumbai has been annexed which records a conclusion that it is necessary to ban use of horse pulled carriages in

Mumbai. There is an affidavit filed by Smt. Maneka Gandhi on behalf of People for Animals.

SUBMISSIONS:

20. The learned counsel appearing for the Petitioners submitted that there is already a policy decision taken by the Municipal Corporation not to grant licenses under Section 394 of the said Act of 1888 to horse stables. His submission is that the provisions of the said Act of 1920 are not applicable to the victorias and other carriages pulled by the horses in the City of Mumbai inasmuch as none of the horse victorias or carriages are being used as a public conveyance and admittedly they are being used only for joyrides. From the affidavits on record, he pointed out that allowing the horse pulled carriages and victorias to be used in the City of Mumbai will cause cruelty to the horses. He pointed out that the horses and ponies are prone to accidents as the horses are unable to manoeuvre themselves in heavy traffic on tar and concrete roads. He has relied upon the affidavit of Dr. Phiroz Khambatta who confirms that it is inherently cruel to make the horses ply on concrete and tar. He, therefore, submitted that this Court will have to issue a writ of mandamus directing the Respondents to phase out and prohibit the use of horses and ponies for carriages and joyrides in the City. The learned senior counsel appearing for the

Intervenors (People for Animals) has made a detailed submissions based on the various affidavits on record. The learned senior counsel appearing for the Ninth Respondent has generally adopted the submissions of the learned counsel appearing for the People for Animals. Shri Rustomjee, the learned Senior counsel for the Intervenors invited the attention of the Court to the provisions of the said Act of 1888 as well as the said Act of 1920. He has also elaborately dealt with the provisions of the PCA Act. He has pointed out several instances of cruelty to the horses which are borne out from the affidavits on record. He submitted that plying of horses with an iron shoe on a concrete and/or tar road amounts to causing cruelty to horses. Relying upon the affidavit of Dr. Khambatta, he submitted that the concrete and tar roads are inherently bad for horse hooves. He invited our attention to the various reports on record depicting the pathetic condition of the horses in the City of Mumbai. He urged that even otherwise, the victorias are being plied and ponies are being used without requisite licenses. He placed reliance on a recent decision of the Apex Court in the case of *Animal Welfare Board of India v. A. Nagaraja and Others*¹. He relied upon Paragraph 62 of the said decision wherein the Apex Court held that for animals, "life" means something more than mere survival or existence and that the animals are entitled to lead a life with some intrinsic worth, honour and dignity. He pointed out the rights of the animals under Sections 3 and 11 of the PCA Act.

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21. The learned counsel appearing for the Eighth Respondent has made detailed submissions. He candidly admitted that the victorias and horse-pulled carriages in the City of Mumbai are not being used for transport but the same are being used for joyrides. He submitted that even the ponies are being used for joyrides. He, however, urged that notwithstanding the fact that the horse victorias are being used for joyrides, the provisions of the said Act of 1920 are squarely applicable as the victorias will fall in the category of 'public conveyance'. He submitted that the licences cannot be denied under the said Act of 1920 to victorias. By pointing out several affidavits filed on behalf of the Eighth Respondent, he refuted the allegations regarding unhygienic conditions of the horse stables. He pointed out the extent of care taken of the horses by those who are in the business relating to horses. He relied upon the additional affidavit dated 16th February 2015 filed by Indu Palani on behalf of the Eighth Respondent. In the said affidavit, it is stated in what manner the horses are acquired. He pointed out that the horses used for pulling the carriages/victorias in the City of Mumbai are of Deccan and Kathiawadi breed. He pointed out that these horses by their very nature are very calm and adaptable to the traffic conditions in Mumbai. He pointed out that the hooves of these horses are very hard and suitable to move on difficult terrains. Therefore, tar or concrete roads do not cause any pain or suffering to them. He pointed out a

Draft Code of Conduct prepared by the Eight Respondent. He relied upon a decision of the Apex Court in the case of *Chintamanrao and Another v. The State of Madhya Pradesh*². He also relied upon a decision of the Apex Court in the case of *Municipal Corporation of the City of Ahmedabad and other v. Mohammed Usmanbhai and another*³. He also relied upon another decision of the Apex Court in the case of *Saghir Ahmad and another v. State of Uttar Pradesh and others*⁴. He urged that no interference is called for in this Public Interest Litigation. The learned counsel representing the Sixth and Seventh Respondents have generally adopted the submissions of the Eight Respondent. We have also heard the learned counsel representing the Mumbai Municipal Corporation as well as the learned Additional Government Pleader representing the State Government.

CONSIDERATION OF SUBMISSIONS:

22. We have given careful consideration to the submissions. Before going to the factual aspects, it will be necessary to make a reference to the various provisions of the said Act of 1920.

“2(b) “Public conveyance” means any wheeled vehicle, drawn or propelled on roads and used for the purposes of plying for hire for the conveyance of persons or goods but does not include a motor vehicle as defined in the Motor

2 AIR 1951 SC 110
3 AIR 1986 SC 1205
4 AIR 1954 SC 728

Vehicles Act, 1939, or a vehicle running upon fixed rails;”

“3(1) No person shall keep or let for hire any public conveyance without licence granted by the Commissioner of Police in this behalf”.

“5(1A) The Commissioner of Police may refuse to grant licences for any class of vehicles if, in his opinion, it is undesirable that such vehicles, should be used, as public conveyances. The Commissioner of Police may on the same ground, refuse to renew and may, at any time cancel the licences already granted for such vehicles. On such cancellation the licensee shall be granted out of the fees paid by him for the licence a refund of a sum equal to the amount of fees payable for the unexpired portion of the licence calculated in proportion to the amount paid for the full period of the licence.”

“8(1) No horse shall be used for drawing a public conveyance except under licence granted by the Commissioner of Police in respect of such horse.”

“9. When granting a licence for a horse the Commissioner of Police may, if he thinks it necessary brand such horse on the hoof in such manner that it may be easily identified.”

“10 (1) The Commissioner of Police may refuse to grant, to renew, and may at any time suspend, a licence for a horse if in his opinion such horse is in any way unfit for use in a public conveyance.

(2) In case of such refusal or suspension the owner of the horse or licensee, as the case may be, may require that such horse be examined by a veterinary practitioner of the Government or of a local authority, and, if in the opinion of such practitioner the horse is fit for use in public conveyance, the Commissioner of Police shall grant or renew the licence or cancel the order of suspension.”

“11(1) No person shall act as driver of a public conveyance without a licence granted by the Commissioner of Police in this behalf”.

23. The object of the said Act of 1920 is to regulate public conveyances and to provide for prohibiting plying of certain classes of vehicles as public conveyance. Clause (b) of Section 2 of the said Act of 1920 defines “public conveyance” which we have quoted above. A public conveyance is a wheeled vehicle which is drawn or propelled on the roads. The motor vehicles within the meaning of Motor Vehicles Act, 1939 (now the Motor Vehicles Act, 1988) have been excluded from the definition of the public conveyance. Moreover, all the categories of vehicles running upon fixed rails such as railways, mono railways etc have been excluded. Thus, the wheeled vehicles which are pulled or propelled by animals are covered by the definition of public conveyance. Thus, it will include carriages and/or victorias drawn by the horses, bullocks and other animals. Such wheeled vehicles are covered by the definition of public conveyance only if the same are used for the purposes of plying for hire for conveyance of persons or goods. Thus, a wheeled vehicle which is covered by clause (b) of Section 2 of the said Act of 1920 becomes public conveyance provided it is used for transporting persons or goods from one place to another for hire. Hence, the wheeled vehicles which are plied for hire only for joyrides will not be included in the definition of “public conveyance”. When a wheeled vehicle is used as a mode of conveyance of persons or goods

from one place to another for hire, it becomes a public conveyance. Hiring such wheeled vehicles only for the purposes of joyrides will not amount to hiring the wheeled vehicles for conveyance of persons or goods. Even going by the affidavits filed by the Eighth Respondent, it becomes an admitted position that the victorias or carriages drawn by the horses in the City of Mumbai are no longer used as a mode of conveyance of persons or goods and that they are being used only for joyrides. When such carriages or wheeled vehicles are used for joyrides, incidentally the said wheeled vehicles may be plied for taking persons from one place to another, but in such a case, the object is not to provide a mode of conveyance for hire but the object is to give a joyride to persons using the wheeled vehicle for hire.

24. Sub-section (1) of Section 3 of the said Act of 1920 provides that no person shall keep or let for hire any public conveyance without a licence granted by the Commissioner of Police. Thus, no owner of such wheeled vehicles shall keep or let for hire any public conveyance without a valid licence. If such a wheeled vehicle is drawn by the use of horses, under Sub-section (1) of Section 8 of the said Act of 1920, no horse can be used for drawing a public conveyance except under a licence granted by the Commissioner of Police in respect of that particular horse. Section 9 confers a power on the Commissioner of Police which can be exercised while granting a licence. The power is to

provide that such horse shall be marked on the hoof in such a manner that it may be easily identified. If a horse in respect of which the licence is granted under Sub-section (1) of Section 8 of the said Act of 1920 is found to be unfit for use for a public conveyance, the Commissioner of Police has a power to refuse to grant licence, to refuse the prayer for renewal of licence and to suspend the existing licence. Under Sub-section (1) of Section 11, it is provided that no person shall act as a driver of a public conveyance without a licence issued by the Commissioner of Police.

25. In our considered opinion, no wheeled vehicle which is drawn by horses and which is hired only for the purposes of joyrides can be a public conveyance within the meaning of Clause (b) of Section 2 of the said Act of 1920. Hence, no licence can be granted to keep or let for hire such a wheeled vehicle used only for joyrides. Similarly, no licence can be granted in relation to the horses used for such a wheeled vehicle and no licence can be granted to a driver of such a wheeled vehicle. Therefore, no licences can be granted in relation to the victorias or carriages drawn or propelled by the horses in the City of Mumbai under the provisions of the Sub-section (1) of Section 3, Sub-section (1) of Section 8 and Sub-section (1) of Section 11 of the said Act of 1920

26. Even assuming that such victorias or carriages plied in the City of Mumbai are covered by the definition of the public conveyance under Clause (b) of Section 2 of the said Act of 1920, it will be necessary to make a reference to the power of the Commissioner of Police under Sub-section (1A) of Section 5 of the said Act of 1920. There is a power vesting in the Commissioner of Police to refuse to grant licences to any class or classes of vehicles, if in his opinion it is undesirable that such vehicles should be used as a public conveyance. On the same ground, the Commissioner of Police is empowered to refuse to renew and even cancel the licences already granted. It is in this context, it will be necessary to consider the stand taken by the Mumbai Traffic Police before this Court. There is an affidavit filed by Shri Shashikant B. Bhandalkar, Senior Inspector of Police which is dated 5th October 2011. It is in this affidavit, it is stated that number of hack victorias in the City of Mumbai has reduced from about 800 in the year 1973 to 130 in the year 2011. It will be necessary to make a reference to Paragraph 9 of the said affidavit which reads thus:

“9. I further state that in order to avoid traffic congestion, no new licences are being issued since 1973 for plying Hack victoria in Brihan Mumbai City. The numbers of Hack victorias has thus gone down from about 800 in 1973 to only 130 in this year. Not only this as regards the numbers of passengers to be carried in victoria, there are certain restrictions put by the Commissioner of Police and if any breach is committed, suitable legal action is taken against such errant drivers/owners under the provisions of the Act.

I crave leave to refer to and rely upon various prosecutions/legal actions taken against some of the persons who have violated various provisions of Bombay Public Conveyance Act and Rules from time to time till today as and when produced. Similarly, to avoid traffic congestion the Joint Commissioner of Police/Deputy Commissioner of Police (Traffic) has powers to issue and has issued a Notification restricting the entry and timings for plying of Hack victorias on certain roads and during certain timings. I crave leave to refer to and rely upon the said Notification.”

27. The details of the existing licences have been set out in the said affidavit. There is another affidavit filed by Shri Dilip Vishnu Raut, the Police Inspector, Incharge of Public Land Conveyance Licence Branch (Traffic). It will be necessary to make a reference to Paragraph 4 of the said affidavit, which reads thus:

“4. As of now, the renewing of licences and the plying of the victorias are being regulated under the provisions of the BPC Act 1920. Although the horse-carriages were granted licence under this Act and they were subsequently renewed under the said Act by the traffic department. It is now clear that the horse carriages are no longer used as a public conveyance and are today used only for joy rides of tourists purposes and thus as a mode of amusement. Horse-drawn carriages were a means of transportation of both goods and passengers and were thus used as public conveyance for which the Act was principally enacted. Taxis, buses, cars, motor cycles and trains are used as means of public conveyance for people and trucks and tempos for goods all of which have now replaced horse carriages as means of public conveyance. Therefore these horse carriages are no longer being used for the purpose for which they were granted the licence under the Act namely as Public Convenience.”

(Underline supplied)

28. Thus, there is a specific stand taken by the Traffic Police that the horse carriages are no longer in use for public conveyance and today they are being used only for joyrides and as a mode of amusement. The specific stand is that the horse carriages in the City are not being used for the purpose for which they were granted licences under the said Act of 1920. In Paragraph 5 of the said affidavit, it is stated that between the years 1991 and 2011, the number of motor vehicles in the City of Mumbai have been increased by 203%. In Paragraph 6 of the said affidavit, it is stated thus:

“6. The use of horse-drawn carriages now serves to be an encumbrance and also great hazard on the already overcrowded roads of Mumbai. Congestion on the city streets means that horse carriages are now struggling for space with private cars, taxis, buses two wheelers etc. They are prone to accidents, as the horses are unable to maneuver themselves in traffic efficiently, or even stop and start at the pace of traffic, often leading to accidents with other road vehicles. Horses get scared due to honking and movement of vehicles and tend to go berserk and to control them carriage drivers use means like spiked bits and whipping to keep them in check. This is fraught with risks both to other people travelling on the roads, passengers in the carriages and cruelty to the horse.”

(Underlines supplied)

Even Paragraphs 8 to 12 of the affidavit of Shri Dilip Vishnu Raut are material which read thus:

“8. The record of the offences committed by the victoria owners in the last 4-5 years and more

recently shows that these victoria owners have more often engaged in overloading of passengers. Also, the victoria owners have been plying unfit horses on the road without proper horse shoes. It is thus clear that these horse carriages have also continued to cause immense physical harm and mental agony to the horse.

9. There is an inherent safety risk in plying any victoria on the city roads for the reasons already mentioned herein-above, and also in view of the increasing traffic density and volume of traffic in the city of Mumbai.
10. Horses not fit to ply on concrete and tar: Expert opinion shows that while horses were equipped to travel on mud, they are not able to travel on concrete and tar and develop serious diseases. Horses suffer from repetitive and compounding injuries such as laminitis, osteoarthritis and tendonitis, which are injuries directly associated by plying on hard surfaces. Dr. Phiroze Khambatta as also the national Research Centre on Equines have filed an Affidavit dated 12th July 2012 before this Hon'ble Court.
11. Horse carriages are a hazard to both people and animals, create tremendous traffic congestion, are very cruel to horses and lead to a public nuisance. Many of the stables are not maintaining standards required as per law. It is the view of this department that the horse carriages should be prohibited in Mumbai completely.
12. In view of the above, the Traffic Branch Mumbai Police proposes that it is in public interest not to renew further any licence for plying horse victoria in the city of Mumbai."
(Underlines supplied)

29. Thus, for the reasons recorded, the Traffic Branch of

Mumbai Police has taken a decision not to renew any licences for plying hack victorias in the City of Mumbai. The reasons recorded for coming to the said conclusion are very relevant. The main reason is that in the City of Mumbai, there is an inherent safety risk in plying any victoria. Even increasing traffic density in the City of Mumbai is also a reason assigned about which there cannot be any dispute. The third reason assigned is that the horses which are used to propel victorias are suffering from serious diseases and are unable to manoeuvre themselves in heavy traffic due to which there are number of accidents.

30. On this aspect, it will be necessary to make a reference to an affidavit of Dr. B.K. Upadhyay, the Joint Commissioner of Police (Traffic). He has filed an affidavit after passing an order dated 16th May 2014 in compliance with the directions issued by this Court under the order dated 2nd May 2014. By the said order, this Court directed the Joint Commissioner of Police (Traffic) to pass appropriate orders regulating the hours during which the horses driven victorias should be allowed to ply. Accordingly, by the said order, the Joint Commissioner of Police (Traffic) has fixed the time and area for hack victorias to ply in the City of Mumbai. In paragraph 4 of his affidavit, he has reiterated the stand taken by the Traffic Department of Police that the horse carriages ought to be totally prohibited in the City of Mumbai. He has stated that in deference to the suggestion made by this Court and the

directions given on 2nd May 2014 that after hearing all the concerned, he has passed the said order. In Paragraph 5 of the said affidavit, he has reiterated that the rides in victorias are essentially taken by tourists coming to Mumbai and is a form of an amusement for some members of the local public as well. Thus, he has reiterated that the victorias in the City of Mumbai are not being used as a public conveyance. In deference to the ad-interim order of this Court, he has observed that with a view to strike a balance between causing inconvenience to the public and the obstruction to traffic on one hand and the interest of tourism on the other hand, he has passed an order permitting plying of horse carriages only on few selected roads and only during the specified hours. Thus, the Joint Commissioner of Police (Traffic) has passed the said order dated 16th May 2014 after noting that the victorias are no longer a public conveyance within the meaning of the said Act of 1920 in the City of Mumbai. There is another affidavit filed by Shri Dilip Vishnu Raut, the Police Inspector, (Incharge of Public Land Conveyance Licence Branch) Traffic. In Paragraph 5 of the said affidavit, he has reiterated what he has stated in the earlier affidavit dated 12th December 2013. In Paragraph 5 of the said affidavit, he has stated that for the detailed reasons set out in the said earlier affidavit, the Traffic Branch has decided that it is not in public interest to renew any licence for plying horse victorias in the City of Mumbai. He has stated that the Traffic Branch of the Police has forwarded the said decision to the

Commissioner of Police, Mumbai and to the Home Department of the State Government on 20th December 2013. In the said affidavit, he has also dealt with the illustration given by the Eighth Respondent of the traffic policemen moving on the horses in the City of London and use of the horses by the Hon'ble President of India in the form of the Horse Drawn Carriages for Ceremonies. Paragraph 15 of the said affidavit reads thus:

“15. I further state that admittedly even according to the Respondent No.8 also the infrastructure is lacking in the city of Mumbai. Hence the comparison made by the Respondent No.8 about traffic policemen on horses in city of London is not only misconceived but totally out of place and so is the mention of the occasional use by the President of India of the Horse Drawn Carriage for Ceremonies, which are very rare. These cannot by any means be sought to justify the use of Horse victorias to be plied for joy rides in the busy and highly congested and already crowded roads of Mumbai, which are a traffic hazard and also a danger to public. I crave leave to refer to and rely upon the records to show the number of accidents taken place on accounts of plying of Hack victorias”.

31. In Paragraph 16 of the said affidavit, he has stated that many horse carriage owners have been repeatedly caught for indulging in overloading and carrying the passengers in excess of what is permitted. In Paragraphs 18 and 19, Shri Dilip Raut has stated thus:

“18. With reference to para No.13- I emphatically deny that the earlier Affidavit was filed due to

any political pressure and stated that the Traffic Branch has not relied upon any private expert opinion of the interveners to as made referred to the same. In any event the said opinion which may have been referred to is not the ground for the decision taken by the Traffic Branch of not renewed the license for plying of Horse victorias.

19. With reference to para No.14 – I emphatically deny that the Traffic Branch has exceeded their authority by proposing to the Court that they would not renew the licence any further. I state that the same has been done not only in consonance with, in accordance with and under the provisions of law i.e. BPC Act and the said action has been prompted by and is proposed and intended to subserve the larger public interest. The Traffic Branch has found after taking into consideration all relevant circumstances that it is undesirable to use horse carriages in the city of Mumbai as a public conveyance and much less for joy rides for which sole purpose they are being used as today. Thus, there is no question of repealing of the said act in the Legislative Assembly as contended by the petitioner as the provisions of act continue to govern the other purposes for which it was enacted.”

(Underline supplied)

32. We have already made a reference to the Sub-section (1A) of Section 5 of the said Act of 1920. There is a power vesting in the Commissioner of Police to refuse to grant licence for any class of vehicles if in his opinion it is undesirable that such vehicles should be used as a public conveyance. Sub-section (1A) of Section 5 also confers a power to cancel the existing licences on the same ground. The facts disclosed in the affidavit dated 12th December 2013 of Shri

Raut and his subsequent affidavit dated 14th February 2015 to which we have made an extensive reference, make out a case for exercising the power under Sub-section (1A) of Section 5 of the said Act of 1920 in respect of the horse driven carriages in the city. The opinion/decision of the Traffic Police is based on all relevant and germane factors which are required to be considered while dealing with the exercise of power under Sub-section (1A) of Section 5 of the said Act of 1920.

33. The Intervenor (People for Animals) have filed an affidavit of Dr. Pheroz Khambatta which is dated 12th July 2012. In Paragraph No.1 of his affidavit, Dr. Khambatta has stated thus:

1. "I have been practicing as an equine veterinarian and have been involved in the animal welfare movement for over 25 years. I have a BVSC degree and an MVSC in surgery from KONKAN KRISHI VIDYAPEETH. I have trained all over the world in equine organisations; more particularly in countries such as Australia, Ireland, United States of America and France. I am also a founder and Trustee of the Blue Cross in Pune, an organisation that work for animals in Pune City. I am a founder and committee member of the Indian Association of Equine Practitioners. Presently, at the Mumbai race course I am treating over 400 horses. I also consult on equine issues in countries such as Bahrain, Qatar and Kuwait on a regular basis".

In paragraph 3, he has stated thus:

"3. I have been approached by People for Animals for an expert opinion on the plying of horse carriages in Mumbai and on the recent survey conducted to

assess the health of the horses. My opinion is as follows:

- (a) The horse's hoof is meant to transfer shock and act as a shock absorber for the upper limbs. Shock goes from the ground to the frog which then proceeds to the wall of the foot. When horses work on hard ground, there is a loss of transfer of shock absorption; the shoes protect the wall and the frog does not come into play. The shock directly hits the tendons and joints.
- (b) The ideal surface for horses to ply on is a firm but giving surface such as mud and grass. Concrete and tar roads are inherently bad for horses. Plying horses on concrete and tar roads leads to various crippling diseases which are commonly observed in cart horses. These diseases are :

- (i) Osteoarthritis: the aging and wearing of joints.
- (ii) Cart horse tendons: tendon problems due to working on hard surfaces.
- (iii) Tendosynovitis: it is an inflammation of the lining of the sheath that surrounds the tendon (the cord that joins muscle to bone). It causes difficulty in moving a joint, pain and tenderness in the area.

(c) Therefore, in my opinion it is cruel to ply horses in concrete and tar surfaces. A horse, naturally, requires a firm but giving surface not a concrete or tar surface."

(emphasis added)

Ultimately, in Paragraph 5, he has stated thus:

"5. In my medical opinion, hard surfaces, such as the streets of Mumbai are not the right surfaces for

horses to ply. They develop huge medical issues such as those listed above. It is inherently cruel to the horses to make them ply on concrete and tar.”
(emphasis added)

34. There are monthly medical reports submitted by a NGO-In Defence for Animals giving details of wounds, injuries, illnesses, etc. suffered by horses. As per the reports submitted by the NGO, from January 2009 to July 2009 in Mumbai, there were minimum 64 cases and maximum 119 cases every month of wounds and injuries sustained by the horses used in carriages in Mumbai. There is a report by Dr. Nilesh Bhamre, a Veterinarian showing that out of the surveyed horses, 87% of the horses suffered from lameness and limb abnormalities, 80% of the horses suffer from hoof problems and 77% from wounds. The Fourth Respondent the Bombay Society for Prevention of Cruelty to Animals (SPCA) has registered 96 cases of cruelty against the horses in the year 2010. There are large number of affidavits filed by Dr. Manilal Valliyate, the Director of Veterinary Affairs of PETA enclosing therewith various reports. There are number of newspaper cuttings filed on record showing the accidents suffered by the horses plying victorias. In the form of affidavits, material is brought on record to show ill-effects of plying horse carriages on the concrete and tar roads in Mumbai.

35. The law laid down by the Apex Court in the case of *Animal Welfare Board of India* needs to be considered. The law laid down in

Paragraph 72 of the said judgment reads thus:

“72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.”

(emphasis added)

36. The issue before the Apex Court was regarding use of bulls as performing animals for races. Paragraph 72 of the said decision will have to be read together with Paragraph 66 to 68 which read thus:

“66. Rights guaranteed to the animals under Sections 3, 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under Sections 3 and 11 have to be read along with Articles 51-A(g) and (h) of the Constitution, which is the magna carta of animal rights. Compassion

67. Article 51-A(g) states that it shall be the duty of citizens to have compassion for living creatures. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* [(2005) 8 SCC 534] , this Court held that by enacting Article 51-A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51-A(g), therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for suffering, sympathy, kindness, etc., which has to be read along with Sections 3, 11(1)(a) and (m), 22, etc. of the PCA Act.

68. Article 51-A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression “humanism” which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, to understand benevolence, compassion, mercy, etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of the PCA Act as well as in Sections 3 and 11 of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51-A(h). Both Articles 51-A(g) and (h) have to be read into the PCA Act, especially into Section 3 and Section 11 of the PCA Act and be applied and enforced.”

(emphasis added)

37. The law laid down by the Apex Court in the said decision can be summarized as under:

- (a) Under Clause (g) of Article 51A of the Constitution of India, it is the fundamental duty of every citizen to have compassion for living creatures which means concern for their suffering, sympathy, kindness, etc.;
- (b) Clause (h) of Article 51A of the Constitution of India provides that it shall be the duty of every citizen to develop humanism which includes sensibility for our species;
- (c) Clauses (g) and (h) of Article 51A of the Constitution of India will have to be read into the PCA Act and especially into Sections 3 and 11 thereof;
- (d) Article 21 of the Constitution of India protects any disturbance from the basic environment which includes animal life which is necessary for human life;

- (e) So far as the animals are concerned, life means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity;
- (f) Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Clause (g) of Article 51A of the Constitution of India;
- (g) Right to dignity and fair treatment is not confined to human beings alone, but it applies to animals as well;
- (h) Right not to be beaten, kicked or overridden is also a right recognized by Sections 3 and 11 of the PCA Act;

38. It is in this context that the provisions of PCA Act has to be examined. Sections 3 and 11 of the PCA Act read thus:

“3. Duties of persons having charge of animals.—It shall be 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.”

“11. Treating animals cruelly.—(1) If any person—

- (a) 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 animal to be so treated; or
- (b) 1 [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed; or
- (c) wilfully and unreasonably administers any injurious drug or injurious substance to 2 [any animal] or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by 3 [any animal]; or
- (d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or
- (e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or
- (f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or
- (g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or
- (h) being the owner of 4 [any animal], fails to provide such animal with sufficient food, drink or shelter; or
- (i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or
- (j) wilfully permits any animal, of which he is the owner, to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or
- (k) offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason

of mutilation, starvation, thirst, overcrowding or other ill-treatment; or

5[(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or]

6[(m) solely with a view to providing entertainment—

(i) confines or causes to be confined any animal including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal; or

(ii) incites any animal to fight or bait any other animal; or]

(n) 7[* * *] organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting;

he shall be punishable, 8 [in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.]

(2) For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall apply to—

(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or 9 [by such other methods as may be prescribed]; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the

destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.”

39. The fundamental duty of a citizen under Clause (g) of Article 51A of the Constitution of India to show compassion to living beings is required to be read with Sections 3 and 11 of the PCA Act. The affidavits filed by Shri Dilip Vishnu Raut and in particular the affidavit dated 12th December 2013 shows that the Traffic Police are conscious of the law laid down by the Apex Court in the aforesaid decision and, therefore, in Paragraph 2 of the said affidavit, he has clearly opined that plying horses on concrete and tar surfaces in the city causes various diseases to the horses. In his affidavits, he has referred to the pathetic condition in which horses are maintained. What is suggested is that with a view to prevent the horses from being subjected to unnecessary pain and suffering, the use of horse driven carriages in Mumbai is required to be banned. Thus, the opinion formed by the Traffic Police is consistent with the law laid down by the Apex Court. Hence, we uphold the stand taken by the Police.

40. There is another aspect of the case. The activity of using horse driven carriages only for joyrides solely for human pleasure is an avoidable human activity. In Paragraph 71 of the decision of the Apex Court in the case of *Animal Welfare Board of India v. A. Nagaraja and*

*Others*⁵, it was held thus:

“71. We have, however, lot of avoidable non-essential human activities like Bullock-cart race, Jallikattu etc. Bulls, thinking that they have only instrumental value are intentionally used though avoidable, ignoring welfare of the Bulls solely for human pleasure. Such avoidable human activities violate rights guaranteed to them Under Sections 3 and 11 of PCA Act. AWBI, the expert statutory body has taken up the stand that events like Jallikattu, Bullock-cart race etc. inherently involve pain and suffering, which involves both physical and mental components, including fear and distress. Temple Grandin and Catherine Johnson, in their work on "Animals in Translation" say:

“The single worst thing you can do to an animal emotionally is to make it feel afraid. Fear is so bad for animals I think it is worse than pain. I always get surprised looks when I say this. If you gave most people a choice between intense pain and intense fear, they'd probably pick fear”.

Both anxiety and fear, therefore, play an important role in animal suffering, which is part and parcel of the events like Jallikattu, Bullock-cart Race etc.”

Hence, the activity of using the horse driven carriages only for joyrides is in violation of Sections 3 and 11 of the PCA Act.

41. Now there is another subject matter of challenge which is in relation to the stables for horses. In the affidavit of Dr. Suresh Kashinath Madane, the Assistant Health Officer of the Municipal Corporation, it is stated that there are 10 stables in the City which do

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not have valid licenses.

42. It will be necessary to make a reference under Section 394 of the said Act of 1888. Section 394 of the said Act of 1888 reads thus:

- “394. (1) Except under and in accordance with the terms and conditions of the licence granted by the Commissioner, no person shall—
- (a) keep, or suffer or allow to be kept, in or upon any premises.
 - (i) any article specified in Part I of Schedule M; or
 - (ii) any article specified in Part II of Schedule M, in excess of the quantity therein specified as the maximum quantity (or where such article is kept along with any other article or articles specified in that Schedule, such other maximum quantity as may be notified by the Commissioner) of such article which may at any one time be kept in or upon the same premises without a licence;
 - (b) keep, or suffer or allow to be kept, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of Schedule M;
 - (c) keep, or suffer or allow to be kept, in or upon any premises, horses, cattle or other four-footed animals for sale, for letting out on hire or for any purpose for which any charge is made or any remuneration is received, or for the sale of any produce thereof;
 - (d) keep or use, or suffer or allow to be kept or used, in or upon any premises, any article or animal which, in the opinion of the Commissioner, is dangerous to life, health or property, or likely to create a nuisance either from its nature or by reason of the manner in which, or the conditions under which, the same is, or is proposed to be, kept or used or suffered or allowed to be kept or used;
 - (e) carry on or allow or suffer to be carried on, in or upon any premises.—
 - (i) any of the trades specified in Part IV of Schedule M, or any process or operation connected with any such trade;
 - (ii) any trade, process or operation, which in the opinion of, the Commissioner, is dangerous to life, health or property, or likely to create a nuisance either from its nature or by reason of

the manner in which, or the conditions under which, the, same is, or is proposed to be carried on;

- (f) carry on within Greater Bombay or use or allow to be used any premises for, the trade or operation of a carrier.
- (2) The State Government may by notification in the Official Gazette, add to, amend or delete any item in Schedule M and thereupon, the said Schedule shall be deemed to be amended accordingly but without prejudice to anything done or omitted to be done before such amendment.
- (3) A person shall be deemed—
 - (a) to have known that keeping any article or animal or carrying on a trade process or operation is, in the opinion of the Commissioner, dangerous or likely to create a nuisance within the meaning of clause (d) or as the case may be paragraph (ii) of clause (e) of sub-section (1) after written notice to that effect, signed by the Commissioner, has been served on such person or affixed to the, premises to which it relates;
 - (b) to keep or to suffer or allow the keeping of an article or animal or to carry on or to allow to be carried on a trade, process or operation within the meaning of clause (d) or, as the case may be, paragraph (ii) of clause (e) of sub-section (1), if he does any act in furtherance of keeping of such article or animal or carrying on of such trade, process or operation or is in any way engaged or concerned therein whether as principal, agent, clerk, master, servant, workman, handicraftsman, watchman or otherwise.
- (4) If it appears to the Commissioner that the keeping of any article or animal or the carrying on of any trade, process or operation, in or upon any premises, is dangerous or likely to create a nuisance within the meaning of clause (d), or paragraph (ii) of clause (e), of sub-section (1), the Commissioner may, by written notice, require the person keeping the article or animal or suffering or allowing it to be kept or the person carrying on the trade, process or operation or, allowing it to be carried on, as the case may be, to take such measures (including discontinuance of the use of the premises for any such purpose) as may be specified by him in such notice in order to prevent such danger or nuisance and if such measures are not taken within the specified time, the Commissioner may seize and carry away or seal such article or animal or any machinery or device used in connection with such trade, process or operations. Any article or animal or machinery or device so seized and carried away or sealed may be redeemed within a period of one month from the date

of seizure, on payment of such sum and subject to such conditions as to future use or disposition of such article or animal, machinery or device as may be fixed by the Commissioner in that behalf:

Provided that, if any article or animal so seized and carried away or sealed is of an explosive or dangerous nature, the Commissioner may by order in writing cause the same to be forthwith destroyed or otherwise disposed of, as he thinks fit:

Provided further that, if any article or animal or machinery or device so seized and carried away or sealed is not claimed and redeemed by the owner or person found in possession thereof, the Commissioner may by order in writing cause the same to be sold by auction or otherwise disposed of as he thinks fit, forthwith if the article or animal is of a perishable nature, and in any other case after the expiry of the aforesaid period of one month.

The proceeds of the sale or other disposal (if any) shall, after defraying therefrom the cost of the sale or such disposal, be paid to the owner or person found in possession of the article or animal or machinery or device sold or disposed of.

(5) It shall be in the discretion of the Commissioner—

- (a) to grant any licence referred to in sub-section (1), subject to such restrictions or conditions (if any,) as he shall think fit to specify, or
- (b) for the purposes of ensuring public safety, to withhold any such licence:

Provided that, the Commissioner when withholding any such licence shall record his reasons in writing for such withholding and furnish the person concerned a copy of his order containing the reasons for such withholding:

Provided further that, any person aggrieved by an order of the Commissioner under this sub-section may, within sixty days of the date of such order, appeal to the Chief Judge of the Small Cause Court, whose decision shall be final.

(6) Every person to whom a licence is granted by the Commissioner under sub-section (5) shall—

- (a) keep such licence in or upon the premises if any, to which it relates;
- (b) put up a board outside such premises on a conspicuous part, indicating thereon the nature of the article or animal kept or the trade, process or operation carried on, in or upon the premises; the municipal licence number, if any, in respect thereof and the name and local address of the

owner or occupier or person in charge of the premises;

- (c) put proper label on the packing or container of every licensable article to indicate its name, contents and hazardous nature.
- (7) The Commissioner may from time to time with the approval of the standing committee specially exempt from the operation of this section any mills for spinning or weaving, cotton, wool, silk or jute or any other large, mill or factory.”

43. Thus, no person can keep horses or cattle for any purpose in any premises without obtaining a licence from the Commissioner of the Municipal Corporation. The guidelines issued by the Mumbai Municipal Corporation require certain special conditions to be imposed while granting licences under Section 394 in relation to the stables. Admittedly, none of the stables in which the horses are kept in the City have a licence under Section 394 of the said Act of 1888. It is contended that certain Appeals are pending for challenging the action of refusal to grant/refusal to renew the licenses. It thus follows that the Municipal Corporation will have to take firm action under the said Act of 1888 and in particular under Section 471 thereof in respect of the illegal stables of the horses and the owners thereof.

44. As far as the condition of the stables is concerned, there are large number of reports on record. It will be necessary to make a brief reference to the affidavits on record. Dr. Manilal Valliyate, Director of Veterinary Affairs of PETA on behalf of the PETA has filed an affidavit

dated 18th July 2013 to which he has annexed reports on the surprise inspection carried out on 15th and 16th July 2013 of the horse stables at Tabela Chawl in Kamathipura, P. D'mello Road and Nariman Point. He has stated that the Animal Welfare Board of India by its letter dated 11th July 2013 authorised him to take inspection of the horse stables and sheds of working equines in and around Mumbai. A team was constituted to carry out inspection which included he himself, Shri Sunil Havaladar, Animal Welfare Officer, Dr. Chetan Yadav and a representative of the Mumbai Municipal Corporation. Dr. Avinash S. Patil, Senior Veterinary Officer accompanied Dr. Manilal Valliyate. We have carefully perused the reports on the said surprise inspection. The reports are that the condition of the stables was completely unhygienic and that the same does not meet even the basic scientific specifications on animal housing. It is recorded that the stables are violative of the provisions of the PCA Act and in particular Section 11 thereof. Number of such inspection reports are on record. Last of such inspection reports is of 11th September 2014 on the Inspection of horse stable in Tabela Chawl in Kamathipura, the horse stable at P. D'mello Road and horse stable at Nariman Point. The inspection team comprised of Dr. Ajay Vijay Khanvilkar, Associate Professor, Department of Livestock Product Management, Dr. Rahul Prakash Kolhe, the Assistant Professor, Department of Veterinary Public Health, Dr. Rakesh Chittora, Veterinary Trainer and Shri Sunil Hawaldar, Senior Animal Welfare Officer. The

findings about the condition of the stables are no different from the findings in the earlier reports. The conclusion in the report is that the stables do not fulfill the minimum standards of horse housing and considering the potential threats which these stables pose to public health and safety, the same should be shut down immediately. We must note here that the condition of the stables in the city of Mumbai of the horses is also taken into consideration by the said Shri Dilip V. Raut.

45. We must note here that the Eighth Respondent has contradicted the stand taken in the said reports and several affidavits on record. The contention raised is that the stables are not in unhygienic condition. The contention is that the horses are being properly looked after. Though we cannot record any finding on the said disputed questions, what is relevant is that none of the stables have licenses under Section 394 of the said Act of 1888 and there is material on record in the form of opinion expressed by the large number of experts after visiting the stables that the same are in unhygienic conditions and the same lack the basic facilities for animal housing. In fact, their contention is that keeping horses in such stables violates Section 11 of the PCA Act. A large number of photographs on record support what the experts have said about the poor condition of the stables.

46. The entire controversy will have to be considered in the light the principles laid down by the Apex Court in its decision in the case of Animal Welfare Board of India as regards the rights of the animals in the context of Article 21 of the Constitution of India and the fundamental duties of the citizens. The decisions relied upon by the learned counsel appearing for the Eighth Respondent are essentially as regards the right to carry on business, constitutionality of legislation and limitations on the power of the Writ Court.

47. We summarize our conclusions as under:

- (a) The victorias and carriages drawn or propelled by the horses in the city of Mumbai are not being used for the purposes of plying for hire for conveyance of persons and goods and, therefore, the same are not 'public conveyance" within the meaning of Clause (b) of Section 2 of the said Act of 1920. Therefore, the owners of the said wheeled vehicles (victorias or carriages) are not entitled to licences under Sub-section (1) of Section 3 of the said Act of 1920. Similarly, the horses used for drawing the said victorias or carriages in the city of Mumbai cannot be granted licences under Sub-section (1) of Section 8 and the drivers of such wheeled vehicles driven by

horses in the City of Mumbai are not entitled to the licences under Section 11 of the said Act of 1920;

- (b) Therefore, the activity of running carriages and/or victorias driven by the horses in the city of Mumbai for joyrides is completely illegal and the same is required to be stopped;
- (c) Even assuming that the horse drawn carriages and/or victorias in the city of Mumbai fall in the definition of the “public conveyance” under Clause (b) of Section 2 of the said Act of 1920, we hold that the opinion expressed by the Traffic Police of Mumbai that the power under Sub-section (1A) of Section 5 of the said Act of 1920 deserves to be exercised in relation to the said wheeled vehicles is legal and valid and the said opinion has been formed on the basis of the consideration of all relevant and germane factors including the condition of traffic in the city of Mumbai;
- (d) The order dated 16th May 2014 passed by the Joint Commissioner of Police (Traffic) is on the basis of

the ad-interim order of this Court dated 2nd May 2014 and the same does not in any manner affect the opinion expressed by the Traffic Police. The said ad-interim order of this Court is always subject to the final order passed in this Public Interest Litigation;

(e) The renewal of licences, if any, under the said Act of 1920 made during the pendency of this PIL are also subject to final orders passed in this PIL;

(f) None of the stables for horses in the city of Mumbai are possessing licences under Section 394 of the said Act of 1888. Therefore, the Mumbai Municipal Corporation shall close down the same subject to the outcome of the pendency of the Appeals, if any. The Municipal Corporation shall take appropriate action under the said Act of 1888 including an action under Section 471 thereof;

(g) As far as the use of ponies/horses for joyrides is concerned, in case of violation of PCA Act, all the Authorities concerned will have to take appropriate

action in accordance with law. The Petitioners and the intervenors are free to point out the instances of violations to the Concerned Authorities who shall be under an obligation to take action in accordance with law;

- (h) Going by the stand taken by the Eighth Respondent, it can be said that about 700 families would be affected if the business of running carriages driven by the horses in the city of Mumbai is prohibited. Therefore, we propose to grant time of six months to the State Government to come out with a scheme for rehabilitation of the families of the persons who are carrying on business of running horse carriages for joy rides whether as the owners of the carriages or the drivers of the carriages or the care-takers of the horses used for such carriages. The State Government will have to also formulate a scheme for rehabilitation of the horses used for plying victorias in the city of Mumbai. If any reputed Animal Welfare Organization comes forward to take care of the horses, the State Government is free to consider the said offer. The State Government will

have to ascertain the number of affected families and ensure that all the families get the benefit of the Scheme;

- (i) For implementation of the scheme, some time will have to be granted. Therefore, we propose to grant time of one year to implement the scheme. Correspondingly, time will have to be granted to the Mumbai Municipal Corporation to close down the stables used for horses;

48. Before we dispose of this PIL, we must clarify that we are dealing with the issue of carriages driven by the horses used in the city of Mumbai. The finding recorded by us that the said carriages are not public conveyance within the meaning of the said Act of 1920 is naturally confined to the city of Mumbai as we are conscious of the fact that in other parts of the State, the horse driven carriages are still being used as a mode of public conveyance. We, therefore, clarify that the directions issued under the Judgment and Order of this Court will remain confined to the city of Mumbai. However, appropriate legal action will have to be taken by the State if it is found that the horse driven carriages are used only for joyrides.

49. Hence, we dispose of this Public Interest Litigation by passing the following order:

ORDER :

- (a) We hold that the use of horse driven carriages/victorias in the city of Mumbai for joy rides is completely illegal;
- (b) All the Authorities of the State shall ensure that use of such horse driven carriages and/or victorias in the city of Mumbai shall be completely stopped on expiry of a period of one year from today;
- (c) We direct the State Government to come out with a scheme for rehabilitation of the families of those who are associated with the business of running carriages driven by the horses in the city of Mumbai for joyrides. The State Government shall also formulate a scheme for rehabilitation of the horses used for plying victorias in the city of Mumbai. If any Animal Welfare Organization comes forward to take care of the horses, the State Government shall be free to consider the said option. The State Government shall also identify the number of

families affected within the stipulated time of six months;

- (d) The State Government shall formulate the schemes and shall place it on record of this Court on or before 31st December 2015;
- (e) We direct the Mumbai Municipal Corporation to close down all the stables in the city of Mumbai meant for horses and ponies on expiry of a period of one year from today. The Municipal Corporation shall also take action under the said Act of 1888 including under Section 471 thereof;
- (f) We direct all the concerned Authorities of the State to take action in accordance with the provisions of the PCA Act in case of violation of the provisions of the PCA Act by use of horses and ponies for joyrides in the city of Mumbai. The Petitioners and the intervenors are free to point out the instances of violations to the Concerned Authorities who shall be under an obligation to take action in accordance with law ;

- (g) Compliance affidavits shall be filed by all concerned Respondents on or before 31st December 2015. For considering compliance, this Public Interest Litigation shall be listed under the caption of “Directions” on the first day of reopening of this Court after the Christmas Vacation of the year 2015;
- (h) The Rule is made partly absolute on above terms;
- (i) There will be no order as to costs;
- (j) All the pending Chamber Summonses and the Notices of Motion do not survive and the same are disposed of.

(A.K. MENON, J)

(A.S. OKA, J)