SUPREME COURT OF INDIA

Chief Secretary to the Govt.,Petitioners Chennai Tamilnadu & Ors.

Vs.

Animal Welfare Board & Anr.

C.A.No.5387 of 2014

(Dipak Misra and Rohinton Fali Nariman,JJ.,)

28.11.2016

JUDGMENT

Dipak Misra,J.,

1. Ordinarily, the review petitions are circulated and upon appreciation of the grounds raised therein, they are either dismissed or listed for hearing in the open Court. The present review petition, regard being had to the grounds expounded and the lis in question, has been listed for hearing in open Court to test the defensibility of the arguments propounded on behalf of the State of Tamil Nadu. Be it noted, Dr. Abhishek Manu Singhvi, learned senior counsel, at the commencement of hearing, submitted that he has instructions to appear on behalf of the Animal Welfare Board and oppose the prayers sought in the application for review singularly on the ground that this Court while dealing with an application for review does not exercise appellate jurisdiction. Structuring the said edifice he would submit that each of the grounds that finds place in the application for review may be a justifiable ground to be raised in appeal, but is absolutely unwarranted to be entertained for the purpose of exercising review jurisdiction.

2. For adjudication of the review petition, certain facts need to be stated. On 11th July, 2011, the Ministry of Environment and Forests issued a Notification in exercise of powers conferred by Section 22 of the Prevention of Cruelty to Animals Act, 1960 (for brevity, 'the PCA Act') in supersession of the Notification of the Government of India in the erstwhile Ministry of Social Justice and Empowerment No.G.S.R.619(E) dated 14-10-1998. The relevant part of the Notification is extracted hereunder:-

> "except as respects things done or omitted to be done before such supersession, the Central Government, hereby specifies that the following animals shall not be exhibited or trained as performing animals, with effect from the date of publication of this notification, namely:-
>
> 1. Bears
> 2.Monkeys

3.Tigers
4.Panthers
5.Lions
6.Bulls"

3. The said Notification could not have been allowed to be suffered in silence. The said Notification was challenged in the High Court of Bombay which upheld the validity of the Notification. In the meantime, it is necessary to note that the constitutional validity of the Tamil Nadu Regulation of Jallikattu Act, 2009 (for brevity, 'the 2009 Act') was called in question before the High Court of Madras, which upheld the same. The judgments from the High Courts of Bombay and Madras were assailed before this Court by various parties and this Court dwelled upon the controversy in *Animal Welfare Board of India vs. A. Nagaraja and Others*[1]. It is apt to mention here that a Writ Petition under Article 32 of the Constitution of India had also been filed by People for Ethical Treatment of Animals (PETA). All these matters were dealt with by a common judgment wherein this Court after adverting to many aspects recorded its conclusion and issued certain directions which are reproduced below:-

"1) We declare that the rights guaranteed to the Bulls under Sections 3 and 11 of PCA Act read with Articles 51A(g) & (h) are cannot be taken away or curtailed, except under Sections 11(3) and 28 of PCA Act.

2) We declare that the five freedoms, referred to earlier be read into Sections 3 and 11 of PCA Act, be protected and safeguarded by the States, Central Government, Union Territories (in short "Governments"), MoEF and AWBI.

3) AWBI and Governments are 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.

4) AWBI and Governments are directed to take steps to prevent the infliction of unnecessary pain or suffering on the animals, since their rights have been statutorily protected under Sections 3 and 11 of PCA Act.

5) AWBI is also directed to ensure that the provisions of Section 11(1)(m)(ii) scrupulously followed, meaning thereby, that the person-in-charge or care of the animal shall not incite any animal to fight against a human being or another animal.

6) AWBI and the Governments would also see that even in cases where Section 11(3) is involved, the animals be not put to unnecessary pain and suffering and adequate and scientific methods be adopted to achieve the same.

7) AWBI and the Governments should take steps to impart education in relation to human treatment of animals in accordance with Section 9(k) inculcating the spirit of Articles 51A(g) & (h) of the Constitution.

8) Parliament is expected to make proper amendment of the PCA Act to provide an effective deterrent to achieve the object and purpose of the Act and for violation of Section 11, adequate penalties and punishments should be imposed.

9) Parliament, it is expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honour.

10) The Governments would see that if the provisions of the PCA Act and the declarations and the directions issued by this Court are not properly and effectively complied with, disciplinary action be taken against the erring officials so that the purpose and object of PCA Act could be achieved.

11) The TNRJ Act is found repugnant to PCA Act, which is a welfare legislation, hence held constitutionally void, being violative or Article 254(1) of the Constitution of India.

12) AWBI is directed to take effective and speedy steps to implement the provisions of PCA Act in consultation with SPCA and make periodical reports to the Governments and if any violation is noticed, the Governments should take steps to remedy the same, including appropriate follow-up action."

4. In support of the application, it is contended by Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu that the Court has fallen into error by treating the 2009 Act to be repugnant to the provisions of the PCA Act and declaring the State Act as unconstitutional. According to the learned senior counsel, there is no repugnancy as the 2009 Act protects the bulls and does not remotely suggest of any cruel treatment to the animal. It is his submission that the concept of repugnancy as is understood in the context of Article 254(1) of the Constitution has been erroneously applied to the factual matrix and, therefore, the judgment is required to be reviewed. Learned senior counsel would further put forth that Jallikattu is a socio-cultural event which has association with religion and hence, has the protection of Article 25 of the Constitution and in such a factual scenario declaring the 2009 Act as ultra vires is erroneous which deserves to be reviewed. He has also submitted that the Court has completely flawed in its opinion on repugnancy, for the 2009 Act would come within the ambit and sweep of Entries 14 and 15 of List II, that is, the State List and, therefore, only the State legislature has the competence to legislate in the said field and the question of repugnancy does not arise. He has comprehensively taken us through the various provisions of the Act to which we shall advert to in course of our deliberation.

5. Dr. Singhvi, learned senior counsel, who has entered caveat, would submit that the analysis made by the two-Judge Bench in A. Nagaraja (supra) as regards repugnancy cannot be flawed in view of the principles laid down by this Court in *Deep Chand vs. The State of Uttar Pradesh and others*[2] . It is urged by him that there is a direct collision between the two enactments inasmuch as the one stands for welfare of the animals treating them with kindness and compassion and the other compels them to participate in an event for satisfying

inferior pleasures which are associated with adventure (sophistically called a sport) of man. Additionally, it is submitted by Dr. Singhvi, that the 1960 Act covers the entire field and there is no scope for the State legislature to bring such law that would frontally run counter to the PCA Act. It is further urged by him that the State legislation remotely has no connection with Entries 14 and 15 of the State List but both the Acts have the root in Entry 17 of the Concurrent List.

6. In reply to the submission of Dr. Singhvi, Mr. Naphade has contended that the Central Act has not covered the arena in its entirety and, in any case, there may be some kind of overlapping and, therefore, this Court should apply the doctrine of pith and substance to uphold the enactment and review the judgment even if it is held to be the subject matter of Concurrent List.

7. To appreciate the rivalised submissions, it is necessary to understand the purpose and scheme of both the enactments. The Statement of Objects and Reasons of the 1960 Act reads as follows:-

> " Statement of Objects and Reasons The Committee for the prevention of Cruelty to animals appointed by the Government of India drew attention to a number of deficiencies in the Prevention of Cruelty to Animals Act, 1890 (Central Act No.11 of 1980) and suggested a replacement by a more comprehensive Act. The existing Act has restricted scope as:
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> (1) it applies only to urban areas within municipal limits;
>
> (2) it defines the term 'animal' as meaning any domestic or captured animal and thus contains no provision for prevention of cruelty to animals other than domestic and captured animals;
>
> (3) it covers only certain specified types of cruelty to animals; and
>
> (4) penalties for certain offences are inadequate. The Bill is extended to give effect to those recommendations of the Committee which have been accepted by the Government of India and in respect of which Central Legislation can be undertaken. The existing Act is proposed to be replaced. Besides declaring certain type of cruelty to animals to be offences and providing necessary penalties for such offences and making some of the more serious of them cognizable, the Bill also contains provisions for the establishment of an Animal Welfare Board with the object of promoting measures for animal welfare. Provisions is also being made for the establishment of a Committee to control experimentation on animals when the Government, on the advice of the Animal Welfare Board, is satisfied that it is necessary to do so for preventing cruelty to animals during experimentation. The Bill also contains provisions for licensing and regulating the training and performance of animals for the purpose of any entertainment to which the public are admitted through sale of tickets."

8. The preamble to the PCA Act lays the postulatethat The purpose of the Act is to prevent the infliction of unnecessary pain or suffering on animals and hence, the necessity was felt to amend the law relating to the prevention of cruelty to animals. Section 2 of the PCA Act, which is the dictionary clause, defines under Section 2(a) the term 'animal'. "Animal" means any living creature other than a human being. Section 2(d) that defines domestic animal reads as follows:-

> "domestic animal" means any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose for the use of man or which, although it neither has been nor is being nor is intended to be so tamed, is or has become in fact wholly or partly tamed."

9. Section 3 enumerates the duties of persons having charge of animals. The said provision is as under:-

> "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."

10. Section 11 of the PCA Act which occurs in Chapter III that deals with cruelty to animals, generally provides number of situations where animals are meted with cruelty. Section 11(1)(a) reads as under:-

> "11(1)(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 animals to be so treated."

11. On a plain reading of the said definition, it is quite vivid that a person cannot treat an animal otherwise so as to subject it to unnecessary pain or suffering. Section 11(2) (m) which has been introduced with effect from 30th July, 1982, reads as follows:-

> "11(2)(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."

12. The aforesaid provision gives stress on inciting an animal to fight or bait any other animal. Sub-section (3) of Section 11 carves out certain exceptions which are as follows:-

> "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 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 manking unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

13. On a perusal of the said sub-section, it is quite limpid that it is embedded on the principle of human requirement, survival of life and certain other facets; and that is why the judgment puts it under the heading of "Doctrine of Necessity".

14. Sections 21 and 22 deal with performing animals. The said provisions are reproduced below:-

"21. "Exhibit" and "train" defined.- In this Chapter, "exhibit" means exhibit at any entertainment, to which the public are admitted through sale of tickets and "train" means train for the purpose of any such exhibition, and the expressions "exhibitor" and "trainer" have respectively the corresponding meanings.

22. Restriction on exhibition and training of performing animals.- No person shall exhibit or train-

(i) any performing animal unless he is registered in accordance with the provisions of this Chapter;

(ii) as a performing animal, any animal which the Central government may, by notification in the Official Gazette, specify as an animal which shall not be exhibited or trained as a performing animal."

15. Having scanned the anatomy of the PCA Act, it is obligatory on our part to refer to the 2009 Act as Mr. Naphade, learned senior counsel would urge with emphasis that the purpose of the Act is to regulate Jallikattu in the State of Tamil Nadu and, therefore, it does not intend to treat the bulls with any kind of cruelty. "Jallikattu" has been defined under Section 2(c), which reads as under:-

"2(c). "Jallikattu" includes "manjuvirattu", "oormaadu", "vadamadu", "erudhu vidum vizha" and all such events involving taming of bulls."

16. Section 3 of the 2009 Act treats conducting of Jallikattu as an "event". Section 4 casts responsibility of the organizer who organizes the event. Section 5 requires the Collector of

the district to make arrangements. We think it appropriate to reproduce Section 5 in entirety. It reads as under:-

> "5. The Collector shall. –
>
> (i) ensure double barricading of the arena at the minimum of six feet height so that bulls will not jump the double barricading and avoid causing of injuries to the spectators;
>
> (ii) ensure the number of spectators in the gallery shall not exceed the limit prescribed by the Public Works Department;
>
> (iii) ensure safety certificate is obtained from the Public Works Department for the double barricading and for the safety of the gallery;
>
> (iv) ensure that the bulls are free of any diseases and not intoxicated or administered with any substance like nicotine, cocaine with the object of making them more aggressive or ferocious with the assistance of the Animal Husbandry Department;
>
> (v) arrange to provide adequate police protection at the places where the event is held;
>
> (vi) arrange to provide adequate medical facilities including the ambulance at the place where the event is held, to give medical treatment and constitute a medical team for such purpose;
>
> (vii) arrange to necessary drinking water supply as well as sanitation facilities in the place where the event is to be held;
>
> (viii) authorise an officer not below the rank of a Deputy Collector to look after each item of eventand arrangement like checking up of bulls, checking up of bull tamers, checking up of the barricading and gallery arrangements, medical facilities, water supply, sanitary arrangements and safety of spectators and any other requirement in connection with the event;
>
> (ix) arrange to give wider publicity of the provisions of the Prevention of Cruelty to Animals Act, 1960 and the rules framed thereunder and the risk involved in participating in the event;
>
> (x) ensure the presence of Animal Welfare activists representing the Animal Welfare Board established under the Prevention of Cruelty to Animals Act, 1960 during the conduct of the event;
>
> (xi) videograph the entire event and provide the same to the Government or any other authority as and when required; and

(xii) make all such other arrangements as may be prescribed."

17. On a careful scrutiny of the 2009 Act, it is manifest that the events can include taming of bulls and Jallikattu is named as an event. True it is, there are certain responsibilities cast on the Collector to ensure that no cruelty is meted to the bull under the PCA Act. The Court dwelling upon in detail the nature of the event has held thus:-

> "Jallikattu and other forms of bulls race, as the various reports indicate, cause considerable pain, stress and strain on the bulls. Bulls, in such events, not only do move their head showing that they do not want to go to the arena but, as pain inflicted in the vadi vasal is so much, they have no other go but to flee to a situation which is adverse to them. Bulls, in that situation, are stressed, exhausted, injured and humiliated. Frustration of the bulls is noticeable in their vocalisation and, looking at the facial expression of the bulls, ethologist or an ordinary man can easily sense their suffering. Bulls, otherwise are very peaceful animals dedicating their life for human use and requirement, but they are subjected to such an ordeal that not only inflicts serious suffering on them but also forces them to behave in ways, namely, they do not behave, force them into the event which does not like and, in that process, they are being tortured to the hilt. Bulls cannot carry the so-called performance without being exhausted, injured, tortured or humiliated. Bulls are also intentionally subjected to fear, in- jury both mentally and physically—and put to unnecessary stress and strain for human pleasure and enjoyment, that too, a species which has totally dedicated its life for human benefit, out of necessity.
>
> Thus, the contention that no cruelty is meted to them while involving them in the event of Jallikattu does not commend acceptation and it is extremely difficult to hold that the Court in its judgment had factually erred.

18. The hub of the matter is whether such an act is in consonance with the PCA Act. In A. Na.gara.ja (supra), the two-Judge Bench referred to the principles of repugnancy and, thereafter analyzed the various provisions and held as follows:-

> "88. PCA Act, especially Section 3, coupled with Section 11(1)(m)(ii), as already stated, makes an offence, if any person solely with a view to provide entertainment, incites any animal to fight. Fight can be with an animal or a human being. Section 5 of TNRJ Act envisages a fight between a Bull and Bull tamers, that is, Bull tamer has to fight with the bull and tame it. Such fight is prohibited under Section 11(1)(m)(ii) of PCA Act read with Section 3 of the Act. Hence, there is inconsistency between Section 5 of TNRJ Act and Section 11(1)(m)(ii) of PCA Act.
>
> 89. TNRJ Act, in its Objects and Reasons, speaks of ancient culture and tradition and also safety of animals, participants and spectators. PCA Act was enacted at a time when it was noticed that in order to reap maximum gains, the animals were being exploited by human beings, by using coercive methods and by inflicting unnecessary pain. PCA Act was, therefore, passed to prevent infliction of unnecessary pain or

> suffering and for the well-being and welfare of the animals and to preserve the natural instinct of the animal. Over-powering the performing animal was never in the contemplation of the PCA Act and, in fact, under Section 3 of the PCA Act, a statutory duty has been cast on the person who is in-charge or care of the animal to ensure the well-being of such animal and to prevent infliction on the animal of unnecessary pain or suffering. PCA Act, therefore, cast not only duties on human beings, but also confer corresponding rights on animals, which is being taken away by the State Act (TNRJ Act) by conferring rights on the organizers and Bull tamers, to conduct Jallikattu, which is inconsistent and in direct collision with Section 3, Section 11(1)(a), 11(1)(m)(ii) and Section 22 of the PCA Act read with Articles 51A(g) & (h) of the Constitution and hence repugnant to the PCA Act, which is a welfare legislation and hence declared unconstitutional and void, being violative of Article 254(1) of the Constitution of India."

19. Submission of Mr. Naphade is that there has been inappropriate appreciation of the 2009 Act and the principle of repugnancy has been applied in a wholly fallacious manner. It is also put forth that the Court has been influenced by the international concept of animal welfare and further erred in referring to the Upanishads which should not have been referred to.

20. Before adverting to the issue of repugnancy, we think we should deal with submission that pertains to the reference to Upanishads and international perception that is sought to be criticized. The Court in A. Nagaraja (supra) in paragraph 55 has translated few lines from Isha-Upanishad, which read as follows:-

> "The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

21. We do not think allusion to Isha-Upanishad in the context of animal welfare is alien to the context. The Court, we are inclined to think, while dealing with law and legal principles can refer to the cultural ethos and the ancient texts of this country as far as they do not run counter to constitutional and statutory thought and principle. As far as the international concept is concerned that pertains to the thinking that "the world that is thought to be big is not that big" or for that matter reference to various concepts that relate to compassion to animals and the steps taken. We do not perceive any legal infirmity in the same. It cannot be said that the reference is unwarrantable. On the contrary, they present a holistic analysis that is in consonance with our constitutional value. We must say the criticism is unfair. We are obliged to say so, for philosophy of compassion can have manifold articulations.

22. Coming back to the facet of repugnancy, we may profitably refer to what has been stated by the Constitution Bench in Deep Chand (supra). In the said case, the majority has opined thus:-

> "Article 254(1) lays down a general rule. Clause (2) is an exception to that Article and the proviso qualifies the exception. If there is repugnancy between the law made by

the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, the law made by Parliament shall prevail to the extent of the repugnancy and the law made by the State shall, to the extent of such repugnancy, be void. Under cl. (2), if the Legislature of a State makes a provision repugnant to the provisions. Of the law made by Parliament, it would prevail if the legislation of the State received the assent of the President. Even in such a case, Parliament may subsequently either amend, vary or repeal the law made by the Legislature of a State."

23. In *M. Karunanidhi vs. Union of India*[3], the Constitution Bench after referring to Deep Chand (supra), *Zaveribhai Amaidas vs. State of Bombay*[4] opined thus:-

"On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:-

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4.That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

24. Be it stated, in the said case, a passage from the *State of Orissa vs. M.A. Tulloch & Co.*[5], *was* reproduced. The said passage, being instructive, is extracted hereunder:-

"Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation."

25. When we analyze both the enactments in juxtaposition, we find that when a bull is "tamed" for the purpose of an event, the fundamental concept runs counter to the welfare of the animal which is the basic foundation of the PCA Act. There is a frontal collision and apparent inconsistency between the PCA Act and the 2009 Act. It is inconceivable that a bull which is a domestic animal should be tamed for entertainment and a wide ground can be put forth that it is not a ticketed show, but meant for celebrating the festival of harvest. Such a celebration for giving pleasure to some, both the participating and the people watching it is such an act that is against the welfare of animals and definitely amount to treating the animal with cruelty.

26. The Court has ruled that both the Acts fall under Entry 17 of the Concurrent List. Entry 17 of Concurrent List reads as follows:-

> "Prevention of Cruelty to Animals"

27. Mr. Naphade, learned senior counsel has submitted that the 2009 Act falls under Entries 14 and 15 of List II of the VIIth Schedule of the Constitution and, therefore, the test of validity cannot be on repugnancy. Entries 14 and 15 read as under:-

> 14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
>
> 15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice."

28. We really fail to fathom how Entry 14, even remotely, can have anything to do with Jallikattu which is an event. Solely because the event takes place after the harvest, it cannot be associated with agriculture. As far as Entry 15 is concerned, it provides for preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice. The Entry is meant to confer power on the State Legislature to legislate with regard to the preservation, protection and improvement of stock and preventing any kind of animal diseases. Thus, we unhesitatingly hold the activity Jallikattu falls squarely within Entry 17 of List III and, therefore, it has to be tested on the anvil of repugnancy and it has been rightly so done and per our analysis, we do not perceive any ex facie error in the same.

29. In *State of A.P. and others vs. McDowell & Co*[6]. and others6 it has been held that the several entries in the three Lists in the Seventh Schedule are mere legislative heads and it is quite likely that very often they overlap. Wherever such a situation arises, the issue must be solved by applying the rule of pith and substance. Whenever a piece of legislation is said to be beyond the legislative competence of a State Legislature, what one must do is to find out, by applying the rule of pith and substance, whether that legislation falls within any of the entries in List II. If it does, no further question arises; the attack upon the ground of legislative competence shall fail.

30. In *ITC Ltd. vs. Agricultural Produce Market Committee and others*[7] it has been held that:-

> "... The power to legislate with which we are con¬cerned is contained in Article 246. The fields are demarcated in the various entries. On reading both, it has to be decided whether the legislature concerned is competent to legislate when its va¬lidity is questioned. The ambit and scope of an entry cannot be determined with reference to a parliamentary enactment."

31. We have referred to the aforesaid two authorities as we are of the convinced opinion that neither Entry 14 nor Entry 15 would cover the 2009 Act. The State Legislature could not have enacted any law like the 2009 Act. PCA and the 2009 Act rest on the bedrock of Entry 17 of the Concurrent List. We are obliged to say that there is repugnancy between the two Acts and hence, the State Act has been appositely declared ultra vires. Though the rule of pith and substance has been canvassed by Mr. Naphade, the same has to be treated as an exercise in futility, for the said principle does not apply. We have held that there is head on collision between the two statutes and we have said so because Entry 17 relates to prevention of cruelty to animals and the PCA Act covers the entire field. The 2009 Act, on the contrary, permits taming of bulls. Thus, both cannot co-exist, because they are inconsistent. The judgment in A. Nagaraja (supra) has adverted to the all aspects and we do not perceive any explicit error in the said analysis which would invite exercise of power of review.

32. We will be failing in our duty if we do not refer to the submission of Mr. Naphade, as his endeavour is to sustain the 2009 Act by placing reliance on Article 25 of the Constitution of India. Article 25 of the Constitution of India which comes under the heading "right to freedom of religion" is reproduced below:-

> "25. Freedom of conscience and free profession, practice and propagation of religion.- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
>
> (2)Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-
>
> (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
>
> (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
>
> Explanation I.- The waring and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion..

Explanation II.- In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

33. The right that is conferred under Article 25 pertains to freedom of conscience and the right to practice and profess any religion. In R*atilal Pana.ch.and Gandhi & ors. v. State of Bombay & ors*[8]. the Constitution Bench while discussing the concept of religion opined that:-

> "... Our Constitution-makers have made no attempt to define what 'religion' is and it is certainly not possible to frame an exhaustive definition of the word 'religion' which would be applicable to all classes of persons. As has been indicated in the Madras case referred to above, the definition of religion given by Fields J. in the American case of *Davis v. Beason*[9], does not seem to us adequate or precise.
>
> "The term 'religion"', thus observed the learned Judge in the case mentioned above, "has refer¬ence to one's views of his relations to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His Will. It is often confounded with cultus or form of worship of a particular sect, but is distinguishable from the latter". It may be noted that 'religion' is not necessarily theistic and in fact there are well known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs -and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well."

34. In *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*[10] it has been ruled as follows:-

> "The language of Arts. 25 and 26 is sufficiently clear to enable the Court to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. Freedom of religion in the Constitution of India is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down."

35. In *Sardar Syedna Taher Saifuddin Sahed v. State of Bombay*[11] the Court after referring to earlier decisions has held that protections given under Articles 25 and 26 are not limited to matter of doctrine or belief but they extend also to the acts done in pursuance of religion and therefore contain a guarantee for rituals and observations, ceremonies and modes of worship which are integral parts of religion. It has been further observed that what constitutes an essential part of a religious or religious practice has to be decided by the courts with

reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion.

36. On a keen appreciation of the aforesaid authorities, we are unable to hold that there is any connection or association of Jallikattu with the right of freedom of religion in Article 25. It is canvassed by Mr. Naphade that every festival has the root in the religion and when Jallikattu is an event that takes place after harvest, it has the religious flavor and such an ethos cannot be disregarded. Though the aforesaid argument is quite attractive, we have no hesitation in saying that such an interpretation is an extremely stretched one and inevitably result in its repulsion and we do so. Such kind of imaginative conception is totally alien to the fundamental facet of Article 25 and, therefore, we are compelled to repel the submission.

36. Before we part with the case, it is obligatory to state that a fresh Notification has been issued by the Union of India which is the subject matter of challenge in other writ petitions and they shall be dealt with within the parameters of PCA Act and hence, we have not adverted to the same.

37. In view of the aforesaid analysis, we do not perceive any merit in this review petition filed by the State of Tamil Nadu and, accordingly, it stands dismissed. There shall be no order as to costs.

REVIEW PETITION (CIVIL) NO.3770 OF 2016 IN CIVIL APPEAL NO.5387 OF 2014

1. None appears for the petitioner.

2. In view of the judgment pronounced in the application filed by the State of Tamil Nadu seeking review, the present review petition stands dismissed. There shall be no order as to costs.

Judgment Referred.

[1]*(2014) 7 SCC 0547*
[2]*AIR 1959 SC 0648*
[3]*(1979) 3 SCC 0431*
[4]*(1955) 1 SCR 0799*
[5]*(1964) 4 SCR 0461*
[6]*(1996) 3 SCC 0709*
[7]*(2002) 9 SCC 0232*
[8]*AIR 1954 SC 0388*
[9]*(1888) 133 US 0333*
[10]*AIR 1954 SC 0282*
[11]*AIR 1962 SC 0853*