

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

C.M. No. 1630 of 2020

In

W.P. No. 1155/2019.

Islamabad Wildlife Management Board through its Chairman
Versus
Metropolitan Corporation Islamabad through its Mayor & 4 others

S. No. of order/proceedings	Date of order/proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18-07-2020	Mr Raja Abid Hassan, Mr Owais Awan, Advocates for petitioners. Mr M. Saif Ullah Gondal, Assistant Attorney General. Malik Abdur Rehman, Advocate for MCI. Mr Nobahar Ali, Advocate for CDA. Mr Joudat Ayaz, Additional Secretary, M/o Climate Change. Dr Rizwan Asghar, Section Officer, M/o Climate Change. Syed Ali Raza Zaidi, Dy. Director (Law), M/o Climate Change.

Athar Minallah, C.J.- *Dr Anis Ur Rehman*, Chairman of the Islamabad Wildlife Management Board, at the very outset of the proceedings, has informed that, in compliance with the judgment of this Court, dated 21-05-2020, passed in W.P. No. 1155/2019 titled '*Islamabad Wildlife Management Board through its Chairman v. Metropolitan Corporation Islamabad through its Mayor and others*' (hereinafter referred to as the '**Judgment**'), the Marsh Crocodile, which had been kept in a small cage under extreme inhumane conditions at the Marghazar Zoo, Islamabad (hereinafter referred to as the '**Zoo**') was released yesterday for its onward journey to

its sanctuary situated near Sukkur in the province of Sindh. The agony of the Marsh Crocodile ended this morning at 08:30 a.m when the latter was safely and happily released in its natural home. He has further informed that, pursuant to this Court's direction given vide order, dated 11-07-2020, the Islamabad Wildlife Management Board held its fourth emergency meeting on July 13, 2020. After thorough deliberations, decisions were taken regarding the relocation of "Kaavan", the lonely elephant at the Zoo, to an appropriate sanctuary. He submitted a copy of the minutes of the meeting of the Board. The decisions relating to Kaavan's relocation to a sanctuary are reproduced as follows:-

- *It is decided that Kaavan (Asian Elephant) should be retired to Cambodia Wildlife Sanctuary, after health assessment by visiting veterinarian and staff from the sanctuary*
- *The visiting team will be guided and assisted by Prof ZB Mirza and zoo officers.*
- *The ministry may write to the MoFA to expedite the visa process of visiting vet and consultants.*
- *It has been agreed that the expenses for the visit of vets and staff from the sanctuary, medical*

tests, crate building and training and relocation transport will be borne by NGO-Free the Wild."

2. He has stated that some of the caged birds have been freed, while relocation of others is in the process. The Ministry of Climate Change, Government of Pakistan, has also issued a press release and the relevant portions thereof are as follows:-

"3. The Advisor to Prime Minister on Climate Change, Malik Amin Aslam, had earlier welcomed the decision of the Honorable Islamabad High Court and had acknowledged that under the circumstances it is sad step to take but the right one, for the betterment of the Kaavan, however, any proposal in this regard must be backed by adequate research and consideration of all factors. The Ministry of Climate Change would fully back and support all decisions relating to animals' wellbeing.

4. The Advisor to the Prime Minister stressed that the Prime Minister has issued strong directions to the Ministry of Climate Change to provide all required support for implementation of the Court's decisions. Also, the Ministry has been tasked to provide support for future rethinking and revamping of the Islamabad Zoo into a more animal friendly enclave which provides environment for adequate protection of animals rather than animal exhibit. In

the context of Islamabad High Court's judgment for the well-being of animals, IWMB was instructed to ensure due care and diligence while undertaking the re-location so that unnecessary haste does not harm animals in any way."

3. This Court records its profound appreciation for the empathy, compassion and care displayed by the Federal Government and the Prime Minister of Pakistan, Mr Imran Khan, in particular. They have not only recognized and affirmed the jurisprudence explained by this Court in the Judgment but have simultaneously acknowledged that animal species have inherent rights and that humans have a fiduciary duty to jealously guard and protect those rights so as to save its own specie on this planet from becoming extinct. It is heartening because the Prime Minister of Pakistan and his Government, by endorsing the Judgment and giving effect to its jurisprudence, have enabled the State of Pakistan to take a lead amongst the comity of nations in the context of recognition of the principle that the right place and home for wild animals is their respective natural habitat and not the four walls or confined boundaries of a zoo, even under the best of circumstances and in the most well managed

zoological gardens. It is a solemn affirmation of the principle that animal species are sentient and thus cannot be subjected to pain and suffering due to captivity in the environment of a zoo, unless it is absolutely necessary and is in the interest of the animal species. The jurisprudence of this Court has also caught the attention of jurists outside Pakistan. Professor Laurence H. Tribe, renowned scholar and faculty of Harvard Law School, has referred to the Judgment in his amicus brief submitted before the New York Supreme Court, Appellate Division, United States of America. The matter relates to the filing of an appeal by the Nonhuman Rights Project on behalf of 'Happy', an elephant held in captivity in the Bronx Zoo. The legal proceedings of the case have been mentioned in the Judgment.

4. The Federal Government's press release states that the Ministry of Climate Change has been tasked to 'provide support for future rethinking and revamping of the Islamabad Zoo into a more animal friendly enclave which provides environment for adequate protection of animals rather than animal exhibit'. It is expected that while doing so, the Federal Government and the Wildlife Management Board will not ignore or overlook the foundational principle that an

artificially created enclave cannot be a substitute for the natural habitat, nor suitable to provide for an environment to meet their behavioral, social and physiological needs. It is noted that each animal species has been created to live and thrive in a particular environment and can remain free from stress, pain and suffering only in its respective natural habitat. The same principle also applies to a human because it is also one of the living species and, like others, requires appropriate conditions and environment for its behavioral, social and physiological needs. The difference is that it has been bestowed with superior faculties of intellect and reasoning and these attributes form the premise for the duty of care it owes to other living beings for their conservation, protection and well being. Imagine a child born in the hottest part of the planet and sent to spend the rest of its life in captivity in a luxurious enclave in one of the coldest areas, separated from the warmth of its mother and other members of its clan. Imagine that while in captivity, hundreds and thousands of strangers visit the enclosure/enclave every day, staring at the child, taking photos, merely to be entertained. The distress, pain and suffering of the child, no matter how comfortable, well equipped or well managed the enclosure of confinement may be, would be unimaginable. This obviously cannot

be justified because it is not 'natural' to do so, is not in conformity with the scheme of nature and the balance created by the Creator. On the same analogy, how then can it be justified to unnecessarily deprive a wild animal of its natural habitat and keep it in the confined space of a zoo, because that has also not been contemplated nor designed by nature. Such unnecessary intervention and tampering with the balance created by nature definitely becomes an unjustified transgression of the inherent natural rights of living beings bestowed by the Creator. This is exactly what happens to many wild animals and Maggie, the elephant at the Alaska zoo, is one such example. She had to be shifted to the Northern California wildlife sanctuary because of the extreme distress endured by her, since it was not her natural habitat and she suffered despite the extraordinary care displayed by the management of the zoo, including providing an elephant sized treadmill.

5. The practice of capturing animals and keeping them in captivity is a relic of the past. It is a deplorable reflection of the treatment of living beings at the hands of another living specie i.e humans. Exotic animals were collected and kept in captivity by the kings, queens and other nobility as a display of their power and might. The subjugation

of wild exotic animals by another living species, possessing superior faculties and attributes, had become a symbol of power and superiority. Capturing a wild exotic animal, separating it from members of its specie and keeping it in captivity away from its natural habitat by humans can by no stretch of the imagination be construed as a sign or symbol of 'power'. This was and is not the design of nature and is thus 'unnatural'. Conversely, it reflects signs of weakness, arrogance and misuse of the superior qualities of one of the living species, resulting in disturbing the scheme of nature created by the Creator. Protecting and caring for the weak ought to be symbols of 'human power' and not subjugating and imprisoning those who are dependent on human species. It is an affront to the fiduciary duty a human owes to other living beings and to its own species because its survival on this planet depends on maintaining the balance artfully woven in nature. I am not suggesting that under no circumstances can a wild animal be held in captivity. Pursuant to the duty of care humans owe to protect nature, there could be compelling reasons necessitating keeping a wild animal in captivity e.g. for the purpose of conservation of endangered species or to protect abandoned animals from being harmed. Wild animals have to be treated as an end in themselves and not a

means for the mere entertainment of humans. The test to justify captivity will be the principle of proportionality in the context of maintaining nature's balance.

6. When the menageries were transformed into 'zoological gardens,' one of the reasons given to justify their existence was to educate children and other humans about the life and behaviour of animal species. There was no internet or other means to access information then. Will such a reason justify the captivity of wild animals in a zoo today? I am afraid that the answer is an emphatic 'No'. In today's age of technological advancement, caging or confining wild exotic animals for the purpose of educating children or adults, at the cost of subjecting them to unnecessary pain and suffering, can neither be justified nor is it sustainable on the principle of proportionality. Subjecting a sentient living being, an animal, to unnecessary pain and suffering is not only an offence under the law but a breach of the constitutionally guaranteed right to life of humans under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 as has been highlighted in the Judgment. In the present digital era, there are other more effective alternatives to meaningfully educate children and adults regarding

wild animals and how they behave in nature, instead of keeping them in captivity under distressfully inhumane conditions. Replacing steel bars and cemented cages with moats or ditches are of no help to avoid causing the unimaginable stress and pain of "zoochosis" to the inmates of a zoo. The best of circumstances in the most well managed and resourced zoo cannot be a substitute for a natural habitat, nor can the behavioral, social and physiological needs of any species of animal be met. Animals have different natural needs and nature has created corresponding habitats for each species of animal. Giraffes are designed to run across miles of open terrains, an elephant needs its habitat to walk thirty miles each day while bears have to remain active for hours. It is natural for a tiger to climb, run and roam distances to hunt. Captivity in a zoo subjects them to unnecessary pain and suffering because they have been created for particular habitats or the habitats have been created for them. Keeping them in captivity merely for the entertainment of humans is cruel and against their inherent natural rights. Wild animals, therefore, cannot be unnecessarily deprived of living in their own respective habitats. The captivity must be for compelling reasons and can only be justified on the touchstone of necessity, based on the welfare and

well being of the species by applying the test of proportionality. The 'Captor' has to discharge this onus. This is the jurisprudence highlighted by this Court in the Judgment.

7. The Federal Government and the Islamabad Wildlife Management Board may, therefore, consider changing its focus from keeping the animal species in captivity to developing, preserving, protecting and maintaining natural habitats. There is also a need to understand that the place for animal species are their respective natural abodes i.e natural habitats and not the artificially created enclaves of zoos. Moreover, in the twenty first century, educating children by keeping wild animals in zoos cannot form a valid justification, while the entertainment of humans is an affront to the scheme of nature as has been designed by the Creator. This Court has already declared in the Judgment that subjecting an animal to unnecessary pain and suffering is illegal and is an offence. The Federal Government and the Wildlife Management Board may, therefore, consider other effective alternatives to utilize the area of the Zoo for educating children and adults regarding animals in general and the need for preserving and protecting each species and their habitats in particular. The educational content

could, inter alia, include information regarding the threat and challenges faced by the human species in a world beset by climate change and habitat loss. They may consider establishing theaters and other modern technological facilities and tools for this purpose which would be far more productive than subjecting living animal species to unnecessary pain and suffering. As an illustration, screening the famous series of *David Attenborough*, titled 'Seven Worlds One Planet', by using the modern technology of 4D would definitely be far more beneficial and effective in educating and entertaining children as well as adults rather than merely displaying animals in cages and enclaves. The sight of captive animals in a zoo, no matter how well looked after, can have adverse affects on impressionable minds because they may go away thinking that captivity of exotic wild animals is an acceptable norm. I am afraid that such a message is contrary to the intent and design of the Creator. The place of each species of animal is its home i.e. its natural habitat and not the confined enclaves in a zoo.

8. The return of the Marsh Crocodile to its home i.e its natural habitat, is a step towards preserving the human race from extinction. Other animals in the Zoo, having suffered unnecessary and

unimaginable pain and distress, are also in the process of being shifted to their respective natural homes in compliance with the judgment of this Court. In a few days 'Kaavan', who was separated from his mother and other family members when he was only a year old, would also embark on his final journey to the Cambodia Wildlife Sanctuary. He has indeed suffered in silence for more than thirty six years. He could only convey the extreme distress, pain and suffering by bobbing his head against the wall for almost thirty six years. It was definitely cruel treatment of a gentle and majestic creation. In his unimaginable pain and suffering he became an advocate and spokesperson for the recognition of the inherent rights of other animal species. He inspired many, including this Court, to recognize that animal species have natural rights and that they cannot be unnecessarily deprived of living in natural habitats, thereby disturbing the balance maintained in nature i.e the scheme of the Creator. Kaavan will soon be starting a new life as an 'elephant'. He will have the opportunity to feel like an 'elephant' rather than a captive 'object', subjected to distress and pain for the purposes of being displayed to humans. 'Kaavan', hopefully, will have a happy ending and the jurisprudence he inspired this Court to lay down may find relief for many other animal species. His ordeal may have

been prolonged had it not been for the support of many humans across the globe who must be acknowledged. The agony of 'Kaavan' was initially noticed and highlighted by Ms Saman Khan, a United States national of Pakistani origin during her visit to the Zoo. Her e-petition on the social media virtually shocked humans across the planet and attracted the attention of many, including Cher, an international celebrity. But many unsung heroes, mostly young, relentlessly campaigned for decades in Pakistan for the release of 'Kaavan' and other animals from the Zoo. This Court observed, during the proceedings, the exceptional passion of Dr Anis ur Rehman, Chairman of the Wildlife Management Board for welfare of animal species. He could not hold his tears on several occasions when he used to describe the plight of the animals at the Zoo. He also could not hold his tears today when informing this Court regarding the end of the ordeal suffered by the Marsh Crocodile. But today the emotions were of joy. The passion of all these true representatives of the human species, the youth in particular, observed by this Court during the proceedings, is the much needed hope for meeting the challenges of climate change and for making the planet a place to live in conformity with the balance created by nature. I am satisfied that since the Prime Minister of Pakistan,

Mr Imran Khan and his government have taken the ownership of implementing the jurisprudence enunciated in the Judgment, therefore, I see no reason for the initiation of proceedings under the law of contempt or to review the Judgment. However, the Ministries of Climate Change and Foreign Affairs are directed to ensure that there is no delay in the issuance of visas in favour of the representatives and officials of the Cambodia Wildlife Sanctuary. The Wildlife Management Board is directed to submit a weekly report before the Registrar of this Court regarding the completion of formalities for the journey of 'Kaavan' to his new home and the relocation of all the other animals. This petition is thus accordingly disposed off. The observation of renowned operatic tenor, Robert Breault ought to be given serious consideration; "The only creature on earth whose natural habitat is a zoo is the zookeeper".

(CHIEF JUSTICE)

Approved for reporting.