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The Commissioner
Municipal Corporation of Gurugram (MCG)
Plot C 1, Info City
Sector 34
Gurugram, 122 001

cmc@mcg.gov.in ; adcmc@mcg.gov.in ; admc@mcg.gov.in

December 09, 2022

Notice Without Prejudice **Served Electronically & Via Speed Post**

Subject: Public Notice by MCG dated 07.12.222 by Deputy Commissioner, MCG

Sir(s),

Reference the public notice above and widespread reports by the mainstream and vernacular media, the notice stems from flawed interpretation of Section 311 of the Haryana Municipal Corporation Act (1994) entitled *Registration & Control of Dogs*.

Locus Standi: In my capacity as a responsible and knowledgeable private citizen with a long record as activist, naturalist and positions in public office : two terms as HAWO officer of the Animal Welfare Board of India, more than 15 years tenure as a central government non-scientific expert to institutional animal ethics committees and nine years as founder-president of People For Animals (PFA) Gurugram chapter, a referee and first responder on animal issues for the Municipal Corporation of Gurugram, I draw your attention to critical and salient points from a position of first-hand, on-ground knowledge as well functional expertise and common sense. Kindly take cognizance of the following:

1. Widespread Adverse Impact of the Notice

The Notice, public pronouncements and media reports have **created a sense of great anxiety, panic and already triggered cases of dogs being abandoned by owners. These illegal and punishable actions are harassment of citizens who look after animals and also amount to creating public hysteria.** Your actions have created panic and acute pain to compassionate citizens. **People who keep pets/take care of strays consider them as their own children. Social friction induced by such action will become the reason for community conflict.** This would clearly increase daily level conflict and create additional unmanageable law and order situations. It will also expose citizens to harassment, exhortation by your staff and/or contractors.

2. Competency and Mandate to "Ban"

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Municipal corporations, SPCAs, veterinarians and NGOs cannot qualify any breeds as “dangerous”. They do not have the research, the qualifications, experience, or the competency. None of the dogs arbitrarily declared by you as “dangerous” are breeds native to India or extant in this country. Any classifications are set to international benchmarks, defined by international norms and mandated by relevant expert bodies. Breeds cannot be “banned” arbitrarily.

Presence of so called “banned” breeds points to the local government’s apathy, dereliction of duty and patronage therefore, of illegal breeders who are in violation of the law – the Prevention of Cruelty to Animals Act (Dog Breeding, Marketing Rules) 2017

Further, the **Municipal Corporation of Gurugram (MCG) or the city’s SPCA or any Government/ quasi Government organization do not have any demonstrated record, training, professional staff, model, plan or track record which can stand to scrutiny regarding dogs in particular and stray animals in general. Infact the condition of the city’s animal related infrastructure in all respects is non-existent or primitive.** Suffice it to say that there is nothing credible and nothing which meets prescribed norms, standards or SoPs for dealing with animals. A case-in-point is the MCG veterinary facility at Basai village in Gurugram and the cattle pound at Carterpuri. These are living hells with zero accountability or transparency. The situation is compounded by the completely unregulated, uncontrolled proliferation of cottage industry models of animal shelters under your and the SPCA’s jurisdiction. **The MCG and its related agencies like SPCA are in actual violation of the law, process and their obligatory mandates.**

4. Widespread Consistent Animal Crime with MCG and SPCA Complicity / Dereliction of Duty

Illegal, abusive unlicensed pet shops, backyard breeders, animal fights etc are widespread in the district within and outside the city limits and these are “protected” by petty criminals with the official machinery in complicity. THIS is the nub of the issue which has never been addressed and which the contestable Notice / Order in question fails to take cognizance of, let alone address.

5. Dysfunctional Animal Birth Control programme Violative of the Law

The MCG dog sterilization programme is sporadic, unmanaged, and in violation of the Animal Birth Control (ABC) Rules mandated by the Animal Welfare Board of India, a statutory body under the Government of India. There have been vastly extended periods (several months / years) of suspended ABC by the MCG, the operating fee offered to partner NGOs by the municipal corporation has remained unchanged since several years and was revised last year to INR 700 per animal. This includes: pick-up, neutering, vaccination, post-op care, drop back. The prescribed figure by AWBI is INR 1400 per animal. Clearly, the MCG has an incompetent, blind and callous attitude to the ABC programme or the wellbeing of the dogs.

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The MCG contract has been awarded to an NGO called Jeev Daya @ Rs 700 per dog for all the above aspects of the central government mandated ABC Rules. Jeev Daya is the sole vendor and has been awarded the contract purely on L1 considerations with no consideration for T1 parameters. Feedback from a wide cross section of public (my research universe was 50 people from diverse areas, varied demography) reveals that **this partner of choice by the MCG is not recognized by the Animal Welfare Board of India (AWBI), has never been audited, maintains no credible records and submits no credible or no reports. There is consistent complaint of negligence, abuse, dislocation of dogs and their mass scale death/disappearance/post operative mortality by citizens which is unheeded.**

6.No Application of Mind in the Order

The MCG has no plausible plan or roadmap or demonstrable abilities regarding any issue related to animals in general and dogs in particular. Fact is, it has consistently abrogated this responsibility, never taken any clear, coherent, sustainable, legally valid measures with regard to stray and community animals. The Notice/Order therefore is reactive and without any plausible rationale from conception to implementation. A cursory look at the following aspects illustrates this charge:

i)A majority of animals, in this case dogs, are community animals. They belong to no one in particular, yet receive food, affection and care from citizens. **I may draw your attention to the fact that per many High Courts of India, dogs are companion animals, are a part of family/community. There are also orders that substantiate the same and save them from any discrimination, including right to use property, space, etc. Imposing restrictions on community dogs/pets violates the fundamental rights of citizens and directive principles of state policy, besides violating rulings of all the several courts.**

ii)Under Indian law, animals are property. Unless declared illegal by legislative process or violative of the law, the Government and/or its organs do not have the right to arbitrarily confiscate legal property.

iii)What is the MCG's process and procedure for "dealing" with "banned" breeds? Where and how does it propose to "deal" with them? Are existing dogs "banned" by the MCG illegally to be surrendered? If not, how will the MCH enforce its will?

iv)How will / is the MCG dealing with the mass abandonment of illegally declared "banned" breeds?

v)The mandatory licensing of dogs may not be possible for poorer sections of society who own pets. What will the MCG do? They will abandon their dogs creating conflict as well as emotional trauma for humans and animals.

vi)What is the budgetary outlay and the standard operating procedure established by the MCG to implement the order? I would be most interested to understand how one of the richest municipalities in the country which awards contracts purely on ridiculously low L1 quotes alone, will infuse large amounts into the dog pogrom. **As a**

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corollary and a test, the undersigned physically contacted the MCG office for dog registration and was directed from one desk to the other without any conclusive result after three hours.

vii) What provisions has the MCG made to address the tide of public opinion and the several litigations it has exposed itself to through this ill-conceived and illegal step? As taxpaying citizens we do not want to see tax revenues wasted by MCG on its defence purely through incompetence and illegal actions when this city has several immediate and pressing issues.

viii) The MCG has also exposed itself to the harassment of citizens by RWAs, anti-animal groups and its own personnel. These will lead to compounded litigations and MCG will be culpable.

ix) How does the MCG propose to address violations of the Prevention of Cruelty to Animals Act, the Transportation of Animals Rules, CrPc / IPC (Ref Sections 428, 429), the Environment Protection Act if this ill conceived order is implemented?

x) Why has the MCG not consulted public opinion or incorporated experts before this Notice?

7. Against the Constitution of India and the Indic Civilizational Fabric

The Constitution of India through an amendment of 1976 prescribes a Fundamental Duty "to have compassion for living creatures." {Constitution of India Part IV A, Article 51 A (g)} **The use of this notion in actual legal practice, gathered from various judgements explicitly mentioning compassion cover diverse issues. They often juxtapose a discourse on compassion as a moral attitude and a discourse about legal rights, essentially the right not to suffer unnecessary pain at the hands of humans. In these judgements. India follows a common law system. Introducing compassion in the Constitution is part of a growing concern for the protection of animals within civil society and the political and legal milieus in India in line with developments internationally. What various judgements as collective legal precedent also show the antiquity of Indian concern for animals. Compassion for living creatures is both antique and modern. It has been a specific and well documented trait of Indian traditions for more than two millennia and it is required by progress in civilization. Compassion is an Indian heritage**

8. In Contempt of Pronouncements | Directives by India's Courts on Animals Including Dogs

The Hon'ble Supreme Court of India (Civil Appeal no 5387 of 2014 & SLP © 11686 of 2007)

- Page 9 of 103 & 56 of 103 last part of para 29

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“or otherwise” in Section 11(1)(a) and submitted that any act which inflicts unnecessary pain or suffering on an animal is prohibited unless it is specifically permitted under any of the provisions of PCA Act or the rules made thereunder. The meaning of the expression “or otherwise” came up for consideration in ***Lilavati Bai v. State of Bombay*** 1957 SCR 721 and the Court held that the words “or otherwise” when used, apparently intended to cover other cases which may not come within the meaning of the preceding clause. In our view, the said principles also can be safely applied while interpreting Section 11(1)(a).

- Page 49 of 103, para 26

“PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state of affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. **Court has also a duty under the doctrine of *parents patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.**”

- Page 50 of 103 para 27

“Section 3 of the (PCA) Act deals with duties of persons having charge of animals, which is mandatory in nature and hence **confer corresponding rights on animals. Rights so conferred on animals are thus the antithesis of a duty and if those rights are violated, law will enforce those rights with legal sanction.** Section 3 is extracted hereunder for an easy reference:

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.” Section 3 of the Act has got two limbs, which are as follows:

(i) Duty cast on persons-in-charge or care to take all reasonable measures to ensure the well-being of the animal; (ii) Duty to take reasonable measures to prevent the

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infliction upon such animal of unnecessary pain and suffering. Both the above limbs have to be cumulatively satisfied. Primary

duty on the persons-in-charge or care of the animal is to ensure the well-being of the animal. 'Well-being' means state of being comfortable, healthy or happy.

- Page 53 of 103 para 28

Page 76 Para 51

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

- Page 77 para 54

FREEDOM:

54. Chapter 7.1.2 of the guidelines of OIE, recognizes five

internationally recognized freedoms for animals, such as: (i) freedom from hunger, thirst and malnutrition; (ii) freedom from fear and distress; (iii) freedom from physical and thermal discomfort;

(iv) freedom from pain, injury and disease; and (v) freedom to express normal patterns of behaviour.

- Page 79 of 103 Para 57

COMPASSION:

Article 51A(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 and Others* (2005) 8 SCC 534, this Court held that by enacting Article 51A(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 51A(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) & (m), 22 etc. of PCA Act.

- Page 98 Item 2

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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.

- **Page 79 & 80 Para 58**

HUMANISM:

58. Article 51A(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, understand benevolence, compassion, mercy etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of 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 51A(h). Both Articles 51A(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.

- **Page 84 Para 62**
- **Page 98 item 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.

- **Page 99 item 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.

- **Page 99 item 10**

There is in India a Constitutional mandate for reforming society according to an idea of progress and it largely falls on the courts to implement it. The duty of compassion for living creatures has also to be seen in this perspective.

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Article 51A (g) of the Constitution which prescribes this duty is immediately followed by Article 51 A (h) enjoining us to “develop the scientific temper, humanism and the spirit of inquiry and reform. Both of these articles are often construed together so that compassion is not only an Indian heritage, it is rational and in line with the scientific times. We also submit to the Hon’ble Court that the Universal Declaration of Animal Welfare (UDAW) is a campaign led by the World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had support at the Governmental level from India through the World Health Organization of Animal Health (OIE) of which India is a member. We draw attention to the fact that men, not destiny is the source of animal suffering.

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.”

In the High Court of Punjab & Haryana at Chandigarh CRR 533-2013 Date of decision

31.05.2019 {Karnail Singh & Ors Vs State of Haryana} Excerpts:

“Page 90 of 104 We have established that there is nothing inherent in the concept of legal personality preventing its extension to animals...

Para 29, Page 104 of 104: The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Haryana are

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hereby declared persons in loco parentis as the human face for the welfare / protection of animals. Live and let live”

In the **High Court of Uttarakhand at Nainital {Writ Petition (PIL) No 43 of 2014. Narayan Dutt Bhatt Vs Union of India & Ors.}** Excerpts:

“Para 83 We have to show compassion towards all living creatures. Animals may be mute, but we as a society have to speak on their behalf. No pain or agony should be caused to the animals....Animals breathe like us and have emotions....Animals cannot be treated merely as property. *“The entire animal kingdom, including avian and aquatic animals are hereby declared ‘Legal entities’, having corresponding rights, duties and liabilities of a living person”*

The High Court of Chattisgarh at Bilaspur {Writ Petition (PIL) No. 6 of 2016} Nitin Singhvi Vs the Union of India & Ors. 18th August 2017 noted : *“11...Homo sapiens form just one of the multifarious species which are entitled to occupy earth. Homo sapiens without humanism are dastards and are unworthy of being called human beings. T.N. Godavarman Thirumalpad Vs Union of India (2002) 10 SSC 606 was rendered by the Apex Court stating that Articles 48 A and 51 A of the Constitution together lay down the foundations of jurisprudence in environmental protection. That judicial precedent proceeds laying down the State and the citizens are under a fundamental obligation to...have compassion for living creatures.” That decision has been so understood and applied by the Constitution Bench in the State of Gujarat Vs Mirzapur Moti Kuresh Kassab Jamat (supra)...the Apex Court stated thus : “72...No religion or holy book teaches or encourages cruelty. Indian society is a pluralistic society. It has unity in*

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diversity. The religions, cultures, and people may be diverse, yet all speak in one voice that cruelty to any living creature must be curbed and ceased..."

"12 ...the Directive Principles of State Policy in Part IV of the Constitution are fundamental in the governance of the country and permeate lacing-on to the Fundamental Duties of the citizens bereft which, responsible citizenry would remain a mirage....A salutary principle, accepted worldwide, for proper management of such scenario is to uphold the right of the animals to say "leave us alone"

The High Court of Tripura at Agartala { Writ Petition C (PIL) No.2 / 2018 The Hon'ble Court said : *"79 In any event, we are of the considered view that... cannot be construed to be a source of law to claim any right when it is found to be violative of human rights which, in our considered view, would also include the right of the animal to live with dignity. Further, no usage found to be pernicious and considered to be in derogation of law or opposed to public policy or social decency can be accepted or upheld by the courts under the Indian constitution.*

"106 It is expected from the courts as the final arbiters of the Constitution and not to be remotely guided by majoritarian view or popular perception. The court must be guided by the conception of constitutional morality and not by the societal morality {Navtej Singh (supra)}"

The undersigned is a co-petitioner in the ongoing matter before the Hon'ble Supreme Court rulings dated January 24, 2009 (Animal Welfare Board of India Vs People For the Elimination of Stray Dogs, Record of Proceedings 265025) Vide SLP (C) 691/2009 and hereby considers it his duty to inform and warn you of the legal consequences of these actions.

MCG's abovementioned actions are autonomous and in contempt of the Hon'ble Supreme Court. In 2009 the Animal Welfare Board of India (AWBI) had, in detail, submitted before the Hon'ble Supreme Court of India deficiencies of the Municipal

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Acts all across the country. AWBI detailed how these municipalities violate central acts and constitutional rights of animals and humans. Following the initial arguments the hon'ble judge stayed the implementation of contestable aspects of the municipal acts all across the country, that deal with dogs. Since the municipal and other acts don't distinguish between pets, strays, semi adopted (no classification) dogs, the stay applies to all rules associated with dogs, in this particular case. Hence, this case is sub-judice in the apex court.

In addition to this, another case, **Civil Appeal No. 5387 of 2014 & SLP 11686 of 2007, via the final judgment, has detailed the five rights of animals that cannot be violated by any by-law, rule of the municipal or state acts. That order also mentions how municipal acts/ laws that violate any of these rights should be considered annulled and cannot cause subjugation of rights of animals and animal owners/lovers/caregivers.**

It is hereby conveyed, that the said actions are illegal, impractical, and dangerous. Therefore, you are put to notice to immediately restrain from such activities. If this persists, we will be compelled to initiate contempt proceeding. All animals have an equal right to life, liberty and domicile. You are further informed that this notice is without prejudice to the rights and contentions of all the animal lovers/activists to take appropriate action against in the appropriate court/courts of law and you/offenders will personally be liable for cost and consequences there upon.

Sincerely,

Dr. Amit Chaudhery

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