
(2002) 07 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 4126, 7266, 7744 and 14384 of 2000 and 17140 of 2001

D. Srinivasa Raju

APPELLANT

Vs

District Forest Officer and Others

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Constitution of India, 1950 — Article 19(6)
Live-Stock Importation Act, 1898 — Section 3, 4

Citation : (2002) 5 ALD 252

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Y.V. Ravi Prasad, for the Appellant; Govt. Pleader, for Fisheries for Respondent Nos. 1 to 3 and 5 in WP Nos. 7744 and 17140 of 2001, for Respondent Nos. 1 and 2 in WP No. 4126 of 2000, for Respondent Nos. 1 to 3 in WP No. 7266 of 2000 and for Respondent Nos. 1, 2, 4 and 5 in WP No. 14384 of 2000 and M. Ganga Rao, Addl. SC for Central Govt. for the Respondent No. 4 in WP Nos. 7266 and 7744 of 2000 and for Respondent No. 3 in WP Nos. 4126 and 14384, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—Nature's fauna and flora have certain exotic species. The exotic animals and the exotic plants fascinated the human beings since the beginning of civilization for various reasons like satiation of the taste buds as well as aesthetic sense. The aquatic fauna like fish, prawn, shrimp and the like has always been dearer to those who had taste of eating these. One such aquatic fish *Clarias gariepinus* popularly known as African Catfish is an exotic species. Biologists continued to research on African Catfish for its good and bad effects and on the ecology of the biosphere. There have been also researchers who commend the artificial rearing/culture of Catfish for the kitchens of connoisseurs of multi-cuisine and the cooks with culinary talents.

2. *Clarias gariepinus* - African Catfish (in local parlance "Magur") is not native or

indigenous to Indian waters, though its nearer cousin *Clarias batrachus* belonging to the family of "Claridae" is found in fresh waters of Indian lakes at some places. In Biologists' view Catfish is highly Carnivorous and it feeds on indigenous fish. They also think that the native *Clarias batrachus* would not effect the ecological balance in the natural water bodies. But, *Clarias gariepinus* by reason of its predatory habit would lead to drastic changes in the eco system in the long run and cause economic loss and there is likelihood of natural hybridization which would result in ecological imbalance in the natural waters in India. African Catfish was introduced in Bangladesh and later in West Bengal. About a decade and half ago it was also introduced in Kolleru lake area of Andhra Pradesh. After receiving complaints from well-meaning people and considering reports from various Research Organisations, the Central Government in 1997 imposed ban on Catfish culture and requested the State Governments to take necessary steps to prevent rearing of Catfish in the aquaculture ponds. Accordingly the Director of Fisheries, the third respondent in these writ petitions directed all the Field Officers like Assistant Directors to destroy the Catfish as and when they come across in the water bodies and to take all steps to ensure that the culture of Catfish is not taken up by the fish farmers and the rearing type of culture systems. The Assistant Directors of Fisheries, Kaikaluru, Eluru, Machilipatnam were specifically directed to ensure that Catfish was not allowed to enter into Kolleru lake waters. In these writ petitions, the petitioners, who are suppliers of Catfish seed to fish farmers in Andhra Pradesh seek invalidation of the proceedings issued by the Central Government as well as the orders of the third respondent.

The Pleadings in brief:

3. Taking WP No.7744 of 2000 as illustrative case, pleadings and counter pleadings may be noticed briefly. The petitioner is a resident of Bhimavaram. He makes a living by culturing fish in ponds and also buying fish seed from the fish hatcheries and selling the seed in retail to other farmers. He alleges that in 1994-95 the Government of India issued a press statement to motivate fish farmers to take up cultivation of Catfish promising to provide all facilities to export Catfish to foreign countries. All of a sudden the third respondent issued proceedings dated 31-5-1999 directing the Assistant Directors of Fisheries to prevent growth of Catfish and destroy the same. The fourth respondent, Fisheries Development Commissioner in the Department of Agriculture and Co-operation, Krishi Bhavan, New Delhi, informed the decision of the National Committee to Oversee and Regulate Introduction of Exotic Aquatic Species in Indian Waters (for short, the National Committee) where a decision was taken to destroy Catfish. As a consequence whereof, the third respondent issued proceedings on 31-5-1999 directing all the Assistant Directors to take steps to destroy the Catfish and prevent introduction of Catfish in Indian waters.

4. The petitioner alleges that the impugned orders would adversely affect fish farmers in 60,000 hectares of land in Andhra Pradesh. The fish farmers would be

deprived of their livelihood. The reasons for which the ban was imposed on Catfish, it is alleged, are not convincing. There are 159 species of fish in Andhra Pradesh, out of this, 53 species are carnivorous, 26 are herbivorous and 81 are omnivorous. All the carnivorous species are not banned. Catfish are omnivorous species and while allowing several carnivorous species in Kolleru area only Catfish was singled out banning the same which is discriminatory and arbitrary. In fact, Wallago Attu and Channa Striatus are highly carnivorous and they eat small fish in the ponds. In any event, Catfish is being cultured in a distant place far away from Kolleru lake without allowing any mixing of Catfish with other species. Therefore, banning of Catfish is not warranted. Further, there are large number of Cranes available in Kolleru lake area which cause damage to fish farmers. The Government of Andhra Pradesh is taking steps to conserve Crane population. Catfish is being cultured mostly in West Godavari District of Andhra Pradesh and therefore the assumption that it is likely to cause ecological imbalance is irrational. The petitioners also rely on expert opinion given by Dr. V. Mahalakshmi, Lecturer in Zoology in Andhra Pradesh Residential Junior College, Rampachodavaram in support of their pleading that Catfish culture is not deleterious to environment and ecology.

5. No counter-affidavit is filed on behalf of Fisheries Development Commissioner, Government of India. The Director of Fisheries, the third respondent has filed a counter-affidavit and common additional counter-affidavit. In the main counter-affidavit filed by the Additional Director of Fisheries it is stated as follows. There are number of fish seed farms established in West Godavari District which produce seed specially of major carp and supply the same to all parts of the State. It was brought to the notice by the Agriculture University that introduction of exotic *Clarias gariepinus* in Kolleru lake with the encouragement of seed sellers from West Bengal is spreading steadily without permission from the Indian Council of Agricultural Research (ICAR) for its import though there is ban on import of Catfish. Being highly carnivorous in nature, it is becoming a major threat to the indigenous fish when it escapes into Kolleru lake. As per the instructions of the Government vide their letter dated 19-12-1997 the Department of Fisheries issued a Memo dated 31-5-1999 to all the Assistant Directors of Fisheries instructing them to destroy the Catfish immediately duly ensuring that the culture of Catfish is not taken up by the fish farmers and educate the farmers about the ban on Catfish in view of highly carnivorous habit and major threat to indigenous fish population. Accordingly, the Assistant Directors and Mandal Revenue Officers of West Godavari District have taken steps to destroy fish stock in question.

6. The National Committee constituted by the Union of India consists of eminent biologists of various research institutions, namely, Central Institute of Fresh Water Aquaculture (IFWA), Central Inland Capture Fisheries Research Institute (CICFRI), Central Institute of Brackish Water Aquaculture (CIBWA) National Bureau of Genetic Research (NBGR) and National Bureau of Aquatic Research (NBAR). The National Committee took a decision to impose ban on import of

Catfish as it is highly carnivorous and its larvae and fry are cannibalistic in pond culture which cause imbalance in existing ecological system. If the fish escapes into Kolleru lake, the entire fish fauna will be affected.

7. The allegation that fish farmers in 60,000 hectares will be deprived of their livelihood is not correct. In addition to natural tanks and reservoirs, about 38,518 hectares of agricultural land converted into fish ponds in West Godavari District and culture of several species of commercial value are being taken up by farmers. Though Catfish is described as omnivorous, it is predacious in nature and feeds only on fish available in water. The Government of India after taking into consideration the implications of introducing exotic species on the endemic fauna these exotic species tend to cause imbalances in the existing ecological system.

8. Indigenous carnivorous fishes existing in Kolleru lake have evolved over thousands of years. These occupy specific ecological niche without upsetting the ecological balance. Their presence is essential for the system and status of exotic carnivorous cannot be compared with such endemic species when there are several varieties of fish available indigenously which can easily adopt to culture practices. There is no need to import fish from outside the country. There is possibility of spread of exotic diseases causing danger to indigenous species. All the varieties of fish mentioned by the petitioner have good economic value and easily marketable at higher rates than the exotic Catfish.

9. *Clarias gariepinus* has migratory tendency and there is every chance of Catfish escaping into Kolleru lake inspite of the same being cultured in distinct culture ponds far away from Kolleru lake. Kolleru lake is developed as Birds Sanctuary. The Cranes and other birds in Kolleru lake do not cause loss or damage to the farmers. The Cranes do not have fins and gills and therefore they cannot go into deeper waters. They only move in shallow waters. The fish evade Cranes by their fast swimming in waters and therefore damage caused to fish population in Kolleru lake is minimum. Cranes are not solely dependent on fish for their food. They consume other materials available on the terrestrial. Catfish cause danger to the fish existing in the water body by swallowing them and also cause enormous damage to fish fauna available in the lake. The ban on export and import of Catfish is not misconceived because it is carnivorous in nature and there is threat of spread of exotic diseases to the endemic species, existence of the Catfish will hamper the sustainability of other fish in Kolleru lake.

10. Basing on the recommendations of the High Level Committee, a policy decision was taken under the Chairmanship of Joint Secretary to Central Government. The committee consists of Senior Scientists, Director Generals and Representatives of Indian Council of Agricultural Research (ICAR) etc., and the said committee took decision to recommend State Governments to ban African Catfish.

11. In another counter-affidavit and common further additional counter-affidavit,

it is stated as follows. One Sri C.D. Sebastian and four others filed a writ petition before High Court of Kerala questioning the action of the Central Government in destroying the exotic Catfish. The High Court of Kerala by order dated 7-9-1998 directed the Union of India to consider the representation of the petitioners therein. The National Committee was constituted with the approval of the Government authority by the Department of Agriculture on 17-7-1996 under the Chairmanship of Joint Secretary, Fisheries, Department of Agriculture and Co-operation. One of the terms of the reference was to evacuate and assess the pros and cons of introduction of exotic aquatic species into the country. First meeting of the National Committee was held on 9-10-1997 and it was resolved that Ministry of Agriculture should take steps to destroy the existing exotic Magur and big head which was introduced into the country without official sanction, to see that it does not establish in natural environment and cross with endemic species *Clarias batrachus* and also to avoid spread of exotic diseases from *Clarias gariepinus*

12. The second meeting of the National Committee was held on 3-9-1998. The case of C.D. Sebastian and three others who had approached the High Court of Kerala was discussed in the said meeting. The National Committee took note of the view of the Director of CIBA, representatives of ICAR and Director of National Bureau of Fish Genetic Resources (NBFGR). The Director of CIBA gave opinion with regard to rate of risk depending upon the purpose of the introduction of exotic fish species in India. After considering all the aspects, the Government of India rejected the representation made by Sebastian and others.

13. Wherever microorganisms plants or biological material is introduced from one country to another, standard procedure is to be adopted by conducting vigorous examinations of associated pathogenic organisms which are made and it is only after the said examinations, introduction will be allowed. The banning of exotic fish would protect the native germplasm and endemic fauna apart from safeguarding the health of the general public. The Central Government issued a notification notifying the "livestock product" covering eggs and seeds of all aquatic animals including fish, crustaceans and molasses. The import of these will be allowed against the sanitary import permit to be issued by the Department of Animal Husbandry subject to conditions mentioned in Gazette Notification S.O.No.655 dated 9-7-2001 which was issued by the Central Government in exercise of powers conferred on them by Clause (d) of Sub-section (2) of Section 3 of the Livestock Importations Act, 1898 (Central Act No.9 of 1898) (for short, the Act). The District Collector, West Godavari, through his letter dated 22-3-2000 issued instructions to the Revenue Divisional Officers of Eluru, Kovvuru and Narsapur to take steps to stop culture of exotic big aqua fish (African Catfish) in Kolleru and other areas. The Assistant Director of Fisheries has also furnished the details of 20 transport vehicles against whom police imposed penalty for carrying poultry and other putrefied slaughter waste to use as feed to the African Catfish culture. The local farmers are normally undertaking the culture of indigenous fish and there has been production of 1,20,000/-tons of

fish, whereas before imposing ban on African Catfish, production was to the tune of 51,305 tons. After imposing ban, Catfish production is reduced to a considerable lower level. It is also stated in the counter-affidavit that it is dangerous to introduce Catfish into Kolleru lake as there is likelihood of escape into lake and it is deleterious to public health. Hence, ban was imposed against Catfish which is reasonable, rational and not violative of any of the rights of the petitioners.

Summary of the Petitioners' submissions :

14. Sri Y.V. Ravi Prasad made submissions to the following effect. The petitioners have a fundamental right to carry on trade and business under Article 19(1)(g) of the Constitution of India. There is no prohibition to carry on the business of selling African Catfish seedlings or to undertake Catfish culture. In the absence of any law imposing restriction on the exercise of the right, the State cannot prevent the petitioners from carrying on their business. Secondly, in West Godavari District and other districts, especially in Kolleru lake there are many carnivorous fish species like Wallago Attu and Channa Striatus, but only African Catfish was singled out by banning its culture. Indian species of Catfish, i.e., Clarias batrachus is also carnivorous, but the same was not banned. The African Catfish Clarias gariepinus was banned in discriminatory manner and it does not satisfy the twin-test of classification and therefore violates Article 14 of the Constitution of India. Thirdly, the action of the respondents-Union of India and Director of Fisheries in imposing ban on the culture of African Catfish is arbitrary and irrational. Clarias gariepinus is not carnivorous and it is omnivorous fish and it is not predatory in nature and there is abundant scientific evidence to show that it is economical and profitable to the farmer to undertake culture of African Catfish. All the farmers are having their fish ponds of African Catfish culture far away from Kolleru lake and therefore, the conclusion arrived at by the authorities that there is likelihood of escape of African Catfish into Kolleru lake resulting in cross-breeding with Indian species is unscientific and not supported by any evidence and therefore the impugned action suffers from irrationality. The learned Counsel for the petitioners relied on the decisions of the Supreme Court in State of Karnataka Vs. Pratap Chand and Others, and Bijoe Emmanuel and Others Vs. State of Kerala and Others, .

Summary of respondents' submissions :

15. Though notice was served and appearance was filed for the Fisheries Development Commissioner, Government of Andhra Pradesh by Sri Ganga Rao, learned Additional Central Government Standing Counsel, no counter-affidavit is filed in-spite of giving sufficient opportunity. However, a Memo is filed by the learned Counsel for the fourth respondent to the effect that the National Committee considered all aspects of the matter and recommended to take immediate steps to destroy the existing stock of exotic Maguf and big head which has been introduced into the country without official sanction. As noticed earlier, counter-affidavits have been filed on behalf of State Officials. Sri L, Prabhakara

Reddy, learned Government Pleader for Department of Fisheries, would submit that in the absence of a proper pleading regarding violation of fundamental right under Article 19(1)(g) of the Constitution, the petitioners cannot be permitted to raise the issue. The petitioners are dealing with all types of fish seeds and therefore they cannot complain denial of fundamental right to carry on business when import of African Catfish alone is banned. In any event, under Article 19(6) of the Constitution it is the reasonable restriction imposed in exercise of powers in accordance with the Act. The African Catfish was ordered to be destroyed and banned for its specific qualities of being predatory in nature and to avoid cross breeding with Indian species and to protect the fish fauna in Kolleru lake and other areas. The classification of the African Catfish for the purpose of ban has nexus with the object sought to be achieved and is based on discernible evidence. The classification is therefore valid. Lastly, the decision is founded on abundant scientific evidence. The National Committee constituted under the Act has invited experts opinion and after obtaining necessary expert opinion the decision was taken and therefore, the decision is reasonable and rational and sustainable under Article 14 of the Constitution of India.

16. The State, having regard to ecological balance and public interest has evolved the policy to prohibit introduction of exotic fish like African Catfish in India. When such policy decision is taken based on experts' opinion, the issue is not justiciable and policy decision cannot be subjected to judicial review.

17. Learned Government Pleader placed reliance on the judgments of this Court in *Dr. P.M. Bhargava and others Vs. University Grants Commission, New Delhi and another*, *Kolli Sai Pratheeka and Others Vs. Unit Trust of India and Others*, *R. Rambabu Vs. APSRTC, Musheerabad, Hyderabad and another*, *BALCO Employees Union (Regd.) Vs. Union of India and Others*, in support of the contention that this Court shall not interfere with policy decision of the State unless it is arbitrary. He also placed reliance on the judgments in *State of Kerala Vs. Joseph Antony*, *Kshetriya Kissan Gramina Bank v. D.B.Sarma (2001) 1 SCC 353*, *M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others*, and *A.P. Pollution Control Board v. M.V.Naidu, (2001)2 SCC 62*, in support of the contention that when a decision is taken by a committee consisting of specialised persons, High Court cannot interfere with the decision.

Points for consideration:

18. Three issues would arise for consideration. First is the issue of right to carry on business or trade. Second issue is invidious classification violating Article 14 of the Constitution. The third issue is arbitrariness and irrationality.

I. Issue of right to carry on trade and business

19. It is strenuously contended by the learned Counsel for the petitioners that in the absence of any law prohibiting to carry on trade or business in selling African Catfish seedlings, the respondents cannot prohibit the petitioners from carrying on business. It is also contended that the letter dated 19-12-1997 of the fourth

respondent banning culture of African Catfish is an unreasonable restriction on the right to carry on business and trade.

20. The Act is made to regulate importation of livestock which is liable to affect by infectious or contagious disorders. The term "livestock" is defined as to includes horses, camels, sheep and any other animal which may be specified by the Central Government by Notification. Section 3 of the Act empowers the Central Government by Notification to regulate, restrict or prohibit in such manner and to such extent as it may think fit, the import into India or any specified place in India, of any livestock which may be liable to be affected by infectious or contagious disorders and of any fodder, dung, stable-litter, clothing harness or fittings appertaining to livestock or that may have been in contact therewith. Further, Section 4 of the Act enables the State Government to make rules for the detention, inspection, disinfection or destruction of imported livestock, and also provide for punishment with fine.

21, The Act and its provisions would show that the Central Government and State Governments have ample powers to prohibit importation of livestock and also order destruction of imported livestock which may cause by infectious or contagious disorders. Therefore, the submission that there is no law prohibiting African Catfish cannot be countenanced. Whether in the absence of any rules made u/s 4 of the Act or in the absence of Notification u/s 3 of the Act, the State Government and Central Government respectively could have passed the impugned orders is altogether different question. It is well-settled principle that in the absence of Statutory Rules made by reason of legislative delegation under an Act, it is always open to the State Government or the Central Government to implement or enforce the provisions of the Act, by executive instructions, and it cannot be accepted that there is no law prohibiting or banning African Catfish. It may also be noticed that under Sub-Article (6) of Article 19 nothing in Article 19(1)(g) shall affect the operation of any existing law insofar as it imposes reasonable restrictions on the exercise of right conferred for right to carry on business or trade. It also does not prevent the State from making any law imposing reasonable restrictions in the interest of general public on the exercise of right to carry on business or trade. Further, under Sub-article (3) of Article 13 of the Constitution of India, law includes any Ordinance, order bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. An order made either by the Central Government or the State Government in exercise of their powers either u/s 3 or in relation to Section 4 of the Act is also law which can impose restrictions on the exercise of right to carry on trade or business.

22. The Government of India in the Ministry of Agriculture constituted the National Committee consisting of as many as fourteen members under the Chairmanship of Secretary to Government in Agriculture Department. The committee also included the Directors, specialists, experts working in various research organisations. The National Committee was constituted by order dated

17-7-1996 with the following terms of reference, (i) To objectively review and assess the pros and cons of introduction of exotic aquatic species (fin and shell fishes, molasses, seaseeds, etc.) into the country; (ii) to regulate and monitor the introduction through ICAR Research Institutes or any other agency deemed suitable for the purpose; and (iii) to develop guidelines/code of ethics for future introduction, both from outside the country and also from one region to the other within the country.

23. The National Committee, which met on 9-10-1997 decided to adopt strict controlling measures to avoid spread of exotic diseases from *Clarias gariepinus* into endemic fishes. The committee again met on 3-9-1998 and considered the representation of Sri C.D. Sebastian and three others as directed by High Court of Kerala in O.P.No.14252 of 1998 dated 7-9-1998. The matter was considered in detail and a decision was arrived at that introduction of *Clarias gariepinus* is illegal and dangerous to the native Magur species. Be it also noted that after the National Committee met for the first time in 1997, a decision was taken to prohibit the importation of African Catfish. It was also noticed that in some parts of India African Catfish is being cultured. Basing on the recommendations of the National Committee, the Fisheries Development Commissioner sent communications dated 19-12-1997 to all the State Governments' Secretaries for Fisheries Department requesting to take necessary action on the recommendation made by the National Committee. As a consequence, the Director of Fisheries issued directive on 31-5-1999 to all the Field Officers.

24. In the meanwhile, it appears the Vice-Chancellor of Acharya N.G. Ranga Agricultural University, Hyderabad, addressed a letter dated 13-5-1999 to the Director of Fisheries informing that indiscriminate import of exotic fish *Clarias gariepinus* in Kolleru lake area with the encouragement of seed sellers of West Bengal is spreading speedily. Therefore, Director of Fisheries having regard to the Government of India's letter dated 19-12-1997 directed all the Field Officers to take steps to destroy all exotic fish as and when they come across in the water bodies. Directions were also issued to ensure that the culture of African Catfish is not taken up by fish farmers and also book cases if the culture is found so as to develop indigenous fish. When the action was initiated, the petitioners filed the present writ petitions and obtained interim orders. The Fisheries Development Commissioner as well as Director of Fisheries have acted in furtherance of and in enforcing the Act. For these reasons I must hold that the submission that Article 19(1)(g) is violated is devoid of any merit.

25. The alternative submission as noticed is that the petitioners are denied the right to carry on business in selling fish seedlings of African Catfish and therefore it is not, reasonable to totally prohibit the business. Per contra, it was submitted by the learned Government Pleader that the petitioners are also dealers of various other fish seedlings and therefore they are not denied of the right to carry on the business. There is force in the submission of the learned Government Pleader. The petitioners have not specifically denied the averments

in the counter-affidavit. Therefore, it must be taken as admitted that the petitioners are dealers of other types of fish seeds also.

26. Be that as it may, the contention of the learned Counsel for the petitioners that the impugned orders are unreasonable restrictions on the trade and therefore they do not have the protection of Sub-article (6) of Article 19 of the Constitution, lacks merit. Article 19(6) is an explicit provision, which enables the State to make law in public interest and for public good imposing reasonable restrictions on the exercise of right to carry on trade or business. In *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, , a Constitution Bench of the Supreme Court ruled that while testing reasonableness on restrictions impinging on fundamental freedom, the Court has to keep in mind two rules of construction in mind. First, the Courts generally lean towards the constitutionality of a legislative measure impugned before them upon the presumption that a Legislature would not deliberately flout a constitutional safeguard or right. Secondly, while construing such an enactment the Court must examine the object and purpose of the Act, the mischief it seeks to prevent and ascertain from such factors its true scope and meaning.

27. It is well-settled that burden lies on the State to prove that the restrictions imposed under Article 19(6) are reasonable and are made keeping in view public interest and public good. Insofar as the test of reasonableness is concerned, in *State of Madras Vs. V.G. Row*, , the Supreme Court laid down as under.

It is important in this context to determine that the test of reasonableness wherever prescribed should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition the prevailing conditions at the times, should all enter into the judicial verdict.

28. In *M.R.F. Ltd. Vs. Inspector Kerala Govt. and Others*, , the Supreme Court after referring to relevant case law laid down the following principles for testing the reasonableness of restrictions.

(1) While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.

(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the

social control envisaged by Clause (6) of Article 19.

(5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind (See *The State of Uttar Pradesh Vs. Kaushaliya and Others*,).

(6) There must be a direct and proximate nexus, or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise (See *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, , and *O.K. Ghosh and Another Vs. E.X. Joseph*,).

29. As seen from the various minutes of the National Committee and the opinion of the experts to which a further reference would be made while considering the "issue of arbitrariness", the National Committee specifically considered the question of unauthorised introduction of exotic Magur and bighead (*Glarias gariepinns*) and it was stressed that *Clarias gariepinus* should not enter in national environment and cross with endemic *Clarias batrachus*. In the second meeting held on 3-9-1998 the issue was again considered. It was felt that exotic *Clarias gariepinus* is having cannibalistic nature, that it is mainly carnivorous under pond culture conditions and that there is possibility of viable crosses which would eventually cause depletion in the natural stocks causing biodiversity problem. Therefore, it was decided that introduction of African Catfish is illegal and dangerous for the native Magur species and it should not be allowed. These conclusions arrived at by the National Committee would indicate that the whole endeavour was to avoid biodiversity problem and protect the indigenous endemic species by avoiding contagious disorders to Indian stock. The action in imposing ban on African Catfish, therefore, cannot be branded as unreasonable. It is done for public good and in public interest. It is also done in furtherance of Directive Principles of State Policy.

30. In *Joseph Antony's* case (*supra*) the Supreme Court while considering the validity of the Notifications issued under Kerala Marine Fishing Regulation Act, 1980 prohibiting fishing by mechanised vessels in territorial waters by use of gears like purse, seine, boats, ring seines, pelagic and mid-water trawls, upheld the Notification as reasonable restriction and observed that if the mechanised vessels are allowed in the territorial waters it would deprive fishermen of their livelihood. It was held:

By monopolising the pelagic fish stock within and by indiscriminate fishing in the territorial waters they are today denying the vast masses of the poor fishermen their right to live in two different ways. The catch that should come to their share is cordoned off by the giant and closely meshed gears leaving negligible quantity for them. Secondly, the closely meshed nets kill indiscriminately the juvenile with the adult fish and their eggs as well. That is preventing breeding of the fish, which is bound in course of time to lead to depletion and extinction of the fish

stock. There is thus an imminent threat to the source of livelihood of the vast section of the society. The State is enjoined under Article 46 of the Constitution in particular to protect the poor fisherman-population. As against this, the respondent-operators are not prohibited from fishing within the territorial waters. They are only prohibited from using certain types of nets., viz,, purse seines, ring seines, pelagic and mid-water trawls. There is, therefore, no restriction on their fundamental right under Article 19(1)(g) to carry on their occupation, trade or business. They cannot insist on carrying on their occupation in a manner which is demonstrably harmful to others and in this case, threatens others with deprivation of their source of livelihood. Since, in the circumstances, the protection of the interests of the weaker sections of the society is warranted as enjoined upon by Article 46 of the Constitution and the protection is also in the interest of the general public, the restriction imposed by the impugned notifications on the use of the gears in question is a reasonable restriction within the meaning of Article 19(6) of the Constitution,

31. The issue of denial of right to carry on business is answered accordingly against the petitioners.

ii. Issue of invidious classification violating Article 14 of the Constitution

32. The learned Counsel for the petitioners placed reliance on the opinion given by Dr. V, Mahalakshmi, Lecturer in Zoology, at Andhra Pradesh Residential Junior College, Rampachodavaram in support of the contention that out of 159 freshwater species available in Andhra Pradesh as many as 53 species are Carnivorous and therefore the ban imposed on African Catfish is discriminatory. He would also submit that *Clarias gariepinus* is not Carnivorous but it is Omnivorous like Indian species, *Clarias batrachus*. Even on that score the learned Counsel would urge that while allowing *Clarias batrachus* and selecting only *Clarias gariepinus* for banning would amount to discriminating without any rational nexus with the object sought to be achieved. The learned Government Pleader, however, strongly contends that *Clarias gariepinus* under pond conditions is mainly Carnivorous, that Catfish farmers are using the poultry waste and slaughter waste as feed which is resulting in spreading infectious diseases, that *Clarias gariepinus* not being native of Indian species has a predatory tendency and if it is allowed in natural waters, the same would damage the germplasm and may lead to cross breeding with Indian species. There are discernible indicia for classification of *Clarias gariepinus* and such classification has nexus with the object to protect Indian fish species and to avoid bio diversity. Therefore, it is urged by the learned Government" Pleader, that the twin tests of classification permissible under Article 14 of the Constitution are satisfied.

33. A legislation should always adhere to the principle of equality before laws and equal protection of laws. This does not however mean that the legislation is denied the power to classify animate as well as inanimate things for the purpose of legislation. The doctrine of classification by the Legislature or the executive as

recognised in American Constitutional Law is now part of Indian Law. In *State of West Bengal v. Anwar Ali Sarkar* AIR 1952 SC 15, *Budhan Choudhry and Others Vs. The State of Bihar*, , and *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , the Supreme Court upheld the power of the legislature to classify men and materials for the purpose of Legislation. A legislation or executive action adopting classification has to pass rationality test and nexus test, namely, that the classification is founded on intelligible differentia and that the differential has rational relation to the object sought to "be achieved. It must also be noticed that when men and material are divided on the basis of classification, it need not be based on perfect arithmetic position. The broad indicia would suffice twin tests of classification. In a recent judgment in *State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others*, , the Supreme Court while upholding Sub-section (1) of Section 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 repelled that the classification of tenants of the lands held by religious institutions or endowments was unreasonable and it has no nexus with the object sought to be achieved and reiterated the principles of classification as under.

What Article 14 of the Constitution prohibits is "class legislation" and not "classification for purpose of legislation". If the Legislature reasonably classifies persons for legislative purposes so as to bring them under a well defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstances arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation,

34. Any classification should also be reasonable and it must not be patently arbitrary. The classification must not be arbitrary, but must be rational and must not only be based on some qualities or characters which are to be found in all groups together and not in others, who are left out, but those qualities or characters must have rational objective or relation. It is also necessary to point out that when legislation or executive takes action for the achievement of particular object, the purpose need not be all embracing. The discrimination should be glaring and capricious to suffer invalidation. In *Sakhawat Ali Vs. The State of Orissa*, , the Supreme Court ruled:

The simple answer to this contention is that legislation enacted for the

achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution.

35. After examining the classification of *Clarias gariepinus* made by the National Committee and all other experts for the purpose of prohibiting its importation into India and banning the same from Indian waters as well as a species for the culture, I am convinced that the classification is justified for reasons more than one. The material placed on record would show that African Catfish, *Clarias gariepinus* is of Central African origin (See T.V.R. Pillay; "Aquaculture principles and practices"; p.344). This is one distinct attribute to say that it cannot be equated with the 159 species of Andhra Pradesh or other fish species in India. Further, whether or not *Clarias gariepinus* or *Clarias batrachus* are Carnivorous or Omnivorous the fact remains that *Clarias gariepinus* is predatory in nature besides being cannibalistic in pond culture conditions. This aspect of the matter was discussed in the meetings of the National Committee. It was also concluded by the committee that the exotic germplasm contaminates natural stock and it would cause bio diversity problem. Be it noted that the Fisheries Development Commissioner, the representative of Indian Council of Agricultural Research, the Director of National Research Centre for Cold Water Fisheries and the Director of .National Bureau of Fish Genetic Resources were unanimous on this. In response to a letter dated 24-9-1999 the Fisheries Development Commissioner Dr. G.R.M Rao., Director of Central Institute of Brackishwater Aquaculture informed that introduction of African Catfish by farmers .for commercial purpose has high risk because it is difficult to control the exotic diseases and spread of species in Indian environment which would result in ecological problems. Thus, there are many distinguishable features which set apart African Catfish from the Indian variety. The whole endeavour and rational object is of saving native germplasm of Indian species and to protect fish fauna of India in general and Andhra Pradesh in particular. The classification is founded on intelligible differentia and has rational nexus with the object sought to be achieved. Therefore, this Court holds that the impugned orders do not suffer from vice of invidious discrimination and the classification is reasonable and unarbitrary.

iii. Issue of arbitrariness and irrationality

36. The learned Counsel for the petitioners would submit that the decision was taken in arbitrary manner without any scientific basis. It is also contended that when large variety of Indian species of fish are also Carnivorous or Omnivorous, that there is no definite scientific evidence that African Catfish is predatory in nature and cannibalistic and hence, the decision to ban and destroy *Clarias gariepinus* from India is arbitrary and irrational. The learned Government Pleader met this argument by contending that when the National Committee of experts

too the decision as a policy the issue is not justiciable.

37. It is well-settled that all policy decisions lack adjudicative disposition. Ordinarily, the Court of judicial review does not interfere with the policy decision simpliciter unless by reason of its legislative avatar or executive action impinges on constitutional rights or Statutory rights conferred on a person/citizen. It is not necessary to refer to copious case law on this point. In Balco Employees Union's case (supra) the Supreme Court considered this question in detail. After referring to entire case law on the subject, the Supreme Court held:

It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.....The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bonafide and within limits of authority.

38. In Association of Drugs and Pharmaceuticals, Manufacturers, A.P. Vs. A.P. Health, Medical, Housing and Infrastructure Development Corporation, Hyd. and Another, , I considered the scope of judicial review of policy decision and observed :

Therefore, the law may be taken to be well-settled that ordinarily all policy decisions do not have adjudicative disposition and, hence, beyond the purview of judicial review. It is also well-settled that the Government while taking a decision has a right to "trial and error, as long as the policy decision does not violate constitutional or legal limits and the decision is bona fide within the limits of an authority. Ordinarily, any policy decision is not justiciable and beyond the scope of judicial review.

39. Therefore, the contention that the policy would have been different or the policy decision would not achieve the object it seeks to achieve are issues beyond the purview of judicial review. Further, this is not one such case where the petitioners have demonstrated that the decision taken by the National Committee which was communicated by the Fisheries Development Commissioner to all the State Governments is violative of any constitutional or legal rights. As rightly "" contended by the learned Government Pleader the petitioners are not prohibited from carrying on business in selling fish seedlings of other fish. The petitioners also failed to demonstrate that the decision is irrational or unreasonable.

40. The principle of irrationality is Wednesbury principle of unreasonableness as explained by the Supreme Court in *Om Kumar v. Union of India* (2001) 2 SCC 386. In my considered opinion, any expert of a research organisation dealing with culture either of fresh water aquaculture or brackish water aquaculture would have taken the same opinion and such a decision cannot be termed as abhorrent to reason. The introduction of *Clarias gariepinus* is a fraught with dangerous consequences to Indian fish fauna, to Indian fish farmers as well as consumers of fish. The Court cannot introduce or apply its own sense of justice in such a matter. It may be reiterated that "it is not normally within the domain of this Court to waive the pros and cons of the policy or scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it based on howsoever sound and good reason except where it is arbitrary or violative of constitutional or statutory or any other provision of law." The policy decision is made based on number of circumstances as well as experts' opinion. It would be dangerous if the Court is asked to test the utility and beneficial effect of the policy or appraisal based on facts set out in the affidavit. The Court would dissuade itself from entering into this realm which belongs to its executive. (See *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.,*).

41. In this connection a reference may also be made to *Vincent v. Union of India*, : [1987]2SCR468 , and *Shivarao Shantaram Wagle and Others (II) Vs. Union of India and Ors,* . In Vincent's case (supra) the petitioner invoked Public Interest Litigation jurisdiction of the Supreme Court and sought directions to State Government to ban import, manufacture, sale and distribution of drugs recommended by the Drugs Consultative Committee and also asked for cancellation of all licences authorising import, manufacture, sale and distribution of such drugs. The Supreme Court declined to go into the matter observing as under:

Having regard to the magnitude complexity and technical nature of the enquiry involved in the matter and keeping in view the far reaching implications of the total ban of certain medicines for which the petitioners has prayed, we must at the outset clearly indicate that a judicial proceeding of the nature initiated is not an appropriate one for determination of such matters. There is perhaps force in the contention of the petitioner that the Hathi Committee too was not one which could be considered as an authoritative body competent to reach definite conclusions, No adverse opinion can therefore be framed against the Central Government for not acting up to its recommendations.

42. In *Shivarao's* case (supra) the petitioner approached the Bombay High Court seeking a writ of mandamus directing the respondents to forbear from releasing 7500 cartons (200 MT) of Irish butter imported into India under FC Grant-in-Aid for Operation Flood Programme. The writ petition was dismissed by the Bombay High Court. In *S.L.P.*, the Supreme Court followed Vincent's case (supra) and dismissed the SLP Therefore, it must be taken as well-settled that matters of

technical nature having complexity and far-reaching implications cannot be subjected to judicial review and must be left to the wisdom of the executive which is entitled to act on the opinion of the experts.

43. The" submission that the impugned orders are arbitrary is also without any basis and devoid of merits. A Division Bench of this Court, to which I was a member in Pennar Delta Ayacutdars Association and others Vs. Government of Andhra PRadesh and others, , considered the concept of arbitrariness in administrative law. It was observed that arbitrariness as a ground of attack is basically the species of the broader ground of irrationality which is Wednesbury principle of unreasonableness. After referring to S.G. Jaisinghani Vs. Union of India (UOI) and Others, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , it is also observed that whether a decision is arbitrary or not has to be answered on the facts and circumstances of each case and that the decision without any discernible principle which fails to satisfy the test of reasonableness by logic is unreasonable and arbitrary. In view of my findings on issues (i) and (ii), it cannot be said that the decision to ban and destroy African Catfish is without any discernible reasons. There are reasons more than one to do so as indicated supra and the decision cannot be termed as arbitrary. The issue is answered accordingly against the petitioners.

44. In the result, for the above reasons, the writ petitions fail and are accordingly dismissed with costs. AH the interim orders shall stand vacated.