
(2007) 07 RAJ CK 0073
In the Rajasthan High Court

Goverdhan Das Keswani

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Constitution of India, 1950 — Article 48

Citation : (2008) 1 RLW 424

Hon'ble Judges : R.M. Lodha, J; Mohammad Rafiq, J

Bench : Division Bench

Judgement

1. This writ petition in the nature of public interest litigation, inter-alia, raises a grievance concerning illegal slaughtering, migration, export and transportation of bovine animals.

2. The following prayers have been made.

(i) Direct the respondents to stop slaughtering, migration, export and transportation of cows, calves and other milch and drought cattle immediately;

(ii) Direct the respondents to take action against the policy personnels who tried to suppress/destroy the evidence in slaughtering of such animals.

(iii) To recommend the state for minimum sentence of 10 years rigorous imprisonment and fine of Rs. 1,00,000/- instead of minimum sentence of 1 year rigorous imprisonment and fine as provided u/s 10 of the Act of 1995 and the vehicle involved in such cases should not be released so lightly, rather it should be dealt with as releasing the vehicle in Forest Act.

(iv) Any other appropriate writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances may also kindly be passed in favour of the petitioner and against the respondents.

(v) Cost of the writ petition may kindly be passed in favour of the petitioner and against the respondents.

3. According to the petitioner, due to leniency of law enforcing agency and/or deliberate inaction or connivance of the police authorities, the slaughtering of bovine animals has been flourishing in the State of Rajasthan and particularly, Alwar and Bharatpur districts. It is stated that slaughtering of cows is on peak in the village Jurhara, Pahari, Gopalgarh, Seekari area of District Bharatpur and the village Tijara, Kishangarhbas, Tapukara, Kot Kasim, Nau Geon, Mubarakpur, Padasli, Rajgarh, Sakka Ka Bas, Andha Ka Beehar and Beehar of Ramgarh in Alwar district. The petitioner has alleged that due to slaughtering of cows, bulls, bullocks and calves, "deshi breed" has decreased and that no effective steps for implementation of the Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995 (for short, "Act of 1995") are in place.

4. The respondents have filed their reply. The importance and utility of the cow stock is not denied. It is also admitted that illegal transportation of cow stock and other animals takes place in Mewat area (Alwar and Bharatpur districts). However, the respondents have denied any deliberate inaction or connivance of the state functionaries in the illegal act. On the other hand, the respondents have claimed that the concerned authorities of police have been taking every possible measure for implementation of the aforesaid Act of 1995 and that for the period between 1995 to 2006 about 400 criminal cases have been registered in the district of Alwar and in most of them challans have been filed and more than 200 criminal cases have been registered in the District of Bharatpur during the period from 1995 to 2004 and in 175 cases challans have been filed. In additional affidavit filed on 12.7.2007, pursuant to the order dated 18.5.2007, the status of all these cases has been given.

5. The Act of 1995 was enacted to provide for prohibition of slaughter of cow and its progeny and also to regulate temporary migration or export from Rajasthan. Earlier Rajasthan Preservation of Certain Animals Act, 1950 (Act 4 of 1950) which prohibited killing of cow and its progeny, was in existence but that was found inadequate. The transportation of large number of cows, bulls, bullocks and calves had been recurrent famine and scarcity conditions in the State. It was for these reasons and in furtherance of the directive principles of the State Policy contained in Article 48 of the Constitution of India, the State legislature decided to act and brought a fresh law in the year 1995 in the interest of general public.

6. Section 3 of the Act of 1995 prohibits slaughter of bovine animal while Section 4 prohibits possession, sale or transport of beef products. These sections read thus:

3. Prohibition of slaughter of bovine animal - Notwithstanding anything contained in any law for the time being in force or in any usage or custom to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any bovine animal.

4. Prohibition of possession, sale or transport of beef and beef products -

Notwithstanding anything contained in any other law for the time being in force, no person shall possess, sale or transport for sale or cause to be sold or transported beef or beef products in any form.

7. Section 5 prohibits export of bovine animal for the purpose of slaughter and regulation of temporary migration or export for other purposes. Section 5 reads thus:

5. Prohibition of export of bovine animal for the purpose of slaughter and regulation of temporary migration or export for other purposes-

(1) No person shall export and cause to be exported any bovine animal himself or through his agent, servant or other person acting in his behalf from any place within the State to any place outside the State for the purposes of slaughter or with the knowledge that it may be or is likely to be slaughtered.

(2) Notwithstanding anything contained in Sub-section (1) temporary migration of bovine animal from the famine and scarcity affected areas of Rajasthan may be allowed by the Competent Authority to other States in India for grazing purposes under a valid permit in the manner prescribed and hereinafter laid down.

(3) Any person residing in any famine and scarcity affected area and desiring migration of any bovine animal shall apply to the Competent Authority having jurisdiction over such area stating the circumstances necessitating the proposed migration together with the number of bovine animals and name of the State or States to which migration is proposed and the period for which the permit is required.

(4) The Competent Authority after satisfying itself about the genuineness of the request of the applicant referred in Sub-section (3), may grant him a permit in the prescribed form and manner which among other things may provide for affixing of identification mark before such temporary migration of bovine animal is allowed out of the State and in no case the period of said migration shall extend beyond the month of August next following the date of grant of the permit.

(5) On return from temporary migration the applicant referred to in Sub-section (3), shall inform the Competent Authority in writing about the number of bovine animal brought back by him together with the explanation for variations, if any.

(6) If any person does not bring back such bovine animal into the State and also within the period specified in the permit he shall be deemed to have contravened the provisions of Sub-section (1).

(7) The Competent Authority may issue special permit in the prescribed manner for export of bovine animal from Rajasthan for agricultural or dairy farming purposes or for participation in a cattle fair, and before granting such permission

the Competent Authority shall also ensure that such export in no way reduces the number of such bovine animal below the level of actual requirement of the local area.

(8) Any applicant referred to in Sub-section (3) or any person seeking special permit under Sub-section (7), aggrieved by an order of the Competent Authority made under Sub-section (4), Sub-section (6) or Sub-section (7) may make an application, within thirty days from the date of the order, to the Divisional Commissioner and the Divisional Commissioner may upon such application or suo-motu call for and examine the record of the case for the purpose of satisfying himself as to the correctness, legality or propriety of any order and may pass such order as it may deem just and proper and such order shall be final and conclusive and shall not be called in question in any civil court.

8. The transporter who transports bovine animals in furtherance of the object of commission of the offence under the Act of 1995 is guilty of abetment u/s 6. it reads thus:

6. Transporter to be abettor- Whenever the bovine animals are transported by any means of transport in furtherance of the object of commission of any offence under this Act, the transporter shall be guilty of abetment of the said offence and shall be liable for the same, punishment as is provided u/s 8 of the Act for person committing the said offence.

9. Section 7 deals with the custody and disposal of bovine animal seized as a result of search or seizure or inspection or otherwise. It reads thus:

7. Custody and disposal of bovine animal seized-(1) Whenever as a result of search or seizure or as a result of inspection or otherwise the bovine animals are seized, the custody of the seized bovine animals pending final disposal of the case may be entrusted by an order of the Competent Authority to any recognised voluntary agency working for the welfare of such animals or to a Gaushala or a Gosadan governed under the provisions of the Rajasthan Gaushala Act, 1960 (Act 24 of 1960):

Provided that where there is no such voluntary agency or Gaushala or a Gosadan in any local area, the Competent Authority may entrust the custody of bovine animals to any such agency, Gaushala or Gosadan outside the area or to any other suitable person, who volunteers to maintain such animal.

(2) Whenever any case is finally disposed of, further orders regarding custody or permanent entrustment of bovine animal shall be made by the Competent Authority subject to such terms and conditions as may be deemed proper.

(3) Any person aggrieved by an order made under Sub-section 91) or Sub-section (2) may, within thirty days from the date of the said order, appeal against it to the Divisional Commissioner.

(4) On such appeal the Divisional Commissioner may after giving an opportunity

to the appellant and the Competent Authority or any other officer authorised by him in this behalf to be heard, direct the order to be stayed pending disposal of the appeal or may modify, alter or annul the order and make any further orders that may be just.

(5) Whenever any bovine animal is seized under this Act the Competent Authority or the Divisional Commissioner shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, Tribunal or other Authority shall not have jurisdiction to make orders with regard to possession, delivery, disposal or release of such animal.

10. Section 8 provides for the penalty. Whoever contravenes or attempts to contravene or abets in the contravention of the provisions of Section 3 is punishable with rigorous imprisonment for a term not less than one year and upto ten years and with fine which may extend to ten thousand rupees.

11. That the Act of 1995 needs strict enforcement is beyond doubt. The constant vigil for protection of bovine animals in the State of Rajasthan which is famine prone is imperative. As a matter of fact, while enacting the Act of 1995, the state legislature was alive that the agriculture is the main stay of our economy and cows, calves, bulls and bullocks being milch and draught cattle are the backbone of the entire agricultural economic structure. That illegal transportation of the cows and other animals takes place in Mewat area (Districts of Alwar and Bharatpur) is not even disputed by the respondents. It is not that nothing has been done by the State functionaries in the enforcement of the animal welfare legislation like the Act of 1995. However, more vigilance and speedy trial of the cases under this Act are needed.

12. Though the reliefs as claimed by the petitioners may not be granted, we are satisfied that some directions need to be issued for effective enforcement of the Act of 1995 and expeditious trial of the cases under the Act of 1995.

13. We, accordingly, dispose of this writ petition by the following order:

(i) The Superintendent of Police, Alwar and Bharatpur districts, shall convene meetings of the Station House officers within their jurisdiction every quarter (every three months) for reviewing the measures in effective implementation of the Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995, such meetings shall be held in the first week of January, April, July and October every year. For the month of July, 2007, now since the first week is already over, such meeting shall be held in the last week of July, 2007.

(ii) In the meetings as afore-directed, amongst others, the Station House Officers shall apprise the concerned Superintendent of Police about the progress of the criminal cases launched under the Act of 1995 and the steps taken for expeditious and early conclusion of trials pending before the criminal courts.

(iii) The Superintendent of Police, Alwar and Bharatpur districts, shall also take

steps in ensuring that the prosecution witnesses in the offences relating to the Act of 1995 are produced before the concerned criminal court on the date/s fixed and that as far as possible no adjournment is sought by the public prosecutor on the ground of non-availability of the prosecution witnesses.

(iv) The Superintendent of Police, Alwar and Bharatpur districts, shall call for quarterly report from the concerned Public Prosecutors dealing with the cases under the Act of 1995 and issue necessary instructions for assisting the court/s in speedy trial of these cases.

(v) The Superintendent of Police, Alwar and Bharatpur shall, also issue necessary guidelines keeping in view the provisions of Section 7 of the Act of 1995 that the animals seized, pending final disposal or upon final disposal, are kept and maintained properly.

14. The Additional Government Advocate shall forward the copy of this order to the Superintendent of Police, Alwar and Bharatpur without any delay for compliance.