

(2000) 02 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2842 of 1990 and 2945 of 1996

Jaipur Pada Meat Merchants Association and Another

APPELLANT

Vs

Municipal Council and Others

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Constitution of India, 1950 — Article 19, 48

Citation : (2000) 4 RLW 77 : (2000) 3 WLN 284

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—The grievance of the petitioner Jaipur Pada Meat Merchants Association (here-in-after called as "the Association") as brought out in the writ petition is that the action of the respondents in issuing the notification dated 8.2.1989 published in the Rajasthan Gazette (Extraordinary) on 9.2.1989 whereby the word "buffalo" has been deleted from the list of animals to be slaughtered in the Slaughter Houses under the Jaipur Municipal Corporation is not valid and prayer is made to allow the petitioner association to slaughter the buffaloes as well in the Slaughter Houses maintained by the Municipal Corporation as per regulations and further to quash the notice issued in the month of July 1989 to certain person for not allowing the slaughtering the buffaloes (here-in-after called "pada").

2. Vide notification dated 2.7.1979 published on 5.7.1979, copy of which is attached as Annexure-1 issued u/s 295 of the Rajasthan Municipalities Act, 1959, the buffalo animal was included in the list of animals which could be slaughtered, but after about 10 years of such notification, vide impugned notification Annexure-2 the insertion of word "buffalo" in the notification (Annexure-1) has been revoked.

3. It is the submission of the counsel for the petitioners that the Municipal

Corporation had already approved the slaughter Houses, but those have been reserved only for Sheep and Goat meat but later on reconsideration the word "buffalo" was also included as already stated above. It is the further contention that other Municipal Councils and Boards such as...Nasirabad, Sawai Madhopur, Kekri in Rajasthan are allowing the buffalo to be slaughtered. It is stated that the State Government had no authority to omit to mention the slaughtering of such animal except in accordance with law for which there may be protection provided in the law itself. The action of the respondents is being challenged as unconstitutional as well.

4. The petition has been opposed by the respondent Corporation on the ground that in Jaipur city slaughtering of buffalo was not allowed from the very beginning, but it was in the year 1979 that the notification for slaughtering the buffalo was also issued, but has been now revoked for the reason that in Jaipur city earlier to 1979 the buffaloes were not being slaughtered for the purpose of meat.

Facts of S.B. Civil Writ Petition No. 2945/96

Jamil Ahmed v. State of Rajasthan and Ors.

5. The present writ petition has been filed with the prayer to issue license to the petitioner for holding the buffalo meat shop at Talab Pada, Baran. It is stated that he was running a shop at Mohalla Talab Pada at Baran when he was issued a notice dated 3.12.1994 asking him to close down the buffalo meat shop as the same was being run without obtaining the license from the Municipal Board.

6. It is stated that he had submitted in his application on 16.12.1991 for grant of license vide Annexure-2, but the license was not granted for the reason that under the bye-laws of 1964 framed u/s 90 of the Act of 1959, the license for selling the buffalo meat could not have been granted. It is stated that the bye-laws of the Municipal Board, Baran do not prescribe the slaughtering of buffalo which is a common consumable of meat for the poor class.

7. It is the contention of the respondents in the written statement that for the reasons that the buffalo has not been mentioned in the notification for the purpose of slaughtering, it is to be deemed that the slaughtering of buffalo is prohibited.

8. Parties have relied on Supreme Court judgments in the case of Mohammed Faruk Vs. State of Madhya Pradesh and Others, and Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another, Reliance is also placed on a Division Bench judgment of this Court in the case of Sarfraz etc. v. The Municipal Council, Beawer and Ors. 1989 (1) R.L.R. 61, and a Single Bench decision in the case of Abdul Majid v. Municipal Council, Beawer and Ors. S.B. Civil Writ Petition No. 2178/90, decided on 26.9.1991.

9. In the case of Mohd. Faruk v. State of Madhya Pradesh (supra), the

notification dated 12.1.1967 issued by the Governor of cancelling confirmation of the bye-laws made by the Jabalpur Municipal Committee for inspection and regulation of slaughter houses in so far as the bye-laws relate to slaughter of bulls and bullocks, which had the effect of prohibiting the slaughter of bulls and bullocks within the municipality of Jabalpur imposed a direct restriction under the fundamental right of the petitioner was declared to be *ultravires* as infringing Article 19(1)(g) of the Constitution. It was held that the onus of proving to the satisfaction of the Court that the restriction is reasonable lies upon the State. A law requiring that the act which is inherently dangerous, noxious or injurious to public interest, health or safety or is likely to prove a nuisance to the community, shall be done under a permit or licence of an executive authority, it is not *per se* unreasonable and no person may claim a licence or permit to do that act as of right. Where the law providing for grant of a licence or a permit confers of discretion upon an administrative authority regulated by rules or principles express or implied, and exercisable in consonance with rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion, the law *ex facie* infringes the fundamental right. It was further observed as under-

The sentiments of a section of the people may be hurt by permitting slaughter of bulls and bullocks in premises maintained by a local authority. But a prohibition imposed on the exercise of a fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in the interest of the general public, but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the claimant."

10. In the case of *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, the Supreme Court had held as under-

(i) that a total ban on the slaughter of cows of all ages and calves of cows and of she-buffaloes, male and female, was reasonable and valid; (ii) that a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes), so long as they were capable of being used as much or draught cattle was also reasonable and valid; and (iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interests of the general public and was invalid.

11. In the case of *Abdul Hakim Quraishi and Others Vs. The State of Bihar*, it was held by the Hon'ble Supreme Court that the ban on the slaughter of bulls, bullocks and she-buffaloes below the age of 20 or 25 years was not a reasonable restriction in the interests of the general public and was void. The court observed that a bull, bullock or buffalo did not remain useful after it was 15 years old, and whatever little use it may then have was greatly offset by the economic disadvantage of feeding and maintaining unserviceable cattle.

12. In the case of *Municipal Corporation of the City of Ahmedabad and Ors. v. Jan Mohammad (supra)*, the controversy involved which came for consideration was whether the closure of slaughter houses on seven days specified in the two standing orders in any way put an unreasonable restriction on the fundamental right guaranteed to the petitioner under Article 19(1)(g) of the Constitution of India. Three days out of seven days were connected with the Birthday of Mahatma Gandhi, Sharadha Day and Nirwan Day and out of four days it was Janmashtmi, Ram Navmi, Mahaveer Jayanti and Jain Samvatsari relating to Lord Mahaveer. It was held by the Supreme Court that it was open to the Municipal Commissioner to fix the days and hours at and during which any slaughter house should be kept open for use. It was further observed as under-

The objects sought to be achieved by the impugned standing orders are the preservation, protection and improvement of live-stock. Cows, bulls, bullocks and calves of cows are no doubt the most important cattle for the agricultural economy of this country. Female buffaloes yield a large quantity of milk and are, therefore, well looked after and do not need as much protection as cows yielding a small quantity of milk require. As draught cattle male buffaloes are not half as useful as bullocks. Sheep and goat give very little milk compared to the cows and the female buffaloes, and have practically no utility as draught animals.

13. In the Division Bench judgment of this Court in the case of *Sarfaraz etc. v. The Municipal Council, Beawar (supra)*, it related to the issuance of a licence for selling the buffalo meat where the case of the Municipal Council was that the slaughter of buffalo or selling its meat was not allowed as there was no provision in the bye-laws of the Municipal Board for sale of meat of he-buffalo and it was contended on behalf of the Municipality that according to the hygienic conditions, legal requirements, health, safety and convenience of the municipality, it was not found suitable to allow sale of buffalo meat in Beawar and almost in similar circumstances it was observed by the Division Bench as under-

We are of the considered opinion that no question of religious feelings of public at large or public health and safety is involved in issuing licences for sale of buffalo/beef meat to the petitioners. As was held in *Mohd. Faruk v. State of M.P. (supra)* by the Apex Court, the sentiments of a section of the people may be hurt by permitting slaughter of bulls and bullocks in premises maintained by a local authority, but a prohibition, imposed on the exercise of a Fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in the interest of the general public, but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the petitioners. The total ban placed by respondent No. 1 offends the fundamental rights guaranteed to the petitioners under Article 19(1)(g) as it totally prohibits the slaughter of buffaloes/bulls without prescribing any test or requirement as to their age of usefulness. As held by the Supreme Court in case of *M.H. Quareshi (supra)* the experts are all almost unanimous that after age of 15 years buffaloes/bulls/bullocks are no longer

useful for breeding, draught and other purposes and whatever little use, they may have then is greatly off-set by the economic disadvantage and maintaining unserviceable cattle.

14. Relying on the judgment of Sarfaraz and Ors. v. Municipal Council, Beawer and Ors. a Single Bench of this court" had given a direction in the case of Abdul Majid v. Municipal Council, Beawer and Ors. S.B. Civil Writ Petition No. 2178/90 decided on 26th September 1991 to construct a separate slaughter house for buffaloes in Beawer. It was further held that not granting of licence for running the profession by the petitioner in that case was not warranted.

15. The case was fixed for pronouncement on 17.12.1999 when a request was made by Shri J.K. Singhi that because of his having gone under the bye-pass surgery when the arguments were heard, he could not assist the court and, therefore, requested for addressing the arguments and ultimately the case was, therefore, adjourned to be listed under the heading "To Be Mentioned" and the judgment was reserved. Mr. Singhi, counsel for the respondent Municipal Corporation relies on a Division Bench decision of M.P. High Court wherein a challenge was made to the blanket ban of slaughter of cow, calf of cow, calf of she-buffalo, bull or bullocks, but in regard to other agricultural cattle a certificate was to be obtained from the competent authority that the cattle is fit for slaughter. It was the argument that such action of the State in banning the cattle for implementing all objects of Article 48 of the Constitution of India and the directive principles of the State policy as enshrined in Part IV of the Constitution. The constitutional validity of the enactment was held to be valid keeping in view of the directive principles.

16. Counsel has also relied on a judgment in the case of M/s. Diwan Singh and Company, Wine Contractor and other Vs. State of Punjab and others, which was a case of acceptance of highest bid of liquor and it was held that there is no right created in the bidder that in all circumstances in the default of the highest bid, the bid should be sanctioned in favour of the petitioner. It has no relevancy to the present case.

17. Similarly the facts in State of West Bengal, etc. Vs. Ashutosh Lahiri and others, are not relevant for determining the proposition of the case in hand. In the case of Ashutosh Lahiri, a total ban was made on the slaughtering of healthy cows which are not fit to be slaughtered u/s 4(1) and if ban was to be lifted even for a day, it had to be shown that such lifting of ban is necessary for sub-serving any religious purpose. The Government had granted exemption in respect of slaughtering of cows on the occasion of Bakri Idd day. It was held by the Supreme Court that slaughtering of healthy cows on Bakri Idd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merit on Bakri Idd and, therefore, granting of exemption u/s 12 in respect of slaughtering of healthy cows on the occasion of Bakri Idd day was dehors the statute and liable to be set aside. Ashutosh Lahiri's case was not a

case of total ban of cows or buffaloes.

18. Another objection has been taken by the respondent Mr. Singhi that no writ was maintainable on behalf of the association and for that purpose relies on : [1997]1SCR868 and 1995 (3) WLC I. This objection is not maintainable for the reason that apart from a writ petition filed by the association another writ petition which has also been connected has been filed by an individual. Even otherwise, when a policy is under challenge, which effects the public at large, it can be tested on the application filed by the association itself as well, for the reason that association is not acting for the benefit of any individual right but challenging the policy at large. This objection is not maintainable, and is rejected.

19. It goes without saying that the total ban or omission or deletion of the word "buffalo" from Annexure-1 vide impugned notification cannot be held to be a valid action of the respondents and as such the slaughter of he/she buffaloes cannot be forbidden as is being now argued by the Municipal Corporation. However, the Municipal Corporation is at liberty to prescribe the regulations which is mandatory for it to regulate the procedure by providing separate butcher houses for "padas"/buffaloes. It shall also prescribe the minimum age of the cattle for the purpose of slaughtering taking into account the usefulness of cattle till the age of the health condition when they are beneficial to the human community; it shall also take measures to see that only healthy and free from any disease cattle are slaughtered under a certificate of the concerned Medical Department. A proper hygienic condition shall also be prescribed so that it may not become a nuisance or irritating to the eyes of the public and in any case, carrying of slaughtered material shall always be carried in a proper covered condition. The licence would be granted for selling the "pada" meat ear-marked for selling by such shops and not in the open residences/localities. The Municipal corporation shall also see that the butcher shop shall maintain all hygienic conditions, free from dirt, flies and other dangerous materials. The Municipal Corporation shall lay down the conditions of license within 3 months from the receipt of the certified copy of this order.

20. For the above-said discussion, directions are issued to the Municipal Corporation to take all steps for allowing the sale of pada meat and issue licenses if the above-said conditions are fulfilled by such licensees. Both the writ petitions are allowed. Necessary licence to the persons who fulfills the conditions shall be granted in accordance with law.