
(1982) 08 CAL CK 0006
In the Calcutta High Court
Case No : C.R. No. 709 (W) of 1971

Kedarnath Brahmachari and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-08-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 133(1), 48
West Bengal Animal Slaughter Control Act, 1950 — Section 12, 13, 14, 2, 4

Citation : (1982) 08 CAL CK 0006

Hon'ble Judges : B.C. Chakraborti, J; Anil K. Sen, J

Bench : Division Bench

Advocate : Nani Coomar Chakrabarti and Madan Mohan Mallik, for the Appellant; P. Bose and K.M. Yusuf, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—This Rule which was obtained by 27 petitioners on a writ petition jointly moved by them was referred to the Division Bench under Rule 1 (i), Chapter II of the Appellate Side Rules of this Court by a learned single judge because it involves an important point of law. Since the subject matter of challenge in the writ petition is the validity of exemption of slaughter of scheduled animals from the operation of the West Bengal Animal Slaughter Control Act 1950 (hereinafter referred to as the said Act) on the Bakrid day, the petitioners obtained leave under Order 1 Rule 8 of the CPC and added respondent Nos. 7 to 21 representing the Muslim public. The said Act was enacted to control slaughter of certain animals, namely, the cows and buffaloes in different species specified in the Schedule to the said Act and its object is "to increase the supply of milk and avoid the wastage of animal power necessary for improvement of agriculture". Section 2 of the said Act provides application of the Act to the animals specified in the Schedule. Section 4(1) provides notwithstanding anything in any other law for the time being in force or in any usage to the contrary, no person shall slaughter any animal unless he has

obtained in respect thereof a certificate under subsection (2) or sub-section (3) that the animal is fit for slaughter. Sub-sections (2) and (3) of section 4 provide that the President of the Municipality and the Veterinary Assistant Surgeon may jointly issue a certificate of such fitness if the animal is 14 years of age and unfit for work or breeding or if the animal has become permanently incapacitated from work or breeding due to age, injury, deformity or any incurable disease. In the event of any difference of opinion between the President and the Assistant Surgeon such certificate can be issued by the Veterinary Officer. Section 7 renders contravention of the Act punishable with imprisonment or fine or with both and section 8 makes such offence cognizable. What is important for our present purpose is section 12 of the said Act which reads as follows:

12. The State Government may, by general or special order and subject to such conditions as it may think fit to impose, exempt from the operation of this Act the slaughter of any animal for any religious, medicinal or research purposes.

2. Section 13 empowers the State Government to delegate its powers and functions u/s 12 to any officer of the State Government and it is not in dispute that the respondent Nos. 2 to 16 are the officers so authorised to exercise the power of exemption u/s 12 on behalf of the State Government. Section 14 empowers the State Government to make rules to carry out the purposes of this Act and such rules were framed on November 2, 1951. For our present purposes reference need be made to Rule 7 of the Rules so framed which provides as follows:

7. Conditions subject to which exemption may be granted. The provisions of the West Bengal Animal Slaughter Control Act, 1950, (West Bengal Act. XXII of 1950) shall not apply to the slaughter of any animal for religious, medical or research purpose subject to the condition that such slaughter does not affect the religious sentiment of the neighbours of the person or persons performing such slaughter and that the previous permission of the State Government or any officer authorised by it is obtained before the slaughter.

3. It is not in dispute that respondent Nos. 2 to 16 acting as the delegate of the State Government are granting exemption in respect of cow slaughter every year on the Bakrid Day in exercise of power u/s 12 of the Act and permission is being given to different members of the Muslim community to slaughter cow on such an occasion overriding the restriction otherwise imposed by the said Act. The 27 petitioners in this writ petition who are Hindu citizens of India and are residents of Calcutta and the neighbouring Districts in West Bengal are challenging the validity of such exemption and permission which is being granted by respondent Nos. 2 to 16 on behalf of the State of West Bengal as also the permission to cow slaughter otherwise overriding the restriction under the Act. The point made out in the writ petition is to the effect that slaughter of cow is not a part of the Muslim religion nor is it a religious necessity for celebrating Bakrid and hence respondent Nos. 2 to 16 in granting the exemption u/s 12 of the said Act are really acting de hors the statute.

4. In contesting this Rule an affidavit has been filed by the Joint Director of Veterinary Services on behalf of respondent Nos. 1 to 16. In this affidavit the material facts are not disputed. On the other hand, it is admitted that on Bakrid Day permit for slaughter of cows as provided under the relevant section of the West Bengal Animal Slaughter Control Act, 1950, are issued by competent officers empowered in this behalf by the State Government after careful scrutiny of each individual case strictly in accordance with Rule 7 of the Rules. Disputing the petitioners' allegation that such slaughter is being permitted on large and extensive scale, in the affidavit it has been pointed out that on the occasion of Bakrid on February 6, 1971, 2,623 permits were issued.

5. Mr. Chakrabarti appearing in support of this Rule has contended that the object of the Act is to control slaughter of animals including cows by prohibiting slaughter of any such animal unless it is over 14 years of age and unfit for work or breeding; or has been permanently incapacitated from work or breeding due to age, injury, deformity or any incurable disease. It is pointed out by Mr. Chakrabarti that any exemption granted u/s 12 would to that extent defeat the purpose of the Act and, therefore, an exemption must come strictly within the sanction of the said provision. According to Mr. Chakrabarti, section 12 empowers granting of exemption for a limited purpose, namely, for religious, medicinal or research purpose. A slaughter of a scheduled animal if be necessary for any one of the aforesaid three purposes an exemption may be granted subject to the conditions specified in the Rules. Since, however, according to Mr. Chakrabarti, slaughter of a scheduled animal or to be more precise slaughter of a cow not being a religious necessity under the Muslim Law, the disputed exemptions granted on the occasion of Bakrid do not really come within the sanction of section 12. In reality Mr. Chakrabarti contends such exemptions are being granted on extraneous considerations and de hors the statute. Strong reliance is placed naturally by Mr. Chakrabarti on the decision on the Supreme Court in Mohd. Hanif Quareshi and Others Vs. The State of Bihar, . Reference is also made to Article 48 of the Constitution incorporating a directive principle of prohibition of slaughter of cows and calves and other milch and draught cattle.

6. In view of the importance of the point involved and its far reaching consequences we have heard the learned Advocate General along with the counsel for the respondent State.

7. According to the learned Advocate General, cow slaughter may not to a part of the Muslim religion or an essential prerequisite for the purpose of celebration of Bakrid but such slaughter is commonly practised by a major part of the Muslim community on an occasion like Bakrid and hence it cannot be said that exemption granted u/s 12 of the said Act on such an occasion is not for a religious purpose. The learned Advocate General, however, has strongly challenged the locus standi of the present petitioners to maintain such a writ petition when the disputed exemption had not affected them individually nor had the same infringed any of their individual rights.

8. So far as the second objection raised by the learned Advocate General is concerned, we think the answer in the decision of the Supreme Court in the case of *S.P. Gupta Vs. President of India and Others*, . In this decision, the Supreme Court pointed out that the traditional rule in regard to locus standi to the effect that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action admits of exception. It is more so at the present day when the State activities are being extended in socio economic field and laws are increasingly being used as a device of organised socio action and bringing about socio economic changes creating thereby rights in favour of people in general and imposing wide ranging duties on the State and public officials for the fulfilment of such a purpose. The Supreme Court pointed out that there may be cases where the State or a public authority may act in violation of a constitution or statutory obligation or fail to carry out such obligation resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. In such a case it cannot be said that such a injury would go unredressed because no individual can claim a locus standi to challenge such an act. To quote the very words of Bhagabati, J. "We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective law." Such a right can be exercised by a member of the public subject, however, to an important condition, namely, that he is acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration.

9. Tested in the light of the principles so enunciated by the Supreme Court we cannot but uphold the right of the present petitioners to move this court for ventilation of their grievance arising out of the alleged infringement of the provisions of the said Act. If the exemptions granted u/s 12 or the said Act complained of are really beyond the sanction of the said provision, then by the exemptions respondent Nos. 2 to 16 acting on behalf of the State are not only authorising slaughter of a scheduled animal in contravention of section 4 of the said Act but they are materially frustrating the very object of the statute which envisages preservation of animal power and increase of supply of milk. Such an infringement undisputedly results in a public injury and the 27 petitionary though they may not have been directly affected by such exemptions, they do stand to suffer as a member of the public by such public injury. It can, therefore, be said that they have made out sufficient interest to entitle them to maintain the writ petition and it is not suggested that they are moving the application out of any

oblique motive. Hence, we overule the objection as to the maintainability of the present application raised by the learned Advocate General.

10. Next we proceed to consider the case of the petitioners on its merits. We find that in the case of Mohd. Hanif Quareshi and Others Vs. The State of Bihar, , the Supreme Court had gone into the disputed point specifically when it was held that sacrifice of a cow on Bakrid Day is not an obligatory overt act for a Musalman to exhibit his religious belief and ideas. The very contention in this regard which has been put forward before us by the learned Advocate General, namely, that a substantial part of the Muslim community does take to cow slaughter on such an occasion was also advanced before the Supreme Court ON that occasion but the Supreme Court rejected the said contention in holding that notwithstanding such sacrifice by a number of Muslims such slaughter cannot be considered to be a part of religious requirement. In the present case, we find that when respondent Nos. 2 to 16 are granting exemption u/s 12 and permitting cow slaughter on the Bakrid Day they are doing so for no purpose other than religious purpose. But there, the said respondents are totally overlooking that such slaughter cannot be for a religious purpose because it is not a part of the religious requirement for the Musalman that a cow or that any of the scheduled animals is required to be sacrificed in observing Bakrid. A sacrifice which is not a part of the religious requirement cannot, in our view, be sanctioned on the ground of religious purpose within the meaning of section 12 of the said Act. In that view, we cannot but accept the contention of Mr. Chakrabarti that exemptions u/s 12 of the said Act which are being granted for slaughter of cows on the Bakrid Day are really dehors the statute not being within the sanction of the said provision.

11. In the result, the petitioner's must succeed in this writ petition and we make the Rule absolute. We direct that a writ in the nature of Mandamus do issue commanding the State of West Bengal, respondent No. 1 and its delegates respondent Nos. 2 to 16 to forbear from giving any exemption u/s 12 of the said Act in respect of slaughter of any cow or a scheduled animal on the occasion of Bakrid hereinafter. There will be no order for costs.

12. The operation of this order shall remain stayed for eight weeks from this day.

13. Prayer for leave, made orally, under Article 133 (1) of the Constitution, is refused since we have proceeded on the decision of the Supreme Court itself.

B.C. Chakrabarti, J.

I agree.