

(2016) 01 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 200 of 2016

Naresh Kadyan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Constitution of India, 1950 — Article 48
General Clauses Act, 1897 — Section 24, Section 6
Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 — Section 12, Section 16, Section 20, Section 20(3), Section 4, Section 4 (1)(c), Section 4

Citation : (2016) AIR(Punjab) 54 : (2016) 1 LawHerald 100 : (2016) 2 PLJ 437 : (2016) 1 PLJ 234 : (2016) 1 PLR 725

Hon'ble Judges : Satish Kumar Mittal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Jitender Malik, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—1. The petitioner has filed this petition, claiming it to be in public interest, challenging certain provisions of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (hereinafter referred to as the "2015 Act"), notified vide Notification dated 19.11.2015. By this Act the Punjab Prohibition of Cow Slaughter Act, 1955 (hereinafter referred to as the "1955 Act") as applicable to Haryana has been repealed.

2. The petitioner is further seeking direction to the respondents to adopt and declare Cow Progeny as "State Animal of Haryana".

3. The primary challenge is to sub sections (2) and (3) of Section 20 of 2015 Act.

4. Section 20 of the Act reads as under:--

"(1) The Punjab Prohibition of Cow Slaughter Act, 1955 (Punjab Act No. 15 of 1956) as applicable to the State of Haryana is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the repealed Act and the rules made thereunder, shall be deemed to have been done or taken under this Act.

(3) The Haryana Prohibition of Cow Slaughter Rules, 1972 framed under the said Act shall be deemed to have been framed under this Act till new rules are framed under this Act."

5. A perusal of the aforesaid provisions reveals that subsection (2) and (3) are a part of the repeal and saving Section. By sub-section (2) anything done or any action taken under the repealed Act and Rules made thereunder shall be deemed to have been done or taken under the 2015 Act. By sub-section (3), till new Rules are framed under the 2015 Act. the Haryana Prohibition of Cow Slaughter Rules, 1972 (hereinafter referred to as the "1972 Rules") framed under the 1955 Act shall be deemed to have been framed under the 2015 Act.

6. Such provisions are normally a part of Repeal and Saving clauses where there is re-enactment after repeal of the Act. Even in their absence, by operation of the General Clauses Act, the result would have been the same. Reference in this context may be made to Sections 6 and 24 of the General Clauses Act, 1897.

"Section 6. Effect of repeal

6. Effect of repeal.--Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Section 24. Continuation of orders, etc., issued under enactments repealed and re-enacted

24. Continuation of orders, etc., issued under enactments repealed and re-

enacted.--Where any [Central Act] or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any [appointment, notification,] order, scheme, rule, form or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment, notification,] order, scheme, rule, form or bye-law [made or] issued under the provisions so re-enacted [and when any [Central Act] or Regulation, which, by a notification under Section 5 or 5-A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section]."

Sections 4 and 22 are the corresponding provisions of the Punjab General Clauses Act, 1898 (as applicable in Haryana) which are to the same effect.

7. Reference has been made to the definition clause of the 1972 Rules, in particular Rule 2(e) where "medical purposes" have been defined to mean the use of beef products in the diet of patients or for medicines as may be notified by the State Government. The objection is that as per the 1972 Rules, which continue to be in force by virtue of Section 20(3) of the 2015 Act, the use of beef for medical purposes is permitted.

8. The petitioner has also impugned Sections 4, 8, 12 and 16 of the 2015 Act.

9. By Section 4 (1)(c) the prohibition of cow slaughter shall not apply where a certificate has been issued in the prescribed form by the Registered Veterinary Practitioner that a cow is to be subjected to experimentation in the interest of medical, veterinary and public health research.

10. As per Section 4(3) the removal of skin and hide from dead cows other than slaughtered cows, by the authorized contractor shall not be construed as cow slaughter.

11. As per Section 8 "Notwithstanding anything contained in any other law for the time being in force, no person shall directly or indirectly sell, keep, store, transport or offer for sale or cause to be sold beef or beef products except for such medical purposes and in such form as may be prescribed."

12. Section 12 requires the Government to establish laboratories for differentiation of beef from that of meat of other species of animals, testing and identification of various constituents of milk and milk products etc. Section 16 confers the power of search and seizure on an officer not below the rank of Sub Inspector or any other person authorized in this behalf by the Government.

13. It is well settled that a legislation can be invalidated only the ground of (a) lack of legislative competency or (b) violation of any fundamental rights or any

provision of the Constitution.

14. Ld. Counsel for the petitioner has not been able to show as to how the aforesaid provisions can be said to be invalid on those grounds.

15. The only objection to the the provisions Sections 4, 8 and 20(3) is that in terms of the above provisions there is no total prohibition of cow slaughter and the use of beef is permitted for medicinal purposes etc.

16. A similar issue was considered by the Hon''ble Supreme Court in Akhil Bharat Goseva Sangh (3) v. State of A.P., (2006) 4 SCC 162, where the Hon''ble Court repelled a challenge to Section 5 of Mysore Prevention of Cow Slaughter and Cattle Preservation Act, 1964 (in short "the 1964 Act"). As per Section 4 thereof Slaughter of cows and calves of she buffaloes was totally prohibited. But as per Section 5 other bovine animals, namely, bulls, bullocks, buffaloes could be slaughtered after obtaining a certificate in writing from the competent authority that the animal is fit for slaughter i.e. it is above the age of 12 years or that the animal has become permanently incapacitated for breeding, draught or milch purposes due to injuries, deformities or any other cause.

17. Upholding Section 5, the Hon''ble Supreme Court observed as under:

"99. Let us come to Issue 4 i.e. whether Section 5 of the 1964 Act is unconstitutional insofar as it does not impose a total prohibition on slaughter of bovine cattle and whether a writ of mandamus must be issued to the State Government to impose a total ban on slaughter of bovine cattle in the State of Karnataka?

100. In State of Gujarat v. Mirzapur the impugned Act therein, provided for prohibition on slaughter of certain types of cattle. The Constitution Bench of this Court in that case held such a legislation to be constitutional in the light of the finding that the legislation was in furtherance of the directive in Article 48 of the Constitution and any enactment which furthers the cause in the directive principles of State policy cannot be held to be unconstitutional. It was, however, not held that permitting slaughter of bovine cattle by itself is unconstitutional. In the case at hand, Section 5 of the 1964 Act does not provide for a total prohibition on slaughter of bovine cattle. That being the case, declaring Section 5 of the 1964 Act as unconstitutional and directing the State Government to impose a total ban on slaughter of bovine cattle, as requested by the appellants, would lead to judicial legislation and would encroach upon the powers of the legislature. Therefore, the prayer of the appellants in Issue 4 to issue a writ to the State Government to totally prohibit slaughter of bovine cattle is rejected.

101. In view of our discussions made hereinabove, even though the Mirzapur decision supports the submission of the appellants on Questions 2 and 3, the issuance of a writ of mandamus to compel total prohibition of cattle slaughter would only amount to judicial legislation and would encroach upon the powers of the Karnataka Legislature, as held by the High Court, which, in our view, was the

right approach made by it. That being the position, we are of the view that the question of declaring total ban on slaughter of cattle cannot be permitted and Section 5 of the Act cannot be said to be ultra vires of the Constitution."

18. In the light of this decision of the Hon''ble Supreme Court the impugned provisions cannot be said to be unconstitutional in any manner.

19. The other prayer with regard to issuance of direction to the respondents to adopt and declare Cow Progeny as "State Animal of Haryana" also cannot be accepted. It is always the discretion of the Government to declare an animal as the State Animal.

20. Dismissed.