

(1992) 06 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22044 of 1992

Sabbir and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 04-06-1992

Acts Referred:

Uttar Pradesh Prevention of Cow Slaughter Act, 1955 — Section 3, 5, 5A, 8, 8(2)

Citation : (1992) 4 AWC 534 Supp

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : R.G. Padia, P. Padia and V. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—On 24-5-92 a FIR was lodged with the Govt. Railway Police, Mughalsarai by Respondent No. 4 alleging that on that date in the afternoon 18 wagons loaded with bullocks had been seen in the down receiving yard which were being transported to West Bengal for being slaughtered. In the aforesaid report it was requested by the informant that further movements of the wagons be stopped.

2. It further appears that on 26-5-92 an application was filed by the Respondent No. 4 before the III A.C.J.M., Varanasi alleging that 230 old bullocks were being carried in 23 wagons through rail transport to Howarah where they will be slaughtered. From the perusal of the aforesaid application, a true copy of which has been filed as Annexure 3 to the writ petition it appears, that violation of Sections 3, 5-A punishable u/s 8 of the U.P. Prevention of Cow Slaughter Act, 1955 was apprehended and it was requested that report be called for from the Govt. Railway Police, Mughalsarai and suitable action be taken to punish for the guilty.

3. It further appears that on the basis of the application referred to above the III A.C.J.M., Varanasi had called for a report from the G.R.P. Mughalsarai. This report

was submitted on 27-5-92 and a true copy of the aforesaid report has been filed as Annexure 5 to the writ petition. In the aforesaid report it has been mentioned that 240 bullocks were being transported in 24 wagons apart from cows and buffaloes which were double edged milk yielding (Dudharu). The report indicated that the bullocks were fully grown up and appeared to be of advance age. It was further reported that some of the persons who were along with the aforesaid consignment showed certain permits for transporting the bullocks from Punjab to West Bengal. It was further stated in the report that a case crime no. 214 of 1992 u/s 3/5/8 of the U.P. Prevention of Cow Slaughter Act had been registered on the basis of the FIR. The Gov. Railway Police had requested the III A.C.J.M. Varanasi for suitable orders in the matter after hearing parties so that further action could be taken.

4. The present writ petition was filed by the Petitioners on 1-6-92 praying for the issue of a writ order or direction quashing the First Information Report dated 26-5-92 and for a writ order or direction in the nature of mandamus restraining the Respondents not to arrest the Petitioners in pursuance of the aforesaid first information report. Petitioners have further prayed for a direction requiring the Respondents to permit the transportation of the bullocks in question to their final destination namely Howrah in the State of West Bengal and further requiring the Respondents not to claim any demurrage or other charge from the Petitioners in respect of illegal detention of the goods which has been done at the own initiative of the Respondents.

5. I have heard the learned Counsel for the Petitioner as well as the learned Standing Counsel.

6. It has been asserted in the writ petition that the Petitioners are agriculturists by profession and were transporting the bullocks in question to the State of West Bengal for the purpose of selling them to the agriculturists in West Bengal for their agricultural operations. It has further been asserted that all the bullocks involved in the present case were being duly transported after obtaining necessary railway receipts and also export permits in respect of each of the bullocks from the State of Punjab. It has further been asserted that from the perusal of FIR absolutely no prima-facie, case or any offence whatsoever is made out against the Petitioners under any of the Sections of the U.P. Prevention of Cows Slaughter Act, 1955 as amended in 1979 and the Petitioners were entitled to complete their transportation and to take their bullocks to Howrah (West Bengal) without any restriction whatsoever from the State of U.P.

7. Along with the writ petition, the Petitioners have filed five-railway receipts showing that Sabbir Petitioner no. 1 had booked ten bullocks which were kept in one wagon for transportation to Howrah on 11-5-92, Bhoora had booked ten bullocks in one wagon for being transported to Howrah on 21-5-92, Jamil had booked ten bullocks in two wagons for being transported to Howrah on 20-5-92, Jindda had booked ten bullocks in one wagon for being transported to Howrah on 21-5-92. The value of the ten bullocks was shown as Rs. 7.50. The Petitioners

have further filed four export permits for cattle issued by the veterinary Officer. Singhpura, Kurali showing that the ten bullocks mentioned in each certificate had been purchased at cattle fare of State and exported from Kurali Punjab. The age of the bullocks was shown to be 7-8 years approximately. The aforesaid four certificates have been issued in favour of Bhoora, Jinda and Jamil. Thus, from the materials produced by the Petitioners it appears that the Petitioner, Jinda, Bhoora and Jamil had obtained, export permit for 40 bullocks for being transported from the State of Punjab to the State of West Bengal. The railway receipts referred to above show that as against the permits for 40 bullocks bullocks were being transported from Punjab to West Bengal. In the writ petition the Petitioners have alleged that they were transporting the bullocks in 18 wagons. Thus, their case is that 180 bullocks are being transported by them from the State of Punjab to the State of West Bengal. However, as indicated above they have shown to have booked only 50 bullocks in five waggons. Section 5-A of the U.P. Prevention of Cow Slaughter Act, 1955 provides that no person shall transport or offer for transport or cause to be transported any cow, or bull or bullock the slaughter whereof in any place in U.P. is punishable under the Act from any place within the State to any place out side the State except under a permit issued by the officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.

8. The assertion of the learned Counsel for the Petitioner that no permit for transport as envisaged u/s 5-A of the Act is necessary in case any cow or bull or bullock referred to therein happens to be in transit through the State of Uttar Pradesh is not acceptable. The Uttar Pradesh Prevention of Cow Slaughter (Amendment) Act, 1979 came into force with effect from 26-6-1979. In the statement of the objects and reasons of the aforesaid Act it has been mentioned that it had been brought to the notice of the Government that cows, bulls or bullocks are taken from the State to West Bengal, Bombay, Kerala and other States for slaughter. It is further mentioned that in the Act as unamended there was no ban on transport of these animals from the State with the result that no effective action to prevent the same was possible and it was therefore, considered necessary to amend the Act so that the transport of such cows, bulls and bullocks from this State be regulated by licencing to enable the State Govt. to keep track of such animals.

9. As observed by the Apex Court in the case of Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity, at 90, the Court must give effect to the will and inbuilt policy of the legislature as discernible from the object and the scheme of the enactment and the language employed therein.

10. The provision contained in Section 5-A of the Act prohibit transport of any cow, or bull or bullock, the slaughter whereof in any place within the State in Uttar Pradesh is punishable under the Act, from any place within the State to any place outside the State except under a permit issued by the authorised officer

and except in accordance with the terms and conditions of such permits. Under the proviso to Section 5A(2) of the Act although permit for the transport from any place within the State to a place outside the State is necessary yet if it does not for a limited period is necessary no fee is chargeable therefor.

11. Rule 16(1) of the rules framed under the Act provides that a person intending to transport or to offer for transport or to cause to transport any cow, bull or bullock, the slaughter whereof is punishable under the Act, in any place in Uttar Pradesh from any place out side the State shall apply for a permit to the licensing authority on the prescribed form.

12. Thus, any transport of the cow, bull or bullock envisaged u/s 5-A of the Act whether it is from any place outside Uttar Pradesh to a place within Uttar Pradesh or from a place within Uttar Pradesh to a place outside the State stands prohibited except under a permit issued by the competent authority appointed for the purpose in accordance with the provisions of the Act.

13. The question which arises for consideration therefore, is to whether in the circumstances of the present case, the transport of the bullocks etc., from the State of Punjab to the State of West Bengal through the territories of the State of Uttar Pradesh as claimed by the Petitioner will fall within the ambit of Section 5-A of the Act and Rule 16 of the Rules framed thereunder.

14. Considering the underlying policy of the Act and the Rules framed thereunder and the emphasis contained under the aforesaid provisions there can be no escape from the conclusion that even the cows, bulls or bullock" in transit" as claimed by the Petitioner cannot be deemed to be exempted from the requirement of obtaining a permit or licence as contemplated u/s 5-A of the Act or rule 16 of the Rules framed thereunder.

15. The Petitioners knew that the bullocks in question will enter the State of U.P. while being transported to the State of West Bengal. Once they had chosen this route they could not escape the liability cast under the law to obtain the permit envisaged in Section 5-A of the Act. I am of the clear opinion that once the petitioner had chosen a route for transporting the bullocks in question which passed through the territory of the State of U.P. a duty stood cast upon them to obtain the necessary permit as contemplated under the provisions of the Act. This having not been done the impugned action cannot be said to be without any authority of law and the Petitioners are not entitled the reliefs claimed by them.

16. From a perusal of Section 8(2) of the Act it is clear that a person while violating the provisions of Section 5-A of the Act is guilty of an offence punishable with simple imprisonment for a term which may extend to one year or a fine which may extend Rs. 200/- or with both. This offence is, therefore, non-cognizable. It appears that it is in this view of the matter that the Chief Judicial Magistrate had been approached by the police for necessary orders relating to investigation and seizure etc. From the assertions made in the writ petition it appears that the bullocks have been seized. It is, therefore, apparent that orders

relating to the seizure must have been issued by the concerned Magistrate.

17. In the aforesaid circumstances it is open to the Petitioner to approach the Chief Judicial Magistrate for suitable orders under rule 16(3) of the Rules framed under the Act or any further order for the protection of the bullocks claimed by them.

18. A supplementary affidavit has been filed by the Petitioners asserting that on 2-6-92, 18 bullocks in question out of those which were being transported have died due to sun, heat and lack of water and fodder at Mughalsarai Railway yard.

19. In the circumstances it will be open to the Petitioner to move an application before the III Additional Chief Judicial Magistrate, Varanasi bringing to his notice the aforesaid facts and for making proper arrangement for the safety of the bullocks by putting them in the custody of a suitable person till the proceedings for confiscation and auction contemplated under rule 16(3) of the rules is finalised and if any such application is made, the III A.C.J.M. Varanasi shall pass suitable orders thereon in accordance with law.

20. It will be open to the Petitioners to apply for permit envisaged u/s 5-A of the Act and in case the permit is issued in their favour the concerned Chief Judicial Magistrate shall pass appropriate orders for the release of the bullocks in accordance with law.

21. No ground at all has been made out for granting any other relief to the Petitioners.

22. Subject to the directions indicated hereinbefore the writ petition is dismissed.