

(1992) 09 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 286 of 1992

Sheikh Bishmillah

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 15-09-1992

Acts Referred:

Constitution of India, 1950 — Article 19(6), 51A

Madhya Pradesh Krishik Pashu Parirakshan (Sanshodhan) Adhiniyam, 1991 — Section 4(1)

Citation : (1994) JLJ 716 : (1994) 2 MPJR 111 : (1994) 39 MPLJ 224 : (1994) MPLJ 224

Hon'ble Judges : S.K. Jha, C.J; P.P. Naolekar, J

Bench : Division Bench

Advocate : N.S. Kale, for the Appellant; N.C. Jain, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.

This judgment shall also dispose of Misc. Petitions Nos. 864 of 1992, 597 of 1992 and 908 of 1992.

All these petitions raise a common question of law to be adjudicated by this Court as to whether the total ban imposed by the M. P. Krishik Pashu Parirakshan (Sanshodhan) Adhiniyam, 1991 (hereinafter to be referred to as the "Amending Act") on the slaughter of certain species of cattle is permissible in view of Article 19(1) of the Constitution of India which guarantees the petitioner's right to carry on any trade, business or profession of his choice and the law so made is saved by virtue of Article 19(6) of the Constitution. A further ancillary question arises whether such a ban imposed is in the teeth of the law declared by the Supreme Court in the case of Mohd. Hanif Quareshi and Others Vs. The State of Bihar,

The Madhya Pradesh State Legislature first enacted Madhya Pradesh Krishik Upaj Pashu Parirakshan Adhiniyam, 1959 and after so many amendments, the

Amending Act of 1991 received the assent of the Governor on 17th September 1991 and was published in the Madhya Pradesh Gazette Extraordinary dated 20th September, 1991 whereby Section 4 of the original Act of 1959 was amended. Section 4 of the Amending Act reads as under :

"4 (1) Notwithstanding anything contained in any other 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 -

(a) cow, calf of cow, calf of she-buffalo, bull or bullock, and

(b) any other agricultural cattle unless he has obtained in respect of such cattle a certificate in writing issued by the Competent Authority for the area in which the cattle is to be slaughtered that the cattle is fit for slaughter."

Thus, the Amending Act prohibits slaughter or cause to be slaughtered or offer or caused to be offered for slaughter of cow, calf of cow, calf of she-buffalo, bull or bullock, thereby putting a total ban on the slaughter of cows, calves of cows, calves of she-buffaloes, bulls or bullocks irrespective of their usefulness or otherwise.

So far as the prohibition of the slaughter of cows of all ages and calves of cows - male and female, and calves of buffaloes - male and female, is concerned, such provisions have already been held to be Constitutionally valid by the Supreme Court in Quareshi's case (supra). Therefore, even judged by the present standards, these matters are no longer res integra. We, thus, proceed further.

The State Legislature brought into force the Amending Act with the following statement of objects and reasons : (as quoted in return of Respondent No. 1 Para 2) :

"The economy of the State of Madhya Pradesh is still predominantly agricultural. In the Agriculture sector, use of animals for milch, draught, breeding or agricultural purposes preponderates. It has, therefore, become necessary to emphasise preservation and protection of agricultural animals by dealing more stringently with slaughter of cattle than before. Viewed in this perspective, the amendment proposed to encompass calf of she-buffalo or bull or bullock within the mischief of the basic provision of this enactment can be said to have a reasonable nexus to the purpose originally stated for the legislation. What with the growing adoption of non-conventional energy sources like biogas plants, even waste-materials have come to achieve considerable value. In this backdrop, even cattle which ceased to be capable of yielding milk or breeding or working as draught animals cannot any more be said to be useless. That being so, there can be no doubt about the proposed amendment which is to cover such animals through this legislation being reasonable in the interest of the general public. This legislation is aimed at implementing the object of Article 48 of the Constitution of India.

Hence this Amending bill."

Viewed in this perspective, it is argued by the learned Advocate General on behalf of the State, the amendment proposing to encompass calf of she-buffalo or bull or bullocks within the sweep of the basic provision of the enactment must be said to have a reasonable nexus to the purpose originally stated in the legislation. What with the growing adoption of non-conventional energy sources like biogas plants, even waste- materials have come to achieve considerable value. In this backdrop, even cattle, which ceased to be capable of yielding milk or breeding or working as draught animals cannot any more be said to be useless. That being so, there can be no doubt about the proposed amendment which is to cover such animals through this legislation being reasonable and in the interest of general public. This legislation, it is further argued, is aimed at implementing the object of Article 48 of the Constitution of India in the Directive Principles of State policy in Part-IV.

The learned counsel for the petitioner argued that the total ban imposed by the State Legislature on the slaughter of useless and inefficient animals is unconstitutional, as it infringes the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India and is not saved either under clause (6) of Article 19 or under the Directive Principles enshrined in Chapter IV of the Constitution, particularly Articles 48, 40A, Article 51A(f) or Article 51A(g) of Chapter IV-A of the Constitution. It is also contended that the principles enunciated and the decision of the Supreme Court in *Quareshi's* case (*supra*) regarding useless and inefficient bulls and bullocks render the Amending Act invalid and liable to be struck down. According to the learned counsel, nothing has been brought forward by the State to demonstrate that useless and inefficient bulls and bullocks become useful in the present context to uphold the legislation of total ban on their slaughter.

On the contrary, the learned Advocate General, appearing for the State contended that there is a total change in the circumstances brought about by new discoveries, scientific studies, realistic concern for the environment, study of ecological balance, the foreign exchange requirements, user of cow-dung not only as manure but a by-product for biogas which is thermal energy, hazards faced by human beings by use of chemical fertilizers, loss of fertility of lands, are the factors required to be considered, *inter alia*, while adjudicating upon the Constitutional validity of the enactment. In a nutshell the concept of uselessness has undergone a vast change and what was considered useless and inefficient in the year 1958 or even in the year 1970 has become useful cattle and the legislation to save them and permit them to die a natural death is in the interest of general public. It is also submitted that the legislation has to be judged in the context of the directive principles particularly enshrined in Article 51A which imposes fundamental duties.

7A. Reliance was placed by the learned counsel for the petitioner on a decision in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, In that case the petitioners were Muslims engaged in the trade of butchers and its subsidiary

undertakings, challenged the constitutional validity of the Acts of Uttar Pradesh, Bihar and Madhya Pradesh preventing slaughter of cattle on the grounds amongst others, that it infringes their fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India, inasmuch as, the Acts if enforced, will compel the petitioners to stop their business. After taking into consideration various factors, then, relevant and available, the Court held as regards the Madhya Pradesh Act, that its Constitutional validity to prohibit slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, is valid. In so far, as it totally prohibits slaughter of breeding bulls and working bullocks, without prescribing any test or requirement as to their age or usefulness is invalid. The Supreme Court has declared the total ban on the slaughter of bulls and bullocks after they had ceased to be capable of breeding and working not in the interests of general public and, therefore, the law prohibiting total ban on the slaughter of useless and inefficient bulls and bullocks is not saved under Article 19(6) of the Constitution of India.

7B. Further, reliance was placed by the learned counsel for the petitioner on a decision of the Supreme Court in *Abdul Hakim Quraishi and Others Vs. The State of Bihar, and Mohammed Faruk Vs. State of Madhya Pradesh and Others*, which reiterated the stand that there cannot be a total ban or prohibition on the slaughter of bulls and bullocks. In *Abdul Hakim's* case (supra) legislative amendments were brought whereby the slaughter of bulls and bullocks below the age 20 or 25 years was prohibited. This amendment was again challenged and struck down by the Supreme Court on the ground that the provision fixes an unreasonably high age limit of 25 years in practically putting a total ban. The Court observed :

"The almost unanimous opinion of experts is that after the age of 15, bulls, bullocks and buffaloes 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 disadvantages of feeding and maintaining unserviceable cattle."

In the other case relied on by the learned counsel for the petitioner, *Mohd. Faruk's* case (supra) the Supreme Court struck down the notification prohibiting slaughter of bulls and bullocks within the municipal limits of Jabalpur city as it was not in the interests of general public and as it imposed unreasonable restriction on the fundamental rights of the petitioner.

Another case on point is *Haji Usmanbhai Hasanbhai Qureshi and others Vs. State of Gujarat*, wherein the ban on the slaughter of bulls and bullocks below the age of 16 years was challenged on the ground of Article 19(1)(g) of the Constitution. While upholding the law the Supreme Court held :

It is thus clear that because of various scientific factors, namely, better cattle feeding, better medical health and better animal husbandry services, the longevity of the cattle in the State of Gujarat has increased and in this context it is correct to say that if the scientific tests were to be applied, bulls and bullocks

up to sixteen years of age can be said to be useful for the -purpose of breeding, draught and other agricultural purposes. In these circumstances the prescription of the age of sixteen years in Clauses (c) and (d) of sub-section (1A) of Section 5 can be said to be reasonable, looking to the balance which has to be struck between public interest, which requires useful animals to be preserved and permitting the different appellants before us to carry on their trade and profession.

The material before the Court thus clearly goes to show that with the help of the scientific advances which have taken place since 1962, the longevity of the cattle and their useful span of life has increased and, therefore, the prescribed age of sixteen years can be said to be a reasonable restriction on the right of the appellants to carry on their trade and profession as mentioned in Article 19(1)(g) of the Constitution.

The ratio of all the aforesaid decisions, according to us, is that if bulls and bullocks are useful then ban on their slaughter is within the competence of the legislature, as the legislation falls under clause (6) of Article 19 of the Constitution of India, imposing reasonable restrictions on the fundamental right to carry on trade, occupation or business. However, a total ban is not permissible if under economic conditions keeping a useless bull or bullock will be a burden on the society and therefore not in the public interest.

While appreciating the Constitutional validity of a legislative provision, it is necessary to consider the validity of the Act in the context of the facts and circumstances prevailing when the Act is brought into force. This principle enunciated and laid down by the Supreme Court in its decision in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, the Supreme Court has observed as under :

"The criteria for determining the degree of restriction on the right to hold property which would be considered reasonable, are by no means fixed or static, but must obviously vary from age to age and be related to the adjustments necessary to solve the problems which communities face from time to time. Where the legislature fulfils its purpose and enacts laws, which in its wisdom, is considered necessary for the solution of what after all is a very human problem the tests of "reasonableness" have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social mterest which is the purpose of the legislation to promote, for the courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole."

The Amending Act was brought into force on 20-9-1991 and therefore it is necessary to consider and adjudicate its direct and immediate impact upon the

fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the objects that are to be achieved at the relevant time and in the circumstances existing.

There are catena of decisions of the highest Court of the land that it is for the State to justify that the restrictions imposed on the fundamental rights are in the interests of general public and are reasonable and in that light it has been argued by the learned counsel for the petitioner that the legislative judgment has to be contemplated from the aims and objects for which the Amending Act was brought into force and it cannot be supplemented by other factors or rationalised by subsequent facts. It was further submitted that a balance-sheet should be drawn and the balance has to be struck at the time the Amending Act, prohibiting slaughter of bulls and bullocks, was enacted and then to find out which way the scale has ticked. Further hope of utilisation in a better manner or better way, old bulls and bullocks, cannot be a consideration for upholding a legislation, as reasonable or in public interest.

A Legislative enactment is to be judged by all relevant circumstances which the Court may ultimately find and from what the legislatures have said. The Court can assume legislative judgment or intent in enacting a statute on the basis of, what possibly, could be conceived of by the legislature. Here we are considering a provision whereby slaughter of bulls and bullocks was totally banned. The bulls and bullocks are living animals and once their slaughter is permitted, they are totally lost for their utilisation in near future and, therefore, it is necessary to consider any possible better economic utilisation of the bulls and bullocks in the near proximity, if there is a reasonable possibility of the cattle being utilised in a better perspective, economic, social or otherwise, it has to be taken note of. The consequences, if adverse, will last long: once an unwanted situation sets in, amends would not be possible.

In a research paper published by Jurgen Lensch and Krempe- Holstein of Germany published in the year 1987 Findings have been arrived at, that cattle dung in India has a fuel value equivalent to 35 million tons of coal or 68 million tons of wood, approximately 340 million tons of dung are returned to the land as manure, 300 million tons are burned as domestic fuel, 160 million tons are lost on roads and roadsides and are recycled into the ecological system. For majority of farmers there is no alternative to cattle dung for fuel and manure in the foreseeable future. It is also noted by the authors that every year 20 to 35 million cattle die a natural death which is 20 to 35 times more than the official slaughter statistics and that meat of the naturally dead animals does not go waste but consumed besides getting their hides. All types of meat together amount to domestic production of 1.1 kg. per year, per head, meat forms half of this, poultry 15.5 per cent, beef accounts for 9.5 per cent, despite the giant live stock population, buffalo 15.5 per cent and pork accounts for 9.5 per cent. Only a very small portion of beef is being utilised as food for human consumption in India. It is scientifically proved that natural manure contains 1.00 to 1.50 per

cent Nitrogen, 5.6 to 9.2 per cent phosphorous and contains a fair proportion of all the ingredients that crops require as food, and being easily diluted in water, and carbonaceous matter, these ingredients are safe to use, for they will not burn or in any way injure growth, it has a quality of lasting long thereby improving the condition of any soil (Manures and Pesticides by W. Dyke at pages 38-39). On the other hand, use of artificial manure, although gives boost to the agricultural production, in the long run, it affects the fertility of the land. This has been noticed in India also, and to enrich the soil fertility, it has become necessary to use natural manure.

All India Statistics 1989 published by C.M.I.E. on decline in productivity of major input in Indian agriculture 1950-51 to 1988-89 it is found that there is impressive revolution so far as the input of agriculture is concerned, but there has been no corresponding increase in output and it is suggested that effective programme for conservation of soil and water and promotion of organic manure to safeguard and strengthen the ecological structure of agriculture is necessary to counter or slow down the trend, which is a clear indication for user of natural manure for fertility of the land. The natural manure in the present context acquired added value because of its capacity to improve fertility of the land which is becoming barren by use of chemical fertilisers.

The data available from the Economic Survey of India for the year 1988-89, the production of major crops in 1983-84 was 503.66 million tons, which came down to 500 million tons in 1987-88 while chemical fertiliser which was being used at 7.71 million tons in 1983-84 increased to 9.01 million tons that is by 16.86 per cent in 1987-88. Hence, while chemical fertiliser dose increased, production of crops fell, whereas the natural, manure helps in retaining the fertility of the land and increases the crop production: Cow and bullocks excrements 30% urine which contains 92% H₂O, 1.05 Nitrogen, 1.30 K₂O and 70% dung which contains 85% H₂O, 0.43 Nitrogen, 0.20 P₂O₅ and 0.15 K₂O. Young animals retain for their growth much more percentage of food than the old animals and consequently the manure from young animals contain less nutrients when compared to the excreta of the old animals.

The position of cattle fodder has been improved considerably and there is no acute shortage of cattle fodder in India : In the book published by S. N. Mishra and Rishi Sharma - Livestock Development in India. An appraisal, the authors have collected figures on feed and fodders available in India between the period 1950-51 to 1983-84 and according to the authors' estimation dry fodder availability grew at the linear trend rate of 2.8% per year during 1950-51 to 1970-72 and 3% a year during 1972-73 to 1983-84 and the corresponding rates of growth for concentrate feed were 1.9% to 3.1% a year and for cultivated green fodder the rates were 2.1% and 1.4% per year. The growth rate of feed is higher than the growth rate of bovine population and available feed and fodder per standard bovine unit increased from 80 to 136 grams per day in concentrates, 1.33 to 2.69 kg. per day in dry fodder, and 2.10 to 2.91 kg. per

day on cultivated green fodder. Within low levels there were considerable gains in respect of concentrated and dry fodder, with the agricultural growth in the country we can take judicial note of the fact that the conditions of feed and fodder have improved in the year 1990-91 and there is considerable improvement in the resources in feeding a cattle. In the return filed by the respondent No. 3, supported by affidavit, it is alleged that in the year 1951 fodder and cattle feed available was around 18 crores tons whereas in the present days it has increased to 50 crore tons but at the same time number of cattle are not increased in that proportion.

C. A, Gopalkrishnan and G. M. Lal have published a book on "Livestock and Poultry Enterprises for Rural Development" and according to the authors, "fermentation of 75% of the dung collected from the countries 230 million cattle would produce 195 million megawatt of energy per year which is equivalent to about 24 billion litres of kerosene oil and also production of 236 million tons of manure, nitrogen contents of this manure will be about 3.5 million tons which is more than the nitrogen fertiliser capacity established in the country." The cow dung is not only used as fertiliser but is now being used for production of biogas which is a new discovery and has a great potential value in the development of country, particularly rural sector of our population. The study conducted by Pannalal Mundhra, Chairman, Animal Welfare Board of India, Ministry of Environment and Forests, Government of India, arrived, at conclusion that a single old incapacitated animal provides 4500 litres of biogas, 120 tons of Organic fertiliser, as per NAPED process, 2000 litres of organic pesticides, increases the yield of foodgrains by 30 to 40 tons per hectare and if all these are taken into consideration it works out that each bull and bullock earns about Rs. 20,000/-. If we take this estimate even to be on higher side, meat sold of the butchered old bulls and bullocks will not fetch that much of a price under any circumstances, and therefore, it is obvious that old and incapacitated (as it is called) bulls and bullocks will be more valuable living than slaughtered.

Use of chemical fertiliser increased in manifold. To supply chemical fertilisers; Government is required to set up fertiliser factories and also to import chemical fertilisers spending huge sums in foreign exchange. New fertiliser factories were being set up in Madhya Pradesh for manufacturing 1350 tons of ammonia and 2250 tons of urea at Babrela at an estimated cost of Rs. 760 crores. The cow dung as manure will save enormous amount of foreign exchange which is the present day need for overall growth of the country. The Department of Fertiliser has estimated the foreign exchange requirement for import of fertilisers at Rs. 7000 crores in 1992-93 as against the current year (1991) allocation of Rs. 4545 crores. The fertiliser factories are hazardous to human health as it is a source of pollution which is a major concern of the present day and therefore the Central Government is required to enact three laws : (i) Water (Prevention and Control of Pollution) Act, 1974, (ii) Air (Prevention and Control of Pollution) Act, 1981 and, (iii) Environment (Protection) Act, 1986.

The environment that man makes for himself is his culture. Everything that he has made, including his society, is part of his cultural " environment. Together with his genetic heritage it determines what he makes of the natural environment and how he lives. The physical, chemical and biological factors that surround living thing is environment and it affects size, shape, colour of human being, plants and animals. Thus, it has become the duty of the individual to safeguard the environment and the ecological balance. The contamination by industrial waste and by chemical fertilisers is a serious threat for the earth's entire hydrographic system and the very existence of human society. Growing concern for environment and ecological importance is a new phenomenon which was appreciated and noted by the Supreme Court in Rural Litigation and Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others, Para 19, Rural Litigation and Entitlement Kendra and Ors. v. State of Uttar Pradesh and Ors.. "We are not oblivious of the fact that natural resources has got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of .resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way" there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation. In a later decision reported in Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, Para 3, the Supreme Court has expressed its concern on environmental question in our country when it said: Today society's interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity. Industrialisation, urbanisation, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reasons at all are factors which have contributed to environmental deterioration.

On consideration of aforesaid facts and circumstances, we are of the view that bulls and bullocks are useful animals living and ban on their slaughter is in consonance with social interest.

By the 42nd Amendment Act of 1976, Part IV-A pertaining to fundamental duties was inserted in the Constitution and Article 51-A enumerated the fundamental duties. Article 51A (f) and (g) are as under:

51-A. It shall be the duty of every citizen of India :-

xxx xxx xxx (f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

xxx xxx xxx

The directive principles are addressed to the States whereas the duties are directed towards the citizens. It is the Court's duty to give a harmonious construction to the directive principles and duties vice versa the fundamental rights. The duties imposed on the citizen under Article 51A fall in the same category as that of directive principles. If there is a law made by the State Legislature imposing duty then it is necessary to give a harmonious interpretation to the fundamental rights and to the fundamental duties. If law is enacted by the State Legislature in furtherance of object to be achieved, namely, imposing duties on the citizens, then the law so made has to be looked into as being made in the interests of general public. The directive principles and duties imposed on the citizens are not enforceable in the Court of law, but Part III and Part IV-A are complementary and supplementary to each other and, therefore, when the State Legislature has made any law in respect of it, then it shall be assumed that the law so made is in the interests of the general public and for the benefit of the public in general and as such is reasonable. The law made by the State Legislature bans completely slaughter of bulls and bullocks, and thereby imposes a duty covered under Article 51A(g) "to have compassion for living creatures" and, therefore, applying the rule of harmonious construction, Amending Act of 1991 falls within the ambit of Article 19(6) of the Constitution.

For the reasons stated above we hold that the provisions under challenge of the M. P. Krishik Pashu Parirakshan (Sanshodhan) Adhiniyam, 1991 (No. 21 of 1991) are intra vires and valid of the Constitution. As a result thereof, petition fails and is dismissed with costs. Counsel's fee Rs. 250/-.