

Lakshman and Others

Vs

State of Madhya Pradesh

Writ Petition No. 829 of 1979

Rajaram S/O Ladhuram

Vs

State of Madhya Pradesh

Kishan and Others

Vs

State of Madhya Pradesh

Chogaram and Others

Vs

State of Madhya Pradesh

Writ Petitions Nos. 829 of 1979 and 1104, 200 & 2655 of 1980

(D. A. Desai, O. Chinnappa Reddy JJ)

06.05.1983

JUDGMENT

CHINNAPPA REDDY, J. –

1. The petitioners are nomad graziers of Gujarat and Rajasthan, who wander from place to place with their sheep, goats and cattle in search of pasture and foliage. Boundaries of State present no barriers to them. After all, to them and to their livestock, it is a question of survival. In their wanderings they often pass through the State of Madhya Pradesh en route some times to Uttar Pradesh and some times to Maharashtra. This happens particularly in times of drought in Gujarat and Rajasthan. The power that be in the State of Madhya Pradesh became apprehensive that uninhibited passage of large herds of these animals through Madhya Pradesh may lead to large scale devastation of their forest wealth. So they hit upon a plan to prevent "foreign cattle" from browsing in Madhya Pradesh forests. For the moment, it was forgotten that India is one country and no Indian is a foreigner in any of the constituent States of India. The plan was this : The Indian Forest Act, 1927 enabled the State Government to make rules to regulate the cutting of grass and pasturing of cattle in protected forests [Section 32 (i)] and, generally, to carry out the [provisions of the Act (Section 76)]. We may note here 'cattle' as defined by Section 2 (i) includes buffaloes, sheep, goats and many other species of browsing animals. We may also note that we are concerned in this case

with protected forests only and not reserved forests. Rules had been made earlier by the Madhya Pradesh Government in 1974 called the Madhya Pradesh Grazing Rates Rules, 1974 by which provision was made for grazing licences, transit grazing licences, grazing rates and other subjects. Rule 4 prohibited grazing in closed coupes, plantation areas and such other areas as were declared as closed for grazing by the Divisional Forest Officer. Rule 3 provided for the issuance of licences for grazing in particular grazing units, each forest range being treated as a grazing unit till the constitution of such grazing units. Rule 5 provided for the issuance of transit licences for transit of cattle through government forests in the State of Madhya Pradesh, so that cattle in transit may not graze continuously for more than a month in a particular grazing unit. Rule 6 prescribed grazing rates, commercial and transit. For buffaloes it was Rs 6 per head per year, while for goats and sheep, it was Re 1 per head per year whether it was for commercial or transit purpose. Rule 7 prescribed grazing rates for 'foreign cattle of adjoining States'. Whether the cattle grazed in the forest or passed through the forest, grazing was permitted at the rate of Rs 10 per head per year in the case of buffaloes and Rs 2 per head per year in the cases of goats and sheep. In 1979, the rules made in 1974 were superseded and fresh rules were made. They are the rules now in force. Rule 2 (5) bans grazing licences in grazing units so constituted. Unit grazing licences in grazing units so constituted. Until grazing unit are constituted, each forest ranges is to be treated as a separate units are constituted, each forest range is to be treated as a separate grazing unit. Rule 3 (2) provides for the levy of grazing in closed coupes, plantation areas and other areas which are declared as closed for grazing by the Divisional Forest Officer. Rule 5 provides for transit grazing licences, on payment of grazing charges, for the transit of cattle through government forests where the owners of the cattle are residents of Madhya Pradesh. Cattle in transit, however, are not allowed to graze continuously in the same grazing unit for more than 30 days. Rule 6 enables the Government to notify from time to time the rates of grazing charges and transit grazing charges payable by residents of Madhya Pradesh, Rule 7 provides for the levy of grazing rates of for 'foreign cattle of adjoining States'. The rule enables the State Government to prohibit, restrict, or in their discretion to grant owners of cattle residing outside the State of Madhya Pradesh grazing or transit grazing facilities for their cattle on payment of charges to be notified from time to time. Rule 7 (2) further empower the Government to specify the specific grazing areas, the points of entry and exit of the route to be followed by the cattle, the period during which grazing or transit grazing should be completed, etc. On June 28, 1979, two notifications, one under Rule 6 and the other, under Rule 7 were issued notifying the rates of charges for the issue of grazing and transit grazing licences. In respect of cattle belonging to residents of Madhya Pradesh, the grazing rate is Re 1 per year for each animal in the case of goats and sheep. Nothing is to be charged in the case of buffaloes. The notification issued under Rule 7 prescribes the routes to be followed by the cattle of Rajasthan and Gujarat while in transit through the State of Madhya Pradesh. It also stipulates that the owners of cattle must take the cattle through the State of Madhya Pradesh within a period of 45 days after the issue of licences. The prescribed grazing rates are Rs 10 per animal in the case of buffaloes and Rs 5 per animal in the case of sheep and goats.

2. Apparently the Government of Madhya Pradesh wants to inhibit the influx of cattle of other States (described in the Rules as 'foreign cattle') by the method of charging higher grazing rates in their case than in the case of cattle belonging to the resident of Madhya Pradesh. This levy of higher rates, the prescription of the route to be followed by foreign cattle while in transit through Madhya Pradesh and the stipulation that the cattle must leave Madhya Pradesh in 45 days are questioned in these writ petitions. It is contended that the petitioners' Fundamental Rights under Article 14 and Article 19 (1) (e), (f) and (g) and the right under Article 301 are contravened. On the other hand, it is contended on behalf of State of Madhya Pradesh that the rules prescribing grazing rates for

'foreign cattle' may remain within the boundaries of the State of Madhya Pradesh are made to regulate in influx and passage of 'foreign cattle' into and through Madhya Pradesh with a view to prevent devastation and to protect the forest wealth of the State.

3. We are unable to see any rational basis for the distinction made between owners of cattle belonging to Madhya Pradesh and owners of cattle belonging to other States (described as owners of 'foreign cattle') and the levy of prohibitive grazing rates on owners of the so-called 'foreign cattle'. Forests of Madhya Pradesh are not grazing grounds reserved for cattle belonging to residents of Madhya Pradesh only, even as the towns and villages of Madhya Pradesh cannot be reserved for the residence of the original residents of Madhya Pradesh only. Accidents of birth and geography cannot furnish the credentials for such discrimination and authorise prejudicial treatment in matters of this nature. We do not say that geographical classification is never permissible. For example, a preference given by a State to its residents in the matter of admission to educational institutions maintained by the State from its revenues may be well justified. But we are unable to see any such justification for the levy of virtually penal grazing charges in the case of owners of cattle belonging to other States. The only attempt at justification is that the influx of 'foreign cattle' is resulting in the destruction of the forest wealth of the State. It is difficult to understand this justification. If cattle belonging to residents of Madhya Pradesh are allowed to graze, will it not lead to the same damage as by the cattle belonging to persons of other States? Surely, it cannot be that the Madhya Pradesh cattle are less destructive than the cattle belonging to persons of other States. Further if the object was to prevent all cattle from grazing in protected forests, such grazing could have been banned as in the case of reserved forests. Even in the case of the so-called foreign cattle, cattle belonging to owners who are rich, may yet have their cattle graze in the Madhya Pradesh forests but not cattle belonging to poorer graziers. Further, subject to reasonable restrictions which may be imposed in the interests of the general public, a citizen has the right under our Constitution to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practice any profession, or to carry on any occupation, trade or business. Graziers, be they of Madhya Pradesh, Gujarat or Rajasthan, therefore, have the right to pass and repass through the State of Madhya Pradesh with their cattle in the pursuit of their occupation. The right is, of course, subject to reasonable restrictions in the interest of the general public. We are unable to discover any reasonable basis for classifying graziers into those belonging to Madhya Pradesh and those belonging to other States; nor are we able to discover any acceptable reason behind the restriction imposed on graziers of other States by the heavier charge made on them. We are convinced that there is no justification whatsoever for charging higher grazing rates for cattle belonging to persons of other States. In regard to the prescription of the route along which the cattle have to be taken while in transit, however, we find nothing wrong with it, since the object is obviously to prevent cattle straying and causing indiscriminate damage to forests. We are, however, unable to justify the ceiling of 45 days in which cattle must pass through the State of Madhya Pradesh, the grazing rate is levied for a period of one year. There is no reason why the charge should be levied for 45 days in the case of persons belonging to other States. The apprehension that cattle, if allowed to graze in the same place for a long time, may destroy the pasture and foliage altogether is taken care of by the other rules which prescribe that the cattle may not graze in the same grazing unit for more than a month. In the circumstances, we quash the levy of higher grazing rates in the case of cattle belonging to persons of States other than Madhya Pradesh and direct the respondents to levy the same rates as they do in the case of cattle belonging to residents of Madhya Pradesh. The limit of stay of 45 days is also declared unconstitutional. The writ petitions are allowed accordingly. The petitioners will get their costs.

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