Hasmattullah

Vs

State of M.P. and Others

Civil Appeal No. 8250 of 1996

(CJI A. M. Ahmadi, N. P. Singh, B. N. Kirpal JJ)

10.05.1996

JUDGEMENT

KIRPAL, J.:-

1.Leave granted.

2. The challenge in this appeal is to the validity of the M. P. Krishik Pashu Parirakshan (Sanshodhan) Adhiniyam, 1991 (hereinafter referred to as the 'Amending Act') by virtue of which a total ban has been imposed on the slaughter of the bulls and bullocks in the State of Madhya Pradesh.

3. The appellant is engaged in the butcher's trade in Jabalpur and, according to him, he mainly slaughters bulls and bullocks which are unfit either for breeding, drought or milch purposes. These animals are slaughtered only after they are certified as fit for slaughter by the Municipal Corporation of Jabalpur in the State of Madhya Pradesh, which has a meat market where the meat is sold under a licence granted by the Corporation. It is alleged that the appellant's family is engaged in the butcher's trade for the past several generations and this vocation is the only source of livelihood of the family.

4. Prior to the passing of the Amending Act, sub-section (1) of Section 4 of the M. P. Agricultural Cattle Preservation Act, 1959 prohibited slaughter of certain types of agricultural cattle. This provision was as under :-

> "4. PROHIBITION OF SLAUGHTER OF AGRICULTURAL CATTLE (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 :-
>
> (i) cows, calves of cows, calves of she buffalo or;
>
> (ii) 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.
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> By the Amending Act a new sub-section (1) of Section 4 of the Principal Act was inserted which reads as follows :-

"(1) Notwithstanding anything contained in any other law for 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, caff 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".

Sub-section (2) to (5) remained unaltered.

5. The unamended Section 4(1) by sub-clause (i) had imposed an absolute ban on the slaughter of cows, calves of cows, or calves of she-buffalo, but other agricultural cattle like male and female buffaloes, bulls and bullocks could be slaughtered only on the receipt of a certificate in writing by the Competent Authority to the effect that the cattle was fit for slaughter. As a result of the amendment introduced by the Amending Act bulls and bullocks have been added to sub-clause (a) of sub-section (1) of Section 4 with the result that an absolute ban on slaughter of bulls and bullocks has also been imposed, notwithstanding the fact that the said animals may have ceased to be draught animals or may have become permanently incapacitated for work or breeding or for any other purposes.

6. The appellant challenged the Amending Act of 1991 by filing a writ petition in the High Court of Madhya Pradesh at Jabalpur. The contention of the appellant was that the Amending Act violated the appellant's fundamental right under Article 19(1)(g) of the Constitution of India and the restrictions now placed were unreasonable and not in public interest. It was also the case of appellant that the presence of a large number of old and useless animals was bad for the economy and the banning of the slaughter of bulls and bullocks was actually in violation of the duty cast on the State by Article 48 of the Constitution. It was also contended that there was shortage of fodder in the State of Madhya Pradesh and that preservation of bulls and bullocks above the age of 15 years, which had ceased to be useful for breeding, draught and other purposes, will have deleterious effect on the agricultural economy of the State. It was also submitted that not only will be preservation of these useless animals put a pressure on the scant food and fodder available in the State but such animals will also become a menace to the Standing crop as these useless animals are not cared for by the owners and allowed to stray. The appellants sought to give facts and figures in an effort to show that the absolute ban on the slaughter of bulls and bullocks was neither in the public interest nor was it a reasonable restriction on the fundamental right of the appellant guaranteed under Art.19(1)(g) of the Constitution of India.

7. The respondents sought to justify the validity of the Amending Act by referring to its statement of objects and reasons and contending that the bulls and bullocks ought not be slaughtered. The foresaid objects and reasons were as follows :-

"The economy of the State of Madhya Pradesh is still predominantly agricultural. In the Agricultural section, use of animals for milch, draught, breeding or agricultural purposes preponderates. It has, therefore, become necessary to emphasis 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 sources like bio-gas 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."

8. The Division Bench of the Madhya Pradesh High Court at Jabalpur, after referring to the decisions of this Court in the cases of Mohd. Hanif Quareshi v. State of Bihar, 1959 SCR 629 : (AIR 1958 SC 731) : Abdul Hakim Quraishi v. State of Bihar, (1961) 2 SCR 610 : (AIR 1961 SC 448) and Mohd. Faruk v. State of Madhya Pradesh, (1970) 1 SCR 156 : (AIR 1970 SC 93) observed that the ratio of these decisions was 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 bank 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". The High Court then referred to statements made in a research paper published from Germany in 1987, which referred to the availability to the farmer of cattle dung for fuel and manure. It also referred to All India Statistics 1989 published by C.M.I.E. which had suggested that there should be effective programme for conservation of soil and water and promotion of organic manure to safeguard and strengthen the ecological structure of agriculture. The High Court also referred to some other publications of different authors for the purpose of concluding that there was no acute shortage of cattle fodder and that it was better to use the cattle dung as a manure rather than using chemical fertilizers. It then came to the conclusion that bulls and bullocks were useful animals and the ban on the slaughter was in consonance with social interest. It also observed that it was the courts duty to give harmonious construction to the directive principles and duties vis-a-vis the fundamental rights and Article 51A(g) imposed the duty on every citizen "to have compassion for living creature" and, therefore, applying the rule of harmonious construction the Amending Act of 1991 fell within the ambit of Article 19(6) of the Constitution. The High Court accordingly upheld the validity of the Amending Act.

9. the main thrust of the argument on behalf of the appellant in this appeal is that the Amending Act is yet another attempt by the state of Madhya Pradesh to impose a total ban on the slaughter of bulls bullocks notwithstanding the fact that similar attempts, made earlier, had failed. Relying upon the above mentioned decisions of this Court, it was contended by Mr. G. L. Sanghi, learned Senior Counsel for the appellant, that the point in issue, namely, whether there could be an absolute ban on the slaughter of bulls and bullocks, stood concluded in favour of the appellant by a series of judgments of this Court and, therefore, the High Court ought to have upheld the appellant's contention.

10. On behalf of the respondents reliance was placed on some articles and research papers in order to show that even after the bulls and bullocks have ceased to be draught animals, they are still useful. The usefulness of these bulls and bullocks was sought to be established by reference to some research papers, articles and books in which it was stated that the cattle dung which was available to the farmers or agriculturists was a source of providing them with manure as well as bio gas and, in the interest of ecology, it was much better to use organic manure rather than chemical fertilizers.

Reference, in particular, was made to a paper written by one Mr. Panna Lall Mundhra, Chairman, Animal Welfare Board of India, in which he mentions that a single old incapacitated animal provides 4500 Ltrs. of bio gas, 120 tonnes of organic fertilizers, 2000 Ltrs. of organic pesticides, increases the yield of food grains by 30 to 40 tonnes per hectare and that if all this was taken into consideration, it would work out that each bull or bullock earned about Rs.20,000/-. This is one of the papers which was taken into consideration by the High Court, in the instant case, in coming to the conclusion that bulls and bullocks were useful animals even after they had become old and, therefore, they should not be slaughtered.

11. This is the fourth attempt by the State of Madhya Pradesh to impose a total ban on the slaughter of bulls and bullocks even after they become old and useless. The first attempt was the enactment of C.P.and Berar Animal Preservation Act, 1949, which placed a total ban on the slaughter of cows, bulls and bullocks and of all categories of animals of the species of "bovine cattle". This Act along with Acts of three other States, namely Bihar Preservation and Improvement of Animals Act, 1956 and U.P. Prevention of Cow Slaugher Act, 1955 were challenged before this Court in Mohd. Haniff Quareshi's case AIR 1958 SC 731) (supra). The petitioners therein were butchers and the challenged the validity of the three Acts on the plea that the same infringed their fundamental rights under Articles 14, 19(1)(g) and 25 of the Constitution. After going into all the facets of the case and examining the usefulness of the cattle in great detail and keeping in mind the availability of adequate fodder and other relevant facts, this Court held that : (i) total ban on the slaughter of cows of all ages and calves of cows and of she buffaloes, male and female, was quite reasonable and valid; (ii) that a total ban on the slaughter of she buffaloes or breeding bulls or working bullocks "cattle as well as buffaloes", as long as they were capable of being used as milch or draught cattle, was also reasonable and valid; (iii) that a total ban on the slaughter of she buffaloes, bulls and bullocks "cattle or buffalo" after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interest of the general public and was invalid. In coming to the conclusion that ban on the slaughter of bulls and bullocks after they had become useless, was not valid this Court in Mohd. Hanif Quareshi's case (supra) at page 684 (of 1959 SCR 629) : (at Pp 753-54 of AIR 1958 SC 731) observed as follows :

> "The country is in short supply of milch cattle, breeding bulls and working bullocks. If the nation is to maintain itself in health and nourishment and get adequate food, our cattle must be improved. In order to achieve this objective our cattle population fit for breeding and work must be properly fed and whatever cattle food is now at our disposal and whatever more she (we) can produce must be made available to the useful cattle which are in present or will in future be capable of yielding milk or doing work. The maintenance of useless cattle involves a wasteful drain on the nation's cattle feed. To maintain them is to deprive the useful cattle of the much needed nourishment. The presence of so many useless animals tends to deteriorate the breed. Total ban on the slaughter of cattle, useful or otherwise, is calculated to bring about a serious dislocation, though not a complete stoppage, of the business of a considerable section of the people who are by occupation butchers (kassais), hide merchants and so on. Such a ban will also deprive a large section of the people of what may be their staple food. At any rate, they will have to fo- rego the little protein food which may be within their means to take once to twice in the week. Preservation of useless cattle by establishment of Gosadans is not, for reasons, already indicated a practical proposition. Preservation of these useless animals by sending them to concentration camps to fend for themselves is to leave them to a process of show death and does no good them. On the contrary, it hurts the best

interest of the nation in that the useless cattle deprive the useful one of a good part of the cattle food, deteriorate the breed and eventually affect the production of milk and breeding bulls and working bullocks, besides involving an enormous expense which could be better utilised for more urgent national needs".

12. After the judgment in Mohd. Hanif Quareshi's case (AIR 1958 SC 731) (supra), the second attempt was made by enacting Madhya Pradesh Agricultural Cattle Preservation Act, 1959, whereby Section 4(2)(a) and Rule 5 prohibited the slaughter of bull, bullock or buffalo except upon a certificate issued by a competent authority and such certificate could not be issued unless the animal was over 20 years of age and was unfit for working or breeding. Similar attempts were made by the State of Bihar and U.P. which had provided minimum age of 25 and 20 years respectively before the bulls and bullocks could be slaughtered. The Acts of these three States were challenged in Abdul Hakim's case (AIR 1961 SC 448) (supra). This Court, while allowing the petitions, held that a bull, bullock or buffalo did not remain useful after it was 15 years old, and whatever little use it may then have, was greatly offset by the economic disadvantage of feeding and maintaining unserviceable cattle. The Court took note of the fact that in some of books it was stated that cows and bullocks may live up to 20 or 25 years, but it was observed that "the question before us is not the maximum age up to which bulls and bullocks and buffalo may live in rare cases. The question before us is what is their average longivity, at what age they become useless, on this question we think that the opinion is almost unanimous, and the opinion which the Deputy Minister expresses was not wrong".

13. The third attempt to circumvent the judgment in Mohd. Hanif Quareshi's case (AIR 1958 SC 731) which had the effect of imposing a complete ban on the slaughter of bulls and bullocks within the Jabalpur Municipality was made in the year 1967. Under the bye-laws of the Jabalpur Municipality a licenced had to be obtained for the slaughter of bulls and bullocks. Section 257(3) of the Madhya Pradesh Municipal Corporation Act, 1956, prohibited the slaughter of animals in places outside the premises fixed by the Municipality. Under a notification issued in 1948 bye-laws were pro-mulgated which permitted bulls and bullocks to be slaughtered in premises fixed for the purpose. By the impugned notification dated 12-1-1967 confirmation of the aforesaid bye-laws in so far as they related to slaughter of bulls and bullocks was cancelled. The effect of this notification was to prohibit the slaughter of bulls and bullocks within the limits of Municipality of Jabalpur. Challenging the cancellation of these bye-laws it was alleged by the petitioners therein that the impugned notification imposed a direct restriction on their fundamental right under Art. 19(1)(g) of the Constitution. Allowing the writ petition it was observed at page 160 that "imposition of restriction on the exercise of fundamental right may be in the form of control or prohibition, but when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the general public interest lies heavily upon the State". While quashing the impugned notification it was observed at page 161 that "the sentiments of a section of the people may be hurt by permitting slaughter of bulls and bullocks in premises maintained by a local authority. But a prohibition imposed on the exercise of a fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in the interest of the general public, but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the claimant".

14. Now in 1991 the State of Madhya Pradesh has, once again, sought to ban the slaughter of bulls and bullocks by enacting the Amending Act. The law now enacted is similar to the one which was quashed by this Court in Mohd. Hanif Quarishi's case (AIR 1958 SC 731) (supra). Having failed to circumvent the judgment of this Court in Mohd. Hanif's case by first fixing the minimum age of

bulls and bullocks at 20 years and then when it sought to prohibit the slaughter of bulls and bullocks within the limits of the Municipality, the State has chosen, notwithstanding the judgment in Mohd. Hanif's case (supra), to impose a complete ban on the slaughter of bulls and bullocks and has sought to justify its action by referring to the manifold benefits of cattle dung which would be available to the agriculturists and farmers even from the useless animals.

15. Three different Constitution Benches of this Court in Mohd. Hanif's case (AIR 1958 SC 731), Abdul Hakim's case (AIR 1961 SC 448) and Mohd. Faruk's case (AIR 1970 SC 93) (supra) have held that total ban on slaughter of bulls and bullocks is ultra vires the Constitution. The submission which have now been made and seem to have found favour with the High Court, with reference to the usefulness and merits of cattle dung and the part which it plays in the rural economy, has been dealt with at length by this Court in Mohd. Hanif's case (supra). The right of the butchers to practice their trade has been upheld in these decisions and because there is a short supply of milch cattle, total ban on their slaughter was upheld as being a reasonable restriction in the interest of general public. But it was held in no uncertain terms that a total ban on the slaughter of useless cattle, which involves a wasteful drain on the nation's cattle fodder, which itself was in short supply and which would deprive the useful cattle of much needed nourishment, could not be justified as being in the interest of general public.

16. Though some literature was placed on record and was sought to be relied upon by the counsel for the respondent in an effort to show that with the passage of time, the position has changed and now the utility of the old bulls and bullocks has grown, we are not satisfied, as contended by Dr. A. M. Singhvi, learned Senior Counsel for the respondent, that there is any change in the circumstances or that the decisions of this Court in the aforesaid three cases require consideration. The consistent view of this Court since 1958 being that total ban on slaughter of bulls and bullocks which had become old amounted to an unreasonable restriction on the fundamental rights of the butchers, no conclusive material has been placed on record to show that the restriction now placed is to be regarded as reasonable. Notwithstanding the fact that the cattle dung is used for generating bio gas, on a specific query put to learned counsel for the respondent, no information was available as to what are the number of bio gas plants which have been installed and which are in operation and whether the cattle and dung available is sufficient or not. Similarly, no authentic information was given by the learned counsel with regard to the expense which will have to be incurred by a farmer in maintaining old and infirm cattle which cannot be used as mulched cattle or draught cattle. A fact which cannot be ignored is that no farmer or agriculturist who has kept a bull or bullock for a number of years would sell it to a butcher unless and until it is uneconomic for him to retain that animal. Normally, it would be only when an animal has become totally useless, and the expense of maintaining it outways its utility, that the animal would be sold to a butcher. Compelling the retention of such animal, by not permitting its sale for being slaughtered, would not be in public interest. It has also not been shown that there has been any increase in the average age of the bulls and bullocks. We may here notice that the ban placed on the slaughter of the bull and bullocks below the age of 16 years in the State of Gujarat by the Bombay Animal Preservation (Gujarat Amendment) Act, 1979 was upheld because it was observed that because of the improvement in and more scientific method of cattle breeding, the usefulness of cattle for breeding, draught and other agricultural purposes was about the age of 16 years in the State of Gujarat. Having concluded that the usual span of life was 16 years, the Constitution Bench of this Court held in Haji Usmanbhai Hasanbhai Qureshi v. State of Gujarat (1986) 3 SCC 12 : (AIR 1986 SC 1213) that the prescribed age of 16 years could be said to be a reasonable restriction on the right of the appellants therein to carry on their trade and profession as mentioned in Art. 19(1)(g) of the Constitution. In reaching this conclusion it was observed at page 18 that the prescription of the age of 16 years could "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". (Emphasis added). This Court, therefore, in Haji Usmanbhai's case (AIR 1986 SC 1213) (supra) once again reiterated the principle of striking a balance between the right of the butchers and the public interest.

17. The High Court has referred to and relied upon a number of articles and books written by different persons in coming to the conclusion that bulls and bullocks are useful, animals, even if they become old and their slaughter should be banned. Dr. Singhvi has also sought to rely on some of such documents. The appellants does not admit that the material relied upon by the High Court presents the correct picture. Till what age the cattle in question are useful is normally a question of fact. In deciding such a question the High Court should have been careful in selecting the material on which it sought to rely. Even article published or a book written cannot ipso facto be regarded as conclusive or worthy of acceptance. What is stated therein may only be a view of the author and may not be based on an data which is scientifically collected from a reliable source. The Writ Court has to be very careful in accepting what data should be accepted and relied upon if there is a bona fide dispute between the parties about the correctness of the same, as in this case. For example in the instant case not only the High Court but Dr. Singhvi has also sought to place reliance on an article written by one Mr. Panna Lall Mudhra, Chairman, Animal Board of India in which he has, inter alia, stated " the cattle even after stopping the supply of milk gives 3500 kg. dung and 2000 litres of urine yearly which in turn supplies 4500 cft. bio-gas, 80 tonnes organic fertilizers, 2000 litres organic pesticides, increases per hectare yield by 30-40 per cent, fetches higher price for their produce as they contain more nutrient. All these gains if complied together works out to Rupees 20,000/- per cattle per year to the owner". The aforesaid statement of the author does not indicate as to from where he has obtained the aforesaid information data on the basis of which he has concluded that the gain to an owner by retaining a cattle which has stopped giving the milk is still Rs.20,000/- per year. Merely because the article is written in which such a statement is made cannot be a reason for accepting as correct what is stated therein without the Court being satisfy as to the basis on which such a conclusion has been arrived at. Merely because some person has made such vague and unsubstantial statement in writing can be no ground for concluding that an absolute ban on the slaughter of useless bulls and bullocks is a reasonable restriction under Art. 19(6) of the Constitution.

18. We are pained to notice the successive attempts made by the State of Madhya Pradesh to nullify the effect of this Court's decisions beginning with Mohd. Hanif's case (AIR 1958 SC 731) and ending with Mohd. Faruk's case (AIR 1970 SC 93), each time on filmsy grounds. In this last such attempt, the objects and reasons show how insignificant and unsupportable the ground for bringing the legislation was. The main thrust of the objects and reasons for the legislation seems to be that even animals which have ceased to be capable of yielding milk or breeding or working as draught animals can be useful as they would produce dung which could be used to generate non-conventional sources of energy like bio-gas without so much as being aware of the cost of maintaining such animals for the mere purpose of dung. Even the supportive articles relied upon do not bear on this point. It is obvious that successive attempts are being made in the hope that some day it will succeed as indeed it did with the High Court which got carried away by research papers published only two or three years before without realising that they dealt with the aspect of utility of dung but had nothing to do with the question of the utility of animals which have ceased to be reproductive or capable of being used as draught animals. Besides, they do not even reflect on the economical aspect of maintaining such animals for the sole purpose of dung. Prima facie it seems far fetched and yet the State Government thought it as sufficient to amend the law.

19. We may note that just as the respondents have made statements with regard to the quality of cattle dung available and the extent of economic benefit which will be derived by the use of the same, similarly, the appellant has in his writ petition averred that there is an acute shortage of cattle fodder and the strength of useless cattle will result in large scale pressure on land and would decrease the availability of fodder. In our opinion it is not necessary to go into the correctness of these allegations which have been considered at length in Mohd. Hanif's case (AIR 1958 SC 731) (supra). We see no justification for the need of reconsideration of the said decision, as was sought to be suggested.

20. With reference to Art. 48, on which reliance was also placed by Dr. Singvi, it was observed by this Court in Mohd. Hanif Quareshi's case (AIR 1958 SC 731 at p. 736, para 6) (supra) dealing with Art. 48 as follows :

> "The protection recommended by this part of the directive is, in our opinion, confined only to cows and calves and to those animals which are presently or potentially capable of yielding milk or of doing work as draught cattle but does not, from the very nature of the purpose for which it is obviously recommended, extent to cattle which at one time were witch or draught cattle but which ceased to be such".

21. It is clear from the aforesaid observation that absolute ban on slaughter of bulls and bullocks is not necessary for complying with Article 48 of the Constitution.

22. In view of the aforesaid decisions of this Court the only conclusion which can be arrived at is that the inclusion of bull or bullock in sub-clause (a) of sub-section (1) of S.4 of the Madhya Pradesh Agricultural Cattle Preservation Act, 1959, brought about by the Amending Act of 1991 has imposed an unreasonable restriction on the fundamental rights of the appellant and to that extent only the sub-clause is held to be ultra vires. The effect of this would be that there would be a total ban on the slaughter of cow, calf of cow and calf of the she-buffalo while the slaughter of bull or bullock, along with other agricultural cattle, shall fall under sub-clause (b) of S.4(1) of the Act and they can be slaughtered after complying with provisions of the said sub-clause and obtaining a certificate contemplated by sub-section (2) of S.4 of the said Act.

23. The appeal is accordingly allowed. The appellant will also be entitled to costs.

Appeal allowed.