

State Of W.B vs Ashutosh Lahiri on 16 November, 1994

Equivalent citations: 1995 AIR 464, 1995 SCC (1) 189, AIR 1995 SUPREME COURT 464, 1995 (1) SCC 189, 1994 AIR SCW 4692, 1994 AIR SCW 4688, (1995) 2 CIVLJ 77, (1994) 7 JT 531 (SC), (1995) 1 PUN LR 685, (1995) 1 SCJ 268, 1995 (7) JT 443

Author: S.B Majmudar

Bench: S.B Majmudar, Kuldip Singh, B.L Hansaria

PETITIONER:
STATE OF W.B.

Vs.

RESPONDENT:
ASHUTOSH LAHIRI

DATE OF JUDGMENT 16/11/1994

BENCH:
MAJMUDAR S.B. (J)
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MAJMUDAR S.B. (J)
KULDIP SINGH (J)
HANSARIA B.L. (J)

CITATION:
1995 AIR 464 1995 SCC (1) 189
JT 1994 (7) 697 1994 SCALE (4) 979

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MAJMUDAR, J.- All these appeals by special leave arise out of the judgment of the Division Bench of Calcutta High Court in Civil Rule No. 709 (W) of 1971 decided on 20-8-1982. The appellants in these appeals are the State of West Bengal and the other contesting respondents who were before the High Court. 27 respondents herein had filed the writ petition before the Calcutta High Court, challenging the validity of exemption of slaughter of

scheduled animal, namely, cows, from the operation of the West Bengal Animal Slaughter Control Act, 1950 (hereinafter referred to as the 'Act') on BakrI'd day. The writ petitioners had obtained leave under Order 1, Rule 8 of the Code of Civil Procedure and joined Respondents 7 to 21 representing the Muslim community. The writ petitioners contended before the High Court that the State of West Bengal Respondent 1 before the High Court had wrongly invoked Section 12 of the Act when it exempted from the operation of the Act, the slaughter of healthy cows on the occasion of BakrI'd on the ground that such exemption was required to be given for the religious purpose of Muslim community. The Division Bench of the Calcutta High Court after hearing the contesting parties took the view that such slaughter of cows by members of Muslim community on BakrI'd day was not a requirement of Muslim religion and, therefore, such exemption was outside the scope of Section 12 of the Act. Consequently, the impugned order was dehors the statute. In that view the Division Bench allowed the petition and issued a mandamus to the appellants, State of West Bengal Respondent 1 and its delegate officers Respondents 2 to 16 in the writ petition calling upon them to forbear from giving any exemption under Section 12 of the Act in respect of slaughter of cows on the occasion of BakrI'd day thereafter. The writ petitioner's oral application for leave under Article 133 of the Constitution was refused as according to the Division Bench it had followed the Constitution Bench decision of this Court in Mohd. Hanif Quareshi v. State of Bihar¹, in coming to the said conclusion.

2.As noted earlier the State of West Bengal as well as other contesting respondents of Muslim community have preferred these appeals by way of special leave to appeal from the aforesaid judgment of the Division Bench of the Calcutta High Court.

3.As all these appeals involve common questions of facts and law, learned counsel for contesting parties addressed common arguments in all these appeals. Consequently, we are disposing of these appeals by this common judgment.

4.Learned counsel for the appellants in these appeals vehemently contended that the view of the High Court is erroneous and does not correctly interpret Section 12 of the Act. It must be held that such exemption can be granted for fulfilling any religious purpose and such purpose may not be an obligatory purpose. That even if it is open to a Muslim to offer sacrifice of a goat or a camel or a cow and when such a sacrifice should be of a healthy animal then it was perfectly open to the State to grant exemption from the operation of the Act so far as slaughtering of a healthy cow on BakrI'd day was concerned. It was also contended that the High Court had misread the judgment in Quareshi case¹ as this case had interpreted Article 25 of the Constitution of India and in that light it was held that slaughter of cows could not be considered to be a part of essential religious requirement. So far as Section 12 of the Act is concerned it does not talk of an essential religious purpose but talks of any religious purpose which may include even an optional purpose. Mr Tarkunde, learned Senior Counsel, appearing for one of the appellants vehemently contended that for operation of Section 12 it is not necessary that the religious purpose must be a mandatory purpose but would cover even an optional purpose as contemplated by the Muslim religion, like slaughter of healthy cow on BakrI'd. Hence such a purpose would be covered by the sweep of Section 12 of the Act.

5. On the other hand learned counsel for the original writ petitioners, respondents in these appeals, contended that the Act is meant for controlling the slaughter of animals including the cows and buffaloes and this is with the object of increasing the supply of milk and avoiding the wastage of animal power necessary for improvement of agriculture. Under Section 4 of the Act only animals fit for slaughtering can be slaughtered. For that a certificate is 1 AIR 1958 SC 731 : 1959 SCR 629 required to be issued by the authorities concerned. But so far as healthy animals like cows are concerned there is a complete ban on slaughtering them. Section 12 seeks to lift the ban in connection with such animals only on the fulfilment of the condition precedent, namely, such lifting of the ban being necessary for any religious, medicinal or research purpose. As this is an exception to the general protection against slaughtering of healthy animals as envisaged by the Act, such exemption or exception should be strictly construed and cannot be lightly granted or lightly resorted to for any optional religious purpose which may not be absolutely necessary. In this connection it was submitted by learned counsel for the respondents that as per the appellants, in order to earn religious merit a Muslim can offer sacrifice of a goat or alternatively of a healthy cow if 7 Muslims together decided to do so and spend for it or even a camel can be sacrificed by them on BakrI'd. Therefore, it is not essential for Muslims to earn religious merit by insisting on sacrificing only healthy cows on BakrI'd. Consequently, the State will not have any Jurisdiction or power to invoke Section 12 for fulfilling such optional religious practice of Muslim community. It was further contended that the Constitution Bench judgment in Quareshi case¹ has clearly ruled that slaughter of cow on BakrI'd day cannot be considered to be a part of essential religious practice and that is the reason why protection of Article 25 is not available for enabling slaughtering of cows on BakrI'd day. If that is so, on that very basis the State's action under Section 12 of the Act has to be judged otherwise what is held to be non-essential religious requirement by the Constitution Bench of this Court, would be treated as essential religious requirement for the purpose of Section 12 of the Act. That would run counter to the very ratio of the decision of the Constitution Bench of this Court. Therefore, according to the learned counsel for the respondent writ petitioners, the Division Bench of the High Court was perfectly justified in following the decision of the Constitution Bench of this Court in Quareshi case¹.

6. We have given our anxious consideration to the rival contentions. In our view the decision rendered by the Division Bench of Calcutta High Court under appeal is unexceptionable and calls for no interference. We must keep in view the scheme of the Act for deciding the question in controversy.

7. As the preamble of the Act shows it was enacted to control the slaughter of certain animals as it was expedient to do so with a view to increase the supply of milk and to avoid the wastage of animal power necessary for improvement of agriculture. Section 2 lays down that the Act applies to animals specified in the schedule. The schedule to the Act covers bulls, bullocks, cows, calves, male and female buffaloes, buffalo calves and castrated buffaloes. Section 4 of the Act deals with prohibition of slaughtering of animals without certificate from authorities concerned. Section 4(1) provides that notwithstanding anything in any other law for the time being in force or in any usage to the contrary, no person shall slaughter any animal unless he has obtained in respect thereof a certificate under subsection (2) or sub-section (3) that the animal is fit for slaughter. As per sub-

section (2) a certificate is required to be issued by the authorities concerned that the animal is over 14 years of age and is unfit for work or breeding or that the animal has become permanently incapacitated from work or breeding due to age, injury, deformity or any incurable disease. Sub-section (3) deals with a case where there is a difference of opinion between the authorities concerned from which initially a certificate is to be obtained. As per Section 5 even if there is a certificate enabling a person to get the animal concerned slaughtered he cannot slaughter it in any place other than the place prescribed in that behalf. As per Section 7 whoever contravenes the provision of the Act shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. Section 8 makes the offences cognizable under the Act. Section 9 prescribes punishment for abetment of offences or even attempts to commit any such offence under the Act.

8. The aforesaid relevant provisions clearly indicate the legislative intention that healthy cows which are not fit to be slaughtered cannot be slaughtered at all. That is the thrust of Section 4 of the Act. In other words there is total ban against slaughtering of healthy cows and other animals mentioned in the schedule under Section 2 of the Act. This is the very essence of the Act and it is necessary to subserve the purpose of the Act i.e. to increase the supply of milk and avoid the wastage of animal power necessary for improvement of agriculture. Keeping in view these essential features of the Act, we have to construe Section 12 which deals with power to grant exemption from the Act. As we have noted earlier the said section enables the State Government by general or special order and subject to such conditions as it may think fit to impose, to exempt from the operation of this Act slaughter of any animal for any religious, medicinal or research purpose. Now it becomes clear that when there is a total ban under the Act so far as slaughtering of healthy cows which are not fit to be slaughtered as per Section 4(1) is concerned, if that ban is to be lifted even for a day, it has to be shown that such lifting of ban is necessary for subserving any religious, medicinal or research purpose. The Constitution Bench decision of this Court in Mohd. Hanif Quareshi case¹ at (SCR) page 650 of the report speaking through Das, C.J. referred to the observations in Hamilton's translation of Hedaya, Book XLIII at page 592 that it is the duty of every free Mussalman arrived at the age of maturity, to offer a sacrifice on the I'd Kurban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslims consists of making sacrifice of any animal which should be a healthy animal, on BakrI'd, then slaughtering of cow is not the only way of carrying out that sacrifice. It is, therefore, obviously not an essential religious purpose but an optional one. In this connection Mr Tarkunde for the appellants submitted that even optional purpose would be covered by the term "any religious purpose" as employed by Section 12 and should not be an essential religious purpose. We cannot accept this view for the simple reason that Section 12 seeks to lift the ban in connection with slaughter of such animals on certain conditions. For lifting the ban it should be shown that it is essential or necessary for a Muslim to sacrifice a healthy cow on BakrI'd day and if such is the requirement of religious purpose then it may enable the State in its wisdom to lift the ban at least on BakrI'd day. But that is not the position. It is well settled that an exceptional provision which seeks to avoid the operation of main thrust of the Act has to be strictly construed. In this connection it is profitable to refer to the decisions of this Court in the cases *Union of India v. Wood Paper Ltd.*² and

Novopan India Ltd. v. C.C.E. & Customs³. If any optional religious purpose enabling the Muslim to sacrifice a healthy cow on BakrI'd is made the subject-matter of an exemption under Section 12 of the Act then such exemption would get granted for a purpose which is not an essential one and to that extent the exemption would be treated to have been lightly or cursorily granted. Such is not the scope and ambit of Section 12. We must, therefore, hold that before the State can exercise the exemption power under Section 12 in connection with slaughter of any healthy animal covered by the Act, it must be shown that such exemption is necessary to be granted for subserving an essential religious, medicinal or research purpose. If granting of such exemption is not essential or necessary for effectuating such a purpose no such exemption can be granted so as to bypass the thrust of the main provisions of the Act. We, therefore, reject the contention of the learned counsel for the appellants that even for an optional religious purpose exemption can be validly granted under Section 12. In this connection it is also necessary to consider Quareshi case¹ which was heavily relied upon by the High Court. The total ban on slaughter of cows even on BakrI'd day as imposed by Bihar Legislature under Bihar Preservation and Improvement of Animals Act, 1955 was attacked as violative of the fundamental right of the petitioners under Article 25 of the Constitution. Repelling this contention the Constitution Bench held that even though Article 25(1) granted to all persons the freedom to profess, practise and propagate religion, as slaughter of cows on BakrI'd was not an essential religious practice for Muslims, total ban on cow's slaughter on all days including BakrI'd day would not be violative of Article 25(1). As we have noted earlier the Constitution Bench speaking through Das C.J., held that it was optional for the Muslims to sacrifice a cow on behalf of seven persons on BakrI'd but it does not appear to be obligatory that a person must sacrifice a cow. It was further observed by the Constitution Bench that the very fact of an option seemed to run counter to the notion of an obligatory duty. One submission was also noted that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats, and it was observed that in such a case there may be an economic compulsion although there was no religious compulsion. In this 2 (1990) 4 SCC 256: 1990 SCC (Tax) 422: JT (1991) 1 SC 151 3 1994 Supp (3) SCC 606: JT (1994) 6 SC 80 connection, Das C.J. referred to the historical background regarding cow slaughtering from the times of Mughal emperors. Mughal Emperor Babur saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this. Similarly, Emperors Akbar, Jehangir and Ahmad Shah, it is said, prohibited cow slaughter. In the light of this historical background it was held that total ban on cow slaughter did not offend Article 25(1) of the Constitution.

9. In view of this settled legal position it becomes obvious that if there is no fundamental right of a Muslim to insist on slaughter of healthy cow on BakrI'd day, it cannot be a valid ground for exemption by the State under Section 12 which would in turn enable slaughtering of such cows on BakrI'd. The contention of learned counsel for the appellants that Article 25(1) of the Constitution deals with essential religious practices while Section 12 of the Act may cover even optional religious practices is not acceptable. No such meaning can be assigned to such an exemption clause which seeks to whittle down and dilute the main provision of the Act, namely, Section 4 which is the very heart of the Act. If the appellants' contention is accepted then the State can exempt from the operation of the Act, the slaughter of healthy cows even for non-essential religious, medicinal or research purpose, as we have to give the same meaning to the three purposes, namely, religious, medicinal or research purpose, as envisaged by Section 12. It becomes obvious that if for fructifying

any medicinal or research purpose it is not necessary or essential to permit slaughter of healthy cow, then there would be no occasion for the State to invoke exemption power under Section 12 of the Act for such a purpose. Similarly it has to be held that if it is not necessary or essential to permit slaughter of a healthy cow for any religious purpose it would be equally not open to the State to invoke its exemption power under Section 12 for such a religious purpose. We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on BakrI'd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merit on BakrI'd.

10. We may also mention one submission of Mr Tarkunde that India is a secular democratic country and, therefore, the State has to respect the wishes of minority. In the appeals at hand we are concerned with the short question whether in the light of clear wording of Section 12, the State can exempt from the operation of the Act slaughtering of healthy cows on BakrI'd. For deciding this, ours being a secular country would not be relevant. Mr Tarkunde next submitted that as per Gujarat Rules slaughtering of cows on BakrI'd is considered a bona fide religious purpose. Even this aspect is not relevant for deciding the parameters of Section 12 of the West Bengal Act, even if that be the position in Gujarat presently, which is not so according to the learned counsel for the respondents.

11. We may also deal with the effort made by the learned counsel for the appellants to distinguish Quareshi case¹ on the ground that for interpreting the term 'religious' under Articles 25 and 26, a restricted meaning was given for balancing the secular nature of democracy on the one hand and the interest of the individual so far as right to practise any religion is concerned on the other. In this connection, our attention was invited to the decisions of this Court in Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan⁴ and Durgah Committee v. Syed Hussain Ali⁵. These decisions are of no avail to the appellants as therein while dealing with the question of validity of certain enactments, scope of Articles 25 and 26 of the Constitution was spelt out and nothing has been held in these decisions which is contrary to what was decided in Quareshi case¹, which we have noted in detail. The effort made by teamed counsel for the appellants to get any and every religious practice covered by Section 12 also is of no avail for the simple reason that in the context of Section 12 the religious practice must be such which requires the invocation of exemption provision under Section 12 so as to bypass the main thrust of Section 4. For such an exercise non-essential religious practices cannot be made the basis. Reliance placed on the decision of this Court in Hazarat Pirmahomed Shah Saheb Roza Committee v. C.LT⁶ also is of no assistance as the same refers to Section 11 of the Income Tax Act, the scheme of which is entirely different from that of the Act. Even if we agree with learned counsel for the appellants that slaughter of a healthy cow on BakrI'd is for a religious purpose, so long as it is not shown to be an essential religious purpose as discussed by us earlier, Section 12 of the Act cannot be pressed in service for buttressing such a non-essential religious purpose.

12. Before parting we may mention that one preliminary objection was raised before the High Court about the petitioners' locus standi to move the writ petition. The High Court held that it was a public interest litigation and the writ petitioners have sufficient locus standi to move the petition. That finding of the High Court was not challenged by any of the appellants. In our view rightly so as the

writ petitioners representing a Hindu segment of society had felt aggrieved by the impugned exemption granted by the State. They had no personal interest but a general cause to project. Consequently, they had sufficient locus standi to move the petition. Rule 7 framed under the Act, provides that provisions of the West Bengal Animal Slaughter Control Act, 1950, shall not apply to the slaughter of any animal for religious, medicinal or research purpose subject to the condition that such slaughter does not affect the religious sentiment of the neighbours of the person or persons performing such slaughter and that the previous permission of the State Government or any officer authorised by it is obtained before the slaughter. The case of the original writ petitioners before the High Court was based on religious sentiments and, therefore, they had moved this public interest litigation. In these circumstances, no fault could 4 (1964) 1 SCR 561 AIR 1963 SC 1638 5 (1962) 1 SCR 383 AIR 1961 SC 1402 6 (1967) 63 ITR 490 (SC) be found with the decision of the High Court recognising locus standi of the original petitioners to move this public interest litigation which we have found to be well justified on merits.

13. In the result, we confirm the decision of the High Court and dismiss these appeals. Interim reliefs granted earlier during the pendency of the appeals shall stand vacated. In the facts and circumstances of the case, there will be no order as to costs.