Buddhu vs Municipal Board And Ors. on 18 March, 1952

Equivalent citations: AIR1952ALL753, AIR 1952 ALLAHABAD 753

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Article 226 of the Constitution directed against (1) the Municipal Board of Allahabad, (2) the Commissioner, Allahabad Division, and (3) the State of Uttar Pradesh, in which the relief prayed is that a writ of Mandamus or directions be issued or such other suitable orders be passed as the Court may deem fit to restrain the Municipal Board of Allahabad from enforcing its bye-laws published by Notification No. 4100/XXIII-82(3)-49 in the U. P. Gazette, dated the 31st March, 1951. The facts are as follows:

2. The applicant is a butcher and carries on the business of slaughtering cows, bulls and calves at Allahabad. Bye-laws to regulate the slaughter of animals have been in existence in this Municipality since 1916. On 31-3-1951, an amendment was made in these bye-laws according to which Clause (iii) of bye-law No. 1 was inserted to the following effect: "No bull, bullock, cow, calf (both male and female) shall be slaughtered in any slaughterhouse or in any other place." The applicant contends that this new bye-law is an infringement of his fundamental right conferred by Article 19(1)(g) of the Constitution, that it is repugnant to Article 14 as it makes a distinction between those who slaughter goats and sheep and those who slaughter bull, bullock, cow and calf and that the Municipal Board had no authority under the U. P. Municipalities Act to frame such a bye-law.

3. The Commissioner of Allahabad has been impleaded because it was he who confirmed this bye-law and it was under his signature that it was published in the Gazette. The State of Uttar Pradesh has been impleaded presumably because it required the Municipal Board, Allahabad, in terms of Sub-section (1) of Section 298 of the U. P. Municipalities Act to frame such a bye-law.

4. A preliminary objection has been taken on behalf of the opposite party to the maintainability of this application on the ground that the applicant could have brought a suit for an injunction and an alternative remedy is open to him. In this connection learned counsel points to the fact that a suit for a similar relief was instituted by Hafiz Ahmad Raza and two others against the Municipal Board in the Court of the Civil Judge of Allahabad under Order 1 Rule 8 of the Code of Civil Procedure representing the butchers and the hide merchants and praying for an injunction to restrain the defendant Board from enforcing the impugned bye-law. It is argued that as it is a representative suit

the applicant is a party in that suit also. That suit was transferred to the extraordinary original side of this Court and it has been dismissed today on the preliminary ground of want of notice under Section 326 (1) of the U. P. Municipalities Act, 1916. Reliance is placed upon the Full Bench case of this Court 'THE ASIATIC ENGINEERING CO. v. ACHHRU RAM', 1951 All L J 576 and another Full Bench case of this Court, 'MOTI LAL v. GOVERNMENT OF THE "STATE OF UTTAR PRADESH', AIR 1951 All 257 (FB). Before referring to other cases cited on behalf of the opposite party, the principles laid down in these two Full Bench cases of our Court may be examined. In the 'ASIATIC ENGINEERING CO's CASE', (1951 All L J 576 F B) these principles have been discussed at pages 595 to 597. Their Lordships observed:

> "The question whether any case has been made out for the grant of any of the writs, orders or directions claimed is, however, a different one and has to be considered with reference to the facts of this particular case. The terms of Article 226 of the Constitution are very wide. They enable this Court to issue, in suitable cases, writs, directions or orders including the writs of habeas corpus, certiorari, prohibition, mandamus and quo warranto for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. It strikes us that the fact that the Constituent Assembly has vested this Court with such vast powers imposes a heavy responsibility upon it to use them with circumspection. We must not be understood to suggest that in a suitable case this Court will be hesitant in issuing the appropriate writ, order, or direction nor must we be understood to lay down that there is any universal or general principle which governs the grant or refusal of the writs, orders or directions referred to above."

5. They cited with approval the following observations of Lord Goddard in the recent case of 'R v. DUNSHEATH, EX PARTE MEREDITH', (1950) 2 All E R 741:

> "It is important to remember that mandamus is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty and specially affects the rights of an individual, provided there is no more appropriate remedy."

In this connection the following observations of this Court in 'THE INDIAN SUGAR MILLS ASSOCIATION v. SECY TO GOVT. U. P., LABOUR DEPARTMENT, LUCKNOW, 1950 All L J 767 (FB) were also quoted:

> "The powers under this Article (that is Article 226) should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him."

6. In 'MOTI LAL v. GOVT. OF THE STATE OF UTTAR PRADESH', AIR 1951 All 257 (FB) four concurrent judgments were delivered. Malik, C. J. observed at page 265:

> "To my mind, we must apply the same principle, which was applied in England, in dealing with the prerogative writs and lay down that the power under Article 226 would be sparingly used by this Court and only in those exceptional cases where there is no adequate remedy and an application under Article 226 is the only convenient, beneficial and effectual means of getting redress."

Mootham and Wanchoo, JJ. observed at p. 285:

> "The Court's power in such cases to issue directions or orders or writs should, we think, be exercised with caution and circumspection, and ordinarily only in those cases where grave injustice may otherwise ensue and no other remedy equally convenient, beneficial and effectual is available."

Sapru, J. while dealing with the objection of the Advocate General that the applicants had not exhausted other avenues of redress open to them under the Motor Vehicles Act pointed out at page 290 that no regular orders had been passed by the Regional Transport Authority and it was impossible for the applicants to go in appeal to the prescribed authority. In these circumstances, in the special and peculiar circumstances of the case, he did not attach any importance to the fact that the applicants had not exhausted the remedy of going in appeal to the prescribed authority before coming to this Court. In para 295 at page 315, he further discussed the principles and held that the Court ought not to issue a writ where any more convenient, beneficial and appropriate remedy is open. Agarwala, J. in para 484 at page 334 observed :

> "Although Article 226 is wider in its scope than the various writs, one condition for the exercise of the power under Article 226 which the Court will always observe is that no other legal remedy equally convenient, beneficial or effectual was obtainable."

7. The position which emerges, to my mind, from these two authorities is that no hard and fast rule can be laid down as to the class of cases in which directions, orders or writs can be issued under Article 226 and the class of cases in which they ought not to be issued; In the case of 'RASHID AHMED v. MUNICIPAL BOARD, KAIRANA,' 1950 S. C. R. 566 the Supreme Court had to deal with a fundamental right to carry on trade. The learned Advocate General of Uttar Pradesh invited attention to Section 318, U. P. Municipalities Act and submitted that the petitioner having adequate remedy by way of appeal, the Court should not grant any writ in the nature of the prerogative writ of mandamus or certiorari. Their Lordships observed :

> "There can be no question that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, but the powers given to this Court under Article 32 are much wider and are not confined to issuing prerogative writs only. The respondent Board having admittedly put it out of its power to grant a license and having regard to the fact that there is no specific bye-law authorising the issue of a license, we do not consider that the appeal under Section 318 to the local Government which sanctioned the bye-laws is, in the circumstances of this case, an adequate legal remedy."

In 'CHINTAMANRAO v STATE OF MADHYA PRADESH,' AIR 1951 S. C. 118 also, there was the case of an infringement of a fundamental right under Article 19(1)(g). The Biri-makers' application was allowed despite the fact that a regular suit could have been brought for the same relief.

8. On the basis of the observations of Patanjali Sastri, J. in 'ROMESH THAPPAR v. STATE OF MADRAS,' 1950 All L. J. 485 (S. C.) it was argued that where a question of a fundamental right is raised by an application under Article 226 this Court must grant the relief. The objection raised before the Court was that the petitioner should not have resorted directly to the Supreme Court but should have, in the first instance, applied to the High Court at Madras under Article 226. The learned Judge observed at page 488:

> "That Article does not merely confer power on this Court, as Article 226 does on the High Courts, to issue certain writs for the enforcement of the rights conferred by part III or for any other purpose, as part of its general jurisdiction. In that case it would have been more appropriately placed among Articles 131 to 139 which define that jurisdiction. Article 32 provides a 'guaranteed remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in part III. This Court is thus constituted the protector and guarantor of fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights."

The case lays down only that the Supreme Court will not reject the application on the preliminary ground that the applicant has not previously applied to the High Court. It will entertain the application. But the mere entertainment of the application does not mean that it will necessarily grant it. Even after the entertainment of the application, it will be open to it to consider whether or not the discretion vested in it under Article 32 should be exercised and in doing so the fact that an alternative course is open to the applicant for the redress of his grievance is a relevant factor to be taken into consideration. Indeed, the Supreme Court in the later case of 'RASHID AHMED v. MUNICIPAL BOARD OF KAIRANA,' 1950 S. C. R. 566 took the view that the existence of a legal remedy is a thing to be taken into consideration in the matter of granting writs. In 'WISHWANATH RAMKRISHNA v. 2ND ADDL. DISTRICT JUDGE, NAGPUR', AIR 1951 Nag 6 and 'IN RE NAGABHUSHANA REDDI,' AIR 1951 Mad. 249 and in so many other cases, it has been held that if there is any other adequate remedy open to the petitioner the Court will consider it before granting an application under Article 226. Indeed, if the contention that in every case in which a fundamental right is involved a writ must issue is accepted then the result will be that a large number of suits which are instituted in the subordinate courts will come up to this Court in the form of petitions for writs, a result which could never have been intended by the Constitution.

9. I am not prepared to go to the extent of laying down as an inflexible rule that in every case in which a fundamental right is involved, a decision should be given by the Court on merits on an application under Article 226. There may be cases in which the existence of an alternative remedy may be a ground for the rejection of the application. The circumstances of each case should be considered and then a decision should be taken whether or not the discretion should be exercised.

10. In the present case a general question of some public importance has been raised. It is desirable that it should be speedily decided and the parties should not remain under suspense for a long time. On the determination of the question before us, the decision of the petitioner and others of his class whether to continue in the present avocation or to take to some other will depend.

11. The preliminary objection having failed, I proceed now to consider the petition on merits.

12. Before dealing with the specific points raised on behalf of the petitioner the principles which should guide us in determining this case may first be set out. In 'KRUSE v. JOHNSON', (1898) 2 QB 91 Lord Russel of Killowen, C. J. observed:

> "when the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any byelaw, so made under such conditions, on the ground of supposed unreasonableness."

This principle was followed by this Court in 'MUNICIPAL BOARD, HATHRAS v. BOHREY NARAIN DUTT', A. I. R. 1948 All. 1 by a Division Bench of which I was a member. In that case the question was whether certain bye-laws made by the Municipality for the regulation and control of flour-mills were valid or not. It was held:

> "Courts of justice are slow to condemn municipal bye-laws, as invalid, on the supposed ground of unreasonableness, & support them, if possible, by a benevolent interpretation crediting those who have to administer them with an intention to do so in a reasonable manner and with being the best judges whether a particular bye-law is required in that district or not."

13. It would be proper first to understand what is the nature of the right which the petitioner claims. In para 2 of the affidavit he says that he "carries on the business of slaughtering cows, bulls and calves at Allahabad". The meaning of the word "slaughter" as given in the Oxford English Dictionary is "to kill cattle, sheep or other animal 'for food'". It is thus clear that the right which the applicant claims is the right to kill these cattle for the purposes of food. He does not claim the right to kill cattle not intended for food.

14. Article 19(1)(g) provides:

> "All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business."

But this must be read with Clause (6) of that article according to which "nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause....."

15. If the impugned bye-law is a reasonable restriction on the exercise of the right conferred by Article 19(1)(g) then it is not invalid. The whole question, therefore, is whether or not it is a reasonable restriction. The documents filed in Original Suit No. 1 of 1951, which was heard along with this writ petition, and which were read in evidence in this case also with the consent of counsel for the parties, show that the impugned bye-law was made by the Municipal Board on suggestion from the State Government in order to prevent permanent damage to the cattle-wealth of the country. The idea evidently was to conserve the sources of milk-supply to the residents of the Municipality and to stop the depletion of bullocks which are so important as drought animals in agricultural operations of this country. These considerations now find a place in Article 48 of the Constitution. It provides:

> "The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and drought cattle."

If in pursuance of this directive principle of State policy the State Government asked and the Municipal Board framed the impugned bye-law, I am unable to see how it can be said to be unreasonable.

16. Learned counsel for the petitioner argued that there may be some good reason to prohibit the slaughter of pregnant and wet cows or working bulls or bullocks or calves but there was no good reason to prohibit old, infirm and useless cows, bulls or bullocks from being slaughtered. It was stated that after a certain age cows become dry and give birth to no calves and so they are a liability upon the society rather than an asset to it. Books on Veterinary Science show that there is no fixed age for cows when they can be said to have become useless, e.g. page 248 of the book "Artificial Insemination and Animal Production" by J.B. Sampat Kumaran and the Magazine known as Veterinary Medicine, Volume I, No. 6, June, 1922, p. 261. There is no data before us to determine as to what is the percentage of the so-called useless cows, bulls and bullocks. It is possible that by giving an exemption to such cattle from the operation of the impugned bye-law there may be a danger of the slaughter of even useful cows, bulls and bullocks. It is possible also that the percentage of such useless animals may be so small that it is not worthwhile to make any exemption in respect of them. The petitioner has not been prohibited from slaughtering he and she-buffaloes. He can also take to the profession of slaughtering goats and sheep. It cannot be said that he will starve by the

prohibition from the slaughter of bulls, bullocks, cows or calves. At all events, the interest of a small class must yield place to the larger interest of the society as a whole.

17. For the above reasons, I have no hesitation in holding that the impugned bye-law is not unreasonable and as such it is not hit by Article 19(1)(g) of the Constitution read with Clause (6) of that Article.

18. Although in the affidavit the point was raised that the impugned bye-law conflicts with Article 14, it was not argued before us. The point sought to be made out was that a distinction was made between the butchers who slaughter goats and sheep and those who slaughter bull, bullock, cow and calf.

19. The next point argued was that the Municipal Board acted contrary to the provisions of the U. P. Municipalities Act, 1916. It is necessary first to set out the relevant provisions of the Municipalities Act. Section 8 of the Act provides for the discretionary functions of boards. Clause (llll) of Sub-section (1) of this section authorises a board to make provision, within the limits of the Municipality, and, with the sanction of the prescribed Authority, outside its limits, for "supply of milk."

Clause (m) authorises boards to adopt any measure likely "to promote the public safety, health or convenience". Sub-section (1) of Section 298 prescribes the powers of the board to make bye-laws. Such bye-laws have to be consistent with the Act and with any rule framed by the State Government and should be "for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under the Act."

It is important to note here that it is mandatory upon a board to make bye-laws when so required by the State Government. The powers given to a municipal board are very wide. In Sub-section (2), some of the topics in respect of which bye-laws may be framed by a board have been specified, but the specification of these topics is "without prejudice to the generality of the power conferred by Sub-section (1)". In regard to slaughter-houses an indication of the nature of the bye-laws is given under heading "F" of List I in Sub-section (2) of Section 298. Reference may also be made to Sections 237 to 241 which deal with the subject of slaughter of animals and their meat. The argument on behalf of the petitioner is twofold: Firstly, it is contended that there is nothing in the Municipalities Act to empower the boards to prohibit the slaughter of any class of animals, and secondly, it is urged that it is implicit in the provisions of Sections 237 & 238 that the right to slaughter animals cannot be taken away.

20. The word "State" occurring in Part IV of the Constitution dealing with the directive principles of State Policy has, according to Article 36, the same meaning as in Part III. According to Article 12 the word "State" includes local authority. Article 47 provides, inter alia, that "the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties". The provisions of Article 48 which, inter alia, provide for the prohibition of slaughter of cows, calves and other milch and drought animals have already been

set out above. These directives apply to the Municipal Boards as much as to the State Government. The promotion and maintenance of the health of the inhabitants of a municipality including the raising of the level of nutrition is thus a duty cast upon the Board not only by the Municipalities Act but also by the Constitution. It is in common knowledge that the price of milk has risen enormously and a large section of the population cannot afford to have it in necessary quantity. Further, it is in common knowledge that foodgrains are also dear these days. The cost of drought cattle is an important factor in the production of foodgrains. If with a view to increase the milk supply and the production of foodgrains, the Board placed a ban upon the slaughter of bulls, bullocks, cows and calves, the action was in pursuance of the policy of raising the level of nutrition and promotion of public health, a policy which is enjoined alike by the Constitution and the U. P. Municipalities Act, 1916. When the law gives power to the municipality to make bye-laws for the purpose of promotion of the health of the inhabitants it can, in my opinion, make a bye-law to ban the slaughter of bulls, bullocks, cows and calves. Prohibition of slaughter of cows is bound to increase the supply of milk to the citizens in the Municipality and thus raise their level of nutrition land promote their health. Prohibition of slaughter of bulls and bullocks is bound to increase the supply of drought cattle, diminish the cost of production of foodgrains and thus raise the level of nutrition and promote the health of the people. Calves are only future cows, bulls, or bullocks. The relationship between the prohibition on the slaughter of these cattle, and the health and level of nutrition of people is thus direct. It cannot be said to be remote. If the object is to promote the health of the people and to raise their level of nutrition, the supply of the articles of food which are bound to contribute to this object must be increased and their cost of production must be lowered.

It is true that in Sub-section (2) of Section 298 under the heading "F" there is nothing to indicate the prohibition of such a slaughter, but the provisions of Sub-section (2) are illustrative and not exhaustive. The ambit of the powers of the board to frame bye-laws is contained in Sub-section (1). If the purpose of a bye-law is to promote the public health, it is valid al-though it may not fall under any specific pro-visions of Sub-section (2) of Section 298. The object for which the legislature has established the municipal boards are contained in Sections 7 and 8. Section 8, as already pointed out above, authorises boards to make provision for the supply of milk and for the promotion of public health. If for these purposes the board makes a bye-law to prohibit the slaughter of cows, bulls, bullocks and calves it is valid. It is significant that in Sub-section (1) of Section 298, the word "regulate" is not used. The principle laid down in the 'TORONTO MUNICIPAL CORPORATION v. VIRGO', (1896) A C 88 is thus not attracted. The powers of the board to frame bye-laws under Section 298 (1) are wide and such bye-laws can go to the extent of even prohibiting slaughter of cows, bulls, bullocks and calves, as this is necessary for promoting public health and raising the level of nutrition of the people.

21. Coming to Sections 237 to 241, I can find nothing there to lead me to the inference that the right to slaughter cattle has been impliedly conferred by them. These sections are as follows:

"Section 237: Places for slaughter of animals for sale:

"(1) The board may, with the approval of the District Magistrate, fix premises, either within or without the limits of the municipality, for the slaughter of animals, or animals of any specified

description for sale, and may, with the like approval, grant and withdraw licences for the use of such premises.

"(2) When such premises have been fixed by the board beyond municipal limits, it shall have the same power to make bye-laws for the inspection and proper regulation of the same as if they were within those limits.

"(3) When such premises have been fixed, no person shall slaughter any such animal for sale at any other place within the municipality.

"(4) Should anyone slaughter for sale any such animal at any other place within the municipality, he shall be liable on conviction to a fine which may extend to twenty rupees for every animal so slaughtered.

"Section 238: Places for slaughter of animals not intended for sale or slaughtered, for religious purposes:

"The board may, by public notice, and, with the previous sanction of the District Magistrate, fix premises within the municipality in which the slaughter of animals of any particular kind not for sale shall be permitted, and prohibit, except in case of necessity, such slaughter elsewhere within the municipality:

"Provided that the provisions of this section shall not apply to animals slaughtered for any religious purpose.

"Section 239: Powers of District Magistrate in respect of animals not slaughtered for sale:

Whenever it appears to the District Magistrate to be necessary for the preservation of the public peace or order, he may, subject to the control of the prescribed Authority, prohibit or regulate, by public notice the slaughter within the limits of a municipality of animal or animals of any specified description for purposes other than sale and prescribe the mode and route in and by which such animals shall be brought to and meat shall be conveyed from, the place of slaughter. "Section 240. Disposal of flesh imported in contravention of bye-law regulating importation: should the flesh of any cattle, sheep, goat or swine be brought within municipal limits in contravention of a bye-law made under subhead (e) of heading F of Section 298, may be seized by an officer of the board authorized in that behalf, and may be destroyed or otherwise disposed of as the board may, by general or special order, direct.

"Section 241. Licensing of markets and shops for sale of certain articles:

(1) The right of any person to use any place, within the limits of e municipality, other than a municipal market, as a market or shop for the sale of animals, meat or fish

intended for human food, or as a market for the sale of fruit or vegetables, shall be subject to bye-laws (if any) made under heading F of Section 298.

"(2) Provided that, where any bye-law is in force requiring a licence for the establishment or maintenance of a market or shop for the sale of any article mentioned in Sub-section (1), the board shall not:

"(a) refuse a licence for the maintenance of a market or shop lawfully established at the date of such bye-law coming into force, if application be made within six months from such date, except on the ground that the place where the market or shop is established fails to comply with any conditions prescribed by, or under this Act, or
"(b) cancel, suspend or refuse to renew any licence granted under such bye-law for any cause other than the failure of the licensee to comply with the conditions of the licence or with any provision of, or made under, this Act."

Sections 237 and 238 are mere empowering sections authorizing the boards to fix premises for the slaughter of animals intended for sale or not intended for sale. The power to fix premises for slaughter of animals does not imply a free and unrestricted right to slaughter any animal. Slaughter-houses are established not for the purpose of slaughter of bulls, bullocks, cows or calves only but for many other animals. The interests of public health require the regulation of such slaughter-houses. It would be improper to have such a slaughter-house in the midst of a thickly inhabited area. It would be against public health to allow diseased animals to be slaughtered for food. The slaughter must be made and the meat must be sold in hygienic conditions. There are so many other considerations which have to be kept in view in this connection. It is for this reason that licensing has been provided for in Section 241. Sections 237 to 241 do not deal with the right of slaughter of animals. They apply to those animals whose slaughter is not prohibited. They come into play only when there is a slaughter. They are inapplicable to those classes of animals whose slaughter is prohibited.

22. I can find nothing in any of the provisions of the U. P. Municipalities Act, 1916, to deprive the municipal boards of the power to prohibit the slaughter of any class of animals if such prohibition is for the purpose of promotion of the public health, including the "raising of the level of nutrition."

23. I see no force in the contention on behalf of the applicant that the impugned bye-law is 'ultra vires' of the Municipal Board of Allahabad.

24. Another argument on behalf of the applicant was that these amendments have been made under Section 298- F(d) and J (d) of the Municipalities Act and as under none of these provisions the impugned bye-law of prohibition of slaughter of bulls, bullocks, cows and calves can fall, so it is invalid. It is now a well established rule of law that if an action taken by an authority can be supported under any law other than the one under which it purports to have been taken its validity must be upheld. It has already been shown above that under the general power given by Sub-section (1) of Section 298, read with Section 8 of the U. P. Municipalities Act and Articles 47 and 48 of the Constitution the Board was competent to make the impugned bye-law.

25. Lastly it was argued that the penalty of a fine of Rs. 250/- provided for the contravention of the impugned bye-law is illegal. It is sufficient to refer only to Section 299 of the U. P. Municipalities Act which provides that the infringement of any bye-law can be made punishable with a fine which may extend to Rs. 500/-.

26. This disposes of all the points urged on behalf of the applicant.

27. I would dismiss the application with costs.

Harish Chandra, J.

28. I agree with my brother Bind Basni Prasad.

Dayal, J.

29. A preliminary objection is taken to the hearing of this application on the ground that the applicant could have brought a suit for injunction and therefore had an alternative remedy open to him.

30. In support of the contention reliance is placed on the observations in 'INDIAN SUGAR MILLS ASSOCIATION v. SECY. TO. GOVT. U. P. LABOUR DEPARTMENT LUCKNOW, 1950 All. L. J. 767 (F B.) 'ASIATIC ENGINEERING CO. v. ACHHRU RAM,' 1951 All. L. J.

576 and 'MOTI LAL v. GOVERNMENT OF THE STATE OF UTTAR PRADESH' AIR 1951 All. 257 (F. B.).

31. It is to be noted that the grievances of the applicants were heard on merits in the aforesaid cases and disposed of on merits.

32. I am of opinion that the various observations are not uniformly expressed and do not certainly lay down any hard and fast rule. The issue of the various writs or directions is in the discretion of the Court. It is not much use to lay it down in the form of any formula that the discretion is to be exercised in such and such a circumstance only. Whatever desirability there may be for expressing any general formula in this respect in connection with ordinary cases, it does not appear to be much when the writ or direction is sought by a person who alleges that his fundamental rights under Chapter III of the Constitution have been infringed. These rights are of a very different character from the rights which are ordinarily agitated before courts. The importance of these rights is apparent from their incorporation in the Constitution and from its providing a guarantee for the right of a person to move the Supreme Court for their enforcement. It should, therefore, be a very extreme case that such a grievance be brought before the Court and the Court should be in a position to say that another remedy under the ordinary law would provide redress.

33. In this connection, reference may also be made to two cases decided by the Supreme Court. The first case is, 'RASHID AHMED v. MUNICIPAL BOARD KAIRANA', 1950 S. C. R., 566. An

application was made under Article 32(1) of the Constitution for the enforcement of the applicant's fundamental right to carry on his business which was guaranteed by Article 19(1) of the Constitution. It was contended by the learned Advocate General of Uttar Pradesh that in view of Section 318, U. P. Municipalities Act, 1916, the petitioner had adequate remedy by way of appeal and that, therefore, the Court should not grant any writ in the nature of the prerogative writ of mandamus or certiorari. In disposing of this contention it was remarked;

> "There can be no question that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, but the powers given to this Court under Article 32 are much wider and are not confined to issuing prerogative writs only."

This remark, to my mind, does not go to this extent that the existence of an adequate legal remedy should ordinarily be a bar to the issue of a writ and does not apply to the prayer for the issue of directions or orders.

34. It is true that their Lordships further observed that the appeal under Section 318, in the circumstances of that case, was not an adequate legal remedy. Their considering this fact does not, to my mind, take away the point of distinction their Lordships were drawing in the remark quoted above that the existence of a legal remedy was a matter for consideration in the matter of granting writs, but the powers under Article 32 were much wider.

35. The next case is 'RAMESH THAPPAR v. STATE OF MADRAS', 1950 S. C. R., 594. An application was presented under Article 32 of the Constitution for a writ of prohibition and certiorari. A preliminary objection was taken to the petitioner's resorting to the Supreme Court directly for such relief in the first instance, it being contended that he should have first moved the High Court under Article 226 of the Constitution. In disposing of this point their Lordships remarked :

> "Article 32 provides a guaranteed remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III. This Court is thus constituted the protector and guarantor of fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringement of such rights. No similar provision is to be found in the Constitution of the United States and we do not consider that the American decisions are in point."

It is true that it is not said in so many words that the Supreme Court will always hear such applications on merits and that in the hearing of such applications it will not take into consideration the existence of any alternative legal remedy, but I venture to think that the effectiveness of the guaranteed right does not lie in the petitioner's right to move the Supreme Court and being then told to go elsewhere or to adopt a different course. The effectiveness of the remedy lies in the right of the applicant to press his grievance to the point of adjudication before the tribunal provided for the purpose. It should follow, therefore, that the right guaranteed to the citizen under Article 32 of the Constitution should mean that he has a right to get a decision from the Supreme Court on his

grievance with respect to the infringement of his fundamental right.

36. No such guarantee is certainly given with respect to the aggrieved person's approaching the High Court under Article 226 of the Constitution. It, however, appears to me that when an aggrieved person is given a right to get an adjudication of the dispute about the infringement of his right from the Supreme Court, it would not be right to say that he is not to get a similar adjudication by a High Court if there exists an alternative legal remedy.

37. I am further of opinion that the importance of the question and the considerations mentioned by the Supreme Court in 'COMMR. OF POLICE, BOMBAY v. GORDHAN DAS', AIR 1952 S C 16, e.g. the delay consequent on the necessity of giving a notice under Section 80, C. P. C. and Section 326, U. P. Municipalities Act, and the likelihood of delay in the disposal of the question through ordinary litigation justify the hearing of this application on merits.

38. I, therefore, agree with brother Bind Basni Prasad that the preliminary objection be rejected.

39. I agree with brother Bind Basni Prasad that the bye-law prohibiting the slaughter of cows, bulls, bullocks and calves, both male and female, within the Municipality does not infringe the fundamental right of a citizen under Article 19(1)(g) to carry on any occupation, trade or business, read with Clause (6), which empowers the Legislature to make any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the 'right conferred by Sub-clause (g), as the restriction imposed by the bye-law is a reasonable restriction in the interest of the general public which stands to gain on account of the protection afforded to these animals due to their use in agricultural operations and in the supply of milk. In fact, Article 48 of the Constitution lays down that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibit the slaughter, of cows and calves and other milch and drought cattle, and Article 37 says that it shall be the duty of the State to apply the principles mentioned in Part IV in making laws.

40. I regret I am not able to agree with brother Bind Basni Prasad about the competency of the Municipal Board to frame such a bye-law. The bye-law purports to have been, framed under Sections 298 F(d) and J(d) and 299 (1), U. P. Municipalities Act. The relevant provisions are:

> "Section 298: Power of Board to make bye-law:
>
> (1) A board by special resolution may, and where required by Provincial Government shall, make bye-laws, applicable to the whole or any part of the municipality consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality and for furtherance of municipal administration under this Act.
>
> "(2) In particular, and without prejudice to the generality of the power conferred by Sub-section (1), the board of a municipality, wherever situated, may, in the exercise of the said power, make any bye-law described in list I below and the board of a

municipality, wholly, or in part situated in a hilly tract may further make in the exercise of the said power, any bye-law described in list II below.

List I. Bye-law for any municipality.

A.-Building ....

....

B.--Drains, privies, cesspools etc. ....

....

C.--Extinction of fire ....

....

D.-Scavenging ....

....

E.--Streets ....

....

F.--Markets, slaughter-houses, sale of food etc. "(a) Prohibiting, subject to the provisions of Section 241, the use of any place as a slaughter-house.....in default of a licence granted by the board or otherwise than in accordance with the conditions of a licence so granted.

"(b) prescribing the conditions subject to which and the circumstances in which and the areas or localities in respect of which, licences for such use may be granted, suspended or withdrawn; and "(c) providing for the inspection of, and regulation of the conduct of business in, a place used as aforesaid, so as to secure cleanliness therein or to minimise any injurious, offensive or dangerous effect arising or likely to arige therefrom;

"(d) providing for the establishment, and (except so far as provision may be made by bye-laws under sub-head (c) for the regulation and inspection of markets and slaughterhouses..... and for the proper and cleanly conduct of business therein.

(dd) prescribing the conditions subject to which and the circumstances in which, and the areas of locality in respect of which licences for the purposes of sub-head (d) may be granted, refused, suspended or withdrawn, and fixing the fees payable for such

licences and prohibiting the establishment of business places mentioned in sub-head (d) in default of licence granted by the Board or otherwise than in accordance with the conditions of a licence so granted.

"(e) in a municipality where a reasonable number of slaughter-houses has been provided or licensed by the board, controlling and regulating the admission within municipal limits, for purposes of sale, of the flesh (other than cured or preserved meat) of any cattle, sheep, goats or swine slaughtered at a slaughter-house or place not maintained or licensed under this Act.

G.--Offensive trades ....

....

H.--Public safety and convenience.

....

....

I.--Sanitation & prevention of disease.

....

....

J.-Miscellaneous ....

"(d) fixing any charges, or fees, or any scale of charges or fees to be paid for house-scavenging or the cleansing of latrines and privies under Section 196(c) or for any other municipal service or undertaking or to be paid under Section 293 (1) or Section 294 of the Act, and prescribing the times at which such charges or fees shall be payable, and designating the persons authorised to receive payment thereof."

"Section 299: (1) In making a rule the Provincial Government, and in making a bye-law the board with the sanction of the Provincial Government, may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence."

The aforesaid provisions in Section 298 (2) and List I do not provide for the making of bye-laws with respect to the prohibition of the slaughter of cattle. They simply deal with the making of bye-laws which would help the Board in effectively supervising the condition in which slaughter is made, so

that the conditions be not such as would be detrimental to the inhabitants of the municipality.

41. It is contended for the Municipal Board that the power to make bye-laws under Section 298 (1) is very wide, the Municipal Board being empowered to make bye-laws for the purpose of maintaining or promoting the health, safety and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Act, and that the Board is bound to make a bye-law when required by the Government to make it.

42. I attach no importance to the fact that the impugned bye-law has been made under directions from the State Government and that the Municipal Board was bound to frame the bye-law when directed by the State Government. A State Government cannot confer authority on the Municipal Board to frame a bye-law which it would otherwise not be competent to frame. It is only with respect to valid bye-laws that the suggestion to frame them must be complied with by the Municipal Board.

43. It is true that Section 298 (1) of the Act is generally expressed, but at the same time it cannot be overlooked that the bye-laws to be framed must, firstly, be consistent with the Act and with any rule framed by the State Government and, secondly, be for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the Municipality.

44. I do not consider the impugned bye-law to satisfy either of the two conditions which are necessary for the validity of a bye-law by the Municipal Board.

45. It is true that it is nowhere laid down in the Act that the inhabitants of the Municipality shall have the right to slaughter such cattle or that the Municipal Board cannot prohibit the inhabitants to slaughter such cattle. The question really is whether the Municipal Board has been given the power to prohibit the slaughter of cattle. It can be in the exercise of such a power that rules or bye-laws can be framed. No such power has been specifically conferred on the Municipal Board under any section of the Act.

46. Reliance is placed on the- provisions of Sections 7 and 8 of the Municipalities Act for the proposition that the Municipal Board can lawfully frame the impugned bye-law.

47. Section 7 lays down the duties of a Municipal Board and provides that the Board may make reasonable provision for the purposes mentioned in that section. This, to my mind, means that the Municipal Board can lawfully do those things. It is not laid down that the Municipal Board can prohibit the slaughter of cattle. Clause (h) simply makes it a duty of the Municipal Board to construct, alter and maintain slaughter-houses. This cannot include the power to prohibit slaughter of animals. Clause (d) lays down the duty of regulating offensive, dangerous or obnoxious trades, callings or practices. Even if the slaughtering of bullocks etc., can be treated as such a trade or calling, this duty of the Board cannot give to it any power to prohibit such trade or calling. In 'TORONTO MUNICIPAL CORPORATION v. VIRGO', (1896) A C 88, it was remarked at page 93:

> "No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where

> such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order. But their Lordships think there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed."

And again:

> "But through all these cases the general principle may be traced, that a municipal power of regulation or of making bye-laws for good government, without express words of prohibition, does not authorise the making (of ?) it unlawful to carry on a lawful trade in a lawful manner."

48. Section 8 of the Act lays down discretionary functions of the Municipal Board. In Clause (llll) of Sub-section (1) the Board is authorised to make provision for the supply of milk. This means that the Board can establish a dairy or a milk-shop or make arrangements with dairy people for supplying milk to the Municipal Board for subsequent supply to consumers. It does not mean that the Municipal Board can make a bye-law ordering people to supply milk or prohibiting people from supplying milk. Clause (m) authorises the Board to adopt any measure likely to promote the public safety, health or convenience. I shall discuss later what is the import of the expression "public safety, health and convenience" as used in the Act. The main emphasis, to my mind, of Sections 7 and 8 is on what the Municipal Board can do itself and not on what the Municipal Board can enforce on others. What it can enforce on others would come within its powers and not within its duties. Sections 7 and 8 do not deal with powers, but deal with duties. The powers of the Municipal Board are laid down elsewhere in the Act and do not include the power to prohibit slaughter of bullocks etc.

49. I do not consider the impugned bye-law to be consistent with other provisions of the Act.

50. Sections 237 to 241 are to be found in Chapter VIII with the heading "Other powers and penalties" and under the description of "Markets, slaughter-houses, sale of food etc." Sub-section (1) of Section 237 empowers the Board to fix premises within or without the limits of the Municipality for the slaughter of animals and to grant and withdraw licences for the use of such premises. Sub-section (2) merely empowers the Board to make bye-laws for the inspection and proper regulation of the premises fixed by the Board beyond municipal limits. Sub-section (3) is:

> "When such premises have been fixed, no person shall slaughter any such animal for sale at any other place within the municipality."

This, to my mind, means that a person is not prohibited to slaughter such animals for the slaughter of which the Municipal Board had not fixed premises anywhere within the Municipality. Even Sub-section (3) does not place a restriction on the right of a person to slaughter cattle within the Municipality, but restricts him in slaughtering such cattle at a place other than the fixed premises in case the Municipality had fixed premises for the slaughter of that particular kind of animal. Section

237 and other sections really deal not so much with the right to slaughter cattle, but with the place of slaughtering. The Municipal Board has been given limited powers for a particular purpose. They have not been given under these sections any general power to control the general right of the people to do what they like unless the doing of that thing had been prohibited by any valid law. The impugned bye-law means that the Municipal Board provides no slaughter-house for the slaughter of bulls, bullocks, cows and calves, as it prohibits the slaughter of such cattle in the slaughter-house. So much of the bye-law, however unreasonable it may appear, may be within the powers of the Municipal Board not to provide a slaughter-house for any kind of animal, but the further provision of the impugned bye-law that nobody is to slaughter these animals in any other place goes against the spirit and implication of Section 237 of the Act, as it prohibits a person from slaughtering such animals at any place within the Municipality, while such a prohibition under Section 237 (3) comes into existence only when the Board had fixed premises for the slaughter of such animals. I am, therefore, of opinion that so much of the impugned bye-law as prohibits the slaughter of bulls, bullocks, cows and calves in any place other than the slaughter-house is inconsistent with Section 237 (3) of the Act and that, therefore, the impugned bye-law could not be framed under Section 298 (1) of the Act.

51. Section 238 is:

> "The Board may, by public notice, and with the previous sanction of the District Magistrate, fix premises within the municipality in which the slaughter of animals of any particular kind not for sale shall be permitted, and prohibit, except in case of necessity, such slaughter elsewhere within the municipality. Provided that the provisions of this section shall not apply to animals slaughtered for any religious purpose."

52. The proviso makes it clear that the Municipal Board has not been given the power to fix premises for the slaughter of animals for religious purposes or to prohibit the slaughter of animals for such purposes anywhere in the Municipality. By the impugned bye-law the Municipal Board does prohibit the slaughter of such cattle within the Municipality even if that be for religious purposes and thus the bye-law appears to me to be inconsistent with this provision of the Act.

53. Further this section does not lay down, as is done in Section 237 (3), that when premises for slaughter of animals not for sale are fixed, such slaughter is not to be done elsewhere. It gives a limited power to the Board to prohibit such slaughter elsewhere and provides for the prohibition not to be operative in case of necessity. The impugned bye-law does prohibit slaughter of animals not for sale in circumstances not provided for by Section 238 and is, therefore, inconsistent with these provisions.

54. Section 240 gives power to an officer of a board to seize and destroy or otherwise dispose of flesh of any cattle etc., if brought in the municipal limits in contravention of bye-law made under Section 298 F(e) which could be made only when the municipality has provided a reasonable number of slaughter-houses. Thus, in the absence of a slaughter-house, no bye-law under Section 298 F(e) can be made and no action can be taken under Section 240. This indicates that powers are not found in

bye-laws, but are given by the Act.

55. Clause (1) of Section 241 is:

> "The right of any person to use any place within the limits of a municipality, other than a municipal market, as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of fruit or vegetables, shall be subject to bye-laws (if any) made under heading F of Section 298."

This indicates that the Act took good care to show where the right of a person in any manner was to be subject to any bye-law made under the Municipalities Act. No similar limitation has been laid down in the Act anywhere about the right of any person to slaughter cattle within the Municipality to be subject to bye-laws.

56. The second necessity for the validity of a bye-law is that it should be for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality. The connection of a bye-law with such a purpose should be immediate and not very remote. The prohibition of slaughtering such cattle within the Municipality does not appeal to me for any such purpose. It has not been shown that the slaughter of such animals tends to affect the health, safety and convenience of the inhabitants of the Municipality in any manner different from the slaughter of other animals which are permitted to be slaughtered within the municipal limits. It is to be presumed that the various specific powers given to the Municipal Board under Sections 237 to 241 for the framing of bye-laws would be ample for this avowed object. I am of opinion that the expression "for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality" is to be interpreted in the light of the main provisions of the Act which describe in detail what are the powers etc. of the Municipal Board with respect to matters which answer the expression "health, safety and convenience." Chapter VII contains Sections 178 to 236, and is headed as "Powers and penalties in respect of buildings, public drains, streets, extinction of fires, scavenging and water supply." It is interesting to note that sub-heads A, B, C, D and E of List I of Section 298 deal with the bye-laws with respect to the first five subjects mentioned in the heading of Chapter VII. The bye-laws do not deal with the sub-head "water supply" as Sections 224 to 235 (a) presumably cover what was necessary to provide for in that connection. Chapter VIII, as already noted, has the heading "Other powers and penalties" and has the following sub-heads "Markets, slaughter-houses, sale of food etc.", "Nuisances from certain trades and professions", "Public safety", "Sanitation and prevention of disease." Bye-laws with respect to these subjects are mentioned in List 1 F, G, H and I respectively. It is clear, therefore, that the scheme of the Act is that the powers with respect to certain matters are to be found in the various sections of the Act and that the bye-laws contemplated with respect to those powers are to be found in the list in Section 298. The scope of the general powers mentioned in Section 298 cannot, therefore, in my opinion, be taken to be absolutely wide and should be taken to be within the powers given to the Board under the Act. Bye-laws are made for the purpose of effectively carrying out the purposes of the Act and, therefore, the main provisions of the Act have to control the meaning of the expressions used in laying down the power of making bye-laws. The powers given in Chapters VII and VIII, therefore, limit the scope of the expression "health, safety and convenience" used in Section 298(1) of the Act.

The powers given in those sections do not contain a power to prohibit the slaughter of any kind of animals and, therefore, I am of opinion that the general expression used in Section 298 (1) does not include the power to make a bye-law prohibiting the slaughter of any kind of animal.

57. I am, therefore, of opinion that the impugned bye-law was not within the powers of the Municipal Board to frame and is, there-fore, ultra vires of the Municipal Board.

58. Lastly, bye-law No. 9, as amended by amendment No. 4 of the amendments published in Notification No. 4100/XIII-83(3)-49 in the U. P. Gazette, dated the 31st March 1951, provides a penalty up to Rs. 250/- for the breach of any bye-law. This means that if a person contravenes the bye-law requiring him not to slaughter bulls, bullocks, cows and calves in any slaughter house or in any other place, he can be fined up to Rs. 250/-. Section 237 (4) provides for the penalty up to Rs. 20/- for the slaughtering of an animal at any place within the Municipality other than the premises fixed for the slaughter of those animals. It would be very anomalous that when the Municipality is good enough to fix premises for the slaughter of an animal and some one slaughters the animal at a place other than the slaughter house, he be liable to a fine up to Rs. 20/- only while in case the Municipal Board has not fixed such premises and he slaughters cattle within the Municipality, he should be liable to a fine up to Rs. 250/-. This penalty for the contravention of bye-law No. 1, Sub-clause (3) is inconsistent with the provisions of Section 237 (4) and, therefore, is invalid.

59. I would, therefore, order the issue of a Direction to the opposite parties prohibiting the Municipal Board, Allahabad, Opposite Party No. 1, from enforcing its bye-law No. 1, Sub-clause (3) and so much of the penalty clause as deals with the penalty for the contravention of Sub- Clause (3) of bye-law No. 1.

60. The application is dismissed. The petitioner shall pay a sum of Rs. 200/- as costs to each opposite party.

BY THE COURT

61. We certify for the purposes of Article 132 of the Constitution that this case involves a substantial question of law as to the interpretation of the Constitution of India.