

Haji Usmanbhai Hasanbhai Qureshi & Ors vs State Of Gujarat on 17 April, 1986

Equivalent citations: 1986 AIR 1213, 1986 SCR (2) 719, AIR 1986 SUPREME COURT 1213, 1986 CRILR(SC MAH GUJ) 370, (1986) 2 GUJ LR 1209, 1986 (1) MCC 163, (1986) 2 SCJ 447, 1986 (3) SCC 12, (1986) 3 SUPREME 250

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Bench: R.B. Misra, O. Chinnappa Reddy, E.S. Venkataramiah, V. Balakrishna Eradi, V. Khalid

PETITIONER:

HAJI USMANBHAI HASANBHAI QURESHI & ORS.

Vs.

RESPONDENT:

STATE OF GUJARAT

DATE OF JUDGMENT 17/04/1986

BENCH:

MISRA, R.B. (J)

BENCH:

MISRA, R.B. (J)

REDDY, O. CHINNAPPA (J)

VENKATARAMIAH, E.S. (J)

ERADI, V. BALAKRISHNA (J)

KHALID, V. (J)

CITATION:

1986 AIR 1213

1986 SCR (2) 719

1986 SCC (3) 12

1986 SCALE (1) 537

ACT:

Bombay Animal Preservation Act, 1954 - S. 5 - Sub-s. (1A), cls. (c) & (d)/sub-s. (2) - Ban on slaughter of bulls and bullocks below the age of sixteen years - Whether imposes an unreasonable restriction on fundamental right to carry on trade or profession - Whether discriminatory.

Constitution of India, Arts. 14, 19 & 48 - Ban on slaughter of bulls and bullocks below sixteen years - Whether constitutional and valid.

HEADNOTE:

Sub-section (1) of s. 5 of the Bombay Animal Preservation Act, 1954 prohibits slaughter of animals except on a certificate in writing issued by the competent authority that the animal is fit for slaughter. Sub-section (1A) of s.5, substituted by Gujarat Act No. 23 of 1979, prohibits grant of such a certificate in respect of (a) a cow, (b) the calf of a cow, whether male or female, (c) a bull below the age of sixteen years, and (d) a bullock below the age of sixteen years. It was brought into force retrospectively with effect from November 28, 1978. Sub-section (2) of s. 5 prohibits issue of certificate in respect of animals, to which sub-s. (1A) does not apply, if in the opinion of the competent authority (a) the animal is useful or likely to become useful for the purpose of draught or any kind of agricultural operations, (b) the animal, if male, is useful or likely to become useful for the purpose of breeding, and (c) the animal, if female, is useful or likely to become useful for the purpose of giving milk or bearing offspring. Sub-section (3) of s. 5, also substituted by Gujarat Act No. 23 of 1979, exempts from the purview of s. 5 for bonafide religious purposes, the slaughter of (i) animals above the age of fifteen years other than a cow, bull or bullock, (ii) a bull above the age of fifteen years, and (iii) a bullock above the

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age of fifteen years provided a certificate in writing has been obtained from the competent authority.

The appellants, who are dealers in beef and other allied trades, assailed the constitutional validity of the ban imposed by cls. (c) and (d) of sub-s. (1A) and sub-s. (3) of s. 5 of the Act, on the slaughter of bulls and bullocks, on various grounds, but the High Court repelled all of them.

In these appeals by certificate, it was contended for the appellants that the ban on the slaughter of bulls and bullocks below the age of sixteen years imposed by cls. (c) and (d) of sub-s. (1A) of s. 5 of the Act puts an unreasonable restriction on their fundamental right under Art. 19(1)(g) of the Constitution to carry on their trade and profession, and that the ban so imposed is violative of Art. 14 of the Constitution as it discriminates between dealers who deal in meat of cows, bulls and bullocks and those who deal in meat of buffaloes and other animals.

Dismissing the appeals, the Court,

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HELD : 1. The prescription of the age of sixteen years in cls. (c) and (d) of sub-s. (1A) of s. 5 of the Bombay Animal Preservation Act, 1954 cannot be said to be an unreasonable restriction looking to the balance which has to be struck between public interest, that required useful animals to be preserved and permitting the appellants to carry on their trade and profession as mentioned in Art. 19(1)(g) of the Constitution. [729 C-D; H]

The longevity of cattle and their useful span of life in the State of Gujarat has increased appreciably with the help of the scientific advances which have taken place in recent years, such as better cattle feeding, better medical health and better animal husbandry services. There is no doubt that if the scientific tests were to be applied, bulls and bullocks up to sixteen years of age would be found useful for the purpose of breeding, draught and other agricultural purposes. [729 B-C]

2. Clauses (c) and (d) of sub-s. (1A) of s. 5 of the Act are not hit by Art. 14 of the Constitution. It is only if the classification is unreasonable that the impugned provisions can be struck down. [730 C]

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In the instant case, looking to the different purposes for which buffaloes and their progeny on the one hand and cows and their progeny on the other are used in each State it cannot be said that there is any hostile discrimination against those who deal in meat of bulls and bullocks. The dealers in different types of meat are not in the same class. A clear distinction is maintained on scientific grounds between animals which are useful and which have not yet reached the age of sixteen years so far as bulls and bullocks are concerned. As regards buffaloes, there is no restriction as to the age, the only bar being sub-s. (2) of s. 5, based on their usefulness for purposes of draught, agricultural operations, breeding, giving milk or bearing offsprings. Bulls and bullocks are useful for agricultural purposes but male buffaloes are seldom used for any purpose other than breeding or rearing progeny. [730 E-G]

Abdul Hakim Qureshi & Ors. v. State of Bihar, [1961] 2 S.C.R. 610, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1734- 39 of 1980.

From the Judgment and Order dated 4.7.1980 of the Gujarat High Court in S.C.A. Nos. 185, 186, 187, 188, 189 and 190 of 1980.

M.C. Bhandare, M. Quamaruddin, Mrs. M. Quamaruddin, M.V. Katarki and Salmon Khurshid for the Appellants.

G.A. Shah, Girish Chandra, C.V. Subba Rao and R.N. Poddar for the Respondent.

T.U. Mehta, H.J. Zaveri, S.S. Khanduja and Yashpal Dhingra for the Intervener.

The Judgment of the Court was delivered by r. R.B. MISRA, J. In the wake of Art. 48 of the Constitution the State of Bombay also passed an enactment, the Bombay Animal Preservation Act, 1954 for the preservation of animals suitable for milch, breeding or for agricultural purposes. Under sub-s. (1) of s.2 the Act was to apply in the first instance to the animals specified in the schedule and the schedule mentioned bovines (bulls, bullocks, cows, calves, male and female buffaloes and buffalo-calves). Under sub-s. (2) of 8.2 the State Government may, by notification in the official gazette, apply the provisions of this Act to any other animal, which in its opinion, it is desirable to preserve. It does not appear that the provisions of the Act were ever made Applicable to any other animals after the initial enactment of the Act and the schedule by the Bombay legislature. Section 5 of the Act, so far it is material, runs :

"5.(1) Notwithstanding any law for the time being in force or any usage to the contrary, no person shall slaughter any animal unless he has obtained in respect of such animal a certificate in writing from the Competent Authority appointed for the area that the animal is fit for slaughter."

In 1961 by the Gujarat Act 16 of 1961, sub-s. (1A) was inserted in s. 5 of the principal Act which read :

"(1A) No certificate under sub-s. (1) shall be granted in respect of a cow".

Thereupon a consequential change was effected in sub-s. (2) of 8.5, after the insertion of sub-s. (1A). It read :

"(2) In respect of an animal to which sub-s. (1A) does not apply, no certificate shall be granted under sub-s. (1), if in the opinion of the competent authority :

(a) the animal, whether male or female, is useful or likely to become useful for the purpose of draught or any kind of agricultural operations;

(b) the animal, if male, is useful or likely to become useful for the purpose of breeding;

(c) the animal, if female, is useful or likely to become useful for the purpose of giving or bearing offspring."

Under sub-s. (3) of s.5 it was provided :

"(3) Nothing in this section shall apply to the slaughter of any animal above the age of fifteen years for bonafide religious purposes, if such animal is not a cow.

Provided that a certificate in writing for such slaughter has been obtained from the competent authority."

In 1978 the Governor of Gujarat issued an ordinance being Gujarat Ordinance No. 10 of 1978 to amend the Bombay Animal Preservation Act, 1954. During the period of operation of the ordinance the Bombay Animal Preservation Act 1954 was to have effect subject to the amendments specified in s.3 of the ordinance and thus the Bombay Act was temporarily amended. By this Amending Ordinance of 1978 under 9. 5 of the principal Act for sub-s. (1A) of new sub- s. (1A) was substituted, which read :

"(1A) No certificate under sub-s. (1) shall be granted in respect of :-

- (a) a cow ;
- (b) the calf of a cow, whether male or female and if male. whether castrated or not ;
- (c) a bull below the age of eighteen years ;
- (d) a bullock below the age of eighteen years."

For sub-s. (3) of s. 5 of the principal Act a new sub-s. was substituted, which read "(3) Nothing in this section shall apply to the slaughter of any of the following animals for bonafide religious purposes, namely :-

- (a) Any animal above the age of fifteen years other than a cow, bull or bullock.
- (b) A bull above the age of eighteen years.
- (c) A bullock above the age of eighteen years."

After the above ordinance was promulgated the legislative assembly of the State met and in view of that session of the legislative assembly the provisions of the ordinance were required to be enacted by the legislature otherwise the ordinance was to lapse. As the legislature did not pass the requisite legislation in time the ordinance lapsed on March 5, 1979.

Thereafter Gujarat Act No. 23 viz, the Bombay Animal Preservation (Gujarat Amendment) Act, 1979, was enacted and by virtue of sub-s. (2) of s.1 the provisions of the Act were deemed to have come into force on 28th November, 1978, that is, from the date on which the Gujarat Ordinance No. 10 of 1978 was brought into force. This amendment Act also inserted a new sub-s. (1A) in 6. 5 of the Principal Act. It read :

"(1A) No certificate under sub-s. (1) shall be granted in respect of:-

- (a) a cow;
- (b) the calf of a cow, whether male or female and if male. whether castrated or not.

(c) a bull below the age of sixteen years;

(d) a bullock below the age of sixteen years."

It is apparent that in cls. (C) and (d) changes were affected inasmuch as instead of cl. (c) providing for a bull below the age of 18 years, as in the ordinance, the Act provided in the new cl.(c) for a bull below the age of 16 years, and similarly in cl.(d) it provided for a bullock below the age of 16 years instead of 18 years provided in the ordinance. The impugned enactment also inserted a new sub-s.(3) which read :

"(3) Nothing in this section shall apply to :

(a) the slaughter of any of the following animals For such bona fide religious purposes, as may be prescribed namely :

(i) any animal above the age of fifteen years other than a cow, bull or bullock;

(ii) a bull above the age of fifteen years ;

(iii) a bullock above the age of fifteen years ;

(b) the slaughter of any animal not being a cow or a calf of a cow, on such religious days as may be prescribed :

Provided that a certificate in writing for the slaughter referred to in clauses (a) or (b) has been obtained from the competent authority." The appellants who are dealers in beef and other allied trades connected with the slaughter of bulls and bullocks seek to challenge the ban of 16 yrs. put by cls. (c) and (d) of sub-s. (1A) of sec. 5 of the Act as it adversely affects their trades.

According to the appellants a large number of people in Ahmedabad city and in the State of Gujarat are engaged in the beef trade, both wholesale and retail and the allied trades. Several hundred shops of beef dealers, both wholesalers and retailers, are located in Ahmedabad city alone, and on an average before the new legislation came into force about 100 bovine cattle were being slaughtered in the slaughter houses in Ahmedabad city. Out of these above seventy used to be bulls and twenty five to thirty buffaloes. Because of slaughter of bovine cattle there are incidental trades which are dependent upon slaughter of bovines, their hides and skins and carcasses of animals. Carcasses are used for the purpose of food which is cheaper food for a large number of people. Hides and skins after they are properly treated and processed serve the export market and thereby also serve the country by earning a good deal of foreign exchange. It was further urged that the different parts of cattle which are slaughtered, like hooves, horns, guts, pancreas, bones, liver bile and even the blood of animals are all used for pharmaceutical purposes and products. They are also used for

manufacturing concentrates of drugs and injections meant for supplying proteins to human beings. Bones of animals which are slaughtered are utilised for the purpose of manufacturing fertilisers. Hides and skins of animals which have a natural death are of inferior quality as compared to the hides and skins of animals which are slaughtered. Calcium is recovered from bones of slaughtered animals. Glue is made from hooves etc. Bulls and bullocks cease to be useful for any purpose after the age of fifteen years and thus the ban on the slaughter of bull and bullocks below the age of 16 years is an unreasonable restriction on their right to carry on their trade or business and is not in the interest of general public.

On the one hand there are the directive principles of Art. 48 of the Constitution which require consideration of usefulness of animals from the point of view of giving milk, breeding, agricultural purposes and draught purposes; on the other hand there is the requirement of those poor sections of people who get their protein requirement from beef which is available to them at cheap rates. Thus a balance between the requirement contemplated by Art. 48 and the requirement of a large section of people and traders and dealers has to be struck by the court. It was further pleaded that on certain specified religious days animals are required to be slaughtered, for example Qurbani at the time of Bakrid or Id festival, and there are also other religious ceremonies in connection with which animals and bovine cattle are required to be slaughtered.

The impugned Act was, therefore, challenged in the High Court on a number of grounds :

1. that the impugned amendment puts an unreasonable restriction on the fundamental right of the petitioners under Art. 19(1)(g) of the Constitution :
2. that the State of Gujarat has acted mala fide in enacting this piece of legislation, being the Gujarat Act 23 of 1979;
3. that the State legislature has no legislative competence to enact the impugned legislation ;
4. that the amended sub-s. (3) of s. 5 is an interference with their religious practices and customs and hence violative of Arts. 25, 26 and 29 of the Constitution ;
5. that the impugned provisions are discriminatory and violative of Art. 14 of the Constitution inasmuch as the discrimination is made between those who deal in meat of bulls and bullocks on the one hand and those who deal in meat of buffaloes on the other.

All these contentions were repelled by the High Court. Feeling aggrieved by the judgment and order of the High Court the appellants have now come to this Court by certificate and only two contentions

have been raised on their behalf:

1. The ban on the slaughter of bulls and bullocks below the age of sixteen years is hit by Art.

19(1)(g) of the Constitution as it puts an unreasonable restriction on the fundamental right of the appellants and is not in the interest of general public.

2. The ban put by cls. (c) and (d) of sub-s. (1A) of 6. 5 of the Act is also violative of Art. 14 of the Constitution.

In support of their contentions reliance was placed on Abdul Hakim Quraishi & Ors. V. State of Bihar, [1961] 2 S.C.R. 610. It was held in that case that the ban on the slaughter of bulls, bullocks and she-buffaloes below the age of 20 or 25 years was not a reasonable restriction in the interest of general public and was void as a bull, bullock or buffalo did not remain useful after the age of 15 years and whatever little use it may have then was greatly offset by the economic disadvantages of feeding and maintaining unserviceable cattle.

In the affidavit in reply filed in this case it has been pointed out on behalf of the Government that because of improvement and more scientific methods of cattle breeding and also advancement in the science of looking after the health of cattle in the State of Gujarat today a situation has been reached where the usefulness of cattle for breeding, draught and other agricultural purposes is above the age of sixteen years.

Mr. P.J. Bhatt, Under Secretary to the Government of Gujarat, Agriculture, Forests and Co-operation Department, in his affidavit dated March 14, 1980 has pointed out in paragraph 11 as follows:

"With the improved and scientific animal husbandry services in the State, the average longevity of animals in the State has considerably increased. In 1960, there were 456 Veterinary Dispensaries, First Aid Veterinary Centres, etc. whereas in the year 1979, there were as many as 800 Veterinary Dispensaries, First Aid Veterinary Centres etc. There were no mobile Veterinary Dispensaries in 1960, while there were 20 such mobile dispensaries for animals in 1979. In addition to this there are more than 600 centres for intensive cattle development programme, where, besides first aid to animals, other animal husbandry inputs are also provided. In 1960, five lacs of cattle were vaccinated, whereas in the year 1979, fiftyone lacs cattle were vaccinated to provide immunization against various diseases of animals. There were no cattle Feed Compounding Units preparing cattle feed on scientific lines in the year 1960, while in the year 1979, there were as many as 6 cattle feed factories in the State of Gujarat. As a result of improved Animal Husbandry services, the disease of Rinderpest which was widespread in the State and which took a large toll of animal life has been totally wiped out and eradicated since the year 1971-72, except for an isolated recurrence in the year 1978 in the cattle imported in the State from abroad. Similarly, in respect of

Haemorrhagic Septicaemia, a disease which used to take a heavy toll of animals, the total number of deaths on account of the disease was 6689 in the year 1961- 62 which has been brought down to about 2000 in the year 1978-79 on account of intensive vaccination programme undertaken by the Government."

It is thus clear that because of various scientific factors, namely, better cattle feeding, better medical health and better animal husbandry services, the longevity of cattle in the State of Gujarat has increased and in this context it is correct to say that if the scientific tests were to be applied, bulls and bullocks upto sixteen years of age can be said to be useful for the purpose of breeding, draught and other agricultural purposes. In these circumstances the prescription of The age of sixteen years in clauses (c) and (d) of sub-s. (1A) of s.5 can be said to be reasonable, looking to the balance which has to be struck between public interest, which requires useful animals to be preserved and permitting the different appellants before us to carry on their trade and profession.

In a passage from the publication of the Indian Council of Agricultural Research, New Delhi published in the year 1962, which was reprinted in the year 1967, it has been pointed out :

"Indian cattle are found to do well in dry areas. They are small and non-decrepit in area of heavy rainfall, such as the coastal or the hilly areas of the country. Cattle of good breeds are thus found in Punjab, Rajasthan and Andhra Pradesh. Varying types of cattle may be seen within the limits of the same State. Thus in Bombay one finds excellent cattle in Gujarat and similar dry parts of the State, while in Madras, such cattle are observed in Coimbatore."

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

This leads us to the second contention regarding the impugned legislation being discriminatory between dealers who deal in meat of cows, bulls and bullocks and those who deal in meat of buffaloes and other animals and there is no uniform law with respect to all cattle. As a second limb to this argument it was further contended that the cattle and beef dealers in other States are not subjected to the similar restrictions, and thus there is a violation of Art. 14 of the Constitution.

This contention in our opinion has no force. The dealers in different types of meat are not in the same class. It is only if the classification is unreasonable that it can be struck down. But here a clear distinction is maintained on scientific grounds between animals which are useful and which have not yet reached the age of 16 years so far as bulls and bullocks are concerned. As regards buffaloes there is no restriction as to the age and the only restriction is sub-s. (2) of s. 5 and that section has remained unamended, namely the test is whether the animal, male or female, is useful or likely to become useful for the purposes of milch or draught or any kind of agricultural operations; whether the animal, if male is useful or likely to become useful for the purpose of breeding, and whether the

animal, if female, is useful or likely to become useful for the purpose of giving milk or bearing offspring. So looking to the different purposes for which buffaloes and their progeny on the one hand and cows and their progeny on the other hand are used in each State it cannot be said that there is any hostile discrimination against those who deal in meat of bulls and bullocks. Bulls and bullocks, particularly bullocks, are useful for agricultural purposes and male buffaloes are seldom used for any purpose other than breeding or rearing progeny and under these circumstances the impugned amendment is not hit by Art. 14 of the Constitution.

In the result the appeals must fail. Accordingly they are dismissed with costs.

P.S.S.

Appeals dismissed.