

Supreme Court of India

Abdul Hakim Quraishi And Others vs The State Of Bihar (And Connected ... on 23 November, 1960

Equivalent citations: 1961 AIR 448, 1961 SCR (2) 610

Author: S Das

Bench: Imam, Syed Jaffer, Das, S.K., Kapur, J.L., Sarkar, A.K., Subbarao, K.

PETITIONER:

ABDUL HAKIM QURAISHI AND OTHERS

Vs.

RESPONDENT:

THE STATE OF BIHAR (AND CONNECTED PETITIONS)

DATE OF JUDGMENT:

23/11/1960

BENCH:

DAS, S.K.

BENCH:

DAS, S.K.

IMAM, SYED JAFFER

KAPUR, J.L.

SARKAR, A.K.

SUBBARAO, K.

CITATION:

1961 AIR 448

1961 SCR (2) 610

CITATOR INFO :

RF 1962 SC1371 (42,64)

RF 1970 SC 93 (5)

RF 1986 SC1205 (6)

RF 1986 SC1213 (12)

ACT:

Cattle Preservation--Ban on slaughter of cattle below 20 or 25 years of age--Whether reasonable--Bihar Preservation and Improvement of Animals (Amendment) Act, 1959 (Bihar 1 of 1959), s. 3--Bihar Preservation and Improvement of Animals Rules, 1960, r. 3--Uttar Pradesh Prevention of Cow Slaughter (Amendment) Act, 1958 (U. P. 33 of 1958), s. 3--Madhya Pradesh Agricultural Cattle Preservation Act, 1959 (M. P. 18 of 1959), ss. 4(2)(a) and 5.

HEADNOTE:

In Mohd. Hanif Quareshi v. The State of Bihar the Supreme Court held that a total ban on the slaughter of bulls, bullocks and she-buffaloes after they had ceased to be useful was not in the interests of the general public and was invalid. Thereafter, the Bihar Legislature passed the

Bihar Preservation and Improvement of Animals (Amendment) Act, 1958, the Uttar Pradesh Legislature passed the U. P. Prevention of Cow Slaughter (Amendment) Act, 1958 and the Madhya Pradesh Legislature passed a new Act, the M. P. Agricultural Cattle Preservation Act, 1959.

Section 3 of the Bihar Act prohibited the slaughter of a bull, bullock or she-buffalo except when it was over 25 years of age and had become useless. Rule 3 of the Bihar Preservation and Improvement of Animals Rules, 1960 prescribed that the certificate for slaughtering an animal could be granted only with the concurrence of the Veterinary Officer and the Chairman or Chief Officer of a District Board, Municipality etc., and if the two differed, then according to the decision of the Sub-Divisional Animal Husbandary Officer.

Section 3 of the U. P. Act permitted the slaughter of a bull or bullock only if it was over 20 years of age and was permanently unfit. It further provided that the animal could not be slaughtered within 20 days of the grant of 'a certificate that it was fit to be slaughtered and gave a right of appeal to any person aggrieved by the order granting the certificate.

Section 4(1)(b) of the Madhya Pradesh Act provided that no bull, bullock or buffalo could be slaughtered except upon a certificate issued by the competent authority and s. 4(2)(a) provided that no certificate could be issued unless the animal was over 20 years of age and was unfit for work or breeding. Section 4(3) gave a right of appeal to any person aggrieved by the order of the competent authority. Section 5 provided that no animal

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shall be slaughtered within 10 days of the date of the issue of the certificate and where an appeal was preferred against the grant of the certificate, till the time such appeal was disposed of.

The petitioners, who carried on the profession and trade of butchers, contended that the various provisions of the three Acts set out above infringed their fundamental rights by practically putting a total ban on the slaughter of bulls, bullocks and she-buffaloes even after the animal had ceased to be useful and thus virtually put an end to their profession and trade.

Held, (i) 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 interests of the general public and was void. A bull, bullock or buffalo did not remain useful after 15 years, and whatever little use it may have then was greatly offset by the economic disadvantages of feeding and maintaining unserviceable cattle. The additional condition that the animal must, apart from being above 20 or 25 years of age, also be unfit was a further unreasonable restriction. Section 3 of the Bihar Act, s. 3 of the U. P. Act and s. 4(2)(a) of the M. P. Act were

invalid.

(ii) Rule 3 of the Bihar Rules was bad as it imposed disproportionate restrictions on the rights of the petitioners. The procedure involved such expenditure of money and time as made the obtaining of the certificate not worthwhile.

(iii) The provisions in the Uttar Pradesh and Madhya Pradesh Acts providing that the animal shall not be slaughtered within 20 and 10 days respectively of the issue of the certificate and that any person aggrieved by the order of the competent authority, may appeal against it, were likely to hold up the slaughter of the animal for a long time and practically put a total ban on slaughter of bulls, bullocks and buffaloes even after they had ceased to be useful. These provisions imposed unreasonable restrictions on the fundamental rights of the petitioners and were void.

Mohd. Hanif Quareshi v. The State of Bihar, [1959] S.C.R. 629, State of Madras v. V. G. Row, [1952] S.C.R. 597 and The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga, [1952] S.C.R. 889, referred to.

#### JUDGMENT:

ORIGINAL JURISDICTION: Petitions Nos. 15 of 1959, 14 of 1960 and 21 of 1959.

Petitions under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

Frank Anthony and J. B. Dadachanji, for the petitioners (In Petns. Nos. 15 and 21 of 1959).

H. J. Umrigar, O. P. Rana and A. G. Ratnaparkhi, for the petitioners (In Petn. No. 14 of 1960).

L. K. Jha and S. P. Varma, for the respondent (In Petn. No. 15 of 1959).

C. K. Daphtary, Solicitor-General of India, M. Adhikari, Advocate-General for the State of Madhya Pradesh and I. N. Shroff, for the respondent (In Petn. No. 14 of 1960). H. N. Sanyal, Additional Solicitor-General of India and C. P. Lal, for the respondent (In Petn. No. 21 of 1959). 1960. November 23. The Judgment of the Court was delivered by S. K. DAS, J.-These three writ petitions have been heard together, as they raise common questions of law and fact. They relate, however, to three different enactments made by the Legislatures of three different States-Bihar in writ petition No. 15, Uttar Pradesh in writ petition No. 21, and Madhya Pradesh in writ petition No. 14. The petitioners in the several petitions have challenged the 'validity of a number of provisions of the enactments in question and, in some cases, also of the rules made thereunder. The impugned provisions are similar in nature, but are not exactly the same. Therefore, we shall first state in general terms the case of the petitioners and then consider in detail and separately the impugned provisions in each case. But before we do so, it is necessary to refer to some background history of the legislation under consideration in these cases.

In the year 1958 this Court had to consider the validity of certain provisions of three Acts:

(1) The Bihar Preservation and Improvement of Animals Act, (Bihar Act II of 1956);

(2) the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (U. P. Act 1 of 1956); and (3) the Central Provinces and Berar Animal Preservation Act, 1949 (C. P. and Berar Act LII of 1949).

The Bihar Act put a total ban on the slaughter of all categories of animals of the species of bovine cattle. The U. P. Act put a total ban on the slaughter of cows and her progeny which included bulls, bullocks, heifers and calves. The C. P. and Berar Act placed a total ban on the slaughter of cows, male or female calves of cows, bulls, bullocks, and heifers, and the slaughter of buffaloes (male or female, adults or calves) was permitted only under a certificate granted by the proper authorities. These three Acts were enacted in pursuance of the directive principle of State policy contained in Art. 48 of the Constitution. The petitioners who challenged the various provisions of the aforesaid Acts in 1958 were engaged in the butcher's trade and its subsidiary undertakings; they challenged the constitutional validity of the Acts on the ground that they infringed their fundamental rights under Arts. 14, 19(1)(f) and (g) of the Constitution. In the decision which this Court gave in *Mohd. Hanif Quareshi v. The State, of Bihar* (1), it held-

(i) that a total ban on the slaughter of cows of all ages and calves of cows and of she-buffaloes, male or female, was quite reasonable and valid;

(ii) that a total ban on the slaughter of she-buffaloes or breeding bulls, or working bullocks (cattle as well as buffaloes) so long as they were capable of being used as milch or draught cattle was also reasonable and valid; and

(iii) that a total ban on slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interests of the general public and was invalid.

In the result this Court directed the respondent States not to enforce their respective Acts in so far as they were declared void by it. This led to some amending or new legislation, and we are concerned in these three cases with the provisions of these amending or new Acts and the rules made thereunder. In Bihar (Writ Petition No. 15 of 1959) the impugned Act is called the Bihar Preservation and Improvement of Animals (1) [1959] S.C.R. 629.

(Amendment) Act, 1959 which received the assent of the Governor on January 13, 1959. in Uttar Pradesh (Writ Petition No. 21 of 1959) the impugned Act is called the Uttar Pradesh Prevention of Cow Slaughter (Amendment) Act, 1958 and in Madhya Pradesh (Writ Petition No' 14 of 1960) a new Act was passed called the Madhya Pradesh Agricultural Cattle Preservation Act, 1959 (Act 18 of 1959) which received the assent of the President on July 24, 1959 and came into force on January 15, 1960. The rules made there- under are called the Madhya Pradesh Agricultural Cattle Preservation Rules, 1959.

The general case of the petitioners, who are several in number in each of the three cases, is that they are citizens of India and carry on their profession and trade of butchers; they allege that the various provisions of the impugned legislation infringe their fundamental rights in that they, for all practical purposes, have put a total ban on the slaughter of she-buffaloes, bulls or bullocks, even after such animals have ceased to be useful, and have virtually put an end to their profession and trade. It is pointed out that the age up to which the animals referred to above cannot be slaughtered (20 or 25 years) has been put so high that the practical effect is that no animals can be slaughtered, and the amending or new legislation has put in other restrictions so arbitrary and unreasonable in nature that in effect they amount to a prohibition or destruction of the petitioner's right to carry on their trade and profession. The following allegations quoted from one of the petitions (Writ Petition No. 15 of 1959) give a general idea of the nature of the case which the petitioners have put forward:

"That there is good professional authority for the view that even in countries where animal husbandry is organised on a highly progressive and scientific basis, cattle seldom live beyond 15 or 16 years.

That there is also good authority to the effect that even pedigree breeding bulls are usually discarded at the age of 12 or 14 years. , That in India bulls and bullocks and she-buffaloes rarely live even up to the age of 15 years; draught bullocks begin to age after eight years, That the raising of the age limit from 15 to 20 years is arbitrary, unreasonable and against the general public interests and is repugnant to and infringes the, fundamental rights of the, petitioners under Article 19 (1)(f) and (g) of the Constitution.

That section 3 of the amending Act is a mala fide, colourable exercise of power, repugnant to the fundamental rights of the -petitioners under Article 19 (1)(f) and (g). That this arbitrary raising of the age limit will be against the public interests For the following among' other reasons:

- (i) That there will, in fact, be no bulls or bullocks or she-buffaloes available for slaughter as few, if any, of such animals survive in India up to the age of 15 years;
- (ii) that the profession, trade and occupation of millions of Muslims will be permanently and irreparably injured;
- (iii) that millions of members of the minority communities such as Christians, Scheduled Castes, Scheduled Tribes and Muslims, for whom cattle-beef is a staple item of their diet, will be deprived of this diet;
- (iv) that the menace of the rapidly increasing uneconomic cattle population in such matters as the destruction of crops, being a public nuisance, will be accentuated by this arbitrary age limit, and in effect will ensure that bulls and bullocks cannot be slaughtered;
- (v) that the menace of the rapidly increasing population of uneconomic cattle to the fodder and other animal food resources of the country will be accentuated.

(vi) that the competition between the rapidly increasing cattle population, a large percentage I of which is uneconomic and useless, add the human population for available land will be accentuated;

(vii) that this piece of legislation will ensure the steady increase of useless bulls and bullocks and must react disastrously against any attempt to improve milk production, bullock power or animal husbandry generally."

Similar allegations have been made in the other two petitions also.

The correctness of these allegations has been con. tested on behalf of the respondent States, which through some of their officers have filed affidavits in reply. We shall presently examine at greater length the averments made in these affidavits, but we may indicate here in broad outline what their general effect is. In Bihar the age below which the slaughter of she-buffaloes, bulls and bullocks is prohibited is 25 years. The respondent State has taken the plea that the usefulness or longevity of live-stock for breeding and other purposes depends to a very great extent on (a) better animal husbandry facilities like feeding and management and (b) control of animal diseases, and as these facilities are now available in a greater measure, the legislature came to the conclusion that a bull or bullock or a she-buffalo below 25 years of age continues to remain useful; if a bull, bullock or shebuffalo is permanently incapacitated below that age the impugned provision permits its slaughter and therefore the legislation which is challenged conforms to the decision of this Court and does not violate any fundamental right. In Uttar Pradesh the age is 20 years as respects bulls or bullocks, with a further restriction to be referred to later. The reply of the respondent State is that bulls or bullocks do not become unfit at the age of 12 or 14 years as alleged by the petitioners; on the contrary, they continue to be useful and at no time they become entirely useless. It is then stated in the affidavit:

"As a matter of fact, the age up to which the animals can live and are serviceable depends upon the care and attention they receive and the quality of the grass on which they are grazed.....According to a high authority the average age of an ox under favourable conditions would be between 15 to 20 years. Even under conditions prevailing in Uttar Pradesh, bulls can live upto 20 years or more as would appear from an analysis of a survey report of the animal husbandry department."

On these averments the respondent State contends that the legislation is valid. In Madhya Pradesh also the age is 20 years. The Under-Secretary to the( State Government in the Agricultural Department' has made the reply affidavit in which it has been stated inter alia that conditions in Madhya Pradesh are different from conditions in other States. The affidavit then states:

"The State of Madhya Pradesh has a total area of 107,589,000 acres, out of which total cropped area is 43,572,000 acres. Forest area is 33,443,000 acres, area not available for cultivation is 11,555,000 acres, uncultivated land is 18,405,000 acres and fallow land is 5,834,000 acres. It will thus be seen that this State has a large forest area and plenty of grass land for pasturage. As the forests supply the greater part of the fuel needs of the human population, the dung of animals is largely available as manure. The legislature considered that bulls, bullocks and buffaloes are useful in this State till they

are well past twenty years of age and that they should not be slaughtered till they are past that age and are also unfit for work or breeding. The problem of animals dying of slow starvation or of worthless animals depriving useful animals of fodder needs no consideration in this State. The agricultural community in the State benefits by the existence of animals as long as they are useful." There are also further averments as to the shortage of breeding bulls, working bullocks and she-buffaloes in Madhya Pradesh. On these averments the contention of the respondent State is that the cattle in that State are useful up to the age of 20 years. We have indicated above in general terms the case of the petitioners and the reply which the respondent States have given. We proceed now to a detailed consideration of the impugned legislation in each case.

(1) We take up first the Bihar Preservation and Improvement of Animals (Amendment) Act, 1959 and the rules made under the main Act of 1955. Section 3 of the Act as amended reads:

"S. 3. Prohibition of slaughter of cow, calf, bull, bullock or she-buffalo;

Notwithstanding anything contained in any law for the time' being in force or in any usage or custom to the contrary, no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter a cow, calf, bull, bullock or she-buffalo:

Provided that the prescribed authority may, subject to such conditions as may be prescribed, allow the slaughter of-

(i) a bull or bullock which is over twenty-five years of age or which has become permanently incapable of breeding or of being used as a draught animal, as the case may be, and

(ii) a she-buffalo which is over twenty-five years of age or which has become permanently incapable of breeding or yielding milk, if the permanent incapability has not been caused deliberately;

Provided further that the State Government may, by general or special order, and subject to such conditions as it may think fit to impose, allow the slaughter of any such animal for any medicinal or research purposes."

The scheme of the section is that its substantive provision imposes a total ban on the slaughter of a cow, calf, bull, bullock or she-buffalo; the proviso then engrafts an exception as to bulls, bullocks and she-buffaloes and lays down the circumstances in which the slaughter of the aforesaid animals may be allowed. No question arises here as to cows and calves; a total ban on their slaughter has been held to be valid by this Court. The question before us is whether the section in so far as it relates to bulls, bullocks and shebuffaloes is constitutionally valid. It is worthy of note that the Bill, as originally drafted, put the age at fifteen years only; but the Select Committee on the Bill said, "The Committee feels that the words 'fifteen years' will not be sufficient for the preservation of animals. They feel that it would be better if those words are substituted by the words 'twenty-five years' ..... " No other reason was given for increasing the age. After the filing of Writ Petition no. 15 of 1959 the Governor of Bihar made certain rules under s. 38