

Hifzur Rahman Choudhury vs The Union Of India And 5 Ors on 9 July, 2022

Bench: Manash Ranjan Pathak, Manish Choudhury

Page No.# 1/15

GAHC010137802022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/49/2022

HIFZUR RAHMAN CHOUDHURY
S/O LATE LUTHFUR RAHMAN CHOUDHURY, H NO. 24, P D CHALIHA
ROAD, HEDAYETPUR, GUWAHATI- 781003

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVT OF INDIA,
MIN OF HOME AND POLITICAL AFFAIRS, NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM
DISPUR
GUWAHATI- 06

3:THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME AND POLITICAL AFFAIRS DEPTT
DISPUR
GHY- 06

4:THE ANIMAL WELFARE BOARD OF INDIA
MIN OF FISHERIES
ANIMAL HUSBANDRY AND DAIRY REP. BY ITS SECRETARY
BALLABHGARH
FARIDABAD
STATE OF HARYANA
PIN- 121004

5:THE CHAIRMAN
ANIMAL WELFARE BOARD OF INDIA
BALLABHGARH
FARIDABAD

HARYANA
PIN- 121004

6:THE DIRECTOR GENERAL OF POLICE
ULUBARI
GUWAHATI- 0

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : MR. R K D CHOUDHURY

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MANISH CHOUDHURY

ORDER

09/07/2022 Heard Mr. H R A Choudhury, learned Senior counsel, assisted by Mr. F U Barbhuiya, learned counsel for the petitioner and Mr. J Handique, learned Government Advocate, Assam for the respondent Nos. 2, 3, 4 & 6.

2. The Secretary to the Animal Welfare Board of India (AWBI, in short), Ministry of Fisheries, Animal Husbandry and Dairying, Government of India (Department of Animal Husbandry and Dairying) by its communication No.9-2/2019/20/PCA dated 07.06.2022 communicated to (i) the Chief Secretaries of all the States, (ii) the Director General of Police of all the States and (iii) the Director, Animal Husbandry Department of all the States to stop illegal killing/sacrifices of Cows/Calves, Camels and other animals and taking action against the offenders for violation of Transport of Animals Rules on the occasion of Bakrid stating that large number of animals are likely to be slaughters during Bakrid festival and it is reported that during the transportation of animals, the owner of the animals do not follow the Animal Welfare Laws and Transport Animal Rules that prescribes the number of animals which can be transported in a vehicle resulting in cruelty to the animals noticing that the animals suffer and are subjected to various cruelties and some of the animals even die during transportation.

Page No.# 3/15

3. By the said letter dated 07.06.2022, the AWBI has informed all concerned that cruelty to animal is punishable offence under the Prevention of Cruelty to Animals Act, 1960 and such violation is against the spirit of Articles 48, 48(a) and 51A(g) of the Constitution of India.

4. The AWBI by the said letter dated 07.06.2022 reminded the authorities concerned of the States that as per Rule 3 of Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, no person shall slaughter any animal within a Municipal area except in a Slaughter House recognized or

licenced by a concerned Authority empowered under the law for the time being in force to do so and no animal which is pregnant, has an offspring less than three months old, or is under three months of age, which has not been certified by a Veterinary Doctor that it is in a fit condition to be slaughtered, shall be slaughtered, where slaughter means the killing or destruction of any animal for the purpose of food and includes the process and operations performed on all such animals in order to prepare it for being slaughtered.

5. By the said letter dated 07.06.2022, the AWBI has also informed the authorities concerned that the Food Safety and Standards Authority of India under the Ministry of Health and Family Welfare has issued a direction in their letter No. 1-988/FSSAI/Import/2014 dated 06.08.2014, wherein "animal" has been defined as an animal belonging to any of the species specified below -

(i) Ovines, (ii) Caprines, (iii) Suillines and (iv) Bovines and includes poultry and fish specifying that the slaughtering of animals of any other species other than the one listed above is not permissible under the FSSAI Act and Regulation, which effectively means that camels cannot be slaughtered for food at all and wherever the Cow Slaughter Prohibition Act is in force, then slaughtering of cows should not be allowed at all.

6. In the said letter dated 07.06.2022, salient points of few judgments of the Hon'ble High Courts and Hon'ble Supreme Court have been enclosed as Annexures.

7. By the said letter dated 07.06.2022, the AWBI has also stated that unscrupulous persons are carrying on the business of illegal slaughter in violation of Prevention of Cruelty to Animals Act, 1960 and the Rules made thereunder and that such unlawful practice is also against the local Municipal Act and Rules, and also the direction of the Hon'ble Supreme Court of India in W.P. Laxmi Narain Modi Vs. Union of India and Ors.

Page No.# 4/15

8. Further, by the said letter dated 07.06.2022, the authorities in the AWBI informed that the said Board on 30.05.2022 vide No. 9-2/2018-19/IC issued a circular addressing all the State Governments/Union Territories with a request to implement and circulate Regulatory Compliance for Slaughter Houses and meat shops.

9. The Secretary of said AWBI by the letter dated 07.06.2022 has requested all concerned as well as directed all the authorities concerned to take all precautionary measures to strictly implement the Animal Welfare Laws to stop illegal killing of animals and to take stringent action against the offenders violating the Animal Laws viz. PCA Act, 1960, Transport of Animal Rules, 1978, Transport of Animals (Amendment) Rules, 2001, Slaughter House Rules, 2001, Municipal Laws and Food Safety & Standards Authority of India directions for slaughtering of animals during Bakrid festival directing further to intimate action taken report in that regard to said AWBI (Annexure-1 to this petition).

10. In compliance of the above, the State Government in its Political (B) Department vide No. PLB.207/2017/155 dated 04.07.2022, enclosing the said letter of the AWBI dated 07.06.2022 has informed the Deputy Commissioners and the Superintendents of Police of all the Districts of Assam regarding stopping of illegal killing/sacrifice of Cows/Calves, Camels and other animals directing those authorities to take action against the offenders for violation of Transport of Animal Rules on the occasion of Bakrid and request those authorities to look into the matter and to take necessary action within their jurisdictional area accordingly (Annexure-2 to this petition).

11. Being aggrieved with the said communication dated 07.06.2022 of the AWBI as well as the direction issued by the State Government in its Political (B) Department vide letter dated 04.07.2022, the petitioner has preferred this PIL challenging those two communications stating that those are in violation of the provisions of the Prevention of Cruelty to Animals Act, 1960 and the Assam Cattle Prevention Act, 2021.

12. Placing the provision of Section 9 of said 1960 Act that relates to "Functions of the Animal Welfare Board of India" and the provision of Section 11 of the said 1960 Act that relates to "Treating animals cruelly", Mr. Choudhury, learned Senior counsel has submitted that the said Board has no such power, jurisdiction and authority to issue any such communications to the authorities concerned in the State Government regarding stopping of such sacrifice of animals on the occasion of Bakrid or any other religious festivals of the country.

Page No.# 5/15

13. It is placed before the Court that the State Government as empowered under List III - Concurrent List at Serial No. 17 'Prevention of cruelty to animals' of the Constitution of India and in exercise of the power under Article 48 of the Constitution of India, has brought into force the Assam Cattle Preservation Act, 2021 w.e.f. 16.09.2021, the date it was published in the Assam Gazette Extraordinary.

14. Though, the petitioner in the petition has submitted that the State Government has not formulated any rules under the said 2021 Act, but during the deliberation of the matter it is stated in the bar that the Assam Cattle Preservation Rules, 2022 framed under the said 2021 Act have come into force w.e.f. 07.06.2022 i.e. from the date of its publication in the Assam Gazette Extraordinary. In such view of the matter, prayer No. (iii) that a direction should be issued to the State Government to frame the rules under the 2021 Act and to notify the same appears to be redundant.

15. Mr. Choudhury, learned Senior counsel for the petitioner submitted that the impugned communications dated 07.06.2022 of the Secretary to the AWBI (Annexure-1) and the consequential communication dated 04.07.2022 of the State Government in the Political (B) Department (Annexure-2) cannot override the statutory provisions made in said 2021 Act as well as the 2022 Rules, noted above.

16. Placing the provision of Section 22 (2)(vi) of the 2021 Act that relates to the conditions of subject to which the slaughter of any cattle may be exempted under Section 19 of the said 2021 Act (Section

19 relates to exemptions) Mr. Choudhury has submitted that the said 2022 Rules is silent with regard to such exemptions provided in Section 22 (2)(vi) of said 2021 Act.

17. For all the reasons above, Mr. Choudhury, learned Senior counsel for the petitioner has prayed for setting aside the impugned communications 07.06.2022 issued by the Secretary of the AWBI (Annexure-1) as well as the consequential communication dated 04.07.2022 of the State Government in the Political (B) Department, being non-est in law as there are specific provisions in the said 2021 Act and the 2022 Rules, noted above.

18. We have considered the submissions of the parties and also the relevant provisions of the Prevention of Cruelty to Animals Act, 1960; the Food Safety and Standards Act, 2006, the Assam Cattle Preservation Act, 2021 as well as the Assam Cattle Preservation Rules, 2022.

Page No.# 6/15

19. We have also considered the Judgments of the Hon'ble Supreme Court in the case of Mohd. Hanif Quareshi Vs. State of Bihar, reported in AIR 1958 SC 731 = 1959 SCR 629, State of West Bangal and Others Vs Ashutosh Lahiri and Others , reported in (1995) 1 SCC 189, State of Gujrat Vs Mirzapur Moti Kureshi Kassab Jamat and Others , reported in (2005) 8 SCC 534 and Akhil Bharat Goseva Sangh (3) Vs State of Andhra Pradesh and Others , reported in (2006) 4 SCC

162.

20. Section 2 of the said 2021 Act specifically provides that the said Act shall apply to the cattle specified in the Schedule of the Act. Section 3(b) of said 2021 Act defines "Beef" which means flesh of the cattle in any form whose slaughter is prohibited under the said Act. Further, Section 3(c) of the said 2021 Act defines "Cattle" which means an animal specified in the Schedule of the Act. Section 3 (j) of the said 2021 Act defines "Slaughter" which means killing by any method whatsoever and includes maiming and inflicted of physical injury which in the ordinary course shall cause death.

21. Schedule of the said 2021 Act provides the animals which means "Cattles" and they are (1) Bulls, (2) Bullocks, (3) Cows, (4) Heifer and (5) Calves.

22. Section 4 of said 2021 Act that relates to 'Prohibition of Slaughter of cattle' stipulates as follows-

Prohibition of slaughter of cattle - Notwithstanding anything in any other law for the time being in force or in any usage to the contrary, no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter of any cattle:

Provided that killing of a cattle by accident shall not be considered as slaughter under the Act.

23. Section 5 of said 2021 Act that relates to 'Prohibition of Slaughter of cattle without certificate from competent authority', which provides as follows-

Prohibition of slaughter of cattle without certificate from competent authority (1) Notwithstanding anything in any other law for the time being in force or in any usage to the contrary, no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter any cattle unless he had obtained in respect thereof a certificate in writing, issued by the registered Veterinary Officer under Animal and Husbandry Department for the area in which the cattle is to be slaughtered, that the cattle is fit for slaughter. (2) No certificate under sub-section (1) shall be issued unless the Veterinary Officer is of the opinion that,-

Page No.# 7/15

(a) the cattle, not being a cow, is over fourteen years of age; or

(b) the cattle, not being a cow or heifer or calf, has become permanently incapacitated from work or breeding due to accidental injury or deformity.

(3) The Veterinary Officer shall maintain all records of issuance or refusal of such certificate for future reference and inspection by the prescribed authority:

Provided that if Veterinary Officer refuses to issue such certificate, he shall record it in writing and communicate the same to the applicant.

(4) Any person aggrieved by the refusal of the Veterinary Officer in respect of issuance of a certificate under this section may, within fifteen days from the date of communication to him of such refusal order, may appeal to the prescribed authority against the order of refusal, and the prescribed authority may pass such orders thereon as he deems fit. (5) The prescribed authority may at any time for the purpose of satisfying itself as to the legality or propriety of any such certificate or order for refusal of such certificate issued by a Veterinary Officer under this section, call for examination of the record of any case, and may pass such orders thereon as it deems fit.

(6) A certificate under this section shall be granted in such form and on payments of such fee as may be prescribed.

(7) Subject to the provision of sub-section (5), any order passed by the Veterinary Officer granting or refusing to grant a certificate, and any order passed by the prescribed authority under sub-section (5) shall be final and shall not be called in question in any Court.

24. Section 6 of said 2021 Act specifies about 'Prohibition of Slaughter of places other than a slaughter house' which reads as follows-

Prohibition of slaughter of cattle in places other than a slaughter house-

No cattle in respect of which a certificate has been issued under section 5 shall be slaughtered in any place other than a slaughter house duly licensed or recognized under a Central or State Act or any rules or regulations made hereunder or other premises as may be specified in the certificate as per rules framed under this Act:

Provided that the State Government may exempt certain places of worship or certain occasions for slaughter of cattle other than calf, heifer and cow for religious purposes.

25. Rule 4(1) of said 2022 Rules provides that - Any person intending to slaughter or to cause to be slaughtered or intending to offer or to cause to be offered for slaughter any animal as mentioned in the Schedule shall apply in Form A to the competent authority of the area in which bull or bullock is to be slaughtered for the issuance of a certificate that the bull or bullock is fit for slaughter.

Page No.# 8/15

26. Rule 4(2) of said 2022 Rules provides that - On receipt of application the Competent Authority shall fix a date and time for production of bull or bullock at a place to be specified for the purpose and give intimation thereof to the applicant.

27. Rule 4(3) of said 2022 Rules specifies that - After examining the bull or bullock the Competent Authority either shall issue Certificate in Form B or refuse to issue the same and in either case shall record its reasons on the application.

28. Section 9 of said 1960 Act relates to Functions of the Animal Welfare Board of India" and Clause (l) of said Section 9 authorizes the Animal Welfare Board of India "to advise the Government on any matter connected with animals welfare or the prevention of infliction of unnecessary pain or suffering on animals".

29. One of the contentions of the petitioner is to the effect that the letter dated 07.06.2022 of the AWBI is issued on the eve of Bakrid creating confusion amongst the people of Muslim community. The said contention appears to be not correct in view of the fact that the AWBI on few earlier occasions had issued similarly worded directives to the Chief Secretaries and Director Generals of Police of all the States and the Directors of Animal Husbandry Department of all the States on the eve of Bakrid. In this connection, a reference can be made to a letter No. 9-2/2016- 17-PCA dated 04.07.2016 of the Secretary of the AWBI. On a joint perusal of the contents of the said letter dated 04.07.2016 vis-à-vis of the letter dated 07.06.2022 (Annexure-1 to the writ petition), both are found similarly worded. By the afore-mentioned two communications, the ABWI had directed the authorities concerned to take all precautionary measures to stop illegal killing of animals and to take stringent actions against the violators of laws, with intimation on the actions taken to the Board.

30. It has been contended on behalf of the petitioner that incorporation of the words "other animals" in the communication dated 07.06.2022 and also in the letter dated 04.07.2022 have

created a kind of confusion.

31. The letter dated 07.06.2022 has made mention of "animal" as an animal belonging to any of the species such as (i) Ovines; (ii) Caprines; (iii) Suillines and (iv) Bovines and includes poultry and fish. The Food Safety and Standards Authority of India in its letter dated 07.06.2022 has referred to an earlier letter No. 1-988/FSSAI/Import/2014 dated 06.08.2014 wherein it had said Page No.# 9/15 that slaughtering of any other species 'other than the one listed above' is not permissible under the FSS Act, 2006 and the regulations framed thereunder. It is apposite to state that Section 92 of the FSS Act, 2006 has empowered the Food Safety and Standards Authority of India (the Food Authority, in short) to make regulations, with the previous approval of the Central Government and after previous publication, by notification, consistent with the FSS Act, 2006 and the rules made thereunder to carry out the provisions of the FSS Act, 2006. Clause (e) of Sub-Section 2 of Section 96 has empowered the Food Authority to notify standards and guidelines in relation to articles of food meant for human consumption under Sub-Section (2) of Section 16 of the FSS Act, 2006. The Food Authority in exercise of the powers conferred by Clause (e) of Sub-Section (2) of Section 92 read with Section 16 of the FSS Act, 2006 has made a set of regulations viz. the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (the 2011 Regulations, in short). Regulation 2.5.1 of the 2011 Regulations has defined 'animal' and 'animal' means an animal belonging to any of the species specified below:- (i) Ovines; (ii) Caprines; (iii) Suillines; (iv) Bovines; (v) Domestic Rabbits (*Oryetolagus cuniculevs*) and includes poultry and fish. Both the letter dated 04.07.2016 and the letter dated 07.06.2022 of the AWBI had/has mentioned that the definition of 'animal' has effectively meant that Camels cannot be slaughtered for food at all. This part of the directive contained in the letter 07.06.2022 has not been specifically assailed by the petitioner in this writ petition.

32. At this juncture, it appears appropriate to refer to the provisions of the West Bengal Animal Slaughter Control Act, 1950 (the West Bengal Act, for short) and the decision in Ashutosh Lahiri (Supra), which was rendered by Three Judges Bench of the Hon'ble Supreme Court of India while interpreting the provisions contained in Section 2, Section 4, Section 5, Section 7 and Section 12 thereof. Section 2 of the West Bengal Act had laid down that the same would apply to animals specified in the Schedule and the Schedule covered bulls, bullocks, cows, calves, male and female buffaloes, buffalo calves and castrated buffaloes. Section 4 dealt with prohibition of slaughtering of animals without certificate from authorities concerned and Sub-Section (1) of Section 4 provided that notwithstanding anything in any other law for the time being in force or in any usages to the contrary, no person shall slaughter any animal unless he had obtained in respect thereof a certificate under Sub-Section (2) or Sub-Section (3) that the animal was fit for slaughter. As per Sub-Section (2), a certificate was required to be issued by the authorities concerned that the animal was over 14 years of age and was unfit for work or breeding or that Page No.# 10/15 the animal had become permanently incapacitated from work or breeding due to age, injury, deformity or any incurable disease. Section 5 thereof provided that even if there was a certificate enabling a person to get the animal concerned slaughtered he cannot slaughter it in any other place other than the place prescribed in that behalf. Section 12 of the West Bengal Act had conferred power to the State Government, by general or special order and subject to such conditions, to exempt from the operation of the Act slaughter of any animal for any religious, medicinal or research purpose.

33. The West Bengal Government by invoking the powers conferred under Section 12 of the West Bengal Act had exempted from the operation of the West Bengal Act the slaughter of healthy cows on the occasion of BakrI'd on the ground that such exemption was required to be given for the religious purpose of Muslim community. The aforesaid action of exemption granted by the West Bengal Government was put to challenge in a number of writ petitions before the Hon'ble Calcutta High Court. A Division Bench of the Hon'ble Calcutta High Court took the view that such slaughter of cows by members of Muslim community on BakrI'd day was not a requirement of Muslim religion and, therefore, such exemption was outside the scope of Section 12 of the West Bengal Act.

34. When appeals were preferred by the State of West Bengal and others against the decision of the Division Bench of the Hon'ble Calcutta High Court, the Hon'ble Supreme Court by taking note of the afore-mentioned provisions of the West Bengal Act and its earlier Constitution Bench decision in the case of Mohd. Hanif Quareshi (Supra) had observed as under-

"7. As the preamble of the Act shows it was enacted to control the slaughter of certain animals as it was expedient to do so with a view to increase the supply of milk and to avoid the wastage of animal power necessary for improvement of agriculture. Section 2 lays down that the Act applies to animals specified in the schedule. The schedule to the Act covers bulls, bullocks, cows, calves, male and female buffaloes, buffalo calves and castrated buffaloes. Section 4 of the Act deals with prohibition of slaughtering of animals without certificate from authorities concerned. Section 4(1) provides that notwithstanding anything in any other law for the time being in force or in any usage to the contrary, no person shall slaughter any animal unless he has obtained in respect thereof a certificate under sub-section (2) or sub-section (3) that the animal is fit for slaughter. As per sub-section (2) a certificate is required to be issued by the authorities concerned that the animal is over 14 years of age and is unfit for work or breeding or that the animal has become permanently incapacitated from work or breeding due to Page No.# 11/15 age, injury, deformity or any incurable disease. Sub-section (3) deals with a case where there is a difference of opinion between the authorities concerned from which initially a certificate is to be obtained. As per Section 5 even if there is a certificate enabling a person to get the animal concerned slaughtered he cannot slaughter it in any place other than the place prescribed in that behalf. As per Section 7 whoever contravenes the provision of the Act shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. Section 8 makes the offences cognizable under the Act. Section 9 prescribes punishment for abetment of offences or even attempts to commit any such offence under the Act.

8. The aforesaid relevant provisions clearly indicate the legislative intention that healthy cows which are not fit to be slaughtered cannot be slaughtered at all. That is the thrust of Section 4 of the Act. In other words there is total ban against slaughtering of healthy cows and other animals mentioned in the schedule under Section 2 of the Act. This is the very essence of the Act and it is necessary to subserve the purpose of the Act i.e. to increase the supply of milk and avoid the wastage of

animal power necessary for improvement of agriculture. Keeping in view these essential features of the Act, we have to construe Section 12 which deals with power to grant exemption from the Act. As we have noted earlier the said section enables the State Government by general or special order and subject to such conditions as it may think fit to impose, to exempt from the operation of this Act slaughter of any animal for any religious, medicinal or research purpose. Now it becomes clear that when there is a total ban under the Act so far as slaughtering of healthy cows which are not fit to be slaughtered as per Section 4(1) is concerned, if that ban is to be lifted even for a day, it has to be shown that such lifting of ban is necessary for subserving any religious, medicinal or research purpose. The Constitution Bench decision of this Court in *Mohd. Hanif Quareshi* case [1959 SCR 629 = AIR 1958 SC 731] at (SCR) page 650 of the report speaking through Das, C.J. referred to the observations in Hamilton's translation of Hedaya, Book XLIII at page 592 that it is the duty of every free Mussalman arrived at the age of maturity, to offer a sacrifice on the I'd Kurban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslims consists of making sacrifice of any animal which should be a healthy animal, on BakrI'd, then slaughtering of cow is not the only way of carrying out that sacrifice. It is, therefore, obviously not an essential religious purpose but an optional one. In this connection Mr Tarkunde for the appellants submitted that even optional purpose would be covered by the term "any religious purpose" as employed by Section 12 and should not be an Page No.# 12/15 essential religious purpose. We cannot accept this view for the simple reason that Section 12 seeks to lift the ban in connection with slaughter of such animals on certain conditions. For lifting the ban it should be shown that it is essential or necessary for a Muslim to sacrifice a healthy cow on BakrI'd day and if such is the requirement of religious purpose then it may enable the State in its wisdom to lift the ban at least on BakrI'd day. But that is not the position. It is well settled that an exceptional provision which seeks to avoid the operation of main thrust of the Act has to be strictly construed. In this connection it is profitable to refer to the decisions of this Court in the cases *Union of India v. Wood Paper Ltd.* [(1990) 4 SCC 256] and *Novopan India Ltd. v. C.C.E. & Customs* [1994 Supp (3) SCC 606]. If any optional religious purpose enabling the Muslim to sacrifice a healthy cow on BakrI'd is made the subject-matter of an exemption under Section 12 of the Act then such exemption would get granted for a purpose which is not an essential one and to that extent the exemption would be treated to have been lightly or cursorily granted. Such is not the scope and ambit of Section 12. We must, therefore, hold that before the State can exercise the exemption power under Section 12 in connection with slaughter of any healthy animal covered by the Act, it must be shown that such exemption is necessary to be granted for subserving an essential religious, medicinal or research purpose. If granting of such exemption is not essential or necessary for effectuating such a purpose no such exemption can be granted so as to bypass the

thrust of the main provisions of the Act. We, therefore, reject the contention of the learned counsel for the appellants that even for an optional religious purpose exemption can be validly granted under Section 12. In this connection it is also necessary to consider Quareshi case which was heavily relied upon by the High Court. The total ban on slaughter of cows even on BakrI'd day as imposed by Bihar Legislature under Bihar Preservation and Improvement of Animals Act, 1955 was attacked as violative of the fundamental right of the petitioners under Article 25 of the Constitution. Repelling this contention the Constitution Bench held that even though Article 25(1) granted to all persons the freedom to profess, practise and propagate religion, as slaughter of cows on BakrI'd was not an essential religious practice for Muslims, total ban on cow's slaughter on all days including BakrI'd day would not be violative of Article 25(1). As we have noted earlier the Constitution Bench speaking through Das C.J., held that it was optional for the Muslims to sacrifice a cow on behalf of seven persons on BakrI'd but it does not appear to be obligatory that a person must sacrifice a cow. It was further observed by the Constitution Bench that the very fact of an option seemed to run counter to the notion of an obligatory duty. One submission was also noted that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats, and it was observed that in such a case there may be an economic compulsion although there was no religious compulsion. In this connection, Das C.J. referred to the historical Page No.# 13/15 background regarding cow slaughtering from the times of Mughal emperors. Mughal Emperor Babur saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this. Similarly, Emperors Akbar, Jehangir and Ahmad Shah, it is said, prohibited cow slaughter. In the light of this historical background it was held that total ban on cow slaughter did not offend Article 25(1) of the Constitution.

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

necessary or essential to permit slaughter of a healthy cow for any religious purpose it would be equally not open to the State to invoke its exemption power under Section 12 for such a religious purpose. We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on BakrI'd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merit on BakrI'd.

10. We may also mention one submission of Mr Tarkunde that India is a secular democratic country and, therefore, the State has to respect the wishes of minority. In the appeals at hand we are concerned with the short question whether in the light of clear wording of Section 12, the State can exempt from the operation of the Act slaughtering of healthy cows on BakrI'd. For deciding this, ours being a secular country would not be relevant. Mr Tarkunde next submitted that as per Gujarat Rules slaughtering of cows on BakrI'd is considered a bona fide religious purpose. Even this aspect is not relevant for deciding the parameters of Section 12 of the West Bengal Act, even if that be the position in Gujarat presently, which is not so according to the Page No.# 14/15 learned counsel for the respondents.

11. We may also deal with the effort made by the learned counsel for the appellants to distinguish Quareshi case on the ground that for interpreting the term 'religious' under Articles 25 and 26, a restricted meaning was given for balancing the secular nature of democracy on the one hand and the interest of the individual so far as right to practise any religion is concerned on the other. In this connection, our attention was invited to the decisions of this Court in *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan* [AIR 1963 SC 1638] and *Durgah Committee v. Syed Hussain Ali* [AIR 1961 SC 1402] These decisions are of no avail to the appellants as therein while dealing with the question of validity of certain enactments, scope of Articles 25 and 26 of the Constitution was spelt out and nothing has been held in these decisions which is contrary to what was decided in Quareshi case, which we have noted in detail. The effort made by learned counsel for the appellants to get any and every religious practice covered by Section 12 also is of no avail for the simple reason that in the context of Section 12 the religious practice must be such which requires the invocation of exemption provision under Section 12 so as to bypass the main thrust of Section 4. For such an exercise non-essential religious practices cannot be made the basis. Reliance placed on the decision of this Court in *Hazarat Pirmahomed Shah Saheb Roza Committee v. C.I.T.* [(1967) 63 ITR 490 (SC)] also is of no assistance as the same refers to Section 11 of the Income Tax Act, the scheme of which is entirely different from that of the Act. Even if we agree with learned counsel for the appellants that slaughter of a healthy cow on BakrI'd is for a religious purpose, so long as it is not shown to be an essential religious purpose as discussed by us earlier, Section 12 of the Act cannot be pressed in service for buttressing such a non-essential religious purpose."

35. The petitioner in this writ petition by referring to the proviso to Section 6 of the 2021 Act has sought to contend that the State Government can exempt certain places of worship or certain occasions for religious purposes and on that premise, has sought clarification regarding permissibility of lawful animal sacrifice on the occasion of Bakrid as there is some confusion in this connection.

36. Having noticed the interpretation provided and observations given by the Hon'ble Supreme Court of India in Mohd. Hanif Quareshi (Supra) and Ashutosh Lahiri (Supra) qua the provisions contained in Section 2, Section 4, Section 5, Section 7 and Section 12 of the West Bengal Act, which are pari materia to Section 2, Section 4, Section 5, Section 6 and the proviso to Section 6 of the 2021 Act, noted above, there appears to be no confusion which requires any clarification.

Page No.# 15/15

37. In the considered view of this Court, neither the directives contained in the letter dated 07.06.2022 of the Secretary of the AWBI (Annexure-1 to the writ petition) nor the directives contained in the letter dated 04.07.2022 of the Personal (B) Department of the State (Annexure-2 to the writ petition), which have been issued in deference to the letter dated 07.06.2022, are found repugnant to any of the provisions contained in the Prevention of Cruelty Animal Act, 1960 and the Rules and Regulations framed under it, the Food Safety and Standards Act, 2006 including the Rules and Regulations framed under it as well as the Assam Cattle Preservation Act, 2021 including the Assam Cattle Preservation Rules, 2022.

38. After hearing the learned counsels for the parties and considering entire aspect of the matter as well as the Clause 2.5 (a) that relates to meat and meat products under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 as amended, noted above, vis-à-vis the provisions of Sections 3, 4, 5 & 6 including the proviso to Section 6 of the Assam Cattle Preservation Act, 2021, it is, however, appropriate to clarify that slaughter of animals on the occasion of Bakrid, save and except the prohibitions contained in the aforementioned statutes, is permissible, in the manner as provided therein.

39. With the above observations, this petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant