

MOHD. FARUK

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v.

STATE OF MADHYA PRADESH AND OTHERS

April 1, 1969

[M. HIDAYATULLAH, C.J., J. C. SHAH, V. RAMASWAMI,
G. K. MITTER AND A. N. GROVER, JJ.]

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Constitution of India—Article 19(1)(8)—Notification by State having effect of banning slaughter of bulls and bullocks—If violative of the fundamental right under Art. 19(1)(g)—Principles for considering constitutionality of law restricting or prohibiting carrying on a business.

Certain bye-laws framed by the Jabalpur Municipality, which permitted the slaughter of various animals including bulls and bullocks, were confirmed by the respondent State Government in 1948. By a notification on January 12, 1967, in exercise of its powers under s. 430 of Madhya Pradesh Municipal Corporation Act 23 of 1956, the State Government cancelled the confirmation of certain bye-laws "insofar as the bye-laws relate to the slaughter of bulls and bullocks". The petitioner challenged the constitutionality of the notification by a writ petition under Art. 32 on the ground that it infringed his fundamental right under Art. 19(1)(g) of the Constitution.

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It was contended on behalf of the respondent State that (1) its power to rescind confirmation of the bye-laws could not be challenged by reference to Art. 14 or Art. 19 of the Constitution, because the power vested in the Government to confirm the bye-laws carried with it the power to rescind such confirmation; and (2) that since every person desiring to use a slaughter house had to apply for and obtain a licence, which may be refused, and if given was liable to be withdrawn, no person may insist that he shall be given a licence to slaughter animals in a slaughter-house.

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HELD : Allowing the petition,

The impugned notification, though technically within the competence of the State Government, directly infringed the fundamental right of the petitioner guaranteed by Art. 19(1)(g). It could be upheld only if it was established that it sought to impose reasonable restrictions in the interests of the general public and a less drastic restriction would not ensure the interest of the general public. [161 D]

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The sentiments of a section of the people may be hurt by permitting slaughter of bulls and bullocks in premises maintained by a local authority. But a prohibition imposed on the exercise of a fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in the interest of the general public, but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the claimant. [161 H]

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The power to issue bye-laws indisputably includes the power to cancel or withdraw the bye-laws, but the validity of the exercise of the power to issue and to cancel or withdraw the bye-laws must be adjudged in the light of its impact upon the fundamental rights of persons affected thereby. When the validity of a law placing restriction upon the exercise of fundamental rights in Art. 19(1) is challenged, the onus of proving to the satisfaction of the Court that the restriction is reasonable lies upon the State. A law requiring that an act which is inherently dangerous, noxious or

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injurious to public interest, health or safety or is likely to prove a nuisance to the community, shall be done under a permit or licence of an executive authority, is not *per se* unreasonable and no person may claim a licence or permit to do that act as of right. Where the law providing for grant of a licence or a permit confers a discretion upon an administrative authority regulated by rules or principles expressed or implied, and exercisable in consonance with rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion, the law *ex facie* infringes the fundamental right under Art. 19(1). [160 F]

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Mohd. Hanif Quareshi and Others v. The State of Bihar, [1959] S.C.R. 629; *Abdul Hakim Quraishi and Others v. The State of Bihar*, [1961] 2 S.C.R. 610; and *Narendra Kumar and Others v. The Union of India and Others*, [1960] 2 S.C.R. 375; referred to.

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ORIGINAL JURISDICTION : Writ Petition No. 60 of 1969.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

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Frank Anthony, B. Datta and J. B. Dadachanji, for the petitioner.

I. N. Shroff, for the respondents.

The Judgment of the Court was delivered by

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Shah, J. The petitioner Mohd. Faruk who carries on the vocation of slaughtering bulls and bullocks at the Madar Tekdi Slaughter-House at Jabalpur claims a declaration that the notification dated January 12, 1967, issued by the Governor of Madhya Pradesh in exercise of the powers conferred under sub-s. (3) of s. 430 of the Madhya Pradesh Municipal Corporation Act 23 of 1956 "cancelling confirmation of the bye-laws" made by the Jabalpur Municipal Committee for inspection and regulation of slaughter-houses "in so far as the bye-laws relate to slaughter of

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bulls and bullocks" infringes the fundamental freedoms guaranteed under Arts. 14 and 19 of the Constitution.

Section 5(37) of the Madhya Pradesh Municipal Corporation Act 23 of 1956 defines "municipal slaughter-house". By s. 66(m) it is made obligatory upon the Corporation to make adequate provision for the construction, maintenance and regulation of a slaughter-house. By sub-s. (1) of s. 257 of the Act the Corporation may and when required by the Government shall fix places for the slaughter of animals for sale, and may with the like approval grant and withdraw licences for the use of such premises. By sub-s. (3) it is enacted that when premises have been fixed under sub-s. (1) no person shall slaughter any such animal for sale within the city at any other place. By sub-s. (4) bringing into the city for sale, flesh of any animal intended for human consumption, which has been slaughtered at any slaughter-house

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or place not maintained or licensed under the Act, without the written permission of the Commissioner, is prohibited. Section 427 authorises the Corporation, with the sanction of the Government, to make bye-laws consistent with the provisions of the Act and the rules made thereunder for carrying out "the provisions and intentions" of the Act. The bye-laws may, *inter alia*, relate to the management of municipal markets and the supervision of the manufacture, storage and sale of food, and for that purpose may regulate the sanitary conditions in municipal slaughter-Houses. By s. 430 it is provided that no bye-law made by the Corporation under the Act shall have any validity until it is confirmed by the Government. Power is conferred upon the Government by s. 432 to modify or repeal either wholly or in part any bye-laws in consultation with the Corporation.

In exercise of the power conferred by s. 178(3) of the C.P. and Berar Municipalities Act 2 of 1922, bye-laws were made by the Jabalpur Municipality in January 1948. Those bye-laws continued to remain in force under the Madhya Pradesh Municipal Corporation Act 23 of 1956. The bye-laws controlled and regulated the conditions under which animals may be slaughtered in the premises fixed for that purpose and provided for inspection and for ensuring adequate precaution in respect of sanitation and for slaughter of animals certified by competent authorities as fit for slaughtering. By the notification issued by the Jabalpur Municipality a slaughter-house at a place called "Madar Tekdi" was fixed as premises for slaughtering animals. Under that notification bulls and bullocks were permitted to be slaughtered along with other animals like buffaloes, sheep, goats and pigs. But on January 12, 1967, the State Government issued a notification "cancelling the confirmation of the bye-laws" insofar as they related to slaughter of bulls and bullocks at Madar Tekdi Slaughter-House. That notification places restrictions upon the right of the petitioner to carry on his hereditary vocation.

The question of permitting slaughter of cows, bulls and bullocks has, for a long time, generated violent sentimental differences between sections of the people in our country. After the enactment of the Constitution the controversy relating to the limits within which restrictions may be placed upon the slaughter of cows, bulls and bullocks was agitated before this Court in *Mohd. Hanif Quareshi and Others v. The State of Bihar*⁽¹⁾. In that case the validity of provisions made in three State Acts which imposed a total ban upon slaughter of all categories of "animals of the species of bovine cattle" was challenged. These Acts were the Bihar Preservation and Improvement of Animals Act, 1955, the U.P. Prevention of Cow Slaughter Act, 1955, and the C.P.

(1) [1959] S.C.R. 629

- A and Berar Animals Preservation Act, 1949. The petitioners who followed the occupation of butchers and of dealing in the by-products of slaughter-houses challenged the validity of the three Acts on the plea that the Acts infringed their fundamental rights under Arts. 14, 19 (1)(g) and 25 of the Constitution. This Court held—(i) that a total ban on the slaughter of cows of all ages and calves of cows and of she-buffaloes, male and female, was 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 the 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.
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- Attempts were made from time to time to circumvent the judgment of this Court in *Mohd. Hanif Quareshi's case*⁽¹⁾. After that judgment, Legislatures of the State of Bihar, U.P. and Madhya Pradesh enacted the minimum age of animals to be slaughtered. The Bihar Act prohibited slaughter of a bull, bullock or she-buffalo unless the animal was over 25 years of age and had become useless. Under the U.P. Act slaughter of a bull or bullock was permitted only if it was over 20 years of age and was permanently unfit. Under the Madhya Pradesh Act slaughter of a bull, bullock or buffalo, except upon a certificate issued by the competent authority, was prohibited. The certificate could not be issued unless the animal was over 20 years of age and was unfit for work or breeding. This Court held in *Abdul Hakim Quraishi and Others v. The State of Bihar*⁽²⁾ 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. The Court observed that a bull, bullock or buffalo did not remain useful after it was 15 years old, and whatever little use it may then have was greatly offset by the economic disadvantages of feeding and maintaining unserviceable cattle. This Court also held that the additional condition that the animal must, apart from being above 20 or 25 years of age, be unfit was a further unreasonable restriction. On that ground the relevant provisions in the Bihar, U.P. and Madhya Pradesh Acts were declared invalid.
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- H The present case is apparently another attempt, though on a restricted scale, to circumvent the judgment of this Court in *Mohd. Hanif Quareshi's case*⁽¹⁾. The bye-laws of the Jabalpur Municipality permitted slaughter of bulls and bullocks. A licence

(1) [1959] S.C.R. 629.

(2) [1961] 2 S.C.R. 610.

had to be obtained for that purpose. Slaughter of animals in places outside the premises fixed by the Municipality was prohibited by s. 257(3) of the Act, and sale of meat within the area of the Municipality of the animals not slaughtered in the premises fixed by the Municipality was also prohibited. Under the notification by which the bye-laws were issued in 1948, bulls and bullocks could be slaughtered in premises fixed for that purpose. But by the notification dated January 12, 1967, confirmation of the bye-laws insofar as they related to bulls and bullocks was cancelled. The effect of that notification was to prohibit the slaughter of bulls and bullocks within the Municipality of Jabalpur. This cancellation of the confirmation of Bye-laws imposed a direct restriction upon the fundamental right of the petitioner under Art. 19(1)(g) of the Constitution.

In the affidavit filed on behalf of the State of Madhya Pradesh two principal contentions were raised :—(1) the power to rescind confirmation of the bye-laws cannot be challenged by reference to Art. 14 or Art. 19 of the Constitution, because the power vested in the Government to confirm the bye-laws carries with it the power to rescind such confirmation and (2) that since every person desiring to use a slaughter-house had to apply for and obtain a licence, which may be refused, and if given was liable to be withdrawn, no person may insist that he shall be given a licence to slaughter animals in a slaughter-house.

The power to issue bye-laws indisputably includes the power to cancel or withdraw the bye-laws, but the validity of the exercise of the power to issue and to cancel or withdraw the bye-laws must be adjudged in the light of its impact upon the fundamental rights of persons affected thereby. When the validity of a law placing restriction upon the exercise of fundamental rights in Art. 19(1) is challenged, the onus of proving to the satisfaction of the Court that the restriction is reasonable lies upon the State. A law requiring that an act which is inherently dangerous, noxious or injurious to public interest, health or safety or is likely to prove a nuisance to the community, shall be done under a permit or licence of an executive authority, it is not *per se* unreasonable and no person may claim a licence or permit to do that act as of right. Where the law providing for grant of a licence or a permit confers a discretion upon an administrative authority regulated by rules or principles expressed or implied, and exercisable in consonance with rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion, the law *ex facie* infringes the fundamental right under Art. 19(1). Imposition of restriction on the exercise of a fundamental right may be in the form

- A of control or prohibition, but when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the general public interest lies heavily upon the State.

- B This Court in *Narendra Kumar and Others v. The Union of India and Others*⁽¹⁾ held that the word "restriction" in Arts. 19(5) and 19(6) of the Constitution includes cases of "prohibition" also; that where a restriction reaches the stage of total restraint of rights special care has to be taken by the Court to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than what was necessary in the interests of the general public.

- D The impugned notification, though technically within the competence of the State Government, directly infringes the fundamental right of the petitioner guaranteed by Art. 19(1)(g), and may be upheld only if it be established that it seeks to impose reasonable restrictions in the interests of the general public and a less drastic restriction will not ensure the interest of the general public. The Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency—national or local—or the necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved.

- H The sentiments of a section of the people may be hurt by permitting slaughter of bulls and bullocks in premises maintained by a local authority. But a prohibition imposed on the exercise of a fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in

(1) [1960] 2 S.C.R. 375.

the interest of the general public, but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the claimant. A

The notification issued by the State Government must, therefore, be declared *ultra vires* as infringing Art. 19(1)(g) of the Constitution. B

It is unnecessary to consider the validity of s. 430 of the Act which was sought to be challenged in the petition or to consider whether there has been any infringement of the guarantee of the equality clause of the Constitution.

The petitioner will be entitled to his costs in this Court.

R.K.P.S.

Petition allowed.