

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 2428 OF 2014

Dr. Vinod Bhavarlalji Kothari ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. Rakesh Kumar, Raju Gupta, Subhash Jha, Prafull Shah & Ms.
Rushita Jain i/b Legal Vision, for the Petitioner.

Mr. J. S. Saluja, AGP for the Respondent Nos. 1 and 2.

Mr. M. M. Malvankar, for Respondent Nos. 3 and 4.

Mr. R. A. Shaikh for the Intervenor.

Shri Shiraz Quraishi, for the Intervenor.

CORAM : V. M. KANADE, &
P. D. KODE, JJ.

DATE : SEPTEMBER 30, 2014

PC.

1. Heard the learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Respondents- State. By this petition, which is filed under Art. 226 of the Constitution of India, Petitioner is seeking an appropriate writ, order and direction for quashing the order dated 31st July, 2014 issued by Respondent No. 1 and for other consequential orders.

2. Brief facts, which are relevant for the purpose of

consideration of grant of ad-interim order are as under-

Respondent No. 2 – the Additional Secretary, Government of Maharashtra, has issued Government Resolution dated 31st July, 2014 by exercising the powers vested in him under Section 4(2)(f) and Section 4 (1)(b) of the Bombay Essential Commodities and Cattle (Control) Act, 1958. By the said order, the State has sanctioned additional quota of 12,000 bullocks for being slaughtered at the Devnar Animal Slaughter House on the occasion Bakri-Id, which is to be celebrated between 6.10.2014 to 8.10.2014, and further a circular has been published bearing No. 38 of 2014 on 13th August, 2014.

3. Learned counsel appearing on behalf of the Petitioner has submitted that Respondent Nos. 1 and 2 have no authority to issue an order, sanctioning the additional quota of bullocks on the occasion of Bakrid-Id and on any other occasion. It is submitted that the said Government Resolution dated 31st July, 2014 is in complete violation of the provisions of Maharashtra Animal Preservation Act, 1976. It is submitted that under provisions of said Act of 1976, there is an express ban on slaughtering of cattle. It is submitted that the said Act is a subsequent Act, and as such, the provisions of the said Act would

prevail over the Bombay Essential Commodities Act of 1958.

Reliance is placed on the judgment of the Apex Court in the case of –
State of Gujarat, Appellants Vs. Mirzapur Moti Kureshi Kassab
Jammat & Ors., [AIR 2006 SC 212].

4. On the other hand, learned counsel appearing on behalf of the Respondent – State has vehemently urged that the said sanction was for slaughter of bullocks, and it has been granted for the past seven years. It is submitted that the said section clearly permits the Additional Secretary, Government of Maharashtra in sanctioning the additional quota for slaughtering bullocks.

5. After having heard both the counsel at length and after having perused the said section 4(2)(f) and 4(1)(b) of the Bombay Essential Commodities and Cattle (Control) Act, 1958. We are of the view that the said sections, prima-facie, does not empower the Additional Secretary in granting additional quota for slaughter of bullocks, more particularly, in view of the express provisions in the Maharashtra Animal Preservation Act, 1976 which prohibits the slaughter of cattle, save and except by following the procedure established under the said Act. The Apex Court also in the case of

State of Gujrat (supra) upheld the validity of the provisions of Maharashtra Animal Preservation Act, and has observed that the said provision is *intra vires* and constitutionally valid. The Apex Court has further held that reasonableness of the restriction has to be decided on the touchstone of Article 48, 48-A and 51 of the Constitution. It was further held that the said Act is in the interest of general public within the meaning of Art. 19(6) of the Constitution. Thus, it is held that total ban does not violate the provisions of Article 19(2) of the Constitution.

6. In our view, the judgment of the Apex Court is binding on all authorities. Respondent No. 2 could not have sanctioned additional quota of 12,000 bullocks, to be slaughtered on the occasion of Bakri-Id. Prima-facie, therefore, in our view, case is made out by the Petitioner for grant of ad-interim relief in terms of prayer clauses (g), (h) and (i).

[P. D. KODE, J.]

[V. M. KANADE, J.]

Vinayak Halemath