

(1961) 2 SCR 610 : AIR 1961 SC 448 : (1961) 1 Cri LJ 573

In the Supreme Court of India
(BEFORE S.J. IMAM, S.K. DAS, J.L. KAPUR, A.K. SARKAR AND K. SUBBA RAO, JJ.)

1. ABDUL HAKIM QURAISHI AND OTHERS (IN PETN. NO. 15 OF 59)
2. HAJI MOHD. SHAFFI AND OTHERS (IN PETN. NO. 14 OF 60) AND
3. MOHD. JAN AND OTHERS (IN PETN. NO. 21 OF 59) ...
Petitioners;

Versus

1. STATE OF BIHAR (IN PETN. NO. 15 OF 59)
2. STATE OF MADHYA PRADESH (IN PETN. NO. 14 OF 60) AND
3. STATE OF UTTAR PRADESH (IN PETN. NO. 21 OF 59) ...
Respondents.

Petitions Nos. 15 of 1959, 14 of 1960 and 21 of 1959, decided on November 23, 1960

Advocates who appeared in this case :

Frank Anthony, Advocate and J.B. Dadachanji, Advocate of Rajinder Narain & Co, for the Petitioners (In Petitions Nos. 15 and 21 of 59);

H.J. Umrigar, O.P. Rana and A.G. Ratnaparkhi, Advocates, for the Petitioners (In Petition No. 14 of 60);

L.K. Jha, Senior Advocate (S.P. Varma, Advocate, with him), for the Respondent (In Petition No. 15 of 59);

C.K. Daphtary, Solicitor-General of India and M. Adhikari, Advocate-General for the State of Madhya Pradesh (I.N. Shroff, Advocate, with them), for the Respondent (In Petition No. 14 of 60);

H.N. Sanyal, Additional Solicitor-General of India (C.P. Lal, Advocate with him), for the Respondent (In Petition No. 21 of 59).

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.

2. 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 2 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 52 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 Article 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 Articles 14, 19(1)(f) and (g) of the Constitution. In the decision which this Court gave in *Mohd. Hanif Quareshi v. 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 insofar 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 (Amendment) Act, 1958, 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 thereunder are called the Madhya Pradesh Agricultural Cattle Preservation Rules, 1959.

3. 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 petitioners' 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 Articles 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 of which is uneconomic and useless, and 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.

4. The correctness of these allegations has been contested 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 she-buffalo 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.

5. 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.

6. (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:

"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 insofar as it relates to bulls, bullocks and she-buffaloes 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 Section 38 of the Act. These rules are called the Bihar Preservation and Improvement of Animals Rules, 1960. The provisions of Rule 3 have also been impugned by the petitioners by an amendment petition filed by them. Rule 3 so far as it is material for our purpose is in these terms:

"3.(1) For the purposes of Section 3 of the Act, the Veterinary Officer and the Chairman or Chief Officer, as the case may be, shall be the prescribed authority:

Provided that where there is no Chairman or Chief Officer in respect of any area, the Veterinary Officer shall be the sole prescribed authority.

(2) Where the authority prescribed under sub-rule (1) or sub-rule (5) refuses to issue a certificate under the proviso to Section 3, it shall record the reasons for the refusal and no such refusal shall be made unless the person applying for the certificate has been given a reasonable opportunity of being heard.

(3) * * *

(4) A bull, bullock or she-buffalo in respect of which a certificate has been issued under Section 3 shall not be slaughtered at any place other than the place indicated in the certificate and it shall be slaughtered within 20 days of the date of the receipt of the certificate by the person in whose favour it is issued.

(5) In case of difference of opinion between the Veterinary Officer and the Chairman or Chief Officer, the matter shall be referred to the Sub-divisional Animal Husbandry Officer or the District Animal Husbandry Officer, as the case may be, and the certificate shall be issued or refused according to the decision of the Sub-divisional Animal Husbandry Officer or the District Animal Husbandry Officer, as the case may be.

(6)(a) Any person aggrieved by an order refusing to grant a certificate under the proviso to Section 3 may, within 15 days of the communication of the order to him, prefer an appeal—

(i) where the order is passed by the District Animal Husbandry Officer under sub-rule (5) to the Deputy Director of Animal Husbandry;

(ii) where the order is passed by the Sub-divisional Animal Husbandry Officer, under sub-rule (5), to the District Animal Husbandry Officer and

(iii) where the order is passed by the authority prescribed under sub-rule (1) to the Sub-divisional Animal Husbandry Officer, if there is one; if not, to the District Animal Husbandry Officer;

(b) The appeal shall not be decided against the appellant unless he has been given a reasonable opportunity of being heard."

7. The argument on behalf of the petitioners is that they are "Kassais" by profession and they earn their living by slaughtering cattle only (not goats or sheep which are slaughtered by "Chiks"); that they have the fundamental right to carry on their profession and trade; and that Section 3 of the Act read with Rule 3 imposes unreasonable restrictions — restrictions not in the interests of the general public — on

their fundamental right and therefore they are not saved by clause (6) of Article 19 of the Constitution. Some of these arguments were considered by this Court in *Md. Hanif Quareshi v. State of Bihar*¹ and it was pointed out that the test of reasonableness should be applied to each individual statute impugned and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. It referred to the decision in *State of Madras v. V.G. Row*² and repeated what was said therein that "the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict". Another consideration which has to be kept in mind is that "the legislature is the best judge of what is good for the community, by whose suffrage it comes into existence...." (See *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga*³) But the ultimate responsibility for determining the validity of the law must rest with the Court and the Court must not shirk that solemn duty cast on it by the Constitution. We must, therefore, approach the problem before us in the light of the principles laid down by this Court.

8. The most pertinent question is — having regard to all the relevant circumstances, is the age of 25 years laid down in Section 3 a reasonable restriction on the right of the petitioners in the interests of the general public? We are unable to say that it is. Apart from the affidavits made on behalf of the petitioners and the respondent State, a large volume of authoritative and expert opinion has been placed before us which shows beyond any doubt that a bull, bullock or she-buffalo does not remain useful after 14 or 15 years and only a few of them live upto the age of 25. In the Report of the Cattle Preservation and Development Committee, published by the Ministry of Agriculture, it is recommended by the Committee that the slaughter of animals over 14 years of age and unfit for work as also animals of any age permanently unable to work owing to injury or deformity, should be allowed. In the Report on the Marketing of Meat in India (published by the Ministry of Food and Agriculture) there is a reference to a draft Bill circulated by the Ministry of Agriculture (p. 112 of the Report) which contains a clause that animals over 14 years of age and unfit for work may be slaughtered on a certificate from a Veterinary Officer. In the Report on the Marketing of Cattle in India, again published by the Ministry of Food and Agriculture, occurs the following passage as to the price of animals with reference to their age:

"Young draught animals up to the age of 4 years — being raw and untrained — fetch comparatively low prices. Between 4 and 8 years of age, the animals are in the prime of their youth and render best service, and fetch maximum prices. From the 8th year onwards old age sets in, and a graded decline is observed in their capacity to work and consequently prices depreciate considerably."

In a Food and Agricultural Organisation study of cattle in India and Pakistan (*Zebu Cattle of India and Pakistan*, p. 94) it is stated that the active breeding life of a bull is estimated to be about 10 years. In *Black's Veterinary Dictionary* (edited by W.C. Riller and G.P. West, Edn.) it is stated that pedigree bulls may reach 12 or 14 years of age before being discarded; and cattle seldom live longer than 15 or 16 years, and when they do, their age is usually of no immediate importance. In another publication of the Ministry of Agriculture called "Problems of Cattle Insurance" under Indian conditions, it is stated that the life of cattle is comparatively much shorter, the maximum age being only about 15 years. There is an interesting chart relating to the determination of age in cattle in a publication called "Cattle Development in Uttar Pradesh" by R.L. Kaura, Director of Animal Husbandry; that chart shows that at 11 years incisors appear smaller due to wearing out; at 12 years space appears between the teeth, and after 12 teeth wear out constantly and roots remain far apart from one another. As against all this expert opinion the respondent State has relied on the chart embodying some

useful data about domestic animals, prepared by Major A.C. Aggarwala, Director of Veterinary Services, Punjab, and R.R. Gulati, Superintendent, Veterinary Department, Jullundur, which shows the sterility age of a buffalo at 15 and average age at 25, and of a cow sterility at 15 and 16 years and average life 22 years.

9. We are clearly of the view that the almost unanimous opinion of experts is that after the age of 15, bulls, bullocks and buffaloes are no longer useful for breeding, draught and other purposes and whatever little use they may have then is greatly offset by the economic disadvantages of feeding and maintaining unserviceable cattle — disadvantages to which we had referred in much greater detail in *Md. Hanif Quareshi case*¹. Section 3 of the Bihar Act insofar as it has increased the age limit to 25 in respect of bulls, bullocks and she-buffaloes, imposes an unreasonable restriction on the fundamental right of the petitioners, a restriction moreover which cannot be said to be in the interests of the general public, and to that extent it is void. We may here repeat what we said in *Chintaman Rao v. State of M.P.*⁴:

“The phrase ‘reasonable restriction’ connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word ‘reasonable’ implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality.”

10. As to Rule 3 the grievances of the petitioners are these. Under the rule the prescribed authority for the purpose of Section 3 of the Act consists of the Veterinary Officer and the Chairman or Chief Officer of a District Board, Municipality etc. Unless both of them concur, no certificate for slaughter can be granted. It is pointed out that the Chairman or Chief Officer would be a layman not in a position to judge the age or usefulness of cattle. The result would be that the animal in respect of which a certificate is required may have to be shown to the Veterinary Officer as also the Chairman or Chief Officer, who may not be staying at the same place as the Veterinary Officer. If the two differ, the matter has to be referred to the Sub-divisional Animal Husbandry Officer. This procedure, it is contended, will involve the expenditure of so much money and time that it will not be worth-while for the petitioners to ask for a certificate, or having got a certificate, to slaughter the animal. An animal which is above 15 or which has become useless generally costs much less than a young, serviceable animal. If the petitioners have to incur all the expenditure which the procedure laid down by Rule 3 must necessarily cost them, they must close down their trade. As to the right of appeal from an order refusing to grant a certificate, it is contended that that right is also illusory for all practical purposes. To take the animal to the Deputy Director of Animal Husbandry or the District Animal Husbandry Officer or the Sub-Divisional Animal Husbandry Officer, as the case may be, and to keep and feed the animal for the period of the appeal and its hearing will cost more than the price of the animal itself.

11. We consider that these grievances of the petitioners have substance, and judged from the practical point of view, the provisions of Rule 3 impose disproportionate restrictions on their right. It is difficult to understand why the Veterinary Officer, who has the necessary technical knowledge, cannot be trusted to give the certificate and why it should be necessary to resort to a complicated procedure to resolve a possible difference of opinion between two officers, later followed by a still more expensive appeal.

12. We, therefore, hold Rule 3 also to be bad insofar as it imposes disproportionate restrictions indicated above, on the right of the petitioners.

13. (2) We now proceed to consider the Uttar Pradesh Prevention of Cow Slaughter (Amendment) Act, 1958. After the decision of this Court in *Md. Hanif Quareshi v. State of Bihar*¹ an Ordinance was passed called the Uttar Pradesh Prevention of Cow Slaughter (Amendment) Ordinance, 1958. This Ordinance was later repealed and replaced by the Act. The petitioners say that in the Bill as originally drafted the age-limit below which slaughter was not permissible was put at 15 years; but the Select Committee increased it to 20 years. It will probably be best, for clearness sake, to set forth not the whole provisions of the Act, for that would be too lengthy, but those which form most directly the subject-matter on which the controversy turns. Section 3 of the Act reads (omitting portions not relevant for our purpose)—

"3.(1) Except as hereinafter provided, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter—

(a) * * *

(b) a bull or bullock, unless he has obtained in respect thereof a certificate in writing, from the competent authority of the area in which the bull or bullock is to be slaughtered, certifying that it is fit for slaughter....

(2) No bull or bullock, in respect of which a certificate has been issued under sub-section (1)(b) shall be slaughtered at any place other than the place indicated in the certificate or within twenty days of the date of issue of the certificate.

(3) A certificate under sub-section (1)(b) shall be issued by the competent authority, only after it has, for reasons to be recorded in writing, certified that—

(a) the bull or bullock is over the age of twenty years; and

(b) in the case of a bull, it has become permanently unfit and unserviceable for the purpose of breeding and, in the case of a bullock, it has become permanently unfit and unserviceable for the purposes of draught and any kind of agricultural operation:

Provided that the permanent unfitness or unserviceability has not been caused deliberately.

(4) The competent authority shall, before issuing the certificate under sub-section (3) or refusing to issue the same, record its order in writing. Any person aggrieved by the order of the competent authority, under this section, may, within twenty days of the date of the order, appeal against it to the State Government, which may pass such orders thereon as it may deem fit.

(5) The State Government may, at any time, for the purposes of satisfying itself as to the legality or propriety of the action taken under this section, call for and examine the record of any case and may pass such orders thereon as it may deem fit.

(6) Subject to the provisions herein contained any action taken under this section, shall be final and conclusive and shall not be called in question."

14. On behalf of the petitioners it has been argued that Section 3 imposes a number of unreasonable restrictions. Firstly, it is urged that the age-limit with regard to bulls or bullocks is put too high viz. at 20 years. This is an aspect which we have already considered in relation to the Bihar Act. What we have said about the age-limit in that connection applies equally to the Uttar Pradesh Act. The 8th Live-stock Census, 1956, shows that in Uttar Pradesh bulls and bullocks over 3 years of age, not in use for breeding or work, numbered as many as 126, 201 in 1956 as compared to 162, 746 in 1951. The Municipal Manual, Uttar Pradesh, Vol. 1, contains a direction that for slaughter of animals, bullocks and male buffaloes in good state of *health below ten years of age* should be included. Secondly, it is pointed out that not being content with fixing an unreasonably high age-limit, the impugned provision imposes a double restriction. It says that the animal must be over twenty years in age *and* must also be

permanently unfit and unserviceable; and in the case of a bullock, the unfitness must be for "any kind of agricultural operation" and not merely for draught purposes. The result of this double restriction, it is stated, is that even if the animal is permanently unserviceable and unfit at an earlier age, it cannot be slaughtered unless it is over twenty years in age. Before a certificate can be given, the animal must fulfil two conditions as to (1) age and (2) permanent unfitness. We consider this to be a demonstrably unreasonable restriction. In *Md. Hanif Quareshi case*¹ this Court had said that a total ban on the slaughter of bulls and bullocks after they had ceased to be capable of breeding or working as draught animals was not in the interests of the general public. Yet this is exactly what the impugned provision does by imposing a double restriction. It lays down that even if the animal is permanently unserviceable, no certificate can be given unless it is more than 20 years in age. The restriction will in effect put an end to the trade of the petitioners.

15. Thirdly, the impugned provision provides (1) that the animal shall not be slaughtered within twenty days of the date of the issue of the certificate and (2) that any person aggrieved by the order of the competent authority may appeal to the State Government within 20 days. It is to be noted that the right of appeal is not confined to a refusal to grant a certificate as in the Bihar Act, but the right is given to any person aggrieved by the order of the competent authority. In other words, even when a certificate is given, any person, even a member of the public, who feels aggrieved by it may prefer an appeal and hold up the slaughter of the animal for a long time. From the practical point of view these restrictions really put a total ban on the slaughter of bulls and bullocks even after they have ceased to be useful, and we must hold, following our decision in *Md. Hanif Quareshi case*¹ that Section 3 of the Uttar Pradesh Act insofar as it imposes unreasonable restrictions on the right of the petitioners as to slaughter of bulls and bullocks infringes the fundamental right of the petitioners and is to that extent void.

16. (3) Now, we come to the Madhya Pradesh Act. Several provisions of this Act have been challenged before us as imposing unreasonable restrictions on the fundamental right of the petitioners. Section 4 deals with prohibition of slaughter of agricultural cattle. The expression "agricultural cattle" means an animal specified in the schedule: it means cows of all ages; calves of cows and of she-buffaloes; bulls; bullocks; and male and female buffaloes. As we have stated earlier, we are concerned in these cases with the validity of the restrictions placed on the slaughter of bulls, bullocks and buffaloes. Now, Section 4 is in these terms:

"4.(1) Notwithstanding anything contained in any other 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) cows, calves of cows, or calves of she-buffaloes, or

(b) any other agricultural cattle unless he has obtained in respect of such cattle a certificate in writing issued by the competent authority for the area in which the cattle is to be slaughtered that the cattle is fit for slaughter.

(2) No certificate under clause (b) of sub-section (1) shall be issued by the competent authority unless the Veterinary Officer after examining the cattle certifies that—

(a) the cattle is over twenty years of age and is unfit for work or breeding or has become permanently incapacitated from work or breeding due to age, injury, deformity or an incurable disease; and

(b) the cattle is not suffering from any disease which makes its meat unwholesome for human consumption.

(3) The competent authority shall, before issuing or refusing to issue a certificate under this section, record its order in writing. Any person aggrieved by the order of

the competent authority under this section, may, within ten days of the date of the order, prefer an appeal against such order to the Collector of the district or such other officer as may, by notification, be authorised in this behalf by the State Government, and the Collector or such other officer may pass such orders thereon as he thinks fit.

(4) Subject to the orders passed in appeal, if any, under sub-section (3), the order of the competent authority shall be final and shall not be called in question in any Court."

Section 5 places a restriction as to the place and time for slaughter and the objection taken before us relates to the time rather than to the place of slaughter. It says in effect that no cattle in respect of which a certificate has been issued under Section 4 shall be slaughtered within ten days of the date of issue of the certificate and where an appeal is preferred against the grant of such certificate, till the time such appeal is disposed of. The provision of appeal is contained in sub-section (3) of Section 4 of the Act which we have quoted earlier. That sub-section lays down that any person aggrieved by the order of the competent authority, may, within ten days of the date of the order, prefer an appeal against the order to the Collector of the district or such other officer as may, by notification, be authorised in this behalf by the State Government.

17. Section 6 imposes a restriction on the transport of agricultural cattle for slaughter and reads:

"6. No person shall transport or offer for transport or cause to be transported any agricultural cattle from any place within the State to any place outside the State, for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaughtered."

Section 7 prohibits the sale, purchase or disposal otherwise of certain kinds of animals. It reads:

"7. No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of or cause to be purchased, sold or otherwise disposed of cows, calves of cows or calves of she-buffaloes for slaughter or knowing or having reason to believe that such cattle shall be slaughtered."

Section 8 relates to possession of flesh of agricultural cattle and is in these terms:

"8. Notwithstanding anything contained in any other law for the time being in force, no person shall have in his possession flesh of any agricultural cattle slaughtered in contravention of the provisions of this Act."

18. Section 10 imposes a penalty for a contravention of Section 4(1)(a) and Section 11 imposes penalty for a contravention of any of the other provisions of the Act.

19. On behalf of the petitioners it has been pointed out, and rightly in our opinion, that clause (a) of sub-section (2) of Section 4 of the Act imposes an unreasonable restriction on the right of the petitioners. That clause in its first part lays down that the cattle (other than cows and calves) must be over 20 years of age and must also be unfit for work or breeding; and in the second part it says, "or has become permanently incapacitated from work or breeding due to age, injury, deformity or an incurable disease". It is a little difficult to understand why the two parts are juxtaposed in the section. In any view the restriction that the animal must be over 20 years of age and also unfit for work or breeding is an excessive or unreasonable restriction as we have pointed out with regard to a similar provision in the Uttar Pradesh Act. The second part of the clause would not be open to any objection, if it stood by itself. If, however, it has to be combined with the age-limit mentioned in the first part of the clause, it will again be open to the same objection; if the animal is to be over 20 years of age and also permanently incapacitated from work or breeding etc., then the age-limit is really meaningless. Then, the expression "due to age" in the second part of the clause also

loses its meaning. It seems to us that clause (a) of sub-section (2) of Section 4 of the Act as drafted is bad because, it imposes a disproportionate restriction on the slaughter of bulls, bullocks and buffaloes; it is a restriction excessive in nature and not in the interests of the general public. The test laid down is not merely permanent incapacity or unfitness for work or breeding but the test is something more than that, a combination of age and unfitness. Learned counsel for the petitioners has placed before us an observation contained in a reply made by the Deputy Minister in the course of the debate on the Bill in the Madhya Pradesh Assembly (see Madhya Pradesh Assembly Proceedings, Vol. 5, Serial No. 34, dated April 14, 1959, p. 3201). He said that the age fixed was very much higher than the one to which any animal survived. This observation has been placed before us not with a view to an interpretation of the section, but to show what opinion was held by the Deputy Minister as to the proper age-limit. On behalf of the respondent State our attention has been drawn to a book called *The Miracle of Life* (Home Library Club) in which there is a statement that oxen, given good conditions, live about 40 years. Our attention has also been drawn to certain extracts from a Hindi book called *Godhan* by Girish Chandra Chakravarti in which there are statements to the effect that cows and bullocks may live up to 20 or 25 years. This is an aspect of the case with which we have already dealt. The question before us is not the maximum age upto which bulls, bullocks and buffaloes may live in rare cases. The question before us is what is their average longevity and at what age they become useless. On this question we think that the opinion is almost unanimous, and the opinion which the Deputy Minister expressed was not wrong.

20. Section 5 insofar as it imposes a restriction as to the time for slaughter is again open to the same objection as has been discussed by us with regard to a similar provision in the Uttar Pradesh Act. A right of appeal is given to any person aggrieved by the order. In other words, a member of the public, if he feels aggrieved by the order granting a certificate for slaughter, may prefer an appeal and hold up for a long time the slaughter of the animal. We have pointed out that for all practical purposes such a restriction will really put an end to the trade of the petitioners and we are unable to accept a restriction of this kind as a reasonable restriction within the meaning of clause (6) of Article 19 of the Constitution.

21. Section 6 standing by itself, we think, is not open to any serious objection. It is ancillary in nature and tries to give effect to the provision of the Act prohibiting slaughter of cattle in contravention of the Act.

22. Section 7 relates to the prohibition of sale, purchase etc., of cows and calves and inasmuch as a total ban on the slaughter of cows and calves is valid, no objection can be taken to Section 7 of the Act. It merely seeks to effectuate the total ban on the slaughter of cows and calves (both of cows and she-buffaloes). Section 8 is also ancillary in character and if the other provisions are valid no objection can be taken to the provisions of Section 8. Sections 10 and 11 impose penalties and their validity cannot be seriously disputed.

23. However, we, must say a few words about Section 12 of the Act which has also been challenged before us. Section 12 is in these terms:

"12. In any trial for an offence punishable under Section 11 for contravention of the provision of Section 5, 6 or 7 of this Act the burden of proving that the slaughter, transport or sale of agricultural cattle was not in contravention of the provisions of this Act shall be on the accused."

The argument is that Section 12 infringes the fundamental right of the petitioners inasmuch as it puts the burden of proof on an accused person not only for his own knowledge or intention but for the knowledge or intention of other persons. We do not think that this contention is correct. The accused person, so far as Sections 5 and 7 are concerned, must be the person who has slaughtered the animal or who has

purchased, sold or otherwise disposed of the animal etc. Therefore, the only question will be his knowledge and the legislature was competent to place the burden of proof on him. So far as Section 6 is concerned, it specifically refers to the knowledge of the person who has transported or offered for transport or caused to be transported any agricultural cattles from any place within the State to any place outside the State. Therefore, when the section talks of knowledge, it talks of the knowledge of that person who has transported or offered for transport etc. The knowledge of no other person comes into the purview of Section 6. We are, therefore, of the view that Section 12 is not invalid on the ground suggested by the petitioners.

24. Therefore, the result of our examination of the various provisions of the Act is that the impugned provisions in clause (a) of sub-section (2) of Section 4, in sub-section (3) of Section 4 relating to the right of appeal by any person aggrieved by the order, and in Section 5 relating to the time of slaughter, impose unreasonable and disproportionate restrictions which must be held to be unconstitutional.

25. As to the Madhya Pradesh Agricultural Cattle Preservation Rules, Rule 3 says "that an application for a certificate under Section 4 shall be made to the competent authority", and Rule 4 says that on receipt of the application, the competent authority shall by an order direct the person keeping the animal to submit it for examination by the Veterinary Officer. Rule 5 reproduces the provisions of clauses (a) and (b) of sub-section (2) of Section 4 and insofar as we have held that the provision in clause (a) of sub-section (2) of Section 4 is unconstitutional, the rule must also fall with it.

26. There is one other aspect of these cases which has been emphasized before us, to which a reference must now be made. It is open to the legislature to enact ancillary provisions to give effect to the main object of the Act, namely, the prevention of slaughter of animals like bulls, bullocks or buffaloes which are still useful for the purposes for which they are generally used. It is pointed out that acts innocent in themselves may be prohibited and the restrictions in that regard would be reasonable, if the same were necessary to secure efficient enforcement of valid provisions. For example, it is open to the legislature, if it feels it necessary, in order to reduce the possibilities of evasion to a minimum, to enact provisions which would give effect to the main object of the legislation. We have not ignored this aspect and have kept in mind the undisputed right of the legislature to decide what provisions are necessary to give effect to the main object of the legislation. In these cases the petitioners have complained that the main object of the impugned provisions is not the prohibition of slaughter of animals which are still useful; the impugned provisions as they are worded really put a total ban on the slaughter of bulls, bullocks and buffaloes and for all practical purposes they put a stop to the profession and trade of the petitioners. We have held that this complaint is justified in respect of the main provisions in the three Acts.

27. We, therefore, allow the three writ petitions and direct, as we directed in *Md. Hanif Quareshi case*¹, the respondent States not to enforce the Acts or the rules made thereunder insofar as they have been declared void by us. The petitioners will be entitled to their costs of the hearing in this Court.

* (Under Article 32 of the Constitution of India for enforcement of the Fundamental Rights)

¹ (1959) SCR 629

² (1952) SCR 597

³ (1952) SCR 889

⁴ (1950) SCR 759 at 763

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