11. Counsel for the petitioner has not made any serious attempt to argue that in the view that we are inclined to take there would be any contravention of Article 31(1) of the Constitution. He has, however, pressed for the petitioner being allowed to take the *padakanukas* which are receivable by the Mahant of which he will keep an account as was directed by this court when disposing of the stay petition on December 13, 1968. Counsel for the respondents agrees to this and has also agreed to keep accounts of whatever amount is spent on feeding the Sadhus and on the management of the Math property. He has further given an undertaking that the inquiry which is being conducted under Section 46 of the Act will be concluded within a period of three months. It may be made clear that the Assistant Commissioner who is in charge of the day-to-day administration temporarily of the Math and its endowments shall be fully entitled to take necessary steps for recovery of all debts and claims which could have been recovered by the Mahant from various debtors *etc.*

12. The writ petition, however, fails and it is dismissed, but in view of the entire circumstances we make no order as to costs.

1969 (1) Supreme Court Cases 853

(*From Madhya Pradesh*)

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

MOHAMMED FARUK .. Petitioner ;

Versus

STATE OF MADHYA PRADESH AND OTHERS .. Respondents.

Writ Petition No. 60 of 1968, decided on 1st April, 1969

Constitntion of India—Article 19(1)(g)—Notification placing ban on slaughter of bulls and bullocks—Whether infringes Fundamental Right—Law placing restriction upon the exercise of Fundamental Right—Onus of Proving reasonableness lies on the State—Factors relevant in considering constitutionality of law prohibiting carrying on of business or profession.

By a notification issued by the Jabalpur Municipality, bulls and bullocks were permitted to be slaughtered along with other animals. Later the State Government issued a notification cancelling the confirmation of the bye-laws in so far as they related to slaughter of bulls and bullocks. The notification was challenged by the petitioner under Article 32 of the Constitution on the footing that it imposed a direct restriction upon his Fundamental Right under Article 19(1)(*g*) of the Constitution.

Held, that the impugned notification directly infringes the Fundamental Right of the petitioner guaranteed by Article 19(1)(*g*). 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. Where power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion the law *ex facie* infringed the Fundamental Right under Article 19(1). 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. The notification issued must, therefore, be declared *ultra vires* as infringing Article 19(1)(*g*) of the Constitution. (Paras 8 and 11)

When the validity of a law placing restriction upon the exercise of Fundamental Right in Article 19(1) is challenged, the onus of proving to the satisfaction of the court that the restriction is reasonable is upon the State. Imposition of restriction on the exercise of a Fundamental Right may be in the form of control or prohibition but when the exercise of a 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.

Mohd. Hanif Quareshi and Others v. *State of Bihar*, 1959 SCR 629. (Para 8)

Abdul Hakim Quareshi and Others v. *State of Bihar*, (1961) 2 SCR 610.

Narendra Kumar and Others v. *Union of India and Others*, (1960) 2 SCR 375 *referred to.*

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 thereby in the light of the object to be achieved, the necessity to ristrict the citizens' 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—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. (Para 10)

Writ petition *allowed.*

Frank Anthony and *B. Datta*, Advocates and *J. B. Dadachanji*, Advocate of M/s. J. B. Dadachanji and Co. for Petitioner ;

I. N. Shroff, Advocate. for Respondents.

The Judgment of the Court was delivered by

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 Governer of Madhya Pradesh in exercise of the powers conferred under sub-section (3) of Section 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 bulls and bullocks" infringes the fundamental freedoms guaranteed under Articles 14 and 19 of the Constitution.

2. Section 5(37) of the Madhya Pradesh Municipal Corporation Act, 23 of 1956, defines "municipal slaughter-house". By Section 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-section (1) of Section 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-section (3) it is enacted that when premises have been fixed under sub-section (1) no person shall slaughter any such animal for sale within the city at any other place. By sub-section (4) bringing into the city for sale, flesh of any animal intended for human consumption, which has been slaughtered at any slaughter-house 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 Section 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 Section 432 to modify or repeal either wholly or in part any bye-laws in consultation with the Corporation.

3. In exercise of the power conferred by Section 178(3) of the C. P. and Berar Municipalities Act 2 of 1922, bye-laws were made by theJabalpur 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" in so far 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.

4. 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. 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 Articles 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.

5. Attempts were made from time to time to circumvent the judgment of 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

1. (1959) SCR 629.

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.

6. The present case is apparently another attempt, though on a restricted scale, to circumvent the judgment of this Court in *Mohd. Hanif Quraishi's case.* The bye-laws of the Jabalpur Municipality permitted slaughter of bulls and bullocks. A licence had to be obtained for that purpose. Slaughter of animals in places outside the premises fixed by the Municipality was prohibited by Section 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 in so far 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 concellation of the confirmation of bye-laws imposed a direct restriction upon the Fundamental Right of the petitioner under Article 19(1)(*g*) of the Constitution.

7. 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 Article 14 or Article 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.

8. 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 Article 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

2. (1961) 2 SCR 610.

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 Article 19(1). Imposition of restriction on the exercise of a fundamental right may be in the form 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.

9. This Court in *Narendra Kumar and Others* v. *The Union of India and Others*[3] held that the word "restriction" in Articles 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.

10. The impugned notification, though technically within the competence of the State Government, directly infringes the fundamental right of the petitioner guaranteed by Article 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.

11. 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.

3. (1960) 2 SCR 375.

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

13. It is unnecessary to consider the validity of Section 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.

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

1969 (1) Supreme Court Cases 858

(*From Calcutta*)

[BEFORE M. HIDAYATULLAH, C. J. AND G. K. MITTER, J.]

COLLECTOR OF CUSTOMS AND OTHERS .. Appellants ;

Versus

M/s. SOORAJMULL NAGARMULL AND ANOTHER .. Respondents.

Civil Appeal Nos. 429 and 430(N) of 1966, decided on 28th March, 1969

Civil Procedure Code, 1908—Order XXI, Rule 2 and Section 46(5-A) of I. T. Act—Excess duty with Collector, Customs, Income-tax—Arrears—Decree against Union of India—Payment by Collector, Customs—Whether payment by the judgment debtor.

The respondent firm filed suit against the Collector of Customs and the Union of India for refund of excess duty paid on spindle oil imported from Philadelphia, upon which according to the respondent firm, more than due duty was charged. The suits were successful and decrees were passed against the Union of India to refund the excess duty.

The Collector of Customs got credited the excess amount against super-tax due from the firm at the Income-tax Officer's instance and applied to the Calcutta High Court under Order XXI, Rule 2 of Civil Procedure Code for adjustment of the decree which was refused by the single Judge as also the Division Bench resulting in the present appeals.

It was contended that (*i*) the decrees were not against the Collector of Customs but against the Union of India and therefore payment by the Collector of Customs was not payment by the Union of India, (*ii*) the notice was defective inasmuch as it showed the money lying with the Collector of Customs while in fact it was lying with the Union of India and that it was not money held by the Collector of Customs on behalf of the firm, (*iii*) the receipts were for super-tax and for penalty. (Paras 2 to 7)

Held :

(*i*) The Union of India operates through different departments. The Collector of Customs paid the money not on behalf of himself but on behalf of the Union of India and it was therefore proper payment of the sum to the firm. (Para 7)

(*ii*) Such notices of the Income-tax Officer, are no more than a garnishee order. The amount which was with the Collector of Customs could be asked to be deposited with the income-tax authorities under Section 46(5-A) of Income-tax Act. (Para 8)

(*iii*) Super-tax is also a kind of Income-tax and therefore the notice could issue in the form it did. (Para 9)

Relies on :

In re Reckitt, 1933 ITR 1.