

2015 SCC OnLine Bom 6002 : (2016) 2 Bom CR 171

In the High Court of Bombay
(BEFORE ANOOP V. MOHTA AND A.A. SAYED, JJ.)

The Bombay Mutton Dealer Association and Anr.
Petitioners

Versus

The State of Maharashtra and Ors. Respondents

Mr. Zubin Behram Kamdin with Mr. Charles J. D'souza i/b Verus
Advocates for the Petitioners.

Mr. Anil Singh, Advocate General (Actg.) with Mr. J.S. Saluja, AGP
for Respondent No. 1-State.

Mr. N.V. Walawalkar, Senior Advocate with Ms. Geeta Joglekar for
Respondent No. 2-Corporation.

Mr. Vikram Nankani, Senior Advocate with Mr. Ishwar Nankani, Mr.
Huzefa Khokhawalla and Ms. Gauri Rege I/by M/s. Nankani & Associates
for Intervenor/Applicants in CHSW(L) No. 385 of 2015.

Mr. Keval Shah for Intervenor-Applicant in CHSW(L) No. 386/15 and
CHSW(L) No. 387 of 2015.

Writ Petition (Lodging) No. 2662 of 2015

Decided on September 14, 2015

ORDER:

1. The Petitioner is an association of persons engaged in the business of slaughtering and selling meat and meat products. The challenge in the Petition is to the Notifications/Circulars of the State Government/Respondent Corporation directing (i) closure of Deonar abattoir (owned by the Respondent Corporation), and (ii) closure of meat selling shops/ban on the sale of meat, on some days of Paryurshan, an annual holy festival of Jain community. The Petitioners have prayed that the aforementioned Notifications/Circulars be quashed and set aside.

2. Heard learned Counsel for the parties and learned Counsel for the interveners.

3. Rule, returnable after four weeks. Learned Counsel waive service on behalf of respective Respondents

4. So far as interim relief is concerned, it is noted that the State Government has issued directions that the Deonar abattoir shall remain closed and there shall be no sale of meat on 10 and 17 September 2015 whereas the Respondent Corporation has issued a Circular dated 8 September 2015 to keep the Deonar abattoir closed and not to sell

meat on two additional days viz.- 13 and 18 September 2015, thus making the directions operative on 10, 13, 17 and 18 September.

Closure of Deonar abattoir

5. In our order dated 11 September 2015, we have already recorded the statement of the learned Advocate General Mr. Anil Singh and learned Senior Counsel Mr. Walawalkar on behalf of the Respondent Corporation, that the Circular of the Respondent Corporation containing directions to keep the Deonar abattoir closed (apart from the direction not to sell meat) on the additional two days viz 13 and 18 September will be withdrawn. Consequently, the Deonar abattoir shall remain closed only on 10 and 17 September. It is not in dispute that hitherto, the Deonar abattoir would remain shut atleast for two days during Paryushan each year. Mr. Behramkamdin, learned Counsel for the Petitioners, on instructions, fairly states that the Petitioners have no objection to Deonar abattoir remaining closed only on the aforesaid two days of Paryushan i.e. 10 and 17 September 2015 and further informs that Court that the Deonar abattoir had as a matter of fact remained closed on 10 September 2015. In these circumstances, the challenge to the directions in respect of closure of the Deonar abattoir does not survive for consideration.

Prohibition on sale of meat/Closure of meat selling shops

6. Insofar as that issue of prohibition on the sale of meat/closure of meat selling shops is concerned, the case of the Petitioners is that notwithstanding the State Government's Circular dated 7 September 2004, the direction contained in the said Circular to keep the meat selling shops closed and the prohibition on sale of meat, on certain days of Paryushan, was never enforced. It is submitted that this is for the first time that the Respondents have sought to ban the sale of meat and meat products and that too without giving necessary publicity. According to the Petitioners, the Respondent Corporation's Circular dated 8 September 2015, relying upon the State Government Circular dated 7 September 2004, interalia imposing a ban on selling of meat was issued very late in point of time and without affording an opportunity of hearing. It is submitted that the order dated 16 August 2014 of the Respondent Corporation (which refers to the Corporation Resolutions dated 13 July 2004 and 1 September 1994), which was issued upon the requests and representations of the Jain community, seeks to ban sale of meat on the basis of the judgment of the Supreme Court in *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*, (2008) 5 SCC 33 (Coram : H.K. Sema and Markandey Katju, JJ), which judgment does not assist the Respondents' case and as a matter of fact supports the case of the Petitioners in many respects. According to the Petitioners there are no powers in the State Govt and Respondent Corporation to issue such directions and the impugned action of the

Respondents are against public interest and place unreasonable restrictions on the fundamental rights of the members of the Petitioner association to carry on their trade and business as also of the people at large who have a right to choose what they should eat. The Respondents have discriminated against Jains who are in minuscule minority and citizens practicing other faith. It is submitted that there is neither an intelligible differentia nor a reasonable classification between the actions of the Respondents and the objects sought to be achieved and the onus is on the State to show that the restriction is reasonable and in larger public interest. The impugned action of the Respondents are thus violative of Articles 14, 19(1)(g) and 21 of the Constitution. Learned Counsel for the Petitioner in support of his submissions has placed reliance upon the judgments of the Supreme Court in (1) *Mohammed Faruk v. State of Madhya Pradesh*, (1969) 1 SCC 853 (2) *Communist Party of India v. Bharat Kumar*, (1998) 1 SCC 201 (3) *B.P Sharma v. UOI*, (2003) 7 SCC 309 and the order dated 29 April 2015 of Division Bench of this Court in *Arif Usman Kapadia v. The State of Maharashtra* (Writ Petition (L) No. 777 of 2013).

7. Mr. Nankani, learned Senior Counsel made submissions on behalf of the Poultry Breeders Welfare Association, the Interveners in Chamber Summons (L) No. 385 of 2015. He submitted that the members of the Intervener Association are not concerned with Deonar Abattoir and they are engaged in the business of poultry and they have learnt about the ban on sale of meat and meat products through newspapers only on 7 September 2015. He submitted that the Notifications/Circulars affect the entire poultry business industry and affect their right to carry on their trade and business as enshrined in Article 19(1)(g) of the Constitution. He submitted that the Notifications/Circulars entail penal and civil consequences and cannot be made applicable to the Interveners as the same are vague and require interpretation and are therefore bad in law. He pointed out that so far as the poultry industry is concerned, the State Government/Corporation Notifications/Circulars have never been enforced. He submitted that the words 'poultry products' have been added for the first time in the Respondent Corporation's order dated 16 August 2014. He has placed reliance on the judgment in *Deepak Bhandari v. Himachal Pradesh State Industrial Development Corporation Limited*, (2015) 5 SCC 518 in support of his contention that it is the ratio of a case which is to be applied and not what logically flows therefrom and the judgment of the Supreme Court in *Hinsa Virodhak Sangh's case* has been wrongly relied upon in the Respondent Corporation's order dated 16 August 2014 to form the basis of impugned actions. He supported the submissions urged on behalf of the Petitioners.

8. Learned Advocate General (Actg.) on behalf of the State

Government has tendered Affidavit in Reply of Sanjay Sharadchandra Gohale, Dy Secretary, Urban Development Departement. It is averred in the Affidavit in Reply that the Circular dated 7 September 2004 of the State Government that there will be a ban for two days in terms of no slaughtering of animals at the abattoir and no sale of meat and that the Circular was issued to all Municipal Corporations and Councils in the State of Maharashtra and the same was implemented through the Mumbai Municipal Corporation. It is further stated in the Affidavit that the term 'meat' as used in the Circular includes beef, pork, mutton, poultry and the like but does not include fish and eggs. It is contended that the Municipal Corporation can exercise its independent powers in respect of the prohibition, apart from the two days mentioned in the State Government Circular. The Learned Advocate General has heavily relied upon the judgment of the Supreme Court in *Hinsa Virodhak Sangh's case* and has taken us through the entire judgment. He contended that the judgment in *Hinsa Virodhak Sangh's case* is a complete answer to the case of the Petitioners and there was no infringement of any fundamental rights of the Petitioners or of the public at large and the policy decisions of the State Government warrant no interference.

9. Mr. Walawalkar, learned Senior Counsel on behalf of the Respondent Corporation tendered an Affidavit of Sri. S.Y. Kurhade, Asstt Comm. (Markets). The Affidavit interalia makes a reference to the judgment of the Supreme Court in *Hinsa Virodhak Sangh's case* and avers that on the basis of the orders and Circulars, the Municipal Commissioner vide order dated 16 August 2014 had directed the Assistant Commissioner (Markets) to enforce ban on sale of meat and poultry products (excluding eggs) in Mumbai on Shravan Vadya 12 and Bhadrapad Shudha 4 as per Govt. Circular and Bhadrapad Shudha 1 and Jain Sambhatsari as per resolution of the Corporation. It is stated that the Deonar abattoir is closed for 18 days each year. It is further stated that so far as the ban on sale of meat is concerned, the Corporation have implemented the ban every year. It is pointed out that the ban on sale of meat in the year 2014 was not protested by any party and that the decision of ban on the sale of fresh meat was taken after considering the feelings of the people of the Jain Community. It is stated that the Municipal Resolutions and Govt. Circular are implemented every year and the Petitioners are aware of this ban. Learned Senior Counsel has taken us through the relevant provisions of the Mumbai Municipal Corporation Act, 1888 and submitted that the Respondent Corporation was well within its powers to issue the orders/Notifications/Circulars. Learned Senior Counsel for the Respondent Corporation conceded to the position that prior to the year 2014, the directions in the Notification/Circular for closure of meat

selling shops and sale of meat was not enforced. Even otherwise, nothing is placed on record to suggest any action to prohibit closure of meat selling shops or ban of sale of meat was enforced prior to 2014.

10. Mr. Shah, learned Counsel made submissions on behalf of the Interveners in Chamber Summons (L) Nos. 386 of 2015 and 387 of 2015. He submitted that hurting or harming animals during the Paryushan hurt the religious sentiments of the Jain community which is a minority community and that the Notifications/Circulars of the State Govt/Corporation are validly issued. He has relied upon the judgment of the Supreme Court in *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547 and invited out attention to Articles 51A(g) which inter alia speaks about fundamental duty of citizens to have compassion for living creatures.

11. We have considered the rival contentions. At the outset, we need to clear the air so far as applicability of the judgment of the Supreme Court in *Hinsa Virodhak Sangh's* case. What was impugned in the said case before the Supreme Court were two resolutions of the Standing Committee of the Ahmedabad Municipal Corporation for 'closure' of the municipal slaughter house in Ahmedabad during the Paryushan festival.

12. The two resolutions have been set out in paragraph 6 of the judgment which clearly show that the said resolutions only relate to the 'closure' of slaughter house. There was ban to the sale of meat. In *Deepak Bhandari's* case (supra) in paragraph 20, the Supreme Court has held thus:

"20. We would like to refer to the law laid down by this Court in Oriental Insurance Co. Ltd. v. Smt. Raj Kumari; 2007 (13) SCALE 113. In the said case, well known proposition, namely, it is ratio of a case which is applicable and not what logically flows therefrom is enunciated in a lucid manner. We would like to quote the following observations therefrom : -

"12. Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it

actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Union of India v. Dhanwanti Devi). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathern (1901) AC 495 : (1900-03) All ER Rep 1 (H.L.), the Earl of Halsbury L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."

13. In view of the above, the judgment in *Hinsa Virodhak Sangh's* case would be of no assistance to the Respondents in the instant case. There are other reasons too why the judgment in *Hinsa Virodhak Sangh's* case would not help the Respondents. In the said case before the Supreme Court, their Lordships found that there was a large population of Jain community in the State of Gujarat. In the present case, the Petitioners have averred in the Petition, that the Jain community comprises a minority of 8.5 lacs in Mumbai which has a population of about 22 million. Mumbai, which has come to be known as a cosmopolitan and global city would stand on a different footing altogether. It would be pertinent to note some of the observations of the Supreme Court in the said judgment. In paragraph 27 of the judgment, the Supreme Court has observed - "had the impugned resolutions ordered closure of municipal slaughterhouses for a considerable period of time we may have held the impugned resolutions to be invalid being an excessive restriction on the rights of butchers of Ahmedabad who practise their profession of meat selling". In paragraph 34, the Supreme Court observed - "Also, the dealers in meat can do their business for 356 days in a year, and they have to abstain from it for only 9 days in a year. Surely this is not excessive restriction, particularly since such closure has been observed for many years". In paragraph 40, the Supreme Court observed - "As already stated above, had the closure of the slaughter house been ordered for a considerable period of time, we would have declared it to be unconstitutional on the ground of violation of Articles 14, 19(1)(g) as well as 21 of the Constitution. However, in the present case, the closure is only for a few days and has been done out of respect for the sentiments of the Jain community which has a large population in Gujarat. Moreover such

closure during Paryushan has been consistently observed in Ahmedabad for a very long time, at least from 1993 and probably for a longer period.” In the instant case, the Deonar abattoir is admittedly closed each year atleast for 16 days. We also prima facie find from the documents placed on record that the enforcement was confined to the closure of the abattoir alone and was never extended to the sale of meat. In any event, learned Senior Counsel for the Respondent Corporation also fairly stated before the Court that the enforcement of ban on sale was only from last year i.e. 2014 only and that the same was never enforced in the earlier years.

14. Having regard to the facts and circumstances of the case, we are of the view that merely to appease one section of the Society, the personal dietary choices of the public at large should not be affected. The action of the State Government and Respondent Corporation to impose upon the people at large and to make certain foods unavailable in market at the instance of a section of the Society is something that we are unable to fathom. What one eats is his own business and it cannot extend to what others eat. In our view, the restrictions imposed by Respondents are unreasonable and suffer from the vice of arbitrariness and discrimination and would violate the fundamental rights of the Petitioners as well as general public also. Pertinently, in *Hinsa Virodhak Sangh's case*, the Supreme Court has held - “What one eats is one's personal affair and it is part of his right to privacy which is included in Article 21 of our Constitution as held by several decisions of the Supreme Court”. Meat selling is not restricted to meat shops alone. It is sold in other shops too apart from it being sold in package form. The same is the case with chicken, pigs etc. There is no ban on sea food including fish and eggs. The closure of the Deonar abattoir so as to avoid slaughtering on particular days during the holy festival of Puryushan in deference to the sentiments of our brothers and sisters of Jain community is one thing and not making meat available in market so that the public at large have no access to it and to deny them that food, is something different altogether. We do not want to hazard a guess as to what were to happen if the State were to appease and accommodate the sentiments of different sections of the Society practicing different faiths and to make certain foods/drinks unavailable on particular days of the year to public at large. The democratic and secular principles which are enshrined in the very preamble of our Constitution apart from other Articles need to be preserved. Reference may be made to paragraphs 45 and 46 of the judgment in *Hinsa Virodhak Sangh's case*. The Supreme Court observed thus:

“45. Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and respect for all communities and sects. It was due to the wisdom of

our Founding Fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country.

46. Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups, etc. in the country.”

15. “Paryushan Parva” -2015 (9 and/or 18 days) of Jain community (Shwetambar and Digambar) is the reason for declaring such closure of slaughter houses/markets and ban sale of meat. The conceptual ideology of “Ahinsa” (non-violence) of Jains is the purpose and object of closure/ban. Jains believe in not killing or hurting even an insect, therefore as stated any killing or slaughter affect and hurt the religious feelings of all Jains. They do paryushan during this period. Every year the Respondent Corporation, being owner, closes the abattoir at Deonar about 18 days, on various calender dates, including days during the “Parva”, as a mark of respect to the National leaders and on account of observance of important religious and cultural events of every caste, creed and community. The State Government and the Respondent Corporation have been respecting the respective religious and cultural events and the sentiments by closing abattoir. Based on representations from the Jain Religious bodies and the public representatives in the year 2014 and also based upon the judgment in *Hinsa Virodhak Sangh*, (supra), 4 days had been selected by the Respondent Corporation, by passing a resolution accordingly. This was done without due publicity and notice to the dealers and public at large.

16. We have to consider the factual situation and the practice followed by the Respondent Corporation in the cosmopolitan city like Mumbai. A sizable population in Mumbai are not Jains and/or follower of Jain ideology. It is a city of great diversity. The people of various communities, sects, lingual and ethnic groups are majority in number. There are communities/class of people whose daily food comprises of non-vegetarian food, covering meat of all sorts including of mutton, chicken, fish, sea-food and eggs. Onion, garlic and potatoes are also eaten by all other community. Therefore, the issue or such ban for such long period is a matter which requires consideration from all quarters including the Central and the State Government, apart from respective Municipal Corporations/Municipalities, without disturbing and/or hurting the sentiments of other communities and feelings. The pre-declared 18 days every year is the result of it. The declared days of closure reflects the respect for respective religion/culture and events.

17. We have noted from the Circulars issued by the Corporation, since 1994, inspite of the State declaration of 2004 of the two days

closure of abattoir and ban on sale of meat, the abattoir and slaughter houses were only directed to be kept closed and not the sale of meat. There were no specific ban on sale of meat. Those Corporation notices are on record. There was never ban on sale of fish, sea-food and eggs, which are known to be non-vegetarian food.

18. There was no practice and implementation of total ban on sale of “mutton” in the Corporation and/or private markets/shops. There are various types of non-vegetarian foods available in the market. The decision to have four days ban of sale of meat is not a feasible and practical solution.

19. All religious ceremonies and festivals are duly respected in India. There are holidays already fixed and noted in every calendar. Respective religious and cultural sentiments and food and food habits differ from community to community throughout India for various reasons. The respective demand and supply and availability of all sorts of foods are governed by respective Licencing authorities in every part of our country. To be vegetarian or non-vegetarian is a matter of individual choice and habit.

20. In addition to above, the cosmopolitan city and of culture of respective temples/Mosque/Church and other religious places and/or respective idealism also play important role in food eating habits. Fasting based upon the religion and/or culture is again a matter of individual choice.

21. Some of the issues which may raise for consideration in the Petition are as under:

- a) Whether on representation of a vegetarian religious group or body is sufficient to declare ban on sale on meat or closure of abattoir/slaughter houses for the period 4 to 18 days?
- b) Whether the sentiments of the community of non-violence (Ahimsa) can be restricted only to slaughter or butcher markets and/or ban on sale of meat but not on fish, sea-food and eggs.
- c) Whether for any such decision on meat ban/closure of slaughterhouse/markets, an opportunity and/or hearing needs to be given by the State and/or local bodies, apart from due and advance notices and publications?
- d) Whether every closure of abattoir/slaughter house or market/shops, should follow the ban on sale of meat including meat of all kinds?
- e) Whether such action banning or closing amounts to discrimination between and various religious groups and sects, also in view of the additional fact that two Jain communities themselves follow the “Parv” on different dates, as stated i.e. Shwetambar group 10 September 2015 to 18 September 2015 and Digambar, by 18

September 2015 onwards?

- f) Whether closure of abattoir/slaughter house read and include to mean closure of licenced butcher markets (Private and/or public/shops)?
- g) Whether such ban restricted for such long period 8 to 18 days on representations of one community believing in "Ahimsa" is correct in metropolitan or cosmopolitan cities, and whether it is against secularism, specifically when the people belongs to other communities also, observe fast/fasting for many days?
- h) Whether any kind of such ban or closure depends upon sizeable number of particular or special caste and religions? Whether such ban/closure decision, must be based upon central or State Government common similar policy, specifically when the festival dates are known to all.
- i) Whether such long ban of meat/closure of slaughterhouse or butcher market/shops, by the State Government and local authorities amount to violation of Articles 14, 15, 19(1) (g) and 21.

22. The sudden decision and irregular implementation of such policy by the Corporation, for four days, now two days, including ban of sale of meat, therefore, reflects confusion and vagueness and unclear policy/decision. It would be appropriate for the representation of all the parties and communities to sit together and work out an amicable solution.

23. In light of the above discussion, we pass the following interim order:

- (i) pending the hearing and final disposal of the petition, the directions contained in the State Government Notification/Circular dated 7 September 2004 and the Respondent Corporation Notifications/Circulars/Orders as regards closure of meat selling shops and the prohibition on selling of meat during Paryurshan are stayed. Inasmuch as in the present Petition we are concerned with mutton dealers from Mumbai and the Deonar abattoir, we clarify that the stay would extend to areas falling under Mumbai Municipal Corporation;
- (ii) The State Government and Respondent Corporation to come out with appropriate policy and file Affidavits in Reply within four weeks.