

Court No. - 8

Case :- WRIT - C No. - 11305 of 2023

Petitioner :- Poonam Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And 2 Others

Counsel for Petitioner :- Manish Mani Sharma, Mohammad Sabir

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.

2. When the matter was heard yesterday (21.12.2023), the following order was passed:

"1. Heard learned counsel for the petitioner, learned Standing Counsel for the State respondent and perused the material available on record.

2. The present writ petition has been filed challenging the orders dated 10.08.2023 as well the order dated 01.12.2023, whereby the appeal preferred by the petitioner was dismissed.

3. From the perusal of both the orders as well as the F.I.R., it transpires that on the basis of information received, a search was carried out in the vehicle bearing No. UP 35 BT 0563 (DCM). On the inspection of the said premises, even as per the F.I.R., the skins and hides of cow and Buffalo were loaded and were transported for sell at Kanpur. In terms of the F.I.R., it was alleged that 271 skins of Buffalo and 31 skins of cow progeny were recovered from the vehicle in question, based upon the said, five persons were charged for commission of an offence under Section 3/5A/8 of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (hereinafter referred as 'Cow Slaughter Act') read with Section 11 of the Animal Cruelty Act and Section 429 of the I.P.C.

4. In view of the F.I.R. being lodged and the seizure of the vehicle, an application was moved by the petitioner claiming to be the owner of the vehicle in question for release of the vehicle, however, the said application was rejected vide an order dated 10.08.2023, in terms of the said order it was recorded that the owner of the vehicle could not produce any license for purchase of hides and no such license was annexed along with the application. In terms of the F.I.R., it was mentioned that 31 hides of cow and its progeny were recovered and out of the said, three of the hides were opined to be by causing the slaughter of cows and based upon the same, the application filed by the petitioner was rejected and the vehicle in question was confiscated in favour of the State in exercise of powers under Section 5A(8) of the Cow Slaughter Act. An appeal preferred against the said order was also dismissed on the same grounds.

5. The brief contention of the learned counsel for the petitioner is that on a plain reading of beef as defined under Section 2B of the Cow Slaughter Act as well as the mandate of Section 5A, the transportation of cow or bull

or bullock is regulated and is barred without the permit to be issued by the State Government, he thus argues that what is barred is transportation of cow or bull or bullock, no such restriction is imposed for transportation of skin and thus in terms of the mandate of Section 5A(7) or even Section 5A(8), no action for confiscation can be initiated. In short, he submits that the order of confiscation is without any authority of law and thus is violative of Article 300-A of the Constitution of India.

6. In view of the F.I.R, which is annexed along with writ petition and the two orders, the only allegation against the petitioner was of transporting hides of cow and buffalo which is neither regulated nor prohibited in terms of the Cow Slaughter Act, thus, prima facie, the order is contrary to the mandate of Section 5A(7) or 5A(8) of the said Act.

7. Learned Standing Counsel is directed to seek instructions and in view of the matter to be decided only on the basis of interpretation of law, he may advance arguments tomorrow.

8. Put up this matter in the list of fresh cases tomorrow i.e. 22nd December, 2023."

3. Heard learned Standing Counsel today. After analyzing the provisions of the Act in question, nothing could be pointed out by him with regard to restriction or prohibition of transport of hides and skins of either the cow, bull, bullock or any progeny of the cow. It is essential to once again record the provisions of Section 2(a) of the U.P. Prevention of Cow Slaughter Act as well as Section 5A, which is as under:

"2. Definitions. - In this Act unless there is anything repugnant in the subject or context -

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(a) "beef" means flesh of cow but does not include such flesh contained in sealed containers and imported as such into Uttar Pradesh;

.....

5A. Regulation on transport of cow, etc. - (1) No person shall transport or offer for transport or cause to be transported any cow, or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under this Act, from any place within the State to any place outside the State, except under a permit issued by an officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.

(2) Such officer shall issue the permit on payment of such fee not exceeding five hundred rupees] for every cow, bull or bullock as may be prescribed :

Provided that no fee shall be chargeable where the permit is for transport of the cow, bull or bullock for a limited period not exceeding six months as may be specified in the permit.

(3) Where the person transporting a cow, bull or bullock on a permit for a limited period does not bring back such cow, bull or bullock into the State within the period specified in the permit, he shall be deemed to have contravened the provision of subsection (1).

(4) The form of permit, the form of application therefor and the procedure for disposal of such application shall be such as may be prescribed.

(5) The State Government or any officer authorised by it in this behalf by general or special notified order, may, at any time, for the purpose of satisfying itself, or himself, as to the legality or propriety of the action taken under this section, call for and examine the record of any case and pass such orders thereon as it or he may deem fit.

(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised laboratory under this Act, the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that the transport medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.

(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.

(8) The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/ Commissioner will do all proceedings of the confiscation and release, as the case may be.

(9) The expenditure on the maintenance of the seized cows and its progeny shall be recovered from the accused for a period of one year or till the release of the cow and its progeny in favour of the owner thereof whichever is earlier.

(10) Where a person is prosecuted for committing, abetting, or attempting to an offence under Sections 3, 5 and 8 of this Act and the beef or cow-remains in the possession of accused has been proved by the prosecution and transported things are confirmed to be beef by the competent authority or authorised laboratory, then the court shall presume that such person has committed such offence or attempt or abetment of such offence, as the case may be, unless the contrary is proved.

(11) Where the provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto."

4. On a plain reading of the provisions of Section 5A, once there is no specific restriction of transportation of hides and skins of any cow or bull or bullock, no power of seizure or confiscation could be exercised under Section 5A(7) or 5A(8) of the Act and thus, the same clearly violates the rights of the petitioner enshrined under Art. 300A of the Constitution of

India.

5. Accordingly, the impugned orders dated 10.08.2023 and 01.12.2023 are quashed with directions to forthwith release the vehicle in question without any bond or undertaking.

6. In case, the vehicle has been made a case property, the same shall be released by the Court where the matter is pending in accordance with law without furnishing any surety.

7. The writ petition is ***allowed*** in above terms.

8. Before parting with the order, it is essential to note that during the course of hearing of the present writ petition, a reliance was placed on the U.P. Prevention of Cow Slaughter Act, 1955, 2020 Edition, through a Bare Act which was issued by the Hon'ble Judges Library of this Court and published by Sagar Law House. In the said Bare Act, Section 5A as was enacted by the State Legislature was mentioned only in half, which could have easily misled to the Court passing a wrong order. After analyzing the provisions from the Bare Act published by Ekta Law Agency, the matter could be decided. This acquisition of Bare Acts from persons/publishers who is not credible has potential of leading to incorrect judgments.

9. In view thereof, the Senior Registrar of this Court is directed to ensure that no Bare Acts/books published by 'Sagar Law House' are purchased by the High Court Library.

Order Date :- 22.12.2023

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