

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

PUBLIC INTEREST LITIGATION NO.81 OF 2015

Altaf Ahmed s/o Iqbal Ahmed - PETITIONER

VERSUS

1) The State of Maharashtra
and ors. - RESPONDENTS

Mr.R.R.Shaikh, Advocate for Petitioner;
Mr.NB Patil, AGP for State.

**CORAM : R.M.BORDE &
P.R.BORA,JJ.**

DATE : 22nd September,2015.

PER COURT :

1) Heard. The petitioner in this petition is seeking relaxation in favour of the petitioner and Muslim community with regard to the provisions of Maharashtra Animal Preservation (Amendment) Act, 1995 in respect of slaughtering animals like bullock on the event of Bakri-Eid and subsequent two days thereof of every year as a special privilege considering the religious dicta. The petitioner also prays for an interim order, granting relaxation to the petitioner and the Muslim community as a whole

from operation of the provisions of Maharashtra Animal Preservation (Amendment) Act, 1995 in reference to slaughtering big animals like bullock on the event of Bakri-Eid and subsequent two days thereof for the year 2015. The petitioner contends that the provisions of the Amendment Act of 1995, which has received assent of the President on 4th March, 2015, do not take into the religious feelings, sentiments and ceremonies of Muslim religion, as such, the provision, directing imposition of ban on slaughtering of cows or bullocks, is violative of constitutional provisions inasmuch as Article 14 of the Constitution of India. It is the contention of the petitioner that there is discrimination on the religious grounds and interest of minority, i.e. Muslim community and its religious feelings, ceremonies and sentiments have not been taken care of in the legislation. The petitioner places reliance on Article 13(2) of the Constitution of India, which prescribes that the State shall not make any law which takes away or abridges the rights conferred by IIIrd Part and any law made in contravention of said clause shall, to the extent of the contravention, be void. It has not been demonstrated with reference to

the specific Article as to what is the right conferred on the community. A reference is made to Article 25, which prescribes freedom of conscience and profession, practice and propagation of religion. Sub-Article (1) of Article 25 provides that, subject to public order, morality and health and subject to the other provisions of the Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. Sub-Article (2) of Article 25 provides that, Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law, - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

2) On bare reading of Article 25 of the Constitution of India, it is eloquent that the right conferred in respect of freedom of conscience and right of free profession, practice and propagation of

religion is subject to public order, morality and health and to the other provisions of the Part.

3) It would be appropriate to refer to Article 48, which is part of directive principles of the State Policy. Article 48 prescribes that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and drought cattle. The Maharashtra Animal Preservation Act, 1976 does appear in consonance with the directive principles of the State Policy.

4) The petitioner contends that the Central legislation i.e. Prevention of Cruelty to Animals Act, 1960 and more particularly, Section 28 thereof, does not prohibit the right of a person to kill animal in a manner required by the religion of any community. The petitioner contends that since the Act of 1960 is Central legislation, the same shall prevail over the State Act, i.e. The Maharashtra Animal Preservation Act, 1976 and the prohibition

contained in Section 5 thereof shall not apply. The argument advanced is unacceptable for the reasons that the Amendment provided to the Act of 1976 framed by the State Government has received the assent of the President. The Act of 1976 and the Amendment provided in 1995 to the said enactment by virtue of Maharashtra Act No.V of 2015 was reserved for consideration of the President and the Hon'ble President has given assent to the Amendment Act of 1995 on 15th March, 2015.

5) In view of sub-Article (2) of Article 254 of the Constitution of India, where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. Thus, the Amendment Act of 1995, which has received the assent of the President of India and the State enactment, which prohibits the slaughtering of bull

or bullocks, shall prevail in the State of Maharashtra.

6) Lastly, the counsel for the petitioner making a reference to Section 14 of the Act of 1976, urges to issue directions to the State Government to consider representation presented by the petitioner and provide time frame for taking a decision thereon. We are afraid that considering the Scheme of the Act and in view of the amendment incorporated in the year 2015 i.e. Maharashtra Act No. V of 2015, it would not be open for the State Government to consider such request. Clauses (a),(b)and (c) of Section 14 of the Act of 1976, refers to animal bulls and bullocks. The category of animal, bull and bullock have been brought under the purview of the Act by virtue of Maharashtra Act No. V of 2015, which has been assented by the President in the year 2015. In view of the provisions of contained in clauses (a)(b)(c) of Section 14 of the Act of 1976, which exclude category of cows, bulls and bullocks, it would not be open for the State Government to consider any request contrary to the provisions of the enactment. However, we deem it appropriate to permit the

petitioner to pursue the remedies, if available, and in accordance with the provisions of law.

7) In view of the above discussion, we do not find any merit in the instant petition and the same is dismissed.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/