

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Writ Petition No.20300 of 2016 (O&M)  
Date of Decision: September 29, 2016.

Manik Sethi ..... Petitioner.

Versus

State of Haryana ..... Respondent.

CORAM:- HON'BLE MR. JUSTICE S.S.SARON  
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Manik Sethi - petitioner in person.

S.S. SARON, J.

The petitioner in the petition that has been filed by him has made the following substantive prayers:-

- “(a) Issue an order under Article 226 to make sections 428 and 429 of the IPC applicable to all animals irrespective of monetary value or ownership;
- (b) Issue guidelines as regards punishment for animal abuse, till the amendment to the PCA Act is not passed by the Parliament;
- (c) Issue a writ, order or direction or declaration to the effect that the practice of sacrifice of animals is unconstitutional and same cannot be resorted to by any member of the public;
- (d) Issue a writ of mandamus or any other writ or direction to ban all the cruel practices in the name of religion and otherwise as the same is unconstitutional, illegal and violative of Article 14, 21 and 25 of the Constitution of India.”

In response to a query of the Court as to the *locus standi* of the petitioner, who is appearing in person, to file a public interest petition, it is submitted that he has no personal interest in the petition and would gain nothing in any manner by adjudication of the petition. In the affidavit that has been filed by the petitioner, it is stated that he is a student and well conversant with the facts of the case. It is also stated that he has gone through the Maintainability of Public Interest Litigation Rules, 2010 (the 'Rules' - for short) and it has been affirmed that the present public interest litigation is in conformity with the Rules.

It may be noticed that Rule 7 of the Rules envisages that the Registry shall be entitled to verify the antecedents of a person, society or an association, who invokes the jurisdiction of the High Court. Wherever the Registry has a doubt on the antecedents, an office note to this effect is to be put up except on the petitions which are received by post.

The Registry of this Court apprised the petitioner that the writ petition be filed according to the directions issued by a Division Bench of this Court in Ajaib Singh v. State of Punjab and others, (2013-4) PLR 367, which judgment is also available on the High Court Website. The petitioner in reply to the same recorded, 'objection complied with'. Therefore, it is taken that he is aware of the directions issued by a Division Bench of this Court in Ajaib Singh's case (supra). The said judgment emphasized that a petitioner filing a petition in the nature of public interest is to “specifically disclose his credentials” or his direct or indirect personal motive, or interest involved in the case, if any, by way of an affidavit. The expression “specifically disclose his credentials”, it was observed, must, naturally imply

that he has to set forth what he does for his living, what public interest he has been espousing, the work done by him in that behalf, the particulars of any matter preferred by him as PIL earlier on which the Court has passed orders etc. It cannot imply merely writing a sentence that a person is residing in the State, is public-spirited and is, thus, filing a PIL.

The petitioner, however, has merely stated that he is a student without mentioning as to where he is a student and what academic course or studies he is pursuing. He has not mentioned as to in which college, university, faculty etc. he is studying or pursuing a course. Besides, he has not mentioned as to what public interest he has been espousing and the work had done by him in that behalf. The requirement to invoke the PIL jurisdiction of this Court by a petitioner is to show his contribution to the society. In the affidavit that has been filed by the petitioner, there is no mention of any contribution made by the petitioner to a social cause or as to what public cause he has espoused. Therefore, the petitioner has been unable to show that he has the *locus standi* to file a public interest petition in consonance with the Rules and judgment of this Court in Ajaib Singh's case (*supra*).

Even otherwise, the petitioner primarily seeks for a legislation to be framed to make Sections 428 and 429 of the Indian Penal Code applicable to animals irrespective of the monetary value or ownership. This is the domain of the legislature and this Court in exercise of its supervisory writ jurisdiction is not to undertake the task of legislation. The applicability of provisions of the Indian Penal Code to animals is not the domain of this Court as it does not legislate.

In, State of Himachal Pradesh v. A Parent of A Student of Medical College, Shimla and others, AIR 1985 SC 910, a letter written by a guardian of a student of Medical College at Shimla was treated as a petition and notices were issued by the High Court to the Government and the college authorities. The High Court passed various directions to constitute a committee for reporting in the matter relating to ragging. On the submission of the report, which contained a recommendation for legislation, the High Court directed the Chief Secretary to inform the Court as to what action the government proposed to take on the recommendation to initiate legislation for curbing ragging. This direction was given in spite of the Chief Secretary's categorical assurance in this regard. The Supreme Court held that the direction given by the Division Bench of the High Court was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curb the evil of ragging, for otherwise it was found difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the government would introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. This, the Division Bench, it was held, was clearly not entitled to do. It was further held that it is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the Court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the Court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to

the judiciary under the Constitution. If the executive is not carrying out any duty laid upon it by the Constitution or the law, the Court can certainly require the executive to carry out such duty and this is precisely what the Court does when it entertains public interest litigation. When the Court passes any orders in public interest litigation, the Court does so not with a view to mocking at legislative or executive authority or in a spirit of confrontation but with a view to enforcing the Constitution and the law. It was also observed that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.

In V.K. Naswa v. Union of India, (2012) 2 SCC 542, the Supreme Court held that the Court can neither legislate nor issue a direction to the legislature to enact the law in a particular manner. The Court has a very limited role and in exercise of that, it is not open to have judicial legislation. In exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field.

In Municipal Committee, Patiala v. Model Town Residents Assn., (2007) 8 SCC 669, the Supreme Court held that it is well settled that the legislature is supreme in its own sphere under the Constitution subject to the limitations provided for in the Constitution itself. It is for the legislature to decide as to when and in what respect and on what subject-matter the laws

are to be made. It is for the legislature to decide as to the nature of operation of the statutes. The Court cannot usurp the functions assigned to the legislative body under the Constitution and even indirectly require the legislature to exercise its power of law-making in a particular manner. The Court cannot assume to itself a supervisory role for the law-making power of the legislature under the provisions of the Constitution. The High Court must ensure that while exercising its jurisdiction which is supervisory in nature it should not overstep the well-recognized bounds of its own jurisdiction.

Therefore, it is evident that the Court is not to issue directions to the legislature to initiate legislation and it is the domain of the legislature to frame laws. Therefore, we are not inclined to issue a writ for legislation in the manner as prayed for.

As regards the sacrificing of animals, the petitioner has not provided any specific issue as to the sacrificing of animals. It may in any case be noticed that Muslims sacrifice goats on the occasion of festival of Id-Ul-Zuha. In Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731, the Supreme Court considered the case of petitioners in the said case who were Muslims and generally engaged in the butchers' trade and its subsidiary undertaking. They challenged the constitutional validity of various State Acts banning the slaughter of certain animals including cows on three grounds, namely, that they offended the fundamental rights guaranteed to them by Articles 14, 19 (1) (g) and 25 of the Constitution. The Supreme Court held (i) that the challenge under Article 14 could not prevail inasmuch as the Acts had adopted a classification on sound and intelligible basis and could stand the test of permissible classification; (ii) that the Acts insofar as they

prohibited slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, were constitutionally valid and insofar as they totally prohibited the slaughter of she buffaloes, breeding bulls and working bulls, without prescribing any test or requirement as to their age or usefulness they offended against Article 19 (1) (g); and (iii) that the Acts did not violate the fundamental rights of the Mussalmans under Article 25 (1) of the Constitution as there was no material to substantiate the claim that the sacrifice of a cow on Bakr'd day was enjoined or sanctioned by Islam to exhibit a Mussalman's religious belief and ideas. The Supreme Court referred to Hamilton's translation of Hedaya Book XLIII at page 592 and noticed that it is the duty of every free Mussalman, arrived at the age of maturity, to offer a sacrifice on the Yd Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It was observed that it did not appear to be obligatory that a person must sacrifice a cow.

In State of W.B. and others v. Ashutosh Lahiri and others, (1995) 1 SCC 189, it was held that it is optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. Once the religious purpose of Muslims consists of making sacrifice of any animal which should be a healthy animal, on Bakr'd, then slaughtering of cow is not the only way of carrying out that sacrifice. Thus, slaughtering of healthy cow on Bakr'd was held to be not essential or required for religious purpose of Muslims or in other words it was held to be not a part of religious requirement for a

Muslim that a cow must be necessarily sacrificed for earning religious merit on Bakr'd. The following observations of the Hon'ble Supreme Court are apposite:-

“The attainment of these objectives may well necessitate that the slaughters of cattle should be dealt with more stringently than the slaughterers of, say, goats and sheep. The impugned Acts, therefore, have adopted a classification on sound and intelligible basis and can quite clearly stand the test laid down in the decisions of this Court. Whatever objections there may be against the validity of the impugned Acts the denial of equal protection of laws does not, prima facie, appear to us to be one of them. In any case, bearing in mind the presumption of constitutionality attaching to all enactments founded on the recognition by the Court of the fact that the legislature correctly appreciates the needs of its own people there appears to be no escape from the conclusion that the petitioners have not discharged the onus that was on them and the challenge under Article 14 cannot, therefore, prevail.”

Therefore, from the above, it follows that sacrificing of goats on the occasion of Bakr'd has not been invalidated by the Supreme Court even though the slaughtering of cows, calves etc. has been invalidated by the Supreme Court.

A Seven Judge Bench of the Supreme Court in State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and others, (2005) 8 SCC 534, known as ‘Mirzapur case’ held that the slaughter of cow and cow progeny on

Bakri'd is neither essential to nor necessarily required as part of the religious ceremony. An optional religious practice, it was held, is not covered by Article 25 (1) of the Constitution. On the contrary, it was held as common knowledge that the cow and its progeny i.e. the bulls, bullocks and cows are worshipped by Hindus on specified days during 'Diwali' and other festivals like 'Makar Sankranti' and 'Gopashtmi'. It was further held on the question of enlargement of restriction on cow progeny, that bulls and bullocks below the age of 16 years could not be slaughtered, to a total ban thereon under Gujarat Act 4 of 1994 if in the interest of the general public. It was held on the basis of available material that the said ban was in the interest of general public and the change in factual circumstances since the decision in *Quareshi-I* (AIR 1958 SC 731), warranted the reversal of that decision. It was held that merely because it may cause "inconvenience" or some "dislocation" to butchers, the impugned restriction did not cease to be in the interest of general public and the former must yield to the latter. The Gujarat Act of 1994 was held *intra vires* the constitution and the decision in *Quareshi-I* (AIR 1958 SC 731) and the decisions following it were overruled on this point.

The decision in the case, *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and others* (supra) known as 'Mirzapur case' was clarified in *Akhil Bharat Goseva Sangh (3) v. State of A.P.*, (2006) 4 SCC 162. It was held that both the directive principles and fundamental duties must be kept in mind while assessing the reasonableness of legal restrictions placed upon fundamental rights. It was held that in *Mirzapur case* (supra), the impugned Act therein provided for prohibition on slaughter of certain types

of cattle. The Supreme Court in that case, it was observed, held such a legislation to be constitutional in the light of the finding that the legislation was in furtherance of the directive in Article 48 of the Constitution and any enactment which furthers the cause in the directive principles of State policy cannot be held unconstitutional. It is true that in Mirzapur case (supra) it had been held that total prohibition of cow and cow progeny may be justified. It was, however, not held therein that permitting slaughter of bovine cattle by itself is unconstitutional or that laws or policies which permit such slaughter are unconstitutional. Therefore, the position of law, it was held, remains that the directive principles and fundamental duties cannot in themselves serve into invalidate a legislation or a policy. The ban on slaughter of cow and cow progeny was upheld and the question of goats being sacrificed on the occasion of BakrId was not gone into.

Therefore, the position in regard to sacrificing of animals has been delineated upon by the Supreme Court. The further position is that the ratio of the judgment in Mohd. Hanif Quareshi v. State of Bihar (supra) continues. In the said case different categories of animals being susceptible of classification into separate groups on the basis of their usefulness to society, the butchers who kill each category, it was held, may also be placed in distinct classes according to the effect produced on society by carrying on of their respective occupations. It was held that indeed the butchers who kill cattle, according to the allegations of the petitioners themselves in their respective petitions, form a well defined class based on their occupation. That classification is based on an intelligible differentia which places them in a well defined class and distinguishes them from those who kill goats and

sheep and this differentia has a close connection with the object sought to be achieved by the impugned Act, namely, the preservation, protection and improvement of our livestock. The attainment of these objectives, it was held, may well necessitate that the slaughterers of cattle should be dealt with more stringently than the slaughterers of, say, goats and sheep.

Therefore, in the face of above legal position, the petitioner cannot seek an absolute ban on the slaughter of animals. Even otherwise, we find that the petitioner has no *locus standi* to file a petition in the public interest.

Consequently, the present petition is dismissed.

(S.S. SARON)  
JUDGE

(LISA GILL)  
JUDGE

September 29, 2016.  
'om'

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No