



6. Anil Krishna Aiwale,  
R/o. Shikalgar Chawl,  
Opp. To Slaughter House,  
Dr. P. R. Patil Road, Sangli

Petitioner No. 29

Proforma  
Respondent  
No.6

7. Chirag Dilip Panjekar,  
R/o. A12/301, Brahma Avenue,  
Kondhwa Khurd, Pune, 411048.

Petitioner No. 30

Proforma  
Respondent  
No.7

TO

THE HON'BLE THE CHIEF JUSTICE AND HIS COMPANION  
JUSTICES OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONERS ABOVE NAMED

**MOST RESPECTFULLY SHEWETH:**

1. That the present petition has been filed under Article 136 of the Constitution of India praying for Special Leave to Appeal against the Judgment and Order dated 06.05.2016 passed by the Hon'ble High Court of Judicature at Bombay in W. P. (L.) 1109 of 2015, filed by the Petitioners herein under Article 226 of the Constitution of India, challenging the constitutional validity of Sections 5, 5A, 5B, 5C, 5D and 9A and 9B of the Maharashtra Animal Preservation Act, 1976 (hereinafter "the Act") as amended by the Maharashtra Animal Preservation (Amendment) Act, 1995. The Hon'ble High Court vide the impugned common final order and judgment, upheld the constitutional validity of Section 5, 5A, 5B, 9A of the Act, held that in Section 5C, the word possession would have to be read as "conscious possession", and held that Sections 5D and 9B of the Act were violative of Article 21 and hence liable to be struck down. With these findings, the Hon'ble High Court disposed off the Writ Petition filed on behalf of the Petitioners as well as other petitions filed by various other parties that had similarly challenged the above mentioned

provisions. The lead matter in the group of clubbed petitions was W.P. No. 5731 of 2015 (*Shaikh Zahid Mukhtar v. State of Maharashtra and Ors.*).

## **2. QUESTION OF LAW: -**

That the substantial questions of law which arise for consideration of this Hon'ble Court in the instant petition are as follows:-

- i. Whether the Hon'ble High Court was justified in upholding the validity of Section 5, and consequently Sections 5A and 5B, and 5C, thereby extending the complete ban on the slaughter of cows to bulls and bullocks without even considering all the submissions, facts and quantitative data submitted by the various petitioners before it?
- ii. Whether the Hon'ble High Court was justified in upholding the validity of Section 5 of the Act on the basis of the judgment of this Hon'ble Court in *State of Gujarat v. Mirzapur Moti Kassab Jamat*, given that it was rendered in the specific context of a different state, and that the conditions in which the agricultural economy of the State of Maharashtra functions are very different from that of the State of Gujarat?
- iii. Whether the Hon'ble High Court was justified in upholding the validity of Section 5 of the Act on given that the only reason given by the Respondent State in support of the prohibition on slaughter of bulls and bullocks is that even after becoming useless as animals that can assist in agricultural work or breeding, they continue to provide

dung and urine that can either be used by farmers as manure and fertilizer?

- iv. Whether the judgment of the Hon'ble High Court can be sustained given that it was rendered without conducting any enquiry into whether the dung and urine provided by old and useless cattle is adequate to sustain their upkeep without creating additional liabilities for their owners, i.e. farmers?
- v. Whether the complete prohibition of the slaughter of bulls and bullocks can be considered reasonable given that it is not even correlated to the depleting cattle wealth of the State of Maharashtra and nor is it a hindrance to enhancement of such cattle wealth?
- vi. Whether the Hon'ble High Court was justified in upholding the validity of Section 5, and consequently Sections 5A and 5B, and 5C without considering the fact that in a predominantly agricultural economy there has to be a provision for the marginal farmers to be able to sell their cattle when they need money to maintain the agricultural cycle instead of being forced to look after them?
- vii. Whether the complete prohibition of the slaughter of bulls and bullocks can be legal given that there has been no consideration of the fact that the bulls and bullocks are kept alive for their natural lifespan then they will necessarily fall out of the commercial cycle of animal breeding and then their numbers will eventually reduce?

- viii. Whether the complete prohibition of the slaughter of bulls and bullocks is reasonable given that instead of furthering the interests of the agriculturists and that of the agricultural economy, actually harms such interests by creating an additional burden on the scarce resources of water and fodder in the State of Maharashtra, and that such burden will necessarily fall on the owners of such cattle?
- ix. Whether the validity of Section 5, 5A, 5B, and 5C can be sustained given that the Hon'ble High Court has failed to consider the presence of the right to food that inheres in the right to life and personal liberty, is violated when access to beef, i.e. meat from the bull and the bullock, which is the most inexpensive source of protein, and a staple food for a large proportion of people in the State of Maharashtra, is cut off?
- x. Whether the complete prohibition on slaughter of bulls and bullocks can be sustained given it results in the restriction of the right to food of those for whom beef is an indispensable part of their diet, and given it results in a discrimination against members of those sections of society who consume beef (predominantly from marginalized sections of society, including members of SCs, STs, OBCs, the Muslim and Christian community)?
- xi. Whether the ban on slaughtering bulls and bullocks can be sustained given that the food consumption patterns are

determined by the prevailing food culture in a given community or family or for a given individual, and the ban has the impact of denying life sustaining food thus violating Article 21 ?

- xii. Whether any person who is desirous of consuming beef from a bull or bullock can be compelled to consume an alternative form of food, given that food is a matter of taste and nutrition value and dependent on affordability and desirability of options, especially since the said consumption in no ways negatively impacts the agricultural economy of the State
- xiii. Whether the right to food includes the right to food of one's choice and is part of the right protected by Article 21 of the Constitution?
- xiv. Whether the said right can be denied, save and except by procedure prescribed by law and the said procedure has to be just, fair and reasonable?
- xv. Whether the State is not bound to consider the competing claims of persons who wish to eat beef from bulls and bullocks as against the need of agriculture and the need to preserve the said animals in the interest of agriculture, and on the balance come to the conclusion that is it possible to protect the right to life without destroying the needs of agriculture?

- xvi. Whether the complete prohibition on slaughter of bulls and bullocks can be sustained given that there exists absolutely no factual data to support the claim of the Respondent State that consumption of beef is actually detrimental to agriculture and/or the agricultural economy, (i.e. the legislative action bears no rational nexus to the objective to behind it)?
- xvii. Whether a law still needs satisfy the test of reasonableness if it is alleged to infringe a fundamental right given under Part III of the Constitution, regardless of whether it is enacted to give effect to a directive principle and therefore is deemed to be in public interest?
- xviii. Whether directive principles of state policy ought to only be employed in a manner that expands the scope of fundamental rights, and not in a manner that whittles them down?
- xix. Whether the test of proportionality must be applied to a law that seeks to create a complete prohibition on the enjoyment of a fundamental right, irrespective of the fact that enacted to give effect to a directive principle and therefore is deemed to be in public interest? Whether in any event, the ratio of the **Mirzapur** judgment has ceased to have any validity in fact, given the changes that have occurred in the pattern of land-holding and agriculture, and has hence lost its binding effect or in any event ought to be overruled?

- xx. Whether the validity of Section 5, 5A, 5B, and 5C can be sustained given that the Hon'ble High Court has failed to consider the fact that increased mechanization in Agriculture has led to reduced use of draught animals for agricultural purpose?
- xxi. Whether the validity of Section 5, 5A, 5B, and 5C can be sustained given that the Hon'ble High Court has failed to consider the fact that the ban impacts many other allied industries impacting most marginalized sections of society (SCs, STs, OBCs and Muslims) whose livelihood depends on these industries.
- xxii. Whether the validity of Section 5, 5A, 5B, and 5C can be sustained given that the Hon'ble High Court has failed to consider the argument that the ban impacts many other allied industries which impacts national economy adversely as well as consumers of the goods?

**3. DECLARATION IN TERMS OF RULE 2(2)**

- a) The Petitioner state that no other petition seeking Special Leave to Appeal on the above noted matter has been filed either against the impugned order dated 06/05/2016 passed by the Hon'ble High Court of Judicature of Bombay in Writ Petition (L.) No. 1109 of 2015.

**4. DECLARATION IN TERMS OF RULE 4**

The **Annexures P-1 to P-8** produced along with the present Special Leave Petition are true typed/translated copies of the pleadings/documents which formed the part of records of the case in the Court (s) below against whose order the Special Leave to Appeal is sought for in this Special Leave Petition.

**5. GROUNDS:**

The petitioners crave the leave of this court to raise additional grounds and file additional documents to show that the pattern of agricultural holdings in the country and in the state have changed dramatically since *Mirzapur* was decided and alternative sources of fertilizer exist, taking away the basis of the judgment and requiring a relook at the said judgment. It is submitted that these grounds were taken by the other parties in the same proceedings and therefore form a part of the record of the case. The Petitioner seeks the leave of this Hon'ble Court to rely upon and reproduce such grounds in the interests of justice, given that critical issues centered on the agricultural economy of the State of Maharashtra and its most marginal participants, as well on the right of citizens of that State to consume beef, which is an integral part of their diet and is the most inexpensive and accessible form of protein. The said questions are also pure questions of law and ought to be allowed to be raised in the present proceedings given that no prejudice will be caused to any party by raising questions of law.

That the petitioner is filing the instant petition on the following amongst other grounds:

- A. For that the present Petition raises important questions of widespread public importance relating to the prohibition on slaughter of bulls and bullocks in context of such cattle

purportedly being useful (throughout their lifespan) in the agricultural economy, both generally, and in the specific context of the State of Maharashtra. At the outset the Petitioner submits that the Respondent State has essentially stated that the prohibition on slaughter of cows must be extended to bulls and bullocks **only** because such cattle, even after becoming useless as animals that can assist in agricultural work or breeding, continue to provide dung and urine that can either be used by farmers as manure and fertilizer, or can be sold by the owners of such otherwise useless cattle. While the Petitioner is not contesting the serviceability of cattle dung and urine, the Petitioner submits that the Hon'ble High Court has erred in relying on this singular submission of the Respondent State, without enquiring whether the dung and urine provided by cattle is adequate to sustain their upkeep without creating additional liabilities for their owners, i.e. farmers.

B. For that the said section has the effect of compelling the owner of the bull and bullock to keep the cattle alive even after they cease to be useful as draught animals and hence their survival is in no way in furtherance of Article 48 of the Constitution of India.

C. For that the Hon'ble High Court, in coming to its conclusion that the amendment to Section 5 (extending complete prohibition on slaughter of cows to bulls and bullocks) is constitutionally valid, has only recorded and relied upon the data provided by the Respondent State, and has failed to appreciate the various facts and quantitative data supplied

by other parties to the dispute. It is submitted that several parties to the proceedings before the High Court had supplied material data that is crucial to understanding the fragile position of owners of unserviceable cattle, and also on the relationship between cattle and the agricultural economy of the State of Maharashtra.

D. For that the Hon'ble High Court erred in upholding the constitutional validity of the amendment to Section 5 of the Act by relying on the decision of this Hon'ble Court in the case of ***State of Gujarat v. Mirzapur Moti Kassarji***, (2005) 8 SCC 534 which had upheld the validity of a similar amendment in the State of Gujarat. It is submitted that the material facts in that case were completely different from those before the Hon'ble High Court in the present case, and it is further submitted that the wholesale reliance on this authority by the Hon'ble High Court has resulted in the Hon'ble High Court being precluded from carrying out a substantial and objective inquiry into the actual economic benefits that otherwise unserviceable cattle can provide to participants of the agricultural economy in the State of Maharashtra.

E. For that the Hon'ble High Court failed to appreciate the fact that in a predominantly agricultural economy there has to be a provision for the marginal farmers to be able to sell their cattle as part of the agricultural cycle when they need money instead of being forced to look after them. If they do not sell their older cattle to someone who can use them (for meat or other purposes) or if they are not monetarily compensated for

them, then the very survival of the marginal farmer becomes threatened. It is submitted that the cycle of buying a bull or bullock for use when there is need for the bullock or bull and selling it off when there is need for money is critical for the survival of small farmers.

F. For that the Hon'ble High Court has failed to consider that in the bulls and bullocks are kept alive for their natural lifespan then they will necessarily fall out of the commercial cycle of animal breeding and then their numbers will eventually reduce. It is submitted that animal husbandry and domestication of animals as it is practiced requires that animals either be useful to human being or they will not be bred. This side of the debate was left completely unconsidered by the Hon'ble High Court.

G. For that the ban on slaughter of bulls and bullocks, instead of furthering the interests of the agriculturists and that of the agricultural economy, actually harms such interests by creating an additional burden on the scarce resources of water and fodder in the State of Maharashtra.

H. For that the Hon'ble High Court, in upholding the constitutional validity of Section 5, has failed to consider in an objective and practical sense the plight of farmers who are saddled with the liability of maintaining cattle that are no longer useful for them, and are in fact an economic drain rather than a source for sustainable income. It is submitted that bulls and bullocks are the animals primarily used by farmers for draught work and farming activity. On average a

bull or bullock remains useful upto the age of 12-13 years, after which the bull cannot be used for any agricultural purpose or farming activity. The average lifespan of a bull is above 18-20 years, and therefore farmers (prior to the amendment of the Act) had the option of selling the bulls and bullocks that were no longer useful to them, either by reason of age, disability, or temperament that prevent them from being useful for farming work. Since no other farmer/agriculturist would buy such a bull or bullock, the animal would necessarily have to be sold for its meat or other products.

- I. For that the Hon'ble High Court has failed to consider the fact that on average, even after a bull or bullock has ceased to be useful for farming work or for breeding, it continues to consume 12 to 15 kg of green fodder, 25-30 kg of dry fodder and 1.5-2.0 kg and thus the normal diet of one bull at present costs around Rs. 150/- to Rs. 160/- per day. Hence to maintain any bull or bullock a farmer/agriculturist must spend around Rs. 4000/- to Rs. 5000/- per month.
- J. For that the Hon'ble High Court has failed to consider the fact that on average each bull/bullock needs around 25-30 litres of water daily for drinking. This requirement increases in the summer when there is widespread water scarcity throughout the State of Maharashtra, which is an extremely drought-prone area. It is submitted that the owners of cattle in some situations are left without enough water for their own consumption, and this difficulty will only be compounded by forcing farmers to keep their unserviceable cattle alive.

K. For that the Hon'ble High Court has also failed to consider the fact that if an agriculturist/farmer is disallowed from selling his or her useless and old bulls and bullocks, the farmer will be prevented from procuring new bulls and bullocks that can be of actual use to them, as the moneys received from selling old cattle are usually diverted towards the procurement of new ones.

L. For that the Hon'ble High Court, has completely failed to consider the presence of the right to food that inheres in the right to life and personal liberty as guaranteed by the Article 21, and as recognized by this Hon'ble Court on several occasions. It is submitted that while the Hon'ble High Court has stated in clear terms that the consumption of beef is not what the Act seeks to prohibit, it has failed to appreciate that by upholding the validity of the amendments to the Act, vital access to beef has been cut off, resulting in a substantive violation of the right of a large proportion of the citizens of Maharashtra from consuming the most inexpensive and healthy form of protein available to them, and one that forms a crucial part of their diet. It is further submitted that the those who consume beef as a part of their regular diet are predominantly from the lower socio-economic strata of society, are predominantly members of Scheduled Castes, Scheduled Tribes and the Muslim community, and therefore the effect of restriction on access to cheap and nutritious food that is a part of their regular diet is extraordinarily intense and cannot be legally sustained.

M. For that the Hon'ble High Court has failed to appreciate that in upholding the constitutional validity of the impugned amendments to the Act, the fundamental right of people to have access to nutritional, inexpensive and widely available food has been violated, effectively resulting in discrimination against the members of the marginalized communities that eat beef as a part of their regular diet. It is submitted that beef has always been a staple in the diet of a majority of SCs, STs, some of the OBCS among Hindus, and across Christians and Muslims, and therefore a prohibition on the slaughter of bulls, and bullocks is a violation of their most fundamental right to food.

N. For that the right to consume food of one's choice is part of the right to food under Article 21, since food habits are formed over centuries and the right to conserve food cultures is part of Article 21.

O. For that no person can be compelled to eat what he or she does not wish to eat as an alternative source of food, since the right to eat food of one's choice is part of the fundamental right to life guaranteed under Article 21.

P. For that food is *res extra commercium* and only those foods that are injurious to public health can be banned or access denied and no other form of food.

Q. For that the direct and inevitable impact of prohibiting slaughter of bulls and bullocks is to deny access to beef for the purpose of human consumption, thus denying the right under Article 21.

- R. For that beef is known to contain protein which is necessary for human survival and is an affordable form of food which cannot be denied to those who wish to eat it.
- S. For that the consumption of beef from bulls and bullocks who are slaughtered is in no way injurious to Indian agriculture more particularly in the State of Maharashtra given that the agricultural economy of the State will not be adversely affected by such consumption.
- T. For that the ban has had undesirable consequences of vigilantism by members of the general public resulting in loss of life and dignity of the vulnerable sections of society at the hands of those claiming to protect the cow (and its progeny) in furtherance of the ban.
- U. For that it is the duty of the State not to encourage and whip up harmful public sentiments against vulnerable communities for eating the food of their choice and the impugned law has the effect of encouraging violence against them in the name of protection of Indian agriculture and in the name of protecting a divine animal.
- V. For that there is absolutely no factual data to support the claim of the Respondent State that consumption of beef actually detracts agriculture and/or the agricultural economy, and therefore, the steps taken to secure the interests of farmers and of the agricultural industry (i.e. prohibition on slaughter of bulls and bullocks) through the impugned Act, are completely unwarranted and in fact cause

real harm to the marginal farmers who are burdened with the responsibility of the upkeep of useless cattle.

W. For that the Hon'ble High Court has failed to appreciate that while a law that is enacted to effect to a directive principle of state policy might be in the interest of the public, such a law still needs satisfy the test of reasonableness if it is alleged to infringe a fundamental right given under Part III of the Constitution.

X. For that the Hon'ble High Court has failed to consider the settled position of law that directive principles of state policy ought to only be employed in a manner that expands the scope of fundamental rights, and not in a manner that whittles them down.

Y. For that the Hon'ble High Court has failed to appreciate the settled position of law that when a restriction is in the nature of a prohibition, (as it admittedly is in the present case) the test of proportionality must be applied, and if there is a less equally effective, drastic measure than complete prohibition available, then the same should be used instead. In the present case, there has been absolutely no inquiry made into the presence of less distressing alternatives to the complete prohibition on the slaughter of bulls and bullocks, and it is submitted that without such an exercise, the constitutional validity of Sections 5, 5A, 5B and 5C cannot be sustained.

**6. GROUNDS FOR INTERIM RELIEF:**

No prayer for interim relief is made at present.

**7. MAIN PRAYER:**

It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- b) grant special leave to appeal against the final Judgment and Order dated 06.05.2016 passed by the Hon'ble High Court of Judicature at Bombay in Writ Petition (L.) No. 1109 of 2015.
- c) pass such other and further order or direction as are deemed just and proper in the facts and circumstances of the case.

**8. PRAYER FOR INTERIM RELIEF:**

No interim relief is sought for.

**AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

**DRAWN BY:**

ROHAN KOTHARI, Adv.

**SETTLED BY:**

INDIRA JAISING, Sr. Adv.

**Drawn on:** 4.08.2016

**PLACE:** NEW DELHI

**Filed on:** 4.08.2016

**FILED BY:-**

[RAJ KUMARI BANJU]  
ADVOCATE FOR THE PETITIONER