

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 77 of 2010

Gauri Maulekhi Petitioner.

Versus

State of Uttarakhand and others Respondents.

Ms. Gauri Maulekhi, Petitioner, in person.

Mr. C.D. Bahuguna, *Amicus Curiae* with Mr. Lalit Miglani, Advocate for the petitioner.

Mr. J.P. Joshi, Chief Standing Counsel (Govt. of Uttarakhand) for the respondents.

With

Writ Petition (PIL) No. 73 of 2010

People for Animals Dehra Dun, Dehradun Petitioner.

Versus

State of Uttarakhand and others Respondents.

Mr. C.D. Bahuguna, *Amicus Curiae* with Mr. Lalit Miglani, Advocate for the petitioner.

Mr. J.P. Joshi, Chief Standing Counsel (Govt. of Uttarakhand) for the respondent Nos. 1, 2, 4 and 28 to 42.

Ms. Pushpa Joshi, Senior Advocate with Mr. Amit Kapri, Advocate for respondent No. 7.

Mr. P.S. Rawat, Advocate for respondent No. 10.

Mr. Siddharth Sah, Advocate for respondent No. 14.

Mr. L.K. Tiwari, Advocate for respondent No. 15.

Date of Judgment: 19.12.2011

JUDGMENT

Coram: Hon'ble Barin Ghosh, C.J.

Hon'ble U.C. Dhyani, J.

BARIN GHOSH, C.J. (ORAL)

These two Public Interest Litigations seek a total ban on animal sacrifice in the State of Uttarakhand. It has been contended in these writ petitions that animals are being slaughtered in a number of Temples situated in the State, contrary to law governing the field. It has also been stated that while such sacrifices are made, buffalos are sacrificed, alongwith goats, and the corpses of the buffalos are left for the purpose of rotting. It has further been stated that the manner in which animals are sacrificed is obnoxious, not acceptable in public view and is not good for public health.

2. The contentions, thus put forward, have not been disputed. It has been accepted that a fair, in the name of *Bhookhal Kalinka Mela*, is organized at *Bhookhal* on *Shukla Paksha* of *Margshirsh* month, when

buffalos are sacrificed, alongwith goats, and the corpses of buffalos are left unattended to rot.

3. In respect of one of these writ petitions, a direction was issued for publication of advertisements in Newspapers, *Amar Ujala* and *Dainik Jagran*, to inform the people, in general, that the said writ petition has been filed, where the petitioner is seeking complete ban on sacrifice of animals in the name of religion. Such advertisements have been published. In the said writ petition, a direction was issued to the District Magistrates to ensure that animal sacrifice takes place within the confinement, beyond public view, and that, corpse of the sacrificed animal is taken by the person sacrificing the same for his / her use and not to permit such corpse to loiter on any land, public or private. Pursuant to the said advertisement, many a persons, representing many Temples of the State, have intervened and they have indicated that some of them have already given up the practice of sacrificing animals, in the presence of deities of Temples represented by them. Some of them have also expressed that they do not encourage animal sacrifices in the name of religion and are taking steps to bring to an end such practice within a short while. Some such persons have contended that the practice of animal sacrifice, in presence of or in respect of deity, installed in the Temples represented by them, is an ancient practice, the same cannot be stopped and if the same is stopped, there will be unjust interference with the religion of the people, who sacrifice animals. In view of the order, passed on 7th December, 2010, referred to above, in one of these writ petitions, it was reported that in course of *Bhookhal Kalinka Mela*, organized at *Bhookhal* on *Shukla Paksha* of *Margshirsh* month of 2010, though animal sacrifices were made, but the corpses of such animals were not permitted to loiter on any land, public or private. Since after 7th December, 2010, however, there were reports that animal sacrifices are taking place outside the confinement and within public view at many a places in the State.

4. While the matter thus stood and the Court was making an inquiry whether animal sacrifices are still being made in full public view or not, it was reported to this Court that at *Bhookhal Kalinka Mela*, organized at *Bhookhal* on *Shukla Paksha* of *Margshirsh* month of 2011, no animal has

been sacrificed. Therefore, it is clear, from the conduct of the people of the State, that there is a consciousness not to sacrifice animals to appease the Gods, worshipped in the form of deities installed in many a Temples in the State.

5. We bow down to such enlightenment of the people of the State and wholeheartedly appeal to them that they are right in their conclusion that there is no need to appease the Gods by making animal sacrifices. We request the State Government to make our appeal known to the people of the State by publishing appropriate advertisements in the newspapers.

6. However, we have also been called upon by the people of the State, by filing the present Public Interest Litigations, to decide whether animal sacrifice can, at all, be made to appease the Gods and if it is permissible, how such sacrifice can be effected.

7. The subject is covered by the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as, 'the Act') enacted by the Parliament, which came into operation on 26th December, 1960, more than 50 years back. By and under the Act, "animal" has been defined to be any living creature other than a human being. Section 11(1) of the Act specifies the actions against an animal, which can be treated as cruelty to the animal. Killing of an animal is not one of those actions mentioned in Section 11 (1) of the Act. However, Section 11(3)(e) of the Act provides as follows:

"Nothing in this section shall apply to –

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

Therefore, by reason of Section 11(3)(e) of the Act, commission or omission of any act in course of destruction of any animal should be deemed to be treating the animal in question cruelly, unless, of course, such destruction was aimed at arranging food for mankind. Even for such purpose unnecessary pain or suffering cannot be inflicted. In as much as treating animals cruelly entails punishment of fine and imprisonment too, it goes without saying, that destruction or killing of animal, other than for arranging

food for mankind, is barred. Section 28 of the Act makes it clear that such destruction or killing, in the manner required by religion of any community, shall not render it an offence. Therefore, for the purpose of arranging food for mankind, if an animal is sacrificed, the same may be sacrificed in the manner followed by the religion of any community, but such sacrifice should only be for the purpose of arranging food for mankind and for no other purpose.

8. In the circumstances, it is illegal to sacrifice an animal and leave the corpse of the animal to rot. The person sacrificing an animal can only sacrifice the same, not for the purpose of appeasing the Gods, as he believes, but only for the purpose of arranging food for mankind.

9. Section 38(1) of the Act has granted rule-making power to the Central Government to carry out the purposes of the Act. Section 38(2) of the Act, without prejudice to the generality of the power granted by Section 38(1) of the Act, authorizes Central Government to make rules providing for, amongst others, the method by which any animal, which cannot be removed without cruelty, may be destroyed under sub-Section (3) of Section 13 of the Act. In terms of such rule-making power, the Central Government has made the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, which came into force, on its publication in the Gazette of India, on 26th March, 2001, i.e., more than 10 years back. Though the heading of Rule 3 of the said Rules is “Animals not to be slaughtered except in recognized or licensed houses,” but in the body of sub-Rule (1) thereof, it has been provided that no person shall slaughter any animal within a municipal area except in a slaughter house recognized or licensed by the concerned authority empowered under the law for the time being in force to do so. In sub-Rule (3) thereof, municipal or other local authority has been mentioned signifying all those areas under municipalities in whatsoever name they may be called. Accordingly, destruction or killing of an animal, in the manner required by the religion of any community for the purpose of arranging food for mankind, can only be done in a slaughter house recognized or licensed by the concerned authority, when such destruction or killing is done in municipal areas under municipalities or other local authorities, i.e., in cities,

towns, urban and semi-urban areas under the jurisdiction of municipalities or other local authorities. Such ban is not applicable when the destruction or killing of an animal is taking place at pure rural areas not coming under municipalities or other local authorities. Rule 6 of the said Rules deals with slaughter. Sub-Rule (5) thereof deals with ritual slaughter. Thus, ritual slaughter is also to be conducted at slaughter houses when the same is to be performed in the areas coming under municipalities or other authorities.

10. In such view of the matter, the legal conclusion would be that in view of the law made, despite there being old tradition of sacrificing animals to appease deities, no such sacrifice is permissible outside a slaughter house, in the event such sacrifice is attempted to be made within the municipal area or within cities, towns or urban or semi-urban areas under the jurisdiction of municipalities or other local authorities. However, there appears to be no bar on slaughter of animals outside slaughter houses in the event such slaughter is done or intended to be done in a rural area not coming under the jurisdiction of a local authority.

11. We, accordingly, conclude the matter and direct the State and its agencies to ensure that no destruction / killing / sacrifice of any nature of any animal takes place outside a registered or licensed slaughter house, if such destruction / killing / sacrifice is to take place in any city, town or urban or semi-urban areas of the State, which areas are within the jurisdiction of municipalities or other local authorities, and to ensure that the purpose of such destruction / killing / sacrifice is to arrange food for mankind and for no other purpose. Though it is not necessary that destruction / killing / sacrifice of animals in rural area should take place within slaughter house, it is obligatory on the part of the State to ensure that such destruction / killing / sacrifice is for the purpose of arranging food for mankind and for no other purpose. We, accordingly, direct the State and its agencies to adhere to their obligations, as indicated above, and to implement the same vigorously, with an appeal to the people of the State as above.

12. While parting, it would be appropriate to record that on the records of these petitions, there is no information whether in the areas coming under

municipalities and other local authorities, there are adequate number of slaughter houses or not. Therefore, in the event for non-availability of slaughter houses, it becomes necessary to destroy or kill animals outside slaughter houses in the areas coming under municipalities or other local authorities, it would be necessary for the protection of human health, hygiene and sentiment to arrange such destruction / killing outside the public view and to ensure removal of the corpse and blood in such manner that the same do not cause any harm to the public health, hygiene and sentiment. The same is also applicable to rural areas outside the purview of municipalities and other local authorities. The State and its agencies are, accordingly, directed to ensure the same. It would be appropriate on the part of the State and its agencies to ensure that adequate number of slaughter houses are available in the areas coming under the municipalities and other local authorities within a period of three years.

13. After we had dictated the order, in the Court, learned *Amicus Curiae* submitted that no religion directs sacrifice of animal, and the case of the petitioners is founded on Section 28 of the Act. While Section 28 of the Act gives emphasis to the manner of killing as may be required by religion of any community, sub-Rule (5) of Rule 6 of the said Rules contemplates ritual slaughter, and, accordingly, the contention to the effect, that no religion authorizes sacrifice of animals and, accordingly, Section 28 prevents sacrifice of animal, is not acceptable. According to us, Section 28 of the Act accepts that killing of an animal in a manner may be required by the religion of any community. The learned *Amicus Curiae* has cited the judgment of the Hon'ble Supreme Court rendered in the case of *Commissioner of Police and Others Vs. Acharya Jagadishwarananda Avadhuta and Another* reported in 2004(2) Supreme 427, which is totally misplaced, since in the instant case the Statute recognizes killing in a manner required by the religion of any community.

(U.C. Dhyani, J.)
19.12.2011

(Barin Ghosh, C.J.)
19.12.2011

Amit