

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.118 of 2017

Hazi Sahbuddin Quresi, President, Matan Vyapari Sangh, Raipur, S/o Mohd. Mahmood Quraisi, Aged about 41 years, R/o Sanjay Nagar, Raipur, Tahsil & District Raipur (C.G.)

---- Petitioner

Versus

1. Municipal Corporation Raipur, Through the Commissioner, Municipal Corporation Raipur, Tahsil & District Raipur (C.G.)
2. The Commissioner, Municipal Corporation Raipur, Tahsil & District Raipur (C.G.)
3. Regional Pollution Control Board, Commercial Complex, Chhattisgarh Housing Board Colony, Kabir Nagar, Raipur, Tahsil & District Raipur (C.G.)
4. The Health Officer, Municipal Corporation Raipur, Tahsil & District Raipur (C.G.)

---- Respondents

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For Petitioner: Mr. Kishore Bhaduri, Advocate.  
For Respondents No.1, 2 and 4: -  
Mr. Pankaj Agrawal, Advocate.  
For Respondent No.3: Mr. Sudhir Kumar Bajpai, Advocate.  
For State: Mr. Arun Sao, Deputy Advocate General.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/08/2017

1. Right to life includes right to livelihood, which has illuminatingly been highlighted by Y.V. Chandrachud, CJ, speaking for the Supreme Court, in the matter of **Olga Tellis and others v. Bombay Municipal Corporation and others**<sup>1</sup>, in the following manner: -

“... An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the

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1 (1985) 3 SCC 545

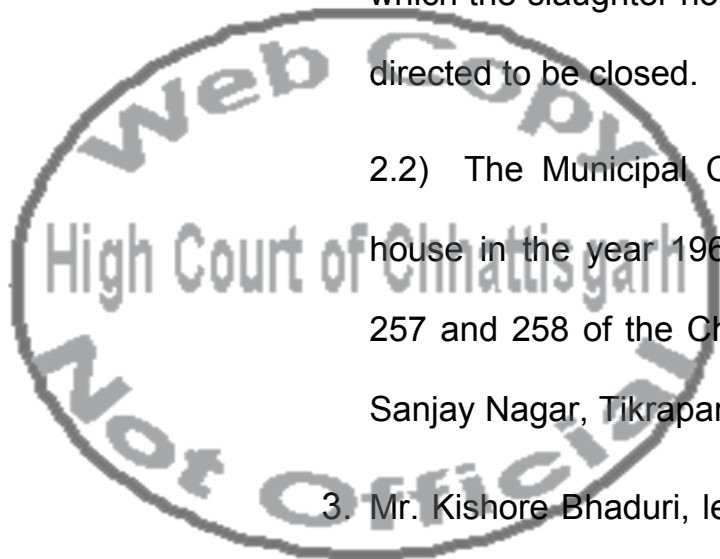
right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. ... Deprive a person of his right to livelihood and you shall have deprived him of his life. ...”

2. The above-stated statement of law applies to the facts of the present case as under: -

2.1) This petition is mainly directed against the impugned order of the Chhattisgarh Environment Conservation Board, Raipur (as well as the consequential order of the Municipal Corporation, Raipur), by which the slaughter house run by the Municipal Corporation has been directed to be closed.

2.2) The Municipal Corporation, Raipur has established slaughter house in the year 1962 under the provisions contained in Sections 257 and 258 of the Chhattisgarh Municipal Corporation Act, 1956 at Sanjay Nagar, Tikrapara, Raipur.

3. Mr. Kishore Bhaduri, learned counsel for the petitioner, would submit that the Municipal Corporation, Raipur, had established a slaughter house in the year 1962 and established a place for slaughter of animals for sale and accordingly, distributed license to meat sellers for sale of meat and others and since then, it is being used regularly, but suddenly in May, 2016, the Municipal Corporation has shut down the slaughter house without notice to any member or the petitioner Association and without showing any cause contending that in absence of permission from the Pollution Control Board, the slaughter house cannot be permitted to run and as such, abruptly and suddenly, closure of slaughter house by the respondent Board is in violation of their constitutional right guaranteed under Article 19(1)(g) of the

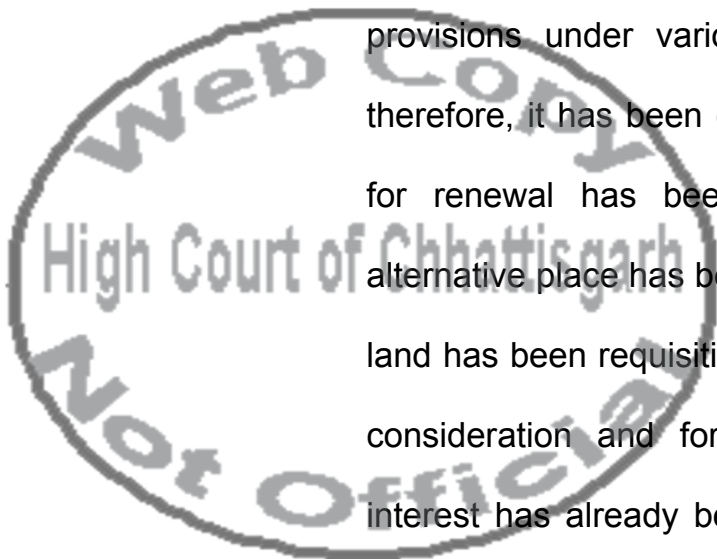


Constitution of India. Therefore, the impugned order passed by the respondent No.3 Board deserves to be quashed.

4. Mr. Pankaj Agrawal, learned counsel appearing for the Municipal Corporation, would submit that the Municipal Corporation established such a slaughter house in the year 1962 and no objection is required for continuance of slaughter house as it is duly and regularly maintained, and air pollution and water pollution are being controlled effectively. He would further submit that since it is a residential area, the Board has not granted any consent/permission under the relevant provisions under various Acts regulating water and air pollution, therefore, it has been closed. He would also point out that proposal for renewal has been rejected by order dated 21-7-2015 and alternative place has been selected at Village Sondongri and requisite land has been requisitioned from the Collector, Raipur which is under consideration and for establishment of plant, the expression of interest has already been floated and entire process of establishing will be completed expeditiously.

5. Mr. Arun Sao, learned Deputy Advocate General, on instructions from the Collector, Raipur, would submit that the land as requisitioned by the Municipal Corporation for establishment of setting up of slaughter house will be granted to the Corporation at Village Sondongri within a month from today by giving advance possession.

6. Mr. Sudhir Kumar Bajpai, learned counsel appearing for respondent No.3 – Chhattisgarh Environment Conservation Board, would submit that pursuant to the direction of the Supreme Court in the matter of



**Laxmi Narain Modi v. Union of India and others**<sup>2</sup>, a State Level Monitoring Committee has been constituted for the purpose as assigned by the Supreme Court and the said multi-membered Committee on 18-9-2013 issued direction that slaughter houses which cannot be regularised and which are in densely populated area should be closed and they be shifted to some other place. He would also bring to the notice of the Court, the resolution dated 5-2-2016 passed by the Committee and inspection reports dated 24-11-2012 and 26-3-2014 by which the officers of respondent No.3 Board have made inspection of the slaughter house and found gross irregularities in regulating water and air pollution on the said slaughter house. He would further submit that no consent has been taken under Sections 24 & 25 of the Water (Prevention and Control of Pollution) Act, 1974 (for short, 'the Water Act') and under Sections 21 & 22 of the Air (Prevention and Control of Pollution) Act, 1981 (for short, 'the Air Act') and the said slaughter house has not been licensed as required under Rule 3 of the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001. Finally, he would also submit that number of notices have been issued to the Municipal Corporation for running the slaughter house despite violating the provisions of the Water Act and the Air Act and ultimately, finding no solution, the application of the Municipal Corporation has been rejected on 21-7-2015 and order for closure has been passed on 28-1-2016 and accordingly, the Municipal Corporation has closed the slaughter house. He would also submit that the Municipal Corporation has informed the Chhattisgarh Environment Conservation Board that at Village Sondongri,

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2 (2014) 2 SCC 417

alternative slaughter house has been proposed and land has been requisitioned from the Collector and expression of interest has also been floated, as soon as the land allocation is made, slaughter house at the proposed land will be established and it will be made operational by granting necessary consent.

7. I have heard learned counsel for the parties and considered the rival submissions and gone through the record with utmost circumspection.

8. In order to consider the plea raised at the Bar, it would be appropriate to firstly notice Sections 257 and 258 of the Chhattisgarh Municipal Corporation Act, 1956 which deal with places for slaughter of animals for sale and disposal of dead animals, respectively. Likewise, in exercise of the powers conferred by sub-section (1) and (2) of Section 38 of the Prevention of Cruelty to Animals Act, 1960, the Central Government has framed the rules known as the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001. Rule 3 of the said Rules of 2001, which provides that animals not to be slaughtered except in recognised or licensed houses, states as under: -

**“3. Animals not to be slaughtered except in recognised or licensed houses.—**(1) No person shall slaughter any animal within a municipal area except in slaughter house recognised or licensed by the concerned authority empowered under the law for the time being in force to do so.

(2) No animal which,—

(i) is pregnant, or

(ii) has an offspring less than three months old, or

(iii) is under the age of three months, or

(iv) has not been certified by a veterinary doctor that it is in a fit condition to be slaughtered,

shall be slaughtered.

(3) The municipal or other local authority specified by the Central Government for this purpose shall, having regard to the capacity of the slaughter house and the requirement of the local population of the area in which a slaughter house is situated, determine the maximum number of animals that may be slaughtered in a day.”

9. Apart from this, it is also pertinent to notice Sections 24 and 25 of the

Water Act which read as follows: -

**“24. Prohibition on use of stream or well for disposal of polluting matter, etc.—(1) Subject to the provisions of this section,—**

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

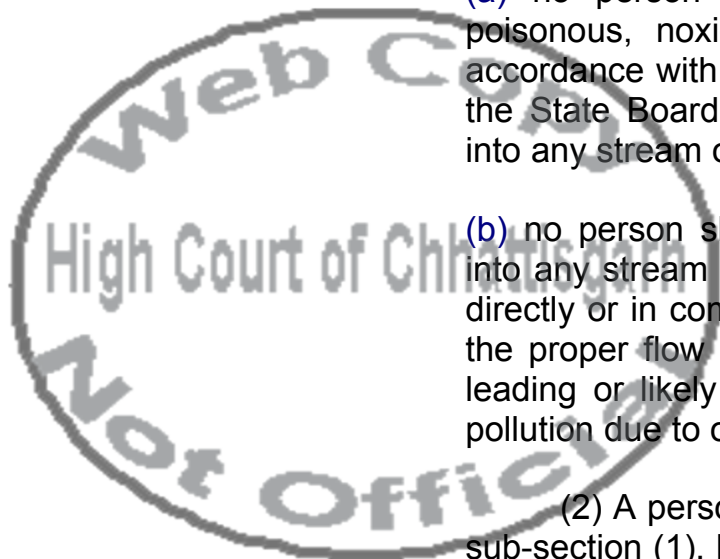
(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done or caused to be done any of the following acts, namely:—

(a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.



(3) The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may by a like notification be altered, varied or amended.

**25. Restrictions on new outlets and new discharges.**

—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

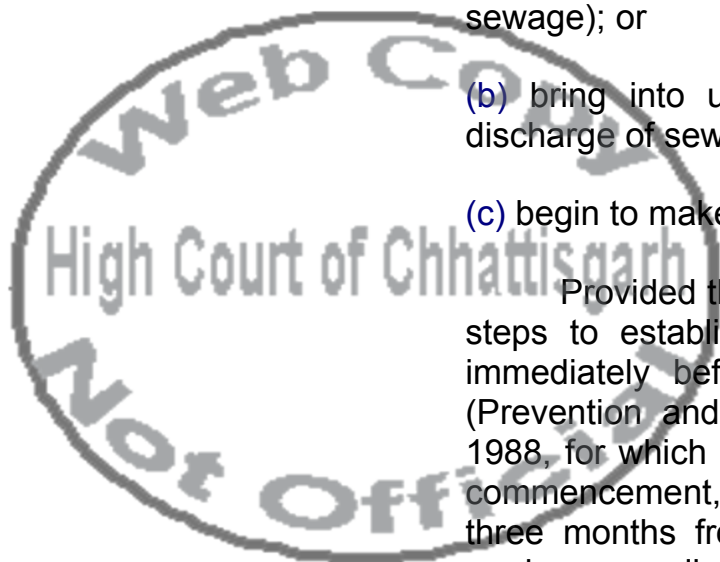
(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of



discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

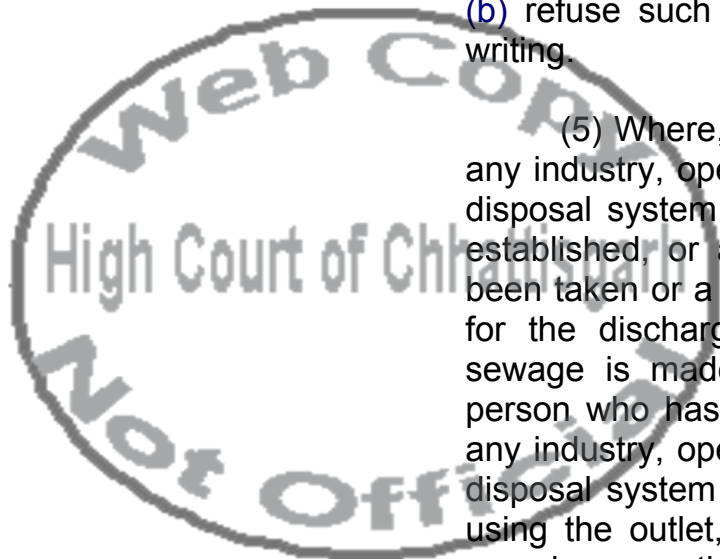
and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.





(8) For the purposes of this section and sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.”

10. Sections 21 and 22 of the Air Act read as follows: -

**“21. Restrictions on use of certain industrial plants.**

—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such

application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:—

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

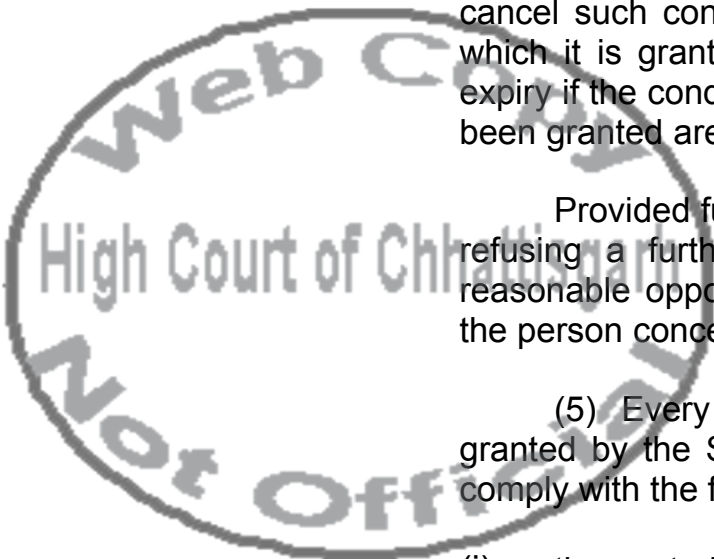
(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv)



shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that—

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-created except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of the opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

**22. Persons carrying on industry, etc., not to allow emission of air pollutants in excess of the standard laid down by State Board.**—No person operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under clause (9) of sub-section (1) of Section 17.”

11. The Supreme Court in the matter of **Laxmi Narain Modi** (supra) has

clearly issued directions to constitute a State level committee for monitoring the slaughter houses. The functions of the State Committee for slaughterhouses so constituted are as follows: - (sub-para (4) of para 8 of the report)

(i) To identify and prepare a list of all the slaughterhouses (SHs) located within the Local Self-Government (Municipal Corporations, Panchayats, etc.)

(ii) To call for reports from the District Magistrate or the Deputy Commissioner and District Food Safety Inspector as the case may be on the condition/functioning of SHs and also on the compliance with the relevant applicable laws.

(iii) To recommend modernisation of old slaughterhouses (SHs) and to relocate SHs which are located within or in close proximity of a residential area.

(iv) To recommend appropriate measures for dealing with solid waste, water/air pollution and for preventing cruelty to the animals meant for slaughter.

(v) To carry out surprise and random inspections of SHs regularly and to issue directions for compliance with the recommendations that may be made by it.

(vi) To send biannual reports on the State SHs to the Central Committee and to refer issues that may require the Central Committee recommendations or Central Government assistance.

(vii) To accord final approval for licensing of SHs to Local Self-Government.

(viii) To identify on an ongoing basis, the unlicensed slaughterhouses in the region, and other unlicensed, unlawful establishments where animals are being slaughtered, on howsoever a small scale, and take the help of the District Magistrate and other law enforcement agencies to crack down on the same.

(ix) To check for child labour.”

12. Pursuant to the direction of the Supreme Court, State level committee was constituted by the State Government which met on 18-9-2013 and numbers of matters were taken-up and resolution Nos.(viii) and

(ix) are relevant to be noted here and they are noticed here accordingly: -

(viii) निकाय क्षेत्रांतर्गत अनाधिकृत रूप से संचालित पशु वधगृहा का चिन्हांकित कर नियमों/अधिनियमों के तहत जिला दण्डाधिकारी एवं अन्य सम्बद्ध संस्थाओं का मार्गदर्शन मे उसके नियमितिकरण की कार्यवाही सुनिश्चित किया जाए। यदि नियमितिकरण करने योग्य नहीं है तो उन्हे बंद कर अस्थायी संरचना निर्माण कर उन्हें लायसेंस देने का अभियान चलाया जाए।

(कार्यवाही- संबंधित नगरीय निकाय)

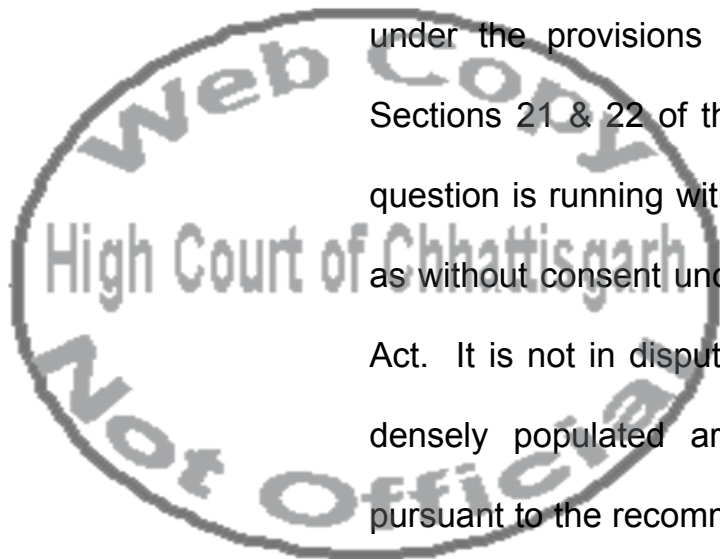
(ix) यदि पशु वधगृहो की वर्तमान स्थिति घनी आबादी के क्षेत्र में हो तथा उनके अन्यत्र स्थानांतरण का प्रस्ताव आवश्यक हो तो ऐसे प्रस्ताव तत्काल प्राप्त किए जाए तथा पुराने पशु वधगृहो के आधुनिकीकरण हेतु मॉडल प्राक्कलन तैयार कर प्रस्तुत करने के निर्देश संबंधितो को दिए जाए। प्राप्त प्रस्तावों का परीक्षणोपरांत आवश्यक स्वीकृति जारी करने की कार्यवाही यथाशीघ्र संपन्न की जाए। जहां पशु वधगृह नहीं है वहां अस्थायी संरचना निर्माण का लायसेंस देने का अभियान चलाया जाए।

(कार्यवाही- संचालक, नगरीय प्रशासन एवं विकास)

13. The aforesaid resolutions clearly state that if slaughterhouses are situated at densely populated area, they cannot be renewed, proposal should be obtained and new slaughterhouses be established at other appropriate place accordingly, and old slaughterhouses which are not liable to be regularised be closed. Not only this, again the committee met on 5-2-2016 and necessary directions in this regard have been issued. In the inspection reports dated 24-11-2012 and 26-3-2014, it has been noticed that without obtaining consent, the slaughterhouse at Sanjay Nagar, Tikrapara, Raipur is running in which slaughtering is being done manually and there is no procedure for disposal of polluted water and disposal of solid waste in accordance with the provisions of the Water Act and the Air Act. The application for

renewal has already been rejected on 21-7-2015 and the slaughterhouse in question has also been directed to be closed on 28-1-2016 on the basis of which the slaughterhouse run by the Municipal Corporation, of which the petitioner and its members are beneficiaries, has been directed to be closed.

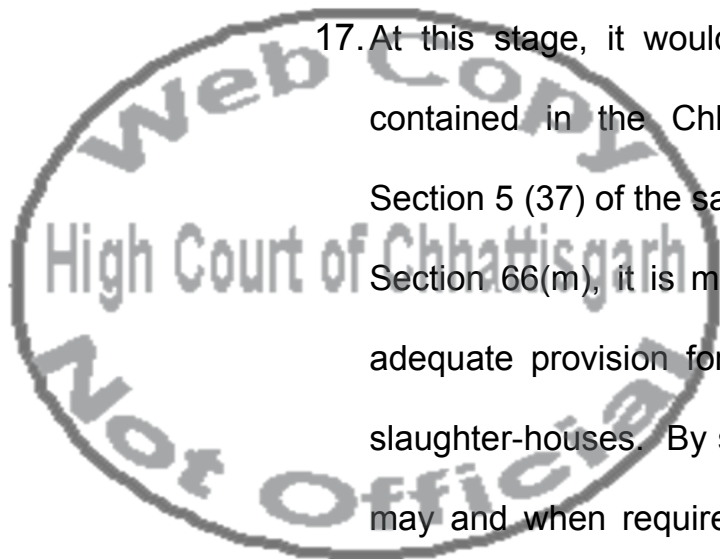
14. Admittedly and undisputedly, no license has been granted at the present place under the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001 and no consent of the Chhattisgarh Environment Conservation Board has been obtained by the Municipal Corporation under the provisions of Sections 24 & 25 of the Water Act and Sections 21 & 22 of the Air Act and as such, the slaughterhouse in question is running without permission under the Rules, 2001 as well as without consent under the provisions of the Water Act and the Air Act. It is not in dispute that the said slaughterhouse was located in densely populated area which has been directed to be closed pursuant to the recommendations of the State level committee and as per the inspection reports dated 24-11-2012 and 26-3-2014. Therefore, the Chhattisgarh Environment Conservation Board is justified in directing closure of slaughterhouse by the Municipal Corporation, Raipur, in absence of valid license and valid consent under the relevant rules and regulations to which the respondent – Municipal Corporation, Raipur has followed and complied the said direction.
15. Now, the question is what direction to be issued to the State and the Municipal Corporation for establishment of alternative slaughterhouse at Raipur.



16. At this stage, Mr. Bhaduri, learned counsel for the petitioner, would submit that even after closure of slaughterhouse, the Municipal Corporation is taking no steps to establish alternative slaughterhouse in place of closed slaughterhouse and therefore the petitioner and members of Matan Vyapari Sangh are deprived of their avocation to run and sell meat etc., and thereby they have been deprived of their right to livelihood which is a part of the constitutional right to life, which is violative of their fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

17. At this stage, it would be appropriate to notice certain provisions contained in the Chhattisgarh Municipal Corporation Act, 1956. Section 5 (37) of the said Act defines "municipal slaughter-house". By Section 66(m), it is made obligatory upon the Corporation to make adequate provision for construction, maintenance and regulation of slaughter-houses. By sub-section (1) of Section 257, the Corporation may and when required by the Government shall fix places for the slaughter of animals for sale, and may with the like approval grant and withdraw licenses for the use of such premises.

18. Thus, the Corporation has been vested with powers, wide in scope and ambit, enabling the definite fulfillment of its statutory obligations. Section 66 of the Chhattisgarh Municipal Corporation Act, 1956 provides for obligatory duties of Council as distinguished with discretionary duties listed in Section 67. The resume of these provisions leaves no manner of doubt that what has been complained of by the petitioner Association and what is expected to be performed by the Municipal Corporation is the establishment of slaughter-house



enabling the members of the petitioner Association for sale of meat etc.. Performance of statutory obligation by the Municipal Corporation is included in the citizens right to life and non-performance of statutory obligation by the Corporation violates the citizens right to life.

19. In the matter of **Francis Coralie v Union Territory of Delhi**<sup>3</sup>, the Supreme Court has held as under: -

“The right to life enshrined in Article 21 of the Constitution of India cannot be reduced to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity.”

20. **State of M.P. and another v. Umed Ram Sharma and others**<sup>4</sup> was

a case where the residents of hilly area wanted existence of roads in reasonable conditions, the right was embraced into their right to life in context of the constitutional provisions. Their Lordships interpreted Article 21 as embracing not only physical existence of life but the quality of life. Their Lordships accepted it as a proposition well settled for residents of hilly areas that access to road is access to life itself.

Their Lordships further observed : -

“Accordingly, there should be road for communication in reasonable conditions in view of our Constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.”

21. In the matter of **Vikram Deo Singh Tomar v. State of Bihar**<sup>5</sup>, Their Lordships said :-

“We live in an age which recognises that every person is entitled to a quality of life consistent with his human

3 AIR 1981 SC 746

4 AIR 1986 SC 847

5 AIR 1988 SC 1782



personality. Their right to live with human dignity is the fundamental right of every Indian citizen.”

22. At this stage, it would also be appropriate to notice the land mark decision of the Supreme Court in the matter of **Municipal Council, Ratlam v. Vardhichand**<sup>6</sup> in which the Supreme Court while highlighting the duties of the Municipal Council statutorily contemplated, observed as under: -

“The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient, it cannot carry out the duties under S. 123 of the Act. This 'alibi' made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no judicial basis. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, S. 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or prevented expenditure budget. That cannot be.”

23. Their Lordships negating the plea of the Municipal Council, the defence of paucity of funds, issued certain directions to make compliance with the orders workable by mandating the Corporation and directed as under: -

“We are sure that the State Government will make available by way of loans or grants sufficient financial aid to the Ratlam Municipality to enable it to fulfill its obligations under this order. The State will realise that Art. 47 makes it a paramount principle of governance that steps are taken 'for the improvement of public health as *amongst is primary duties*'. The municipality also will slim its budget on low priority items and elitist projects to use the savings on sanitation and public health.”

<sup>6</sup> AIR 1980 SC 1622

24. In the matter of **Mohd. Hanif Quareshi and others v. The State of Bihar**<sup>7</sup>, the total ban upon slaughter of all categories of “animals of the species of bovine cattle” imposed by the State of Bihar was challenged. The Supreme Court held that (i) a total ban on the slaughter of cows of all ages and calves of cows and of she-buffaloes, male and female was reasonable and valid; (ii) a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes), so long as they were capable of being used as milch or draught cattle, was also reasonable and valid; and (iii) a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interests of the general public and was invalid.

25. Likewise, the Supreme Court in the matter of **Narendra Kumar and others v. The Union of India and others**<sup>8</sup> held that the word “restriction” in Articles 19 (5) and 19 (6) of the Constitution includes cases of “prohibition” also; that where a restriction reaches the stage of total restraint of rights special care has to be taken by the Court to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than what was necessary in the

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7 (1959) SCR 629

8 (1960) 2 SCR 375

interests of the general public.

26. In the matter of **Mohammed Faruk v. State of Madhya Pradesh and others**<sup>9</sup>, the Supreme Court set aside the notification placing ban on slaughter of bulls and bullocks and held that the impugned notification directly infringes the fundamental right of the petitioner guaranteed by Article 19(1)(g) and further held that the sentiments of a section of the people may be hurt by permitting slaughter of bulls and bullocks in premises maintained by a local authority. But a prohibition imposed on the exercise of a fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in the interest of the general public, but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the claimant. The notification issued must, therefore, be declared ultra vires as infringing Article 19(1)(g) of the Constitution.

27. In the matter of **Haji Usmanbhai Hasanbhai Qureshi and others v. State of Gujarat**<sup>10</sup>, the Supreme Court (Constitution Bench) has held that a law which prohibits the slaughter of bull, bullocks (cattle as well as buffalo), cow and calf in pursuance of directive of Article 48 of the Constitution in order to conserve the sources of milk supply and draught cattle constitute reasonable restriction, but total ban on the slaughter of she buffaloes, bulls and bullocks, after they cease to be capable of yielding milk or of breeding or working as draught animals (say bulls and bullocks up to age of 16 years) cannot be supported as reasonable.

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9 1969 (1) SCC 853

10 (1986) 3 SCC 12

28. Likewise, in the matter of Hashmattullah v. State of M.P. and others<sup>11</sup>, the Supreme Court again held that total ban on slaughter of bulls and bullocks under, irrespective of the fact that they became unfit for breeding, draught, milch or other purposes, is violative of Article 19(1)(g) of the Constitution of India being an unreasonable restriction on right to carry on trade or business of butchers, considering the provisions of the Chhattisgarh Municipal Corporation Act, 1956.

29. It is the case of the Municipal Corporation that for slaughterhouse, firstly, a plot was selected at Village Sakri, but somehow it could not be materialised and now, at Village Sondongri, a land has been identified for allotment of land for the purpose of slaughterhouse and requisition has been made to the Collector, Raipur, which is pending consideration. It is the case of the State Government that proposed land will be allotted to the Municipal Corporation within a month and advance possession will be delivered expeditiously. Mr. Pankaj Agrawal, learned counsel appearing for the Municipal Corporation, would also submit that expression of interest has already been issued on 7-2-2017.

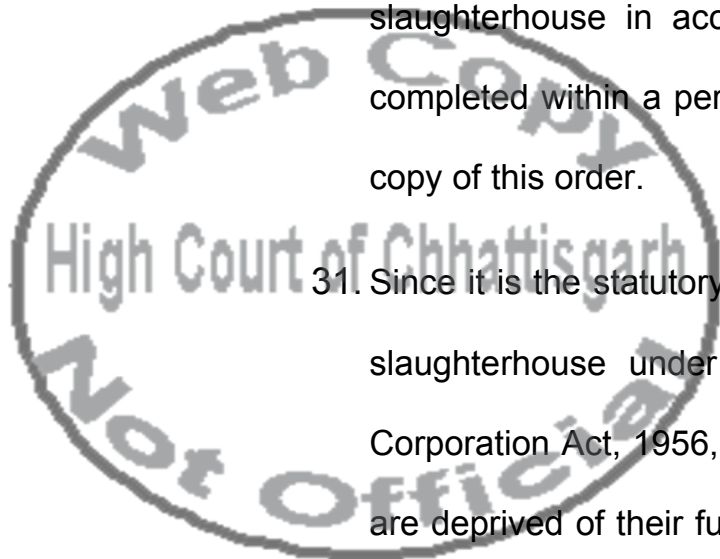
30. Be that as it may, since the impugned non-establishment of new slaughterhouse after closure of old slaughterhouse has affected the rights of the petitioner Association and its members thereof to carry-on their trade and business in meat, which is violative of their fundamental right to carry-on trade and business guaranteed under Article 19(1)(g) of the Constitution of India, as they are dependent on

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11 (1996) 4 SCC 391

the running of slaughterhouse for their livelihood, it is directed that the Collector, Raipur will allot land to the Municipal Corporation, Raipur for the said purpose, as has been said by Mr. Arun Sao, Deputy Advocate General, within three weeks from the date of receipt of a copy of this order and thereafter, the Corporation will establish slaughterhouse, as statutorily mandated under Section 257 of the Chhattisgarh Municipal Corporation Act, 1956, and thereafter, the Chhattisgarh Environment Conservation Board / other competent authority will also grant necessary permission / license for running of slaughterhouse in accordance with law. The said project will be completed within a period of six months from the date of receipt of a copy of this order.

31. Since it is the statutory duty of the Municipal Corporation to establish slaughterhouse under Section 257 of the Chhattisgarh Municipal Corporation Act, 1956, and the members of the petitioner Association are deprived of their fundamental right to carry trade and business of sale of meat etc., and deprived of their right to livelihood which is included in right to life guaranteed under Article 21 of the Constitution of India, it is directed that the Secretary and the Special Secretary of the Department of Urban Administration and Development; the Collector, Raipur; and the Commissioner, Raipur Division, Raipur, shall oversee the issue of establishment of slaughterhouse within the aforesaid period and see that slaughter-house is established in fact and persons eligible are allowed to carry-on their trade and business guaranteed under Article 19(1)(g) of the Constitution of India.



32. The writ petition stands finally disposed of with the aforesaid direction.

No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.118 of 2017

Hazi Sahbuddin Quresi

Versus

Municipal Corporation Raipur and others

HEAD NOTE

Non-establishment of new slaughter-house by Municipal Corporation, Raipur, is violative of fundamental right of meat sellers affecting their livelihood, which is included in right to life enshrined in Article 21 of the Constitution of India.

नगर निगम, रायपुर द्वारा नये बूचडखाने की स्थापना न किया जाना मॉस विक्रेताओं के जीविकोपार्जन को प्रभावित कर उनके मौलिक अधिकार का हनन करने वाला है, जो कि भारत के संविधान के अनुच्छेद 21 में प्रतिष्ठापित जीवन के अधिकार में सम्मिलित है।

