

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 5TH DECEMBER 2005/ 14TH AGRAHAYANA, 1927

WP(C).No. 30764 of 2005(K)

PETITIONERS:

1. SIRAJ M.K., S/O.KUNHU MUHAMMED,
MANAYA PARAMBU, S.R.M. ROAD KOCHI 17.
2. V.I.HAKKIM, S/O.IBRAHIM, STALL KEEPER,
KALOOR MARKET, CORPORATION OF COCHIN,
KOCHI 17.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENTS:

1. THE DISTRICT COLLECTOR, COLLECTORATE,
KAKKANAD, ERNAKULAM.
2. THE TAHSILDAR & EXECUTIVE MAGISTRATE,
KANAYANNOOR TALUK, ERNAKULAM.
3. THE SUB INSEPCTOR OF POLICE,
NORTH KASBA POLICE STATION, ERNAKULAM.
4. THE HEALTH OFFICER & LOCAL HEALTH
AUTHORITY, CORPORATION OF COCHIN, KOCHI-17.

*ADDL.R5. IDUKKI SOCIETY FOR THE PREVENTION OF CRUELTY
TO ANIMALS (ISPCA), REPRESENTED BY ITS SECRETARY
A.G. BABU, 8/686/E, TMC, VATTAPARAMBIL BUILDING,
KOTHAIKANNU ROAD, THODUPUZHA, IDUKKI-685584.

*IS IMPLEADED AS ADDL.R5 AS PER ORDER DATED
9/11/2005 IN I.A. 16492/2005.

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**ADDL.R6.P.B. RAMESH KUMAR, SECRETARY, "DAYA",
SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS,
MUDAVOOR.P.O., VAZHAPPALLY, MUVATTUPUZHA,
ERNAKULAM DISTRICT.

**IS IMPEADED AS ADDL.R6. AS PER ORDER DTD. 9/11/2005
IN I.A. NO. 16496/2005.

***ADDL.R7.PEOPLE'S COUNCIL FOR SOCIAL JUSTICE,
APPU SOUDHAM, RAVIPURAM, COCHIN-682016,
REPRESENTED BY SRI. JUSTICE K.JOHN MATHEW, PRESIDENT.

***IS IMPEADED AS ADDL.R7 AS PER ORDER DATED
14/11/2005 IN I.A. 16686/2005.

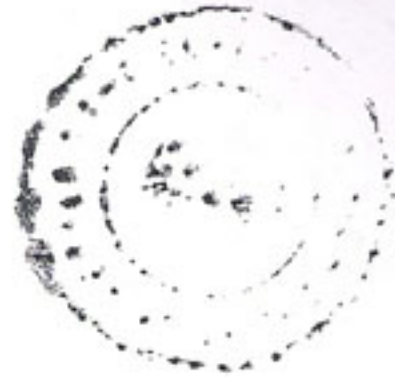
****ADDL.R8. 'NIYAMAVEDI, REP. BY MEMBER ADV. SUDHA. R.,
D/O. N. RAGHAVAN, AGED 30 YEARS,
SHALINI NIVAS, AROOR.P.O., ALAPPUZHA.

**** IS IMPEADED AS ADDL.R8 AS PER ORDER DATED
18/11/2005 IN I.A. NO. 16945/2005.

BY ADV. SRI.NOBLE MATHEW, S.C. COCHIN CORPORATION for R4,
ADV. SRI.MURALI PURUSHOTHAMAN for R5,
ADV. SRI.KALEESWARAN RAJ for R6,
ADV. SRI.M.P.R. NAIR for R7,
ADV. SRI. A.X. VARGHESE for R8.

GP SRI. M.A. FAYAZ R1 To R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18/11/2005, THE COURT ON 05/12/2005 DELIVERED THE
FOLLOWING:



K. BALAKRISHNAN NAIR, J.

W.P.(C)NO.30764 OF 2005-K


J u d g m e n t

The petitioners have approached this Court, feeling aggrieved by the orders issued by the Tahsildar, Kanayannur Taluk and the Health Officer of the Corporation of Kochi, prohibiting the slaughtering of two camels, brought by them from outside the State. The brief facts of the case, as stated by the petitioners, are the following :

2. The second petitioner is the licensee of a beef stall in Kaloor market. The first petitioner is an employee under him. They have brought two camels for slaughtering and selling their meat on the occasion of Id-Ul-Fitr. They submit, there is no prohibition to slaughter camels anywhere in Kerala or in any part of the country. The 2nd respondent Tahsildar of Kanayannur Taluk, who is also exercising the powers of the Executive Magistrate, under the provisions of the Cr.P.C., issued Ext.P3 order dated 29.10.2005, prohibiting the slaughtering of the two camels, brought by the petitioners. The first petitioner filed Ext.P4 objection to Ext.P3. The petitioners submit, Ext.P3 order, issued by the 2nd respondent is liable to be quashed. When, on




an earlier occasion, a camel was brought for slaughtering and action was taken against it, this Court interfered and quashed the criminal proceedings against the person, who brought the camel. Ext.P5 is the Judgment of this Court in that case. Soon after the issuance of Ext.P3, the 4th respondent, who is the Health Officer of the Corporation of Kochi and also the Local Health Authority, issued Ext.P6 notice dated 01.11.2005, prohibiting the first petitioner from slaughtering the camels. According to the petitioners, Ext.P6 is also liable to be quashed as a notice, issued without jurisdiction. They submit, they are law abiding citizens and they are having a right to earn their livelihood by conducting any lawful trade. Slaughtering or butchering of camels is not a prohibited activity. Respondents 2 and 3 have acted on the basis of media reports only. So, they pray for quashing Exts.P3 and P6 and also seek consequential reliefs. The petitioners contend that there is no provision of law, prohibiting the slaughtering of a camel and the sale of its meat and therefore, the petitioners are entitled to slaughter and sell the meat of the two camels brought by them.




2. The 2nd respondent has filed a counter affidavit, supporting Ext.P3 order. It is submitted that the first petitioner has no licence or permit, obtained from the local authority, for butchering and sale of camel's meat. Exts.P1 and P2 would show that the second petitioner has got licence, only for sale of beef and the same will not authorise him to sell the meat of camel. The camels were not subjected to medical examination, to find out whether their meat is fit for human consumption. Trade or occupation or keeping of goods, which are injurious to the health and comfort of the community, can be prohibited and regulated by the competent authority and in exercise of that power and in good faith, Ext.P3 has been issued. Therefore, he prays for dismissal of the Writ Petition.

3. The 4th respondent has filed a counter affidavit, supporting Ext.P6. It is submitted that in the slaughter houses at Kaloor and Mattancherry, there is no facility to slaughter camels. They are only designed to slaughter cattle and goats. Further, as per the provisions of the Kerala Municipality Act, only the slaughtering of cattle, sheep, goat and pig is allowed.






Section 455 of the Kerala Municipality Act prohibits slaughtering of cattle, goat, sheep or pig, without a valid licence and the licensee can conduct slaughtering, only in a licensed slaughter house. In view of the said provision, no licence can be granted for slaughtering a camel. Section 213 of the Kerala Panchayat Raj Act permits slaughtering of horses also, apart from cattle, sheep, goat and pig, provided, a valid licence is obtained for the said purpose. But, under the Kerala Municipality Act, slaughtering of horses, is not permissible. As per the provisions contained in Chapter XII of Travancore Cochin Public Health Act, before slaughtering an animal, for the purpose of using its meat as food, ante-mortem examination has to be done by a competent veterinary doctor, 12 hours before the slaughtering. Thereafter, the animal has to be observed, to ascertain whether it is suffering from any disease, injurious to human health. Even after the slaughter, if the same is to be used as a food item, a post-mortem examination is also mandatory. For following the above procedure in relation to a camel, no facilities are available in the two slaughter houses under the



Corporation of Kochi, it is submitted. Camel's meat is not a notified item of food, as per the provisions of the Prevention of Food Adulteration Act. Even assuming, camel meat could be sold in the State, it can be done, only after proper sealing, packing and with a label on it, it is pointed out. The petitioners also have acted against the provisions of the Prevention of Cruelty to Animals Act, 1960, it is submitted. Therefore, the 4th respondent prays for dismissal of the Writ Petition.

4. The Idukki Society for prevention of cruelty to animals, 'Daya', which is a Society for prevention of cruelty to animals, the Peoples Council for Social Justice and the Niyamavedi, have got themselves impleaded in this Writ Petition. They submit, the actions of the petitioners are against the provisions of the Prevention of Cruelty to Animals Act, the Kerala Municipality Act, the Travancore Cochin Public Health Act and also against the various Rules framed under those enactments. They also point out, the actions of the petitioners run counter to their fundamental duties under Article 51A of the Constitution of India. So, they pray for dismissal of the Writ Petition.





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5. When the case came up for hearing on an earlier occasion, this Court asked the petitioners whether they are willing to part with the two camels, on payment of a reasonable price, which the animal lovers are willing to pay. But, the learned counsel for the petitioners, upon instruction, submitted that there is no possibility for any such agreement and therefore, he prayed for hearing the case on merits.

6. I heard the learned counsel on both sides. They reiterated their respective contentions. The learned counsel for the petitioners submitted that their case is squarely covered by Ext.P5 Judgment of this Court. The learned counsel for the respondents took me through the various provisions of the Kerala Municipality Act, the Kerala Panchayat Raj Act, the Travancore Cochin Public Health Act, the Prevention of Cruelty to Animals Act and also the relevant Rules made thereunder and submitted that it is not legally permissible to slaughter a camel in Kerala and sell its meat.

7. Before going into the validity of Exts.P3 and P6. I think, it will be fruitful to refer to the statutory provisions, relevant in this case. Section 453

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of the Kerala Municipality Act says that no place in the Municipal area shall be used as a slaughter house, without obtaining a valid licence for the same, from the Secretary of the Municipality. Section 454 provides that the Secretary may grant special permission for slaughtering animals, on occasions of festivals and ceremonies, as a special case. Section 455 of the Kerala Municipality Act, which is most relevant in this case reads as follows :

"Slaughter of animals and skinning or cutting carcasses - (1) No person shall slaughter within a municipal area except in a public or licensed slaughter house any cattle, sheep, goat or pig for sale as food without or otherwise than in conformity with a licence from the Secretary. But, no sale of meat as food, prepared after slaughtering, shall be made unless it is subjected to the inspection at the spot where slaughter was done by the officers prescribed.

(2) No person shall skin or cut up any carcass without or otherwise than in conformity with a licence from the Secretary or dry or permit to be dried any skin in such manner as to cause a nuisance."

Going by the above provision, it can be seen that cattle, sheep, goat and pig can be slaughtered for sale as food, only in a licensed slaughter house. The ordinary meaning




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of the word cattle is "cows, bulls and buffaloes, that are kept as farm animals for milk or meat". If the word cattle was used in a wider sense, to include all domestic and farm animals like sheep, goat, pig, horse and camel, there was no necessity to mention sheep, goat and pig in Section 455 of the Municipality Act. So, the word cattle is used in the ordinary sense of that word. Relying on the above quoted provision, the respondents submitted that apart from cattle, only sheep, goat or pig can be slaughtered for meat and the slaughtering of any other animal for meat, should be taken as prohibited. I find considerable force in their submission. Even assuming, the slaughtering of animals other than those named in Section 455 of the Municipality Act, is permissible, the same can be done, only in a slaughter house, licensed for slaughtering that animal, under Section 453 of the Municipality Act. Section 117 of the Travancore Cochin Public Health Act provides that no flesh of any animal, slaughtered outside the local area, otherwise than in a slaughter house maintained or licensed by the Government or a local authority, shall be brought to a local area without the permission in writing of the Health Officer.

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But, this will not apply to cured or preserved meat. Section 231 of the Kerala Panchayat Raj Act says that no person shall slaughter any cattle, horse, sheep, goat or pig for sale as food, except in a public or licensed slaughter house. Rule 8 of the Kerala Panchayat Raj (Slaughter Houses and Meat Stalls) Rules, 1996 provides that no animal shall be admitted to a slaughter house for slaughter, unless it is examined, certified and stamped by the competent authority. Carcasses of animals, after slaughtering, shall be inspected carefully and stamped by the examining authority. Only such stamped meat shall be sold in the meat stalls. Section 11 of the Prevention of Cruelty to Animals Act, 1960 prohibits cruelty to animals in various forms, described in that section. Though, the learned counsel for the respondents tried to canvass that Section 11 of the said Act totally prohibits killing of animals, I think, it is difficult to attribute such a meaning to the said provision. Rule 3(2)(iv) of the Prevention of Cruelty to Animals (Slaughter House) Rules, 2000, provides that no person shall slaughter any animal, unless, it has been certified by a Veterinary Doctor that it is in a fit condition to be slaughtered.





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8. Going by the relevant statutory provisions mentioned above, the following legal and factual positions emerged :

1. For slaughtering any animal for the purpose of using its meat as food, within the Corporation limits, an ante-mortem examination of the same by a competent Veterinary Surgeon and his certification, concerning the fitness of the animal for slaughtering, are necessary.

2. For using the meat of the animal so slaughtered, a post-mortem examination of the meat and the certification by a competent Veterinary Surgeon are mandatory.


3. The slaughtering can be done, only in a licenced slaughter house, by a person, licensed to slaughter.

Presently, provision is available, only for slaughtering cattle, goat, sheep and pig, within the Corporation limits. There is no qualified Veterinary Surgeon, who can certify the fitness of a camel or the suitability of its meat for consumption by human beings, or a licensed

person. to slaughter a camel. There are no licensed persons within the Corporation limits. for the sale of camel's meat also. The licence to sell beef will not enable the sale of camel's meat. In view of the above position, even if Exts.P3 and P6 are quashed, at present, the petitioners cannot slaughter the camels or sell their meat.


9. Ext.P5 is a Judgment passed under Section 482 of the Cr.P.C., quashing an F.I.R., registered under the provisions of the Prevention of Cruelty to Animals Act, 1960. This Court, in the said Judgment, found that the averments in the F.I. statement do not disclose any offence alleged against the petitioner therein, under the provisions of the Act and therefore, the F.I.R. was quashed. The said decision has no application to the facts of this case.

10. Ext.P3 is only a notice issued by the Tahsildar, exercising the powers of the Executive Magistrate, purportedly, under Section 133 Cr.P.C. The first petitioner has submitted his objections to Ext.P3. Therefore, it is unnecessary for this Court to interfere with Ext.P3, at this stage. Accordingly, the 2nd



respondent is directed to hear the petitioners and also the additional respondents 5 to 8 and pass appropriate orders in the matter within one month from the date of receipt of a copy of this Judgment. Ext.P6, though, made without hearing the petitioners, has been issued, prima facie, within jurisdiction. If the petitioners have any objection to the said order, they may file their objections before the 4th respondent Health Officer. In that event, the said Officer will hear the petitioners and the additional respondents 5 to 8 and pass final orders thereon without delay.

11. Respondents 5 to 8 have pointed out that the petitioners have bought the camels to the State, violating the provisions of law, governing transporting of animals. They also submit that the petitioners have committed various offences under the provisions of the Prevention of Cruelty to Animals Act, 1960, by bringing the camels here, by exhibiting them and keeping them in Kerala, where, the weather is inclement, as far as the camels are concerned. So, they pray that this Court may order prosecution of them for the above said alleged commissions and omissions. The said respondents may



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bring to the notice of the statutory authorities. the above alleged illegal acts of the petitioners and pursue those complaints. I think, it is not proper for this Court to issue any direction as prayed for by the party respondents, in a Writ .Petition, filed by the petitioners, challenging Exts.P3 and P6.

The Writ Petition is disposed of as above.

05.12.2005

sd/-
K. BALAKRISHNAN NAIR, JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P.1 COPY OF THE RECEIPT FOR PAYMENT OF LICENCE FOR CONDUCTING MEAT STALL ISSUED BY CORPORATION OF COCHIN DTD. 16/3/2005.
- EXT.P.2 COPY OF THE RECEIPT FOR PAYMENT OF PROFESSION TAX DTD. 18/2/2005.
- EXT.P.3 COPY OF THE ORDER A4 17389/2005 ISSUED BY THE R.2. DTD. 29/10/2005.
- EXT.P.4 COPY OF THE OBJECTION STATEMENT FILED BY THE 1ST PETITIONER BEFORE R.2. DTD. 3/10/2005.
- EXT.P.5 COPY OF THE JUDGMENT IN CRL.M.C. 4301/2003 PASSED BY THE HON'BLE HIGH COURT OF KERALA DTD. 21/8/2003.
- EXT.P.6 COPY OF THE NOTICE ISSUED BY THE R.3. DTD. 1/11/2005.

RESPONDENTS EXHIBITS:

- EXT.R5.A: COPY OF THE PREVENTION OF CRUELTY TO ANIMALS (ESTABLISHMENT AND REGULATION OF SOCIETIES FOR PREVENTION OF CRUELTY TO ANIMALS) RULES, 26TH MARCH.
- EXT.R5.B: COPY OF THE IDENTITY CARD ISSUED BY THE ANIMAL WELFARE BOARD OF INDIA NO.KI 1006.
- EXT.R5.C: COPY OF THE CERTIFICATE OF REGISTRATION NO.I-498/2004 DTD. 04/08/2004 ISSUED BY THE REGISTRAR OF SOCIETIES.
- EXT.R5.D: COPY OF THE RECOGNITION CERTIFICATE NO.KL.026/05 DTD. 22/02/2005 ISSUED BY THE ANIMAL WELFARE BOARD OF INDIA TO THE PETITIONER SOCIETY.
- EXT.R5.E: COPY OF THE PETITION DTD. 08/11/2005 SUBMITTED BY THE PETITIONERS BEFORE THE R.1.

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- EXT.R5.a: COPY OF THE REGISTRATION CERTIFICATE DTD 6/2/2002.
- EXT.R5.b: COPY OF THE CERTIFICATE DTD. 1/8/2001.
- EXT.R5.c: COPY OF THE JUDGMENT DTD. 20/2/2004 IN W.P.(C). NO. 5671/2004.
- EXT.R5.d: COPY OF THE LIST OF PARTIES CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA.
- EXT.R5.e: COPY OF THE CITY EXPRESS WITH NEW INDIAN EXPRESS DTD. 9/11/2005.
- EXT.R5.f: NEWS ITEM WHICH APPEARED IN MATHRUBHUMI DAILY DTD. 03/11/2005.
- EXT.R6: COPIES OF THE NEWS REPORTS REGARDING THE MANNER IN WHICH THE CAMELS ARE TREATED.

//TRUE COPY//

prv.

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07.12.11
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