

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BENGALURU
(ORIGINAL JURISDICTION)

W. P. No. 1154/2021 (PIL)

BETWEEN

Kanika Gulati & Anr.

...Petitioners

AND

State of Karnataka & Others

...Respondents

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PLACE: Bangalore

DATE: 19.01.2021

COUNSEL FOR PETITIONERS

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BENGALURU**(ORIGINAL JURISDICTION)****W. P. No. 1154/2021 (PIL)****BETWEEN**

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...Petitioners**AND**

State of Karnataka & Others

...Respondents

SYNOPSIS

The present petition is a public interest litigation which is brought before this Hon'ble Court challenging certain sections of the "The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance, 2020", which has been promulgated by the Respondents. In this Ordinance, Sections 2 (2) which defines cattle to include all cattle animals, Section 4 which prohibits all slaughter of cattle, Section 5 and 6 which restricts transport of cattle, Section 7 prohibiting sale or purchase of cattle for slaughter, Section 12 imposing penalties for such acts of prohibition and section 18(1) (d) exempting only buffaloes above the age of thirteen years to be permitted for slaughter with certification, are in violation of the fundamental rights under Articles 14, 19 and 21 of the constitution. The impugned Ordinance is in violation citizens' Fundamental right to life and privacy as enshrined under Article 21 of the Constitution of India and freedom of trade as enshrined under Article 19(1) (g) of the Constitution. The impugned ordinance unreasonably restricts the liberty of the people residing in Karnataka to eat food of their choice. It further violates the rights of the people especially farmers, agriculturalists and members carrying out trade which relies on the

slaughter of buffaloes bulls and bullocks, which were permitted under the previous legislation which has now been repealed. Hence, this Public Interest Petition has been filed by the Petitioners, challenging the constitutionality of the impugned Ordinance.

LIST OF DATES

DATE	EVENT
1964-65	The Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 was enacted.
05.01.2021	The Respondents promulgated "The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance, 2020"
HENCE THIS PETITION	

PLACE: Bangalore
DATE: 19.01.2021

COUNSEL FOR PETITIONERS

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BENGALURU

(ORIGINAL JURISDICTION)

W. P. No. 1154 / 2021

IN THE MATTER OF

1. Kanika Gulati

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2. Sreekumar Gopinadhan

[REDACTED]
[REDACTED],
[REDACTED]
[REDACTED]
[REDACTED] Bangalore

PETITIONERS

AND

1. State Government of Karnataka

Room No. 320, 3rd Floor,

Vidhana Soudha

Bangalore - 560001

Represented by its Chief Secretary

2. State of Karnataka

Ministry of Animal Husbandry and Fisheries

405, 4th Floor, Vikasa Soudha

Bangalore- 560001

Represented by its Principal Secretary

3. State government of Karnataka

Department of Parliamentary Affairs

Legislation

Bangalore - 560 001.

Represented by its Principal Secretary ...RESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

The Petitioners in the present petition humbly submit as follows:

1. The present petition is a public interest litigation which is brought before this Hon'ble Court challenging certain sections of the "The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance, 2020", which has been promulgated by the Respondents. In this Ordinance, Sections 2 (2) which defines cattle to include all cattle animals, Section 4 which prohibits all slaughter of cattle, Section 5 and 6 which restricts transport of cattle, Section 7 prohibiting sale or purchase of cattle for slaughter, Section 12 imposing penalties for such acts of prohibition and section 18(1) (d) exempting only buffaloes above the age of thirteen years to be permitted for slaughter with certification, are in violation of the fundamental rights under Articles 14, 19 and 21 of the constitution. The impugned Ordinance is in violation citizens' Fundamental right to life and privacy as enshrined under Article 21 of the Constitution of India and freedom of trade as enshrined under Article 19(1) (g) of the

Constitution. The impugned ordinance unreasonably restricts the liberty of the people residing in Karnataka to eat food of their choice. It further violates the rights of the people especially farmers, agriculturalists and members carrying out trade which relies on the slaughter of buffaloes bulls and bullocks, which were permitted under the previous legislation which has now been repealed. Hence, this Public Interest Petition has been filed by the Petitioners, challenging the constitutionality of the impugned Ordinance.

ARRAY OF PARTIES

2. The Petitioners are citizens of India and are residing in the State of Karnataka [REDACTED] The Petitioners are professionals working and residing in Bangalore, and working on many issues of public interest and rights of citizens in their own communities and neighbourhoods. They are concerned citizens and have filed this petition in public interest, to challenge the constitutionality of the impugned Ordinance as it violates the fundamental rights of a large group of population in Karnataka who may not be able to approach this Hon'ble Court for relief. The Ordinance violates the rights of food and freedom of trade and occupation and the right to life of farmers, traders, agriculturalists, persons who rely on beef as a staple part of their diet, persons from minority communities and religions who are predominantly affected and other members of the general public who are also affected and have filed the present petition in furtherance of such concern. This Petition is bona fide in nature and the Petitioners do not have any private interest in the same.

3. The Respondents are the State government and the departments of Animal Husbandry and Fisheries and the Department of Parliamentary Affairs and Legislation.

Brief facts:

4. In Karnataka, the Respondents had enacted "The Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964" in the year 1964. This law had prohibited cow slaughter and the slaughter of she-buffaloes, but permitted the slaughter of other cattle animals such as bulls, bullocks, male buffaloes after obtaining certificate from the competent authority. Under this legislation, the term "Animal" was defined to mean bull, bullock, buffalo male or female, or calf of buffalo, whether male or female" and the Competent authority as defined under section 2(ii) was empowered to grant certificate to slaughter for all "animals" other than a calf of a she-buffalo, as defined under section 2(i) of the Act of 1964.

(A copy of The Karnataka Prevention of Cow Slaughter and Cattle Preservation Act 1964 is annexed herein and is marked as **ANNEXURE - A)**

5. Recently, the Respondent No.1 has introduced by way of an Ordinance, the Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020, which repeals the above 1964 legislation.

(A copy of The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 is annexed herein and is marked as **ANNEXURE - B)**

6. The impugned Ordinance has repealed the Act of 1964 and has included the word "Cattle". Under Section 2 (1), 'beef' is defined to mean the flesh of cattle in any form. Section 2 (2) defines the word "cattle" to include the "cow, calf of a cow, bull and bullock of all ages and he and she buffalo below the age of thirteen years".

7. The Impugned Ordinance under Section 4 prohibits the slaughter of all cattle. It states that:

"4. Prohibition of slaughter of cattle.- Notwithstanding anything contained in any law, custom, or usage to the contrary, no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter or otherwise intentionally kill or offer or cause to be offered for killing any cattle.

8. It also restricts in sections 5 and 6 all transport of cattle within the state or outside the state for slaughter:

"5. Restriction on transport of cattle.- No person shall transport or offer for transport or cause to be transported by whatever means any cattle from any place within the State to any other place within the State for slaughter: Provided that, the transport of any cattle, in the manner prescribed by the State Government or Central Government, for bona-fide agricultural or animal husbandry purpose shall not be construed as an offence under this section.

6. Restriction on transport of cattle outside the State.-

(1) No person shall transport or offer to transport or cause to be transported by whatever means cattle from any place within the State to outside the State for the purpose of slaughter: Provided that, the Competent Authority may issue permit for transport of cattle for bona-fide agricultural or animal husbandry purposes: Provided further that, the cattle shall be transported in the manner prescribed by the Central Government by rules governing the transport of cattle under the Prevention of Cruelty to Animals Act, 1960 (Central Act 59 of 1960).

(2) The permit issued under sub-section (1) shall be in such form and in such manner, and subject to payment of such fee as may be prescribed.

9. Further, under section 7, there is prohibition of all sale and purchase of cattle for slaughter:

"7. Prohibition of sale, purchase or disposal of cattle for slaughter.- No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of or cause to be purchased, sold or otherwise disposed of, cattle for slaughter or knowing or having reason to believe that such cattle shall be slaughtered.

10. The only exception it provides is in Section 18 (1) (d) that slaughter of only buffaloes above the age of 13 years upon receipt of certificate from the competent authority.

11. All the prohibited activities are termed offences and Section 12 of the Ordinance imposes harsh punishment of three years extending upto 7 years with fines upto Rupees Ten Lakhs.

12. It is submitted that these impugned provisions of the Ordinance will not only seriously affect farmers who will have to look after their cattle even without resources to do so, will not be able to trade in cattle and will seriously affect traders who engage in trades and profession that engage in the slaughter of cattle apart from cows and calf of she-buffaloes and traders and consumers who rely on products from such trades. It also affects persons who rely on beef as a staple part of their diet and daily food. While the Ordinance does not directly prohibit the sale of beef, the word 'beef' has been defined in section 2 (1) of the Ordinance and the impact of the complete slaughter of all animals as defined under the Ordinance would amount to non-availability of beef which a large population in the State relies upon for their food and nutrition.

13. Aggrieved by the impugned Ordinance, and having no other alternative and equally efficacious remedy, the Petitioners have filed the present Public Interest Litigation before this Hon'ble Court. The Petitioners have not filed any other petition either before this Hon'ble Court or any other court in respect of this cause of action. The Petition is filed on the following, among other grounds.

GROUNDS

14. THAT the impugned Ordinance and its sections which extend the complete ban on the slaughter of cows to bulls and bullocks is not constitutionally valid and in violation of the fundamental rights of Articles 14, 19 and 21 and deserves to be set aside.

15. THAT under the impugned Ordinance, the impugned Sections 2 (2) which defines cattle to include all cattle animals, Section 4 which

prohibits all slaughter of cattle, section 5 and 6 which restricts transport of cattle, Section 7 prohibiting sale or purchase of cattle for slaughter, Section 12 imposing penalties for such acts of prohibition and section 18(1) (d) exempting only buffaloes above the age of thirteen years to be permitted for slaughter with certification, are in violation of the fundamental rights under Articles 14, 19 and 21 of the constitution and deserve to be held as being unconstitutional.

16. " THAT the complete prohibition of the slaughter of bulls and bullocks cannot be considered reasonable given that it is not even correlated to the depleting cattle wealth of the State of Karnataka and nor is it a hindrance to enhancement of such cattle wealth.
17. THAT the complete prohibition of the slaughter of cattle, including bulls and bullocks under section 4 is arbitrary as it is without consideration that if 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 and hence not in the interest of preservation of cattle. The complete prohibition of the slaughter of all cattle including bulls and bullocks is unreasonable because instead of furthering the interests of agriculturists, farmers and that of the agricultural economy it actually harms such interests by creating an additional burden on the scarce resources of water and fodder and that such burden will necessarily fall on the owners of such cattle and hence the same is in violation of Article 14 of the constitution.
18. THAT the validity of Sections 4, 5, 6 and 7 are in violation of the rights of farmers 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.

19. THAT the validity of Sections 2 (2), 4, 5, 6, 7, 12 and 18(1) (d) of the impugned Ordinance cannot be sustained as it would lead to a complete ban on access to beef which would amount to a violation of the right to access to beef as a form of food. The right to life and personal liberty guaranteed under Article 21 of the constitution is violated when people's 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 Karnataka and hence the impugned sections deserve to be declared as being unconstitutional.

20. THAT the complete prohibition on slaughter of all cattle including bulls and bullocks and he-buffaloes 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) and hence is a violation of the right to life under Article 21 of the constitution. 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 and the impugned sections deserve to be set aside.

21. That the Hon'ble Supreme Court in the case of **Justice K.S. Puttaswamy and Ors. vs. Union of India (UOI) and Ors.** 2017 (10) SCC 1, held that the right to privacy is an integral part of the Right to life under Article 21 and also the fundamental freedoms under Article 19. The Supreme Court held that the right to privacy is inherent in the

right of an individual to decide what one eats and went on to hold that, "I do not think that anybody would like to be told by the State as to what they should eat or how they should dress or whom they should be associated with either in their personal, social or political life." And hence the impugned sections restricting the right to privacy of persons to eat the food of their choice is a violation of the rights under Articles 14, 19 and 21 and deserve to be set aside.

22. THAT the Hon'ble Supreme Court held in ***Hinsa Virodhak Sangh vs. Mirzapur Moti Kuresh Jamat and Ors., (2008) 5 SCC 33***, the Hon'ble Court observed that closure of slaughter houses for a limited period of time will not be a violation of Article 14, 19 or 21. However, complete ban on such slaughter houses will be violative of right to trade and right to choice of food. The Supreme Court observed:
"Had the impugned resolutions ordered closure of municipal slaughter houses for a considerable period of time we may have held the impugned resolutions to be invalid being an excessive restriction on the rights of the butchers of Ahmedabad who practise their profession of meat selling. After all, butchers are practicing a trade and it is their fundamental right under Article 19(1)(g) of the Constitution which is guaranteed to all citizens of India. Moreover, it is not a matter of the proprietor of the butchery shop alone. There may be also several workmen therein who may become unemployed if the slaughter houses are closed for a considerable period of time, because one of the conditions of the license given to the shop-owners is to supply meat regularly in the city of Ahmedabad and this supply comes from the municipal slaughter houses of Ahmedabad. Also, a large number of people are non-vegetarian and they cannot be compelled to become vegetarian for a long period. What one eats is one's personal affair and it is a part of his right to privacy which is included in Article 21 of our

Constitution as held by several decisions of this Court." Hence the impugned sections as they impose a complete prohibition are in violation of the right to life and deserve to be set aside.

23. THAT the complete prohibition on slaughter of bulls and bullocks in the impugned Ordinance is passed with no factual data to support the claim of the Respondent State government that consumption of beef is actually detrimental to agriculture and/or the agricultural economy, and such legislative action bears no rational nexus to the objective to behind it, and hence the impugned sections are in violation of Article 14 of the constitution.

24. THAT the impugned sections in the Ordinance impacts many other allied industries impacting most marginalized sections of society (SCs, STs, OBCs and Muslims) whose livelihood depends on these industries as well as consumers of the goods and hence in violation of Articles 19 and 21 of the constitution.

25. THAT the impugned sections have the effect of compelling the farmers and owners 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. 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 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.

26. THAT the allowing of slaughter of bulls and buffalos after 13 years is not at all feasible as 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. Slaughter of the bull after 13 years would not make it suitable for meat or for any other purposes.
27. 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 would be quite high for farmers to maintain and is therefore unreasonable.
28. 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.
29. 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. 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. 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.

30. 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 Karnataka given that the agricultural economy of the State will not be adversely affected by such consumption.

31. THAT the impugned sections will lead to 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. 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.

32. 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.

GROUND FOR INTERIM RELIEF

33. THAT the impugned Ordinance which is promulgated in an arbitrary manner is in the constant violation of the concept of liberty as guaranteed by the Constitution of the people in Karnataka as it deprives

them to eat the food of their choice. Hence, its operation is liable to be stayed on this ground alone. The impugned Ordinance violates the freedom of the citizens of India residing in Karnataka to carry out trade and business as guaranteed by the Constitution of India under Article 19(1)(g). Hence its operation is liable to be stayed.

34. THAT the Impugned Ordinance has made the act of slaughtering criminal offences and has prescribed punishment in the form of imprisonment for a term up to 7 years. If the operation of the impugned ordinance is not stayed, a large number of people shall be subjected to harassment by the Police and will be unnecessarily subjected to criminal proceedings.

PRAYER

WHEREFORE, in the light of the facts and circumstances stated above and the grounds mentioned, it is humbly prayed before this Hon'ble Court be pleased to:

- A. Declare Sections 2 (2), 4, 5, 6, 7, 12 and 18(1) (d) of the "The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance, 2020 as being ultra vires and in violation of the fundamental rights under Articles 14, 19 and 21 of the constitution; and
- B. Pass any other order, writ or direction which this Hon'ble Court deems fit in the interest of justice and equity.

INTERIM PRAYER

Pending the disposal of this Writ, the Petitioners pray that this Hon'ble Court be pleased to stay the operation of "The Karnataka Prevention of Slaughter

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and Preservation of Cattle Ordinance, 2020" dated 05.01.2021, which has been produced herein as **ANNEXURE - B**, in the interest of justice and equity.

PLACE: Bangalore

DATE: 19.1.2021

COUNSEL FOR PETITIONERS

ROHAN KOTHARI

ADDRESS FOR SERVICE:

D6, Dona Cynthia Apartments,
35 Primrose Road,
Bangalore 560 025

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IN THE HON'BLE HIGH COURT OF KARNATAKA AT BENGALURU

(ORIGINAL JURISDICTION)

W. P. No. _____/2021 (PIL)

BETWEEN

Kanika Gulati & Anr.

...Petitioners

AND

State of Karnataka & Others

...Respondents

AFFIDAVIT

I, Kanika Gulati, _____

do hereby solemnly swear and state on oath as follows:

1. I state that I am the Petitioner No. 1 in the accompanying petition. I know the facts of the case, Hence I am competent to swear to this affidavit.
2. I state that all the contents of paragraphs 1 to ____ of the accompanying Petition are true to the best of my knowledge, information and belief.
3. I submit that the Annexure A to ____ annexed to the accompanying petition are originals or true copies of their originals.

IDENTIFIED BY ME

ADVOCATE

Place: Bangalore

Date:

✓ Kanika Gulati

Deponent

SWORN TO BEFORE ME

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IN THE HON'BLE HIGH COURT OF KARNATAKA AT BENGALURU

(ORIGINAL JURISDICTION)

W. P. No. _____/2021 (PIL)

BETWEEN

Kanika Gulati & Anr.

...Petitioners

AND

State of Karnataka & Others

...Respondents

AFFIDAVIT

I, Sreekumar Gopinadhan, _____

_____ do hereby solemnly
swear and state on oath as follows:

1. I state that I am the Petitioner No. 2 in the accompanying petition. I know the facts of the case, Hence I am competent to swear to this affidavit.
2. I state that all the contents of paragraphs 1 to ___ of the accompanying Petition are true to the best of my knowledge, information and belief.
3. I submit that the Annexure A to ___ annexed to the accompanying petition are originals or true copies of their originals.

IDENTIFIED BY ME

ADVOCATE

Deponent

Place: Bangalore

Date:

SWORN TO BEFORE ME