

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) UNDER ARTICLE 32 OF THE
CONSTITUTION OF

INDIA
WRIT PETITION (CIVIL)
NO.. OF 2017

IN THE MATTER
OF: _____

MOHAMMED ABDUL FAHEEM QURESHI
LAWYER AND PRESIDENT OF ALL INDIA
JAMIATUL

QURESH ACTION COMMITTEE ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

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ADVOCATE FOR THE PETITIONER: SANOBAR ALI
QURESHI

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

WRIT PETITION (CIVIL)
NO..

OF 2017

IN THE MATTER OF A PUBLIC INTEREST LITIGATION:-

Mohammed Abdul Faheem Qureshi

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

...PETITIONER

VERSUS

1. UNION OF INDIA

Through Ministry of Environment,

Forest and Climate Change

...RESPONDENT

AND IN THE MATTER OF:-

CIVIL WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR WRIT OF DECLARATION OR ANY OTHER WRIT OR ORDER THEREBY DECLARING RULE 22(a), (b)(iii), (c), (d)(ii) (iv)

(v) (vi) (vii), (e) (i) (iii) AND RULE 25(5) OF NOTIFICATION ISSUED VIDE G.S.R. 494(E) DATED, THE 23RD MAY, 2017 OF THE PREVENTION OF CRUELTY TO ANIMAL (REGULATION OF LIVE STOCKS, MARKETS) RULES, 2016 AND RULE 3 (b), 5 (1) TO (8), 7, 8 (1) (2) AND 9 OF NOTIFICATION ISSUED VIDE G.S.R. 495(E)

DATED, THE 23RD MAY, 2017 OF THE PREVENTION OF CRUELTY TO ANIMALS (CARE AND MAINTENANCE OF CASE PROPERTY ANIMALS) BOTH WERE PUBLISHED IN EXERCISE OF THE POWERS CONFERRED BY SUBSECTIONS (1) AND (2) OF SECTION 38 OF THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960 (59 OF 1960), AS ULTRA VIRES BEING VIOLATIVE OF ARTICLE 14, 19, 21, 25 AND 29 OF THE CONSTITUTION OF INDIA IN PARTICULARS AND PASS AN ORDER TO QUASH BOTH NOTIFICATION, AS PRAYED IN THE PRESENT PETITION.

To,

The Hon'ble Chief Justice of India and his Companion Justices of the Hon'ble Supreme Court of India.

THE HUMBLE PETITION OF THE ABOVE NAMED PETITIONER.

MOST RESPECTFULLY SHOWETH:-

1. That the petitioner is a lawyer and the President of All India Jamiatul Quresh Action Committee a non-governmental organization working

for the upliftment of weaker sections of the society including the butchers and cattle traders of the country. The copy of the ID proof of the petitioner and certificate of registration of the organization of the petitioner are annexed

herewith as **ANNEXURE P-1 (COLLY) PAGES (TO)**

2. That the writ petitioner has no personal interest in the litigation and the petition is not guided by self-gain or for gain of any other person/institution/body and there is no motive other than of public interest in filing the present writ petition Under Article 32 of the Constitution of India.
3. That the present petition is being filed in the form of a Public Interest Litigation (PIL) by the petitioner herein for agitating the cause of the cattle traders, farmers, butchers, agriculturists as well as non-vegetarian consumers. The copy of the Gazette Notification vide G.S.R. 494(E) dated 23.05.2017 is annexed herewith as **ANNEXURE P-2 PAGES (TO)** and Gazette Notification vide G.S.R. 495(E) dated 23.05.2017 is annexed herewith as **ANNEXURE P-3 PAGES (TO)**.
4. That the petitioner is filing the present writ petition being aggrieved by Rule 3 (b), 5 (1) to (8), 7, 8 (1) (2) and 9 of NOTIFICATION issued vide G.S.R. 495(E) dated, the 23rd May, 2017 in exercise of the powers conferred by sub-sections (1) and (2) of section 38 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), the Respondent made the following rules, namely: —the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016 and Rule 22(a) (b)(iii) (c) (d)(ii) (iv) (v) (vi) (vii) (e) (i) (iii) and Rule 25(5) of NOTIFICATION issued vide G.S.R. 494(E) dated, the 23rd May, 2017 in exercise of the powers conferred by sub-sections (1) and

(2) of section 38 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), the Respondent made the following rules, namely: — the Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2016.

5. That the Rules Rule 3 (b), 5 (1) to (8), 7, 8 (1)(2) and 9 of (Care and Maintenance of Case Property Animals) Rules, 2016 in the notifications issued vide G.S.R. 495(E) dated, the 23rd May, 2017 are ultra vires, illegal and unsustainable being violative of Section 29 and 35 of the parental Act.
6. That the Rules under 22(a) (b)(iii) (c) (d)(ii) (iv) (v) (vi) (vii) and (e) (ii) and (iii) and 25 (5) of NOTIFICATION issued vide G.S.R. 494(E) dated, the 23rd May, 2017 are arbitrary, illegal, unconstitutional and violative of Article 19 (1) (g), 21, 25, 29 of the Constitution of India.
7. That the Prevention of Cruelty to Animals Act 1960(59 of 1960) is an Act to prevent the infliction of unnecessary pain or suffering on animals. It is submitted that section 38 gives power to the respondent to make rules by notification in the Official Gazette and subject to the condition of previous publication, to carry out the purposes of this Act but Section 38 does not delegate any power to override or rewrite the provisions of the Parent Act.
8. That the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016 are made in exercise of the powers conferred under section 38 (1) of the Act and the impugned rules 8 (1) and (2) are inconsistent and overriding with the provisions of Section 29 of The Prevention of Cruelty to Animals Act 1960.
9. That it is also relevant to note that recently the Hon'ble Bombay High Court in the case of Sheik Zahid Mukthar Vs State

of Maharashtra and the Allahabad High Court in Saeed Ahmed Vs State of U.P, had held similar entrenchment of the State in connection with slaughter of animals and depriving the people of their right to choice of food to be unconstitutional.

10. That After Kerala, West Bengal, Karnataka, left ruled Tripura has said that it will not implement the Centre's ban on sale of cattle for slaughter through animal markets in the wake of outrage against the new rules that impact the livelihood of poor dalits and Muslims. It is submitted that Agriculture and Animal Resources Minister, Aghore Deb-barma said on 31.05.2017 that "the new cattle trade and slaughter rules framed by the central government are against the interests of the people. We will not implement them." And Karnataka Chief Minister K Siddaramaiah on 30.05.2017 said it is not mandatory to follow every notification issued by the Central Government, this matter is a state issue. Kerala Chief Minister Pinarayi Vijayan has asked Chief Ministers of other states to raise their voices against restrictions imposed on cattle trade, saying that the centre's "anti-democratic" notification is an attempt to usurp the state government's power in the guise of rules under a central act." The true copy of the newspaper clippings of various newspapers are annexed herewith

as **ANNEXURE P-4 (COLLY) PAGES (TO)**.

11. That the provisions of the Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued with an object of preventing unnecessary pain or suffering to animals and providing protection to them. But the impugned rules 8 (1) and (2) of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016 are inconsistent and overriding provisions of

The Prevention of Cruelty to Animals Act 1960. The provisions of the rules made under the Act cannot be used to override the provisions of the Act and it would render the entire scheme of the Act operating in the country as useless and nugatory.

29. Power of court to deprive person convicted of ownership of animal :

- (i) If the owner of any animal is found guilty of any offence under this Act. the court upon his conviction thereof, may, if it thinks fit, in addition to any other punishment make an order that the animal with respect to which the offence was committed shall be forfeited to Government and may, further, make such order as to the disposal of the animal as it thinks fit under the circumstances.*
- (ii) No order under sub section (1) shall be made unless it is shown by evidence as to a -previous conviction under this Act or as to the character of the owner or otherwise as to the treatment of the animal that the animal if left with the owner, is likely to be exposed to further cruelty.*
- (iii) without prejudice to the provision contained in sub-section (1), the court may also order that a person convicted of an offence under this Act shall, either permanently or during such period as is fixed by the order, be prohibited from having the custody of any animal of any kind whatsoever, or as the court thinks fit of any animal of any kind or species specified in the order.*

- (iv) *No order under sub-section (3) shall be made unless*
- (a) *it is shown by evidence as to a previous conviction or as to the character of the said person or otherwise as to the treatment of the animal in relation to which he has been convicted that an animal in the custody of the said person is likely to be exposed to cruelty; (b) it is stated in the complaint upon which the conviction was made that it is the intention of the complaint upon the conviction of the accused to request that an order be made as aforesaid and (c) the offence for which the conviction was made was committed in an area in which under the law for the time being in force a licence is necessary for the keeping of any such animal as that in respect of which the conviction was made.*
- (v) *Notwithstanding anything to the contrary contained in any law for the time being in force, any person in respect of whom an order is made under sub-section (3) shall have no right to the custody of any animal contrary to the provisions of the order, and if he contravenes the provisions of any order, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.*
- (vi) *Any court which has made an order under sub-section (3) may at any time, either on its own motion or on application made to it in this behalf, rescind or modify such order.*

12. That it is evident from the above provisions that the confiscation can be ordered only on a second or a subsequent conviction. There is no

provision for confiscation of the animals on first conviction of the accused according to the Prevention of Cruelty to Animals Act, 1960. As per Section 29 of the Act, the animals are liable to be confiscated only when the owner of the animals is convicted for the second time.

13. That similarly, this hon'ble court held in Criminal Appeals Nos. 889-892 of 1998 Manager, Pinjrapole Deudar and another, Appellants V. Chakram Moraji Nat and others reported in AIR 1998 SUPREME COURT 2769, it was held at Page : 4 Para 9 as under :

In view of the above discussion and provisions of Section 451 of Cr.P..C. It appears to us that unless the owner of the animal in respect of which he is facing prosecution is deprived of the custody which can be done only on his conviction under the Act for the second time.

Para 10 : (if the owner is facing first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution)

14. That on the similar issue, Andhra Pradesh High Court also held in Criminal Revision Case Nos. 1966 & 1963 of 2011 between SRI GOKULAM GOSHALA Vs. The State of Andhra Pradesh It was held as under :

(It is evident from the provisions that the confiscation can be ordered only on second and subsequent convictions)

15. That on the similar issue, In Criminal Revision Case No. 799 of 2015 between The Blue Cross of Hyderabad Vs. Mohd. Jahangir & The State of Telangana, The Hon'ble High court of Hyderabad held as under :

(There is no provision for confiscation of the camels according to the Prevention of Cruelty to Animals Act, 1960. As per Section 29 of the Act, the camels are liable to be confiscated only when the owner of the animals is convicted for the second time)

16. That in another case in RAJASTHAN HIGH COURT- JODHPUR between Mohd. & Another vs State & others *Held :*

(In view of the directions and guidelines issued by the Hon'ble Apex Court in the aforesaid case, this Court is of the opinion that the interim custody of the cattle in question was rightly awarded to the owners by the learned Chief Judicial Magistrate, Pratapgarh)

17. That this Hon'ble Court held in a case reported in (2010) 1 SUPREME COURT CASES 234 Criminal Appeal No. 2020 of 2009 Between Bharat Amratlal Kothari and another V. Dosukhan Samadkhan sindhi and others.

(FIR No. II-C.R.No. 3131 of 2008, registered with Deesa City Police Station for the alleged commission of offences punishable under Section 279 of Indian Penal Code, Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and Sections 5, 6 and 8 of Bombay Animal Preservation Act, 1954)

Held : (Para 48 and 49) "For the foregoing reasons the appeal partly succeeds. The directions Nos. 1 to 6, contained in paragraph 14 of the impugned judgment, are hereby set aside. The Special Criminal Application No. 1387 of 2008 is accepted in part by directing the respondent No. 8 to hand over custody of goats and sheep seized in the instant

case to the respondent Nos. 1 to 6, who are owners thereof, in such proportion as the original number of seized animals bears to the number of surviving animals, on each of them depositing a sum of rupees fifty thousand with the trial court and each furnishing two sureties of Rs.50,000/- to the satisfaction of the trial court. The respondent Nos. 1 to 6 be handed over custody of goats and sheep in the presence of Police Officer in-charge of the Police Station at Patan, who shall supervise delivery of the animals to the respondent Nos. 1 to 6 in such manner that the animals are not subjected to further cruelty in their transportation within the area of his jurisdiction. The respondent Nos. 1 to 6 are directed to see that no cruelty is meted out to the surviving animals and submit an undertaking to that effect to the trial court within a period of two weeks from today.”

18. That In fact, the Constitution Bench of the Supreme Court in M.H.Qureashi Vs State of Bihar AIR 1958 SC 731, had observed as follows:-

“The maintenance of useless cattle involves a wasteful drain on the nation’s cattle feed. To maintain them is to deprive the useful cattle of the much needed nutrition. The presence of so many useless animals tends to deteriorate the breed”

Similarly State laws providing for total ban on slaughter of Bulls and Bullocks, was quashed by the Supreme Court. Further, it is also to be noted that any freedom under Article 19 can be restricted, only by a law made by the legislature and cannot be curtailed by a delegated executive fiat having no sanction in the parent

Act. Further, the complete ban of sale or purchase or resale of animals, would cast a huge economic burden on the farmers who find it difficult to feed their children today but would be required to feed the cattle as it is an offence under the Act of 1960 to starve an animal or failure to maintain it.

19. That there are number of incidents where the cow, bull or bullocks are transported by any goods carriage or carried on foot, they are generally seized either by the police or some anti-social elements. The Police is also helpless before such anti-social elements, who are violating the Fundamental right of citizens to carry the trade of purchasing and selling the cattle.
20. That thus the Parliament by the Act of 1960 had exhaustively provided the acts which in the wisdom of legislature amounts to cruelty, which is sought to be prevented by the Act of 1960. Further, it is to be noted that section 11 also provides exceptions to the acts stated above under section 11(3), making it clear that the section would not apply to among other things any commission or omission of any act in the course of destruction or the preparation for the destruction of any animal as food for mankind unless, such destruction or preparation was accompanied by the infliction of unnecessary pain and suffering. From the above it is clear that the legislature had not categorize slaughtering of animals for the purpose of food to be an act of cruelty, sought to be in any way prevented by the Act of 1960. In fact, the scheme of the Act specifically provides for and permits slaughter of any animal for the purpose of food.
21. That it is also to be noted that though the legislature has specifically sought to prohibit experiments on animals, the scheme of the Act does not contemplate any prohibition on slaughter of animals. In fact, the legislature has positively provided vide section 28, that killing of any animal in any manner required by the religion of any

community to be outside the purview of the Act of 1960. Therefore, from the above express provisions of the Act, it is clear that the Act of 1960 was not enacted by the Parliament to in any way prohibit or restrict any act of slaughter of animals for food or for religious sacrifice or the sale of animals for the same.

22. That it is also to be noted that a right under Article 25 can be restricted on the grounds of public order morality and health or grounds enumerated under Article 25(2), only by a law made by the legislature and not by the delegated executive fiat having no backing of the enactment made by the legislature. As the impugned provisions have not been made either on the grounds of public order or morality or health or any justification of restriction provided under Article 25(2) and also the impugned provisions is not a legislature made law, the impugned provisions offend the right to freedom of religion and conscience and is therefore void. Further, it is also to be noted that slaughtering of animals for food, the foods and culinary made out of such animal flesh and offering sacrifice of animals is a part of the cultural identity of such communities, which is protected from any legislative or executive encroachment under Article 29 of the Constitution of India, which is not been subjected to any restriction by the framers of the constitution and thus the impugned provision which prohibits sale, purchase, for slaughter of animals for food and religious offering is violative of Article 29 of the Constitution of India.
23. That in a Judgment Passed by HIGH COURT OF JUDICATURE AT ALLAHABAD in Criminal Revision No. 131 of 2005 Between Kailash Yadav and others.....Revisionists Versus State of U.P. and another, It was held as under :

11. *Mere transportation of cow, bull or bullock from one place to another place within the State of Uttar Pradesh or carrying them on foot cannot amount to 'attempt' of slaughtering and this act at the most can be said to the 'preparation' of slaughtering, which is not punishable under Cow Slaughter Act or any other law for the time being in force. It is held by the Allahabad High Court that Uttar Pradesh Prevention of Cow Slaughter Act prohibits slaughter of cow or bullocks and possession of beef, but there is nothing in the act prohibiting preparation for cow slaughtering. It is also held that there cannot be reasonable presumption or inference that the bullocks were being transported for slaughtering. In present case also, barring the so called confession of the accused persons before the police, there is no other material on record to show that the seized bullocks were being carried to Bihar for the purpose of slaughtering as alleged in the FIR.*
12. *The offence of 'abatement' of slaughtering would also not be made out in present case, as the accused persons at the time of their arrest were neither offering the bullocks to any other person for slaughtering, nor they were providing any other kind of aid to any person for the offence of slaughtering. Mere transporting the cow, bull or bullock or carrying them on foot from one place to another place within the State of Uttar Pradesh cannot be said to the 'abatement' of any offence under Cow Slaughter Act,*

unless these cattle are either offered to any other person for slaughtering or any other kind of aid is provided to any person for the offence of slaughtering.

13. *It is often seen now-a-days that whenever the cow, bull or bullocks are transported by any goods carriage or carried on foot, they are generally seized either by the police or some anti-social elements. The Uttar Pradesh Police also is helpless before such anti-social elements, who are violating the Fundamental right of citizens to carry the trade of purchasing and selling the cattle. Cow Slaughter Act prohibits slaughter of cow and its progeny and possession of beef, but neither this Act, nor any other law for the time being in force prohibits the trade of cow or its progeny within the State of Uttar Pradesh. Unfortunately the police of Uttar Pradesh is also helping such anti-social elements by seizing the cattle and vehicles carrying them, even no offence under Cow Slaughter Act or Animals' Cruelty Act is made out. Even more unfortunate state of affairs in Uttar Pradesh is that the Magistrates and Judges in subordinate courts are also not looking to this matter and either due to excessive devotion to cow or lack of legal knowledge, they are not only declining to release the seized cattle or vehicles carrying them, but without applying their mind, they are rejecting the bail applications also in such cases, although no offence under Cow Slaughter Act is made out and all the offences under Animals' Cruelty Act are bailable.*

While making Inspection of Rampur judgeship as Administrative Judge, I found that a large number of bail applications in such cases were rejected not only by the magistrates, but unfortunately the then Sessions Judge and some Additional Sessions Judges also did not care to see

whether any offence under Cow Slaughter Act is made out or not and without applying the mind, the bail applications even in those cases were rejected where two or three bullocks were being carried on foot by the accused. This unfortunate practice of rejecting the bail applications without applying mind by merely seeing section 3, 5, 5-A and 8 of Cow Slaughter Act in FIR is prevalent almost in the whole Uttar Pradesh, which is unnecessarily increasing the work-load of High Court. By declining bail to the accused persons under Cow Slaughter Act, although no offence under this act is made out and the offences punishable under Animals' Cruelty Act are bailable, the personal liberty of the accused protected under Article 21 of the Constitution of India is also unnecessarily curtailed till their release on granting bail by the High Court.

24. That the provisions under the impugned Rule 3 (b) and Rule 8 (1) (2) of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 are inconsistent, ultra virus, overriding and outside the purview of the provisions of The Prevention of Cruelty to Animals Act 1960 (59 of 1960).

3. Custody of animals pending litigation.—

When an animal has been seized under the provision of the Act or the rules made thereunder—

(b) the magistrate may direct the animal to be housed at an infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala during the pendency of the litigation.

8. Status of animal upon disposal of litigation.—

(1) If the accused is convicted, or pleads guilty, the magistrate shall deprive him of the ownership of animal and forfeit the seized animal to the infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala already having custody for proper adoption or other disposition.

(2) If the accused is found not guilty of all charges, the seized animal shall be returned to the accused or owner of the animal and the unused portion of any bond amount executed shall be returned to the person who executed the bond.

25. That according to the provision under section 29 of the Act, the animals can be forfeited on second and subsequent conviction only, whereas the provision under new impugned Rule 8, inconsistent and overriding with section 29 of the Parent Act and it empowers the magistrate to deprive the accused of the ownership of the animals and forfeit the seized animals to infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala on first conviction, or on pleading guilty. Similarly Rule 8 (2) and 3 (b) are also inconsistent with section 35 of the Act.

The provisions under section 35 of the Act speaks as under :,

35. Treatment and care of animals :

- (1) *The State Government, may by general or special order appoint infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorise the detention therein of any animal pending its production before a magistrate.*
- (2) *The magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animals concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a pinjrapole, or if the veterinary officer in charge of the area in which the animal is found or such a veterinary officer as may be authorised in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.*
- (3) *An animal sent for care and treatment to an infirmary shall not, unless the magistrate directs that it shall be sent to a pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as may be authorised in this behalf by rules made under this Act.*
- (4) *The cost of transporting the animal to an infirmary or pinjrapole and of its maintenance and treatment in an infirmary, shall be payable by the owner of animals in*

accordance with a scale of rates prescribed by the district magistrate, or, in presidency-towns, by the commissioner of police;

Provided that when the magistrate so orders on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

- (5) Any amount payable by an owner of an animal under sub-section (4) may be recovered in the same manner as an arrear of land revenue,*
- (6) If the owner refuses or neglects to remove the animal within such time as a magistrate may specify, the magistrate may direct that the animal be sold and that the proceeds of the same be applied to the payment of such cost.*
- (7) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale be paid to him.*

26. That it is held by the Supreme Court in Criminal Appeals Nos. 889-892 of 1998 *Manager, Pinjrapole Deudar and another, Appellants V. Chakram Moraji Nat and others* reported AIR 1998 SUPREME COURT 2769

“From a plain reading of the provisions, above noted, it is evident that sub-section (1) of Section 35 enables the State Government to appoint infirmaries for the treatment and care of animals in respect of which any of the offences under the Act has been committed and to authorise the detention of such animals pending their production before a magistrate. Under sub-

section (2), the Magistrate may order that: (a) the animal shall be treated and cared for in an infirmary till such time it is fit to perform its usual work or is otherwise fit for discharge; (b) the animal shall be sent to a Pinjrapole; or (c) the animals shall be destroyed if it is certified by a veterinary officer, authorised under the Rules, to be incurable or if it is found that it cannot be removed without cruelty. Mandate of sub-section (3) is that no animal shall be released from an infirmary unless it is directed to be sent to Pinjrapole or be destroyed or certified by concerned veterinary officer to be fit for discharge. Sub-section

(4) imposes liability for payment of the cost of transporting the animal to an infirmary or Pinjrapole and its maintenance and treatment in an infirmary, in accordance with the prescribed rates, which, however, can be dispensed with if the Magistrate is satisfied that on account of the poverty of the owner, he is unable to bear the same, otherwise it may be recovered as arrears of land revenue, as envisaged in sub-section (5). Sub-section (6) says that if the owner refuses or neglects to remove the animal within the time specified by the Magistrate then he can order the sale of the animal and appropriation of the sale proceeds for the cost thereof and in the event of there being surplus proceeds of such sale, payment of the same to the owner on his application within two months of the sale. This is postulated by sub-section (7). In view of the above discussion and provisions of Section 451

Cr.P.C., it appears to us that unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no bar can be inferred against him to claim interim custody of the animal. Now advertng to the contention that under Section 35(2), in the event of the animal not being sent to infirmary, the Magistrate is bound to give the interim custody to Pinjrapole, we find it difficult to accede to it. We have noted above the options available to the Magistrate under Section 35(2). That sub-section vests in the Magistrate the discretion to give interim custody of the animal to Pinjrapole. The material part of sub-section (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a Pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to Pinjrapole. It is thus evident that the expression "shall be sent" is part of the direction he decides to give interim custody to Pinjrapole. It follows that under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to Pinjrapole but he is not bound to hand over custody of the animal to Pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, Pinjrapole has no preferential right. In deciding whether the interim custody of the animal be given to the owner who is facing

prosecution, or to the Pinjrapole, the following factors will be relevant: (1) the nature and gravity of the offence alleged against the owner; (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution; (4) the condition in which the animal was found at the time of inspection and seizure; (5) the possibility of the animal being again subjected to cruelty. There cannot be any doubt that establishment of Pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen, (a) whether the Pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and (b) whether the Pinjrapole has good record of taking care of the animals given under its custody. A perusal of the order of the High Court shows that the High court has taken relevant factors into consideration in coming to the conclusion that it is not a fit case to interfere in the order of the learned Additional

Sessions Judge directing the State to hand over the custody of animals to the owner. Dr. Singhvi represents that Pinjrapole prepared to keep animals in custody without charging any money for their maintenance. In our view, that cannot be a correct criteria for giving custody of the animals to Pinjrapole particularly when the Court has to decide the competing claims of the owner and the Pinjrapole for their custody.”

27. That the impugned provisions prohibit the owner to have the interim custody of his own animals during pendency of litigation and even after being acquitted he is losing the amount deposited for transporting, care and maintenance of animals which may exceed the cost of the animal due to long pendency of the case in the court, thus the impugned provisions are ex-facie illegal, contrary to the parent Act, decisions of High Courts and the decisions of the Hon'ble Supreme Court, the impugned provisions do not enjoy presumption of constitutionality and is per se unconstitutional.
28. That the preamble of the Constitution is an integral part of the Constitution. Democratic form of Government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution. Accordingly Constitution by Article 19 (1) (g) guarantees to the Indian citizen the right to carry on trade or business subject to

such reasonable restrictions as are mentioned in clause 6 of that Article. A constitutional guarantee of the right to take up the profession, calling, trade or business of one's choice is indeed a significant aid to the building up of a dynamic and democratic society. The framers of the Constitution have done well to incorporate these rights in the chapter on Fundamental Rights and have thereby helped the evolution of a truly democratic society.

29. That restrictions under Rule 22(a) (b)(iii) (c) (d)(ii) (iv) (v) (vi)

(vii) and (e) (ii) (iii) of the Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017, on the face of it, is of an arbitrary nature amount to an infringement of the fundamental right guaranteed by Article 19 (g) of the Constitution of India and Rule 25 (5) is inconsistent with the provision of Section 35(4) of the Prevention of Cruelty to Animals Act.

22. Restrictions on sale of cattle.—

The Member Secretary of the Animal Market

Committee shall ensure that-

- (a) no person shall bring to an animal market a young animal;*
- (b) no person shall bring a cattle to an animal market unless upon arrival he has furnished a written declaration signed by the owner of the cattle or his duly authorised agent—*
 - (iii) stating that the cattle has not been brought to market for sale for slaughter;*

- (c) *every declaration furnished to the Animal Market Committee shall be retained by it for a period of six months from the date on which it is furnished to them and the Animal Market Committee shall, on demand made by an Inspector at any reasonable time during that period, produce such declaration and allow a copy of it or an extract from it to be taken;*
- (d) *where an animal has been sold and before its removal from the animal market, the Animal Market Committee shall*
- (ii) *take an undertaking that the animals are bought for agriculture purposes and not for slaughter;*
 - (iv) *verify that the purchaser is an agriculturist by seeing the relevant revenue document;*
 - (v) *ensure that the purchaser of the animal gives a declaration that he shall not sell the animal up to six months from the date of purchase and shall abide by the rules relating to transport of animals made under the Act or any other law for the time being in force;*
 - vi) *retain such record for a period of six months from the date of sale;*
 - (vii) *produce such record before an Inspector on demand being made by him at any reasonable time*

during that period and allow a copy of it or an extract from it to be taken;

(e) the purchaser of the cattle shall –

(i) not sell the animal for purpose of slaughter;

(iii) not sacrifice the animal for any religious purpose;

30. That the Rule 22(a) is prohibiting the owner of a young animal to bring to an animal market. A young animal defined under 2 (o) of the impugned rules as the animal under the age of six months. It is an unreasonable and illegal restriction which prohibits the cattle trader to trade for the purpose of breeding and raring. Rule 22(b)(iii) unconstitutionally prohibits the sale of cattle for slaughter imposing absolute ban on the purchase of the animal in the cattle market for slaughter. Rule 22 (c) is unnecessary imposing a condition upon the most educationally backward class community of India to furnish declaration to the Animal Market Committee and to retain it for a period of six months from the date on which it is furnished on demand made by an Inspector at any reasonable time during that period, produce such declaration and allow a copy of it or an extract from it to be taken. Rule 22 (d) (ii) (iv) (v) (vi) (vii) impose absolute ban upon the cattle trader to buy and sell the animals in the cattle markets and permitting only the agriculturist on production of their revenue records and with a declaration not to sell the animal within a period of six month from the date of purchase. It's

discrimination with the cattle traders imposing unconstitutional restrictions from using the cattle markets for the trade of cattle which is their ancestral and traditional occupation being carried on from their ancestors with no other skills to get employed or adopt any other profession. It is a forceful imposition of illegal and unconstitutional rule 22 (v) on agriculturist to maintain the cattle for a minimum fixed period of six month after purchase and more better than his family members irrespective of his financial liabilities towards his family members. It is further more unlawful imposition of a liability under Rule 22 (e) (i))(iii) on the buyer of the cattle who shall be an agriculturist and can sell the cattle after the maturity period of six month to other buyer who should also be an agriculturist and the purchased animals shall never be sold for the purpose of slaughtering even if it does not remain as a useful animal.

31. That the complete ban of sale or purchase or resale of animals, would cast a huge economic burden on the farmers, cattle traders who find it difficult to feed their children today but would be required to feed the cattle as it is an offence under the Act of 1960 to starve an animal or failure to maintain it and would also give way for Cow Vigilantes to harass farmers and cattle traders under the blessing of the impugned regulations. Therefore, the impugned provisions are in violation of the right to livelihood under Article 21 of the Constitution of India and in violation of the right to carry on trade or business and amount to an infringement

of the fundamental right guaranteed by Article 19 (g) of the Constitution of India.

32. That under the impugned regulations, the sale of animals for slaughter has been prohibited in any animal market while the definition of animal market under Rule 2(b) covers all places of sale and therefore by the impugned regulations, a complete ban has been imposed on the trade of sale or purchase of animals for slaughter. Therefore, the impugned provisions are imposing an absolute ban on slaughtering of animals in the country directly effecting the employment of the butchers and their trade depriving the citizens to have the food of their choice and in violation of the right to livelihood under Article 21 of the Constitution of India and also inconsistent and violative of section 28 of the parent Act.
33. That Rule 25 of The Prevention of Cruelty to Animals Act (Regulation of Livestock Markets) Rules 2016 gave the veterinary Inspectors power of detention and treatment of unfit animals with a mandatory provision under Rule 25 (5) which says Expenses incurred by a veterinary inspector in treating, or causing to be treated, an unfit animal in exercise of the powers conferred on him by these rules shall be borne by the owner of the animal.
34. That similarly the provisions for cost and care of the animals pending litigation has been laid down in The Prevention of the Cruelty Act (Care and Maintenance of Case Property Animal) Rules 2016. Rule 5(1) empowers the magistrate to handover

the custody of animals to an infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala and to impose a liability on the owner of the cattle for cost incurred and anticipated to be incurred for transport, maintenance and treatment of animal. It also empowers the magistrate to direct the accused and owner to execute a bond of the determined value with sureties within three days and on failure the power of forfeiture of animals to infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala. The Rule 5(2) gives power to infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala to draw on from the bond on a fortnightly basis the cost incurred in caring or the animals from the date it received the custody till the date of disposal of animal. Rule 5(3) empowers the magistrate to call for the accused and the owner to execute additional bond with sureties once eighty percent of the initial bond amount has been exhausted as cost for caring animals. Rule 5(4) empowers the magistrate to direct the vehicle to be held as a security in case a vehicle is involved in an offence. Rule 5(5) is imposing a liability in case of offence relating to transport of animals, the vehicle owner, consignor, consignee, transporter, agents and any other parties involved shall be jointly and severally liable for the cost of transport, treatment and care of animals. Rule 5(6) & 5 (7) imposing such liabilities on body corporate and government.

35. That if the owner and accused do not have the means to furnish the bond before the magistrate on account of poverty or by any

other reason in that event Rule 5(8) empowers the magistrate to direct the local authority to undertake the costs involved and recover the same as arrears of land revenue.

36. That the provisions under Rule 25 (5) of The Prevention of Cruelty to Animals Act (Regulation of Livestock Markets) Rules 2016 and the provisions under Rule 5 (1) to (8) of The Prevention of the Cruelty Act (Care and Maintenance of Case Property Animal) Rules 2016 are in contradictory and inconsistent with section 35 of the Parent Act and it is compelling the accused and the owner of the animals to abide by Rule 7 of The Prevention of the Cruelty Act (Care and Maintenance of Case Property Animal) Rules 2016 and to execute a bond for voluntary and permanent relinquishment of animals to infirmary, pinjarapole, SPCA, Animal Welfare Organisation or Gaushala. The said contradictory and ultra virus rules extracted hereunder :

25. Detention and treatment of unfit animals.

- (5) Expenses incurred by a veterinary inspector in treating, or causing to be treated, an unfit animal in exercise of the powers conferred on him by these rules shall be borne by the owner of the animal.*

- 5. Execution of bond.— (1) The magistrate when handing over the custody of animal to an infirmary, pinjarapole, SPCA, Animal Welfare Organisation or Gaushala shall determine an amount which is*

sufficient to cover all reasonable cost incurred and anticipated to be incurred for transport, maintenance and treatment of the animal based on the input provided by the jurisdictional veterinary officer and shall direct the accused and the owner to execute a bond of the determined value with sureties within three days and if the accused and owner do not execute the bond, the animal shall be forfeited to infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala.

- (2) The infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala having the custody of the animal may draw on from the bond on a fortnightly basis the actual reasonable cost incurred in caring for the animal from the date it received custody till the date of final disposal of the animal.*
- (3) The magistrate shall call for the accused and the owner to execute additional bond with sureties once eighty per cent. of the initial bond amount has been exhausted as cost for caring for the animal.*
- (4) Where a vehicle has been involved in an offence, the magistrate shall direct that the vehicle be held as a security.*

- (5) *In case of offence relating to transport of animals, the vehicle owner, consignor, consignee, transporter, agents and any other parties involved shall be jointly and severally liable for the cost of transport, treatment and care of animals.*
- (6) *In cases where a body corporate owns the animal, the Chief Executive Officer, President or highest-ranking employee of the body corporate, the body corporate and the accused shall be jointly and severally liable for the cost of transport, treatment and care of the animal.*
- (7) *In cases where the Government owns the animal, the Head of the Department and the accused shall be jointly and severally liable for the cost of transport, treatment and care of the animal.*
- (8) *If the owner and the accused do not have the means to furnish the bond, the magistrate shall direct the local authority to undertake the costs involved and recover the same as arrears of land revenue.*

Rule 7. Voluntary relinquishment.— Nothing in these rules shall be construed to prevent the voluntary and permanent relinquishment of any animal by the owner who is the accused, to infirmary, pinjarapole, SPCA, Animal Welfare Organisation or Gaushala in

lieu of executing a bond but the voluntary and permanent relinquishment shall have no effect on any criminal charges against the accused or owner.

37. That the provisions under section 35 of the Parent Act considered the poverty of the accused owner of the animal and exempted him from the payment for the treatment of animals, whereas the new rules mentioned above imposing harsh conditions of recovering the cost of care and maintenance as arrears of land revenue. It is also compelling the accused owner to voluntarily relinquish his right to infirmary, pinjarapole, SPCA, Animal Welfare Organisation or Gaushala whereas the provisions of the Parent Act gave a preferential right to the accused owner to have the interim custody of his animals during the pendency of the litigation and no confiscation of the cattle on first conviction under the Act. It is held by the Supreme Court in Criminal Appeals Nos. 889-892 of 1998 Manager, Pinjrapole Deudar and another, Appellants V. Chakram Moraji Nat and others reported in AIR

1998 SUPREME COURT 2769 as under :

“Now adverting to the contention that under Section 35(2), in the event of the animal not being sent to infirmary, the Magistrate is bound to give the interim custody to Pinjrapole, we find it difficult to accede to it. We have noted above the options available to the Magistrate under Section 35(2). That sub-section vests in the Magistrate the

discretion to give interim custody of the animal to Pinjrapole. The material part of sub-section (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a Pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to Pinjrapole. It is thus evident that the expression "shall be sent" is part of the direction he decides to give interim custody to Pinjrapole. It follows that under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to Pinjrapole but he is not bound to hand over custody of the animal to Pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, Pinjrapole has no preferential right."

38. That the provisions under Rule 25 (5) of the Prevention of Cruelty to Animals Act (Regulation of Livestock Markets) Rules 2016 and the provisions under Rule 5 (1) to (8) and Rule 7 of The Prevention of the Cruelty Act (Care and Maintenance of Case Property Animal) Rules 2016 are illegally and unconstitutionally creating compelling circumstances to permanently handover the legally purchased animals by its owners to infirmary, pinjarapole,

SPCA, Animal Welfare Organisation or Gaushala by permitting them to execute Rule 9 for process of illegal adoption of animals.

39. That, the Constitution clearly demarcates the fields of legislation, for the Parliament and for the State legislatures in the VII Schedule to the Constitution. It is relevant to note that, the fields of legislation, concerning “Markets and fairs” and “Preservation or protection and improvement of stocks”, falls, within entry 28 and 15 of the State list and thus it is only the State legislature, which is empowered to make laws on the said fields of legislation. The impugned regulations though have been framed in furtherance of the prevention of Cruelty to Animals Act, 1960, the impugned provisions and Rules, which tend to regulate live stock markets with an intention of preserving protecting and improving stocks, is in pith and substance a legislation on the fields earmarked for the State legislature. Given the fact, that

the parent Act (Act of 1960) itself does not deal with the

regulation of markets for sale of animals or the slaughter of the same, the respondent cannot make the impugned Rules

entrenching into the fields of legislation occupied by the State legislature by their respective enactments. For example, in the all the States, District Municipalities Act and the Panchayat Act, permit a person to hold animal markets. When the field of legislation as regards markets and sale of animals for food and sacrifice is occupied by the State legislation, the impugned Rules being delegated legislations cannot prohibit the holding of

markets for sale of animals for food and sacrifice. As the Rule making power of the delegate is only co extensive as that of the parent Act and also subject to the limitation place therein, the impugned provisions which encroached into the powers of the State legislature is unconstitutional and therefore void.

40. That according to Rule 8 (2) If the accused is found not guilty of all charges, the seized animal shall be returned to the accused or owner of the animal and the unused portion of any bond amount executed shall be returned to the person who executed the bond. The said provision deprived the owner of the cattle from its ownership on a false and frivolous registration of a case against him under the Act and that his false implication in the case compelled him to pay the cost of transport, care and maintenance during the pendency of the litigation. It is pertinent to mention that the implementation of the impugned rules is amount to passing of a verdict without trial. The said impugned rule also prohibits the owners from claiming the interim custody of his animals by invoking the provisions u/s 451 or 457 of Cr.P.C. and also it is against the guidelines issued in *Sunderbhai Ambalal Desai vs State Of Gujarat* and several other judgments. There are long pending cases in the courts and there are number of incidents where after disposal of the cases the SPCA's, Animal Welfare Organizations and Goshalas never returned the cattle by willfully and deliberately disobeying the orders of the lower courts and High Courts in the country. There are several incidents in the

country where cases under the Act has been registered on false complaints and the animals were seized on such false complaints and billions of worth animals purchased by farmers, cattle traders, butchers and others legally under valid transaction in the government cattle markets illegally handed over, or forcibly taken without any order and are in possession of SPCA's, Animal Welfare Organizations, infirmaries and Goshalas and never returned to its owners. If the said impugned Rule is implemented it will encourage and give free hands to the bad elements even criminals to lodge false complaints with an intention to grab animals and for making source of their regular income under the pretext of animal laws.

41. That the act of the respondent is completely illegal and arbitrary and hence requires interference of this Hon'ble Court in exercise of its Extra Ordinary Jurisdiction.
42. That being aggrieved by the act of the respondent, the petitioner herein on behalf of public at large including cattle traders, farmers, butchers, agriculturists as well as non-vegetarian consumers, files the present petition on one and each of the following grounds:-

GROUND:-

- A. Because the impugned gazette notifications are bad and erroneous as per law and hence deserves to be declared ultra vires by this Hon'ble Court.

B. Because the Constitution clearly demarcates the fields of

legislation, for the Parliament and for the State legislatures in the 7th

Schedule to the Constitution. It is relevant to note that, the fields of legislation, concerning markets and fairs and preservation or protection and improvement of stocks, falls, within entry 28 and 15 of the State list and thus it is only the State legislature, which is empowered to make laws on the said fields of legislation. The impugned regulations though have been framed in furtherance of the prevention of Cruelty to Animals Act, 1960, the impugned provisions and Rules, which tend to regulate live stock markets with an intention of preserving protecting and improving stocks, is in pith and substance, legislation on the fields earmarked for the State legislature. Thus the respondent has not competence to make Rules on a subject matter falling purely within the legislative domain of the State Legislature.

C. Because the Rules Rule 3 (b), 5 (1) to (8), 7, 8 (1)(2) and 9 of (Care and Maintenance of Case Property Animals) Rules, 2016 in the notifications issued vide G.S.R. 495(E) dated, the 23rd May, 2017 are ultra vires, illegal and unsustainable., violative of Section 29 and 35 of the parental Act,

D. Because the Rules under 22(a) (b)(iii) (c) (d)(ii) (iv) (v) (vi) (vii) and (e) (ii) and (iii) and 25 (5) of NOTIFICATION issued vide G.S.R. 494(E) dated, the 23rd May, 2017 are arbitrary, illegal, unconstitutional and violative of Article 19 (1) (g), 21, 25 and 29 of the Constitution of India.

- E. Because the impugned rules made by the respondent pursuant to the power under section 38 but the same subject to the condition of previous publication, to carry out the purposes of this Act. Section 38 does delegate any power to override the provisions of the Parent Act.
- F. Because the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016 are made in exercise of the powers conferred under section 38 (1) of the Act and the rules under Rule 8 (1) and (2) are inconsistent and overriding with the provisions of Section 29 of The Prevention of Cruelty to Animals Act 1960.
- G. Because Rule 22 (a) is unconstitutional which states that no person shall bring to an animal market a young animal which means respondent depriving the persons from doing permissible trade of breeding and raring of animals.
- H. Because Rule 22 (b)(iii) unconstitutionally prohibits the sale of cattle for slaughter imposing absolute ban on the purchase of the animal in the cattle market for slaughter and violates the fundamental rights of freedom of choice of food.
- I. Because it is a forceful imposition of illegal and unconstitutional rule 22 (v) on agriculturist to maintain the cattle for a minimum fixed period of six month after purchase and more better than his family members irrespective of his financial liabilities towards his family members. It is further more unlawful imposition of a liability under Rule 22 (e) (i))(iii) on the buyer of the cattle who shall be an

agriculturist and can sell the cattle after the maturity period of six month to other buyer who should also be an agriculturist and the purchased animals shall never be sold for the purpose of slaughtering even if it does not remain as a useful animal.

- J. Because the complete ban of sale or purchase or resale of animals, would cast a huge economic burden on the farmers, cattle traders who find it difficult to feed their children today but would be required to feed the cattle as it is an offence under the Act of 1960 to starve an animal or failure to maintain it and would also give way for Cow Vigilantes to harass farmers and cattle traders under the blessing of the impugned regulations. Therefore, the impugned provisions are in violation of the right to livelihood under Article 21 of the Constitution of India and in violation of the right to carry on trade or business and amount to an infringement of the fundamental right guaranteed by Article 19 (g) of the Constitution of India.
- K. Because the impugned rule 22 (e) (iii) contrary to the section 28 which permits killing of animals for religious purposes, while the impugned provisions being delegated legislations which prohibits sale, purchase or sacrifice for religious purposes is thus offend the right to freedom of religion and conscience and is arbitrary, inconsistent and outside the purview of parent act and against the freedom of religious practice to sacrifice the animals and also against the intentions of the framers of the constitution, and it is

also violative of Article 25 and 29 of the Constitution of India and ultra vires the Act of 1960 and therefore void.

- L. Because the provisions under Rule 25 (5) of The Prevention of Cruelty to Animals Act (Regulation of Livestock Markets) Rules 2016 and the provisions under Rule 5 (1) to (8) of The Prevention of the Cruelty Act (Care and Maintenance of Case Property Animal) Rules 2016 are in contradictory and inconsistent with section 35 of the Parent Act and it is compelling the accused and the owner of the animals to abide by Rule 7 of The Prevention of the Cruelty Act (Care and Maintenance of Case Property Animal) Rules 2016 and to execute a bond for voluntary and permanent relinquishment of animals to infirmary, pinjarapole, SPCA, Animal Welfare Organisation or Gaushala.
- M. Because the said impugned rule also prohibits the owners from claiming the interim custody of the his animals by invoking the provisions u/s 451 or 457 of Cr.P.C. and also it is against the guidelines issued in *Sunderbhal Ambalal Desai vs State Of Gujarat* and several other judgments. If the said impugned Rule is implemented it will encourage and give free hands to the bad elements even criminals to lodge false complaints with an intention to grab animals and for making source of their regular income under the pretext of animal laws.
- N. Because some unregistered infirmaries/gaushalas used to seize the animals of cattle traders by implicating them in false cases and despite the court order to release the same, they willfully

disobeyed the order and due to long pendency of cases, they raise the care and maintenance bill which virtually more than the cost of the animals and as such these unregistered infirmaries/gaushalas misappropriated with the animals of the cattle traders before conviction or without permission of the court concerned and as such these impugned rules give power to these unregistered infirmaries/gaushalas to misappropriate with the animals. It is pertinent to mention that in some cases, FIR has been registered on the direction of court concerned against these infirmaries/gaushalas for misappropriation of the animals.

- O. Because the impugned provisions which prohibit the sale or purchase of animals defined as cattle under the Rules for religious purposes, offends the right to freedom of religion guaranteed under Article 25 of the Constitution of India.
- P. Because the impugned provisions deprives a citizen of his right to sell or purchase any animal for sale or slaughter the same as a part of meat vending business is a burdensome interference into the freedom of trade and business guaranteed under Article 19(i)(g) of the Constitution of India and the impugned provisions also do not qualify to be a reasonable restriction as by the impugned provisions, complete ban on the sale or purchase or slaughter of animals irrespective of their economic utility thereby even prohibiting sale and slaughter of animals which have ceased to milk, and thus is an excessive restriction on the right to free trade and business.

- Q. Because the farmers and other traders involved in sale of cattle and other animals and slaughter houses and its employees would be gravely deprived of their right to livelihood as under the impugned regulations, the sale of animals for slaughter has been prohibited in any animal market while the definition of animal market under Rule 2(b) covers all places of sale and therefore by the impugned regulations, a complete ban has been imposed on the trade of sale or purchase of animals defined as cattle under Rule 2(e) of the Rules. Therefore, the impugned provisions are in violation of the right to livelihood under Article 21 of the Constitution of India.
- R. Because the right to choice of food (Non Vegetarian or Vegetarian) is a part of the right to personal liberty, conscience and privacy. By imposing a ban on slaughter of animals for food, the citizens with a choice to eat the flesh of such animals would be deprived of such food, which violates the right to food, privacy and personal liberty, guaranteed under Article 21 of the Constitution of India.
- S. Because the respondent had as a delegate of the Parliament, sought to legislate on matters falling purely within the domain of the State legislature and thus the exercise of Rule making power, directly usurping the legislative powers of the States of the Union, the respondent had breached the cardinal principle of federalism, which is a basic structure of our constitution. Therefore, the impugned rules, which emasculate the State legislature of their domain of legislation, particularly when the Parliamentary

enactment on the subject does not empower such Rule making, is a direct attack on federal structure of our Constitution and is therefore void.

T. Because the Constitutional scheme provides for primacy of the fundamental rights of citizens over the directive principles and the fine balance between the two is by itself a façade of the identity of the Constitution and has been declared by the Hon'ble Supreme Court to be a basic structure of the Constitution. Therefore, by the impugned provisions, the respondent had sought to give primacy to the directive principles over the fundamental rights of citizens and thus has breached the Constitutional identity and therefore void.

43. That the petitioner has not filed any other or similar petition under Article 226 of constitution of India for the same or similar relief on the aforesaid grounds to any other High Court or Hon'ble Supreme Court of India.

44. That the annexures are the true copy of their respective originals.

45. That this hon'ble court may be pleased to grant an **ad-interim stay** of the operation of impugned rules mentioned above of the notification issued vide G.S.R. 494(E) dated 23.05.2017 and notification issued vide G.S.R. 495(E), dated 23.05.2017 pending disposal of above writ petition and thus render justice.

P R A Y E R

In the light of the facts and the circumstances submitted above, your lordship of this Hon'ble Court may graciously be pleased to issue

the writ in the nature of declaration or any other appropriate writs/ order/
directions:

- A pass an order thereby declaring the impugned rules 22(a),
(b)(III), (c), (d)(ii) (iv) (v) (vi) (vii), (e) (i) (iii) and rule 25(5) of
notification issued vide G.S.R. 494(E) dated, the 23rd May, 2017 of
The Prevention Of Cruelty To Animal (Regulation Of Live Stocks,
Markets) Rules, 2016 as ultra vires and unconstitutional.
- B. pass an order thereby declaring the impugned rule 3 (b), 5 (1) TO
(8), 7, 8 (1)(2) and 9 of notification issued vide G.S.R. 495(E) dated,
the 23rd May, 2017 of The Prevention Of Cruelty To
Animals (Care And Maintenance Of Case Property Animals) as ultra
vires and unconstitutional.
- iv. Pass any other or further order(s) which this Hon'ble Court may
deem fit and proper in the facts and circumstances of the case in the
interest of Justice.

AND FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER
BEING DUTY BOUND AND SHALL EVERY PRAY.

Drawn By:

SANOBAR ALI QURESHI

Advocate

Filed By:

Advocate for the petitioner

SANOBAR ALI
QURESHI

Drawn on: 6.2017

Place: New Delhi

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) UNDER ARTICLE 32 OF THE
CONSTITUTION OF

INDIA
WRIT PETITION (CIVIL)
NO.. OF 2017

IN THE MATTER OF:

MOHAMMED ABDUL FAHEEM
QURESHI

...Petitioner

Versus

UNION OF INDIA

...Respondent

**AFFIDA
VIT**

I, Mohammed Abdul Faheem Qureshi

[REDACTED]

[REDACTED]

[REDACTED] now temporarily having come to

Delhi, do hereby solemnly affirm and state as under:-

1. That I am the Petitioner in the above matter am well aware of the facts and circumstances and am thus competent to affirm this affidavit.
2. That I have read and understand the contents of the Synopsis and Dist of the Date from Page B to.... Writ Petition from page 1 to and applications and state that the fact contained therein are true to the best of my knowledge and belief as derived the

record.

3. That all annexure annexed to the petition are true copies of the respective originals.

DEPONENT

VERIFICATION:-

Verified at New Delhi on -----day June. . 2017, that the contents of my above affidavit are true and nothing false has been stated therein

DEPONENT

SYNOPSIS

That the present petition is being filed in the form of a Public Interest Litigation (PIL) by the petitioner herein for agitating the cause of the cattle traders, farmers, butchers, agriculturists as well as non-vegetarian consumers being aggrieved by Rule 3 (b), 5 (1) to (8), 7, 8

(1) (2) and 9 of NOTIFICATION issued vide G.S.R. 495(E) dated, the 23rd May, 2016 in exercise of the powers conferred by sub-sections (1) and

(2) of section 38 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), the Respondent made the following rules, namely: —the Prevention of Cruelty to Animals (Care and Maintenance of Case

Property Animals) Rules, 2016 and Rule 22(a) (b)(iii) (c) (d)(ii) (iv) (v)

(vi) (vii) (e) (i) (iii) and Rule 25(5) of NOTIFICATION issued vide G.S.R.

494(E) dated, the 23rd May, 2017 in exercise of the powers conferred by sub-sections (1) and (2) of section 38 of the Prevention of Cruelty to

Animals Act, 1960 (59 of 1960), the Respondent made the following rules,

namely: — the Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2016.

That the Rules Rule 3 (b), 5 (1) to (8), 7, 8 (1) (2) and 9 of (Care and Maintenance of Case Property Animals) Rules, 2017 in the

notifications issued vide G.S.R. 495(E) dated, the 23rd May, 2017 are ultra virus, violative of Section 29 and 35 of the parental Act, illegal and unsustainable and the Rules under 22(a) (b)(iii) (c) (d)(ii) (iv) (v) (vi)

(vii) and (e) (ii) and (iii) and 25 (5) of NOTIFICATION issued vide G.S.R.

494(E) dated, the 23rd May, 2017 are arbitrary, illegal, unconstitutional and violative of Article 19 (1) (g), 21, 25, 29 of the Constitution of India.

That the Prevention of Cruelty to Animals Act 1960(59 of 1960) is an Act to prevent the infliction of unnecessary pain or suffering on animals. It is submitted that section 38 gives power to the respondent to make rules by notification in the Official Gazette and subject to the condition of previous publication, to carry out the purposes of this Act but Section 38 does not delegate any power to override or rewrite the provisions of the Parent Act. It is submitted that That the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016 are made in exercise of the powers conferred under section 38 (1) of the Act and the impugned rules 8 (1) and (2) are inconsistent and overriding with the provisions of Section 29 of The Prevention of Cruelty to Animals Act 1960.

The impugned provisions which prohibit the sale or purchase for slaughter of animals such as bovine animals and camel, has created a discriminatory segregation between the owners, purchasers and people engaged in the slaughter of the animals covered under the term cattle and owners, purchasers and people engaged in the slaughter of other animals like goat, sheep or poultry, while the object of the impugned Rules is to protect and preserve all lives stocks and thus the impugned provision makes a discriminatory segregation not based on any intelligible differentia having any nexus with the object sought to be achieved by the Rules and therefore, offends equal protection of law guaranteed under Article 14 of the Constitution of India and is therefore void.

That the Constitutional scheme provides for primacy of the fundamental rights of citizens over the directive principles and the fine balance between the two is by itself a façade of the identity of the Constitution and has been declared by the Hon'ble Supreme Court to be a basic structure of the Constitution. Therefore, by the impugned provisions, the respondent had sought to give primacy to the directive principles over the fundamental rights of citizens and thus has breached the Constitutional identity and therefore void.

That the respondent had as a delegate of the Parliament, sought to legislate on matters falling purely within the domain of the State legislature and thus the exercise of Rule making power, directly usurping the legislative powers of the States of the Union, the respondent had breached the cardinal principle of federalism, which is a basic structure of our constitution. Therefore, the impugned rules, which emasculate the State legislature of their domain of legislation, particularly when the Parliamentary enactment on the subject does not empower such Rule making, is a direct attack on federal structure of our Constitution and is therefore void.

That the right to choice of food (Non Vegetarian or Vegetarian) is a part of the right to personal liberty, conscience and privacy. By imposing a ban on slaughter of animals for food, the citizens with a choice to eat the flesh of such animals would be deprived of such food, which violates the right to food, privacy and personal liberty, guaranteed under Article 21 of the Constitution of India.

DATES AND EVENTS

- | | |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1960 | Prevention of Cruelty to Animals Act was came into existence. |
| 23.05.2017 | Impugned Notification were notified in the form of Gazette notification vide G.S.R. 494(E) dated 23.05.2017 and Gazette Notification vide G.S.R. 495(E) dated 23.05.2017 |
| .06.2017 | Being aggrieved with the above said new cattle trade and slaughter rules framed by the respondent, petitioner herein filing present writ petitioner in the interest of public at large including cattle traders, farmers, butchers, agriculturists as well as non-vegetarian consumers. |

PROFORMA FOR FIRST LISTING SECTION:-

Writ

The case pertains to (Please tick/check the correct box):

- Central Act: (Title) Constitution of India
- Section:
- Central Rule : (Title) Supreme court Rules
- Rule No(s): N.A.
- State Act : (Title) N.A
- Section: N.A.
- State Rule : (Title) N.A.
- Rule No(s): N.A.
- Impugned Interim Order: (Date)
- Impugned Final Order/Decree: (Date) N.A
- High Court: (Name) **N.A**
- Names of Judges: N.A

Tribunal Authority : (Name) N.A.

1. Nature of matter: Civil
2. (a) Petitioner: — Mohammed Abdul Faheem Qureshi
(b) e-mail ID: XXXXXXXXXX
(c) Mobile phone number: XXXXXXXXXX
3. (a) Respondent : Union of India
(b) e-mail ID: N.A.
(c) Mobile phone number: N.A.

4. (a) Main category classification:

(b) Sub classification:

5. Not to be listed before: N.A.

6. Similar/Pending matter: N.A.

7. Criminal Matters: N.A.

(a) Whether accused/convict has surrendered: N.A.

(b) FIR No. N.A. Date: N.A.

(c) Police Station: N.A.

(d) Sentence Awarded: N.A.

(e) Sentence Undergone: N.A.

8. Land Acquisition Matters: N.A.

(a) Date of Section 4 notification: N.A.

(b) Date of Section 6 notification: N.A.

(e) Date of Section 17 notification: N.A.

9. Tax Matters: State the tax effect: N.A.

10. Special Category (first petitioner/appellant only):

Senior citizen > 65 years SC/ST Woman/child

Disabled Legal Aid case In custody

11. Vehicle Number (in case of Motor Accident Claim matters):

12. Decided cases with citation: N.A.

ADVOCATE FOR THE PETITIONER:

RAJNEESH KUMAR JHA

Supreme Court Library No1. 01Mob. [REDACTED]

Dated .2017 Code No.