

13.10.2011.
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**W.P. 16749 (W) of 2011.
(PIL)**

**Rajesh Yadav & Ors.
Vs.
State of West Bengal & Ors.**

Mr. Parmeshwar Nath Mishra
Mr. Gopal Ram Sharma
Mr. Pragya Mishra
Ms. Jewel Biswas
... For the petitioners.

Mr. Asoke Banerjee, G.P.,
Mr. Tapan Kumar Mukherjee, A.G.P.,
Mr. Jayanta Banerjee,
Mr. Ranjan Bachayat,
Mr. Soumen Sengupta,
Mr. Abhratosh Majumdar,
Mr. Sakya Sen,
Mr. Suman Sengupta,
Mr. Barin Banerjee,
Mr. Swapan Kr. Debnath
.... For the Respondent nos.
1,2,7,9,10,84,94,95 & 100.

Mr. Chandi Charan De, A.G.P.,
Mr. Sanjib Das,
Mr. Sanjib Dutta
... For the Respondent nos.
18 – 28.

Mr. Subhabrata Datta
..... For Respondent nos.
89 – 93.

Mr. Jayanta Banerjee,
Mr. Susovan Sengupta
..... For Respondents nos.
96 – 98.

Mr. Paritosh Sinha,
Mr. Protik Prokash Banerjee

..... For Respondent nos.
77 & 78.

Mr. Subrata Talukdar,
Mr. Saikat Chatterjee
..... For Respondent nos.
68 – 76.

Mr. Ramananda Agarwala
.... For Respondent no. 103.

Mr. Idris Ali,
Mr. S. M. Hassan
Mr. Rajdeep Majumdar,
Mr. Debabrata Chatterjee,
... For the Respondent no. 102.

This writ petition is filed in public interest on the issue of sacrificing cow and its progeny as religious ritual on the occasion of Bakri id. The State has enacted the West Bengal Animal Slaughter Control Act, 1950 by which the slaughtering of an animal was permitted in restricted manner that is only upon the certificate being issued under sub-sections 2 and 3 of Section 4 thereof. Section 12 of said Act empowers the State Government to grant exemptions of the slaughter of any animal for religious, medicinal or research purpose.

Since decades, the point has cropped up whether the sacrifice of the cow on Bakr id Day is an essential part of the religious requirement of the Musalmans, the Division Bench of this Court in case of Kedarnath Brahmachari & Ors. vs. The State of West Bengal & Ors. reported in 1982 (II) CHN 273 held:

“Next we proceed to consider the case of the petitioners on its merit we find that in the case of M. H. Qureshi v. State of Bihar AIR 1958 SC 731 the Supreme Court had gone into the disputed point specifically when it was held that sacrifice of a cow on Bakr id Day

is not an obligatory overt act for a Musalman to exhibit his religious belief and ideas. The very contention in this regard which has been put forward before us by the learned Advocate General, namely, that a substantial part of the Muslim community does take to cow slaughter on such an occasion was also advanced before the Supreme Court on that occasion but the Supreme Court rejected the said contention in holding that notwithstanding such sacrifice by a number of Musalmans, such slaughter cannot be considered to be a part of religious requirement. In the present case, we find that when respondent nos. 2 to 16 granting exemptions under S.12 and permitting cow slaughter on the Bakr id Day, they are doing so for no purpose other than religious purpose. But there, the said respondents are totally over looking that such slaughter cannot be a religious purpose because it is not a part of the religious requirement for the Musalman that a cow or that any of the scheduled animals required to be sacrificed in observing Bakar id. A sacrifice which is not a part of the religious requirement cannot, in our view, be sanctioned on the ground of religious purpose within the meaning of S. 12 of the said Act. In that view, we cannot but except the contention of Mr. Chakravarti that exemptions under S. 12 of the said Act which are being granted for slaughter of cows on the Bakar id Day are really de hors the statute not being within the sanction of the said provision.”

The Apex Court in case of State of West Bengal & Ors. vs. Ashutosh Lahiri and others reported in AIR 1995 SC 464 laid down the proposition that the sacrifice of the cows on auspicious day of Bakr id is not imperative but optional religious rituals in following words.

“ ***** In this connection, Das C.J., referred to the historical background regarding cow slaughtering from the times of Mughal Emperors. Mughal Emperor Babar

saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this. Similarly, Emperors Akbar, Jehangir and Ahmed Shah, it is said, prohibited cow slaughter. In the light of this historical background it was held that total ban on cows slaughter did not offend Art. 25 (1) of Constitution.

In view of this settled legal position it becomes obvious that if there is no fundamental right of Muslim to insist on slaughter of healthy cow on Bakri Idd day, it cannot be a valid ground for exemption by the State under S 12 which would in turn enable slaughtering of such cows on Bakri Idd. The contention of learned counsel for the appellant that Art. 25 (1) of the Constitution deals with essential religious practices while S. 12 of the Act may cover even optional religious practices is not acceptable. No such meaning can be assigned to such an exemption cause which seeks to whittle down and dilute the main provision of the Act, namely S.4 which is the very heart of the Act. If the appellants' contention is accepted then the State case exempt from the operation of the Act, the slaughter of healthy cows even for non-essential religious, medicinal or research purpose, as we have to give the same meaning to the three purposes, namely, religious, medicinal or research purpose, as envisaged by Sec. 12. It becomes obvious that if for fructifying any medicinal or research purpose it is not necessary or essential to permit slaughter of healthy cow, then there would be no occasion for the State to invoke exemption power under S. 12 of the Act for such a purpose. Similarly it has to be held that if it is not necessary or essential to permit slaughter of a healthy cow for any religious purpose it would be equally not open to the State to invoke its exemption power under S. 12 for such a religious purpose. We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on Bakri Idd is not essential or required for religious purpose of Muslims

or in other words it is not a part of religious requirement of a Muslim that a cow must be necessarily scarified for earning religious merit on Bakri Idd.

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The effort made by learned counsel for the appellants to get any and every religious practice by S. 12 also is of no avail for the simple reason that in the context of S. 12 the religious practice must be such which requires the invocation of exemption provision under S. 12 so as to by-pass the main thrust of S. 4. For such an exercise non-essential religious practices cannot be made the basis. Reliance place on the decision of this Court in Hazarat Pir Mohd. Shah v. Commr. Of Incomne-Tax, Gujrat (1967) 63 ITR 490 (SC), also is of no assistance as the same refers to S. 11 of the Income - Tax Act, the scheme of which is entirely different from that of the Act. Even if we agree with learned counsel for the appellants that slaughter of a healthy cow on Bakri Idd is for a religious purpose, so long as it is now shown to be an essential religious purpose as discussed by us earlier, S. 12 of the Act cannot be pressed in service for buttressing such a non-essential religious purpose.”

Prior to this writ petition, other two writ petitions in public interest were moved, being W.P. 1378 of 2010 and W.P. no. 21591 (W) of 2010, before the Division Bench of this Court and the Division Bench on November 12, 2010 disposed of the two writ petitions in public interest with following observation:

“These two petitions have been filed in public interest on the issue of sacrificing cow and its progeny as religious ritual on the occasion of Bakri Idd. The petition itself contains decision of this Court, which bans slaughter of cow on the occasion of Idd as a religious ritual. Therefore, no fruitful purpose will be served by again passing similar judgments and orders as the said judgment, which was upheld by the Supreme Court (State of West Bengal vs. Asutosh Lahiri, reported in AIR 1995 SC 464), still holds good. The Authorities are, therefore,

bound to implement the provisions of West Bengal Animal Slaughter (Control) Act, 1950 and if any instance of cow slaughter on Bakri-Idd is brought to their notice, they will have to take cognizance and act in accordance with law.

Therefore, we are disposing of these two petitions as filed without there being any cause of action for the same and simply on an apprehension of the petitioners that cow and its progeny would be sacrificed as a religious ritual on the occasion of Bakri-Idd.

It will be open for the petitioners to move this Court in case they come across such incident and if the same is reported to the authorities and the authorities fail to take any action in the matter.

With this observation, the two petitions stand disposed of.”

In this writ petition the writ petitioners try to demonstrate that even after the judgment of the Division Bench delivered in case of Kedarnath (*supra*) as well as the Apex Court in case of Ashutosh (*supra*) there has been a continuous, uninterrupted slaughtering of the cow on an auspicious day of Bakri Idd.

The aforesaid fact has been seriously disputed by the learned Government Pleader as well as the other respondents. We find that such disputed fact cannot be decided without exchange of affidavits.

Considering the serious apprehension and the facts as it revealed in the said petition and the nature of the objection which has been raised in the writ petition and also in view of law enunciated in the aforesaid two reports, it is inconceivable that the State after enacting the legislation should shirk its responsibilities of due implementation thereof.

Although learned Government Pleader has vehemently opposed for passing any interim directions but we find that such submission is not tenable for the following reasons:

(1) The State has promulgated the West Bengal Animal Slaughter Control Act, 1950 by which the slaughter of an animal is restricted though there is no absolute ban on the slaughter of animal;

(2) Section 12 of the said Act by which the power is reserved by the State Government to grant exemption on certain parameters has been declared by the Division Bench to be not under the religious compulsion;

(3) The State owes the responsibility to ensure the due implementation of the legislation enacted by it and as also the orders passed by the Court.”

In view of above, we expect and hope that the State shall make all efforts or take all endeavours to see that the provision of the West Bengal Animal Slaughter Control Act, 1950 is not violated or flouted in any manner whatsoever.

The respondents are directed to file affidavit-in-opposition by October 24, 2011 and reply thereto, if any, within October 29, 2011.

Let this matter appear before the regular Bench on the reopening day.

(Harish Tandon, J.)

(Soumen Sen, J.)