

PETITIONER:
LAKSHMAN AND ORS.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT 06/05/1983

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
DESAI, D.A.

CITATION:
1983 SCR (3) 124 1983 SCC (3) 275
1983 SCALE (1) 577

ACT:

Constitution of India, 1950-Article 19 (1) (e), (f) and (g)-State Government-If could discriminate between owners of cattle belonging to its own State and other States-If could levy higher grazing charges on owners of 'foreign cattle' -If could restrict the route and period of transit of 'foreign cattle through the State

HEADNOTE:

With the purported object of inhibiting the influx of cattle belonging to owners of neighbouring States passing through the State of Madhya Pradesh, the State Government issued a notification under rule 7 of the M.P. Grazing Rates Rules, 1979 prescribing the route to be followed by such cattle (described as 'foreign cattle') while in transit. The notification also stipulated that 'foreign cattle should leave the State within a period of 45 days after the issue of the licence, that the owner should pay grazing charges of Rs. 10 per buffalo and Rs. 5 per goat or sheep for the period of transit. A notification issued under rule 6, however, prescribed grazing charge of Re. 1 per year for each goat or sheep belonging to residents of the State of Madhya Pradesh. No charge was prescribed in respect of buffaloes.

The petitioners, nomad graziers of Gujarat and Rajasthan who pass through the State of Madhya Pradesh with their cattle en routes to other neighbouring States, in their petitions under Article 32 of the Constitution contended that tile notification issued under rule 7 contravened their fundamental rights under Articles 14, 19 (1) (e), (f) and (g) and also their right under Article 301 of the Constitution and that therefore it was invalid.

Allowing the petitions,

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HELD: There was no rational basis for the distinction made between owners of cattle belonging to Madhya Pradesh and owners of cattle belonging to other States and the levy of prohibited grazing rates on owners of 'foreign cattle'. There was equally no justification in prescribing the ceiling of 45 days during which the cattle must pass through the State. While in the case of cattle belonging to the residents of the State of Madhya Pradesh the levy was for

one year there was no reason why the charge should be for 45 days in the case of cattle belonging to graziers of other States. [127 G-H, 128 A-B]

Under our Constitution a citizen has the right to move freely throughout the territory of India subject to reasonable restrictions. To whichever State a grazier may belong, he has the right to pass and repass through the State of

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Madhya Pradesh with his cattle in pursuit of his occupation. Forests of the State are not the grazing grounds reserved for cattle belonging to residents of A that State only. [128 D-F]

There was, however, nothing wrong in prescribing the route along which the cattle had to pass while in transit because its object was to prevent cattle straying and causing indiscriminate damage to forests. [128 H]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 829/79, 1104, 200 2655 of 1980.

(Under article 32 of the Constitution of India).

G. N. Dikshit, S. Markendeya, P. Sinha, M. M. Temai, J. K Nayyar and S. K Bisaria with him for the Petitioners.

S. R Gambhir for the Respondent.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. The petitioners are nomad graziers of Gujarat and Rajasthan, who wander from place to place with their sheep, goats and cattle in search of pasture and foliage. Boundaries of States present no barriers to them. After all, to them and to their livestock, it is a question of survival. In their wanderings they often pass through the State of Madhya Pradesh en route some times to Uttar Pradesh and some times to Maharashtra. This happens particularly in times of drought in Gujarat and Rajasthan. The powers that be in the State of Madhya Pradesh became apprehensive that uninhibited passage of large herds of these animals through Madhya Pradesh may lead to large scale devastation of their forest wealth. So they hit upon a plan to prevent foreign cattle' from browsing in Madhya Pradesh forests. For the moment, it was forgotten that India is one country and no Indian is a foreigner in any of the constituent States of India. The plan was this: The Indian Forest Act 1927 enabled the State Government to make rules to regulate the cutting of grass and pasturing of cattle in protected forests (Sec. 32(i) and, generally, to carry out the provisions of the Act (Sec. 76). We may note here 'cattle' as defined by s. 2(i) includes buffaloes, sheep, goats and many other specie of browsing animals. We may also note that we are concerned in this case with protected forests only and not reserved forests. Rules had been made earlier by the Madhya Pradesh Government in 1974 called the Madhya

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Pradesh Grazing Rates Rules, 1974 by which provision was made A for grazing licences, transit grazing licences, grazing rates and other subjects. Rule 4 prohibited grazing in closed coupes, plantation area and such other areas as were declared as closed for grazing by the Divisional Forest officer. Rule 3 provided for the issuance of licences for grazing in particular grazing units, each forest range being treated as a grazing unit till the constitution of such grazing units. Rule 5 provided for the issuance of transit licences for transit of cattle through Government forests in

the State of Madhya Pradesh, so that cattle in transit may not graze continuously for more than a month in a particular grazing unit. Rule 6 prescribed grazing rates, commercial and transit. For buffaloes it was Rs. 6 per head per year while for goats and sheep, it was Re. 1 per head per year whether it was for commercial or transit purposes. Rule 7 prescribed grazing rates for 'foreign cattle of adjoining States'. Whether the cattle grazed in the forest or passed through the forest, Grazing was permitted at the rate of Rs. 10 per head per year in the case of buffaloes and Rs. 2 per head per year in the case of goats and sheep. In 1979, the rules made in 1974 were superseded and fresh rules were made. They are the rules now in force. Rule 2(5) bans grazing in reserved forests. Rule 3 provides for the issue of grazing licences in grazing units so constituted. Until grazing units are constituted, each forest range is to be treated as a separate grazing unit. Rule 3(2) provides for the levy of grazing charges at rates to be notified from time to time. Rule 4 prohibits grazing in closed coupes, plantation areas and other areas which are declared as closed for grazing by the Divisional Forest officer. Rule 5 provides for transit grazing licences, on payment of grazing charges, for the transit of cattle through Government forests where the owners of the cattle are residents of Madhya Pradesh. Cattle in transit, however, are not allowed to graze continuously in the same grazing unit for more than 30 days. Rule 6 enables the Government to notify from time to time the rates of grazing charges and transit grazing charges payable by residents of Madhya Pradesh. Rule 7 provides for the levy of grazing rates for 'foreign cattle of adjoining States'. The rule enables the State Government to prohibit, restrict, or in their discretion to grant owners of cattle residing outside the State of Madhya Pradesh grazing or transit grazing facilities for their cattle on payment of charges to be notified from time to time. Rule 7(2) further empowers the Government to specify the specific grazing areas, the - points of entry and exit of the route to be followed by the cattle,

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the period during which grazing or transit grazing should be completed, etc. On June 28, 1979, two notifications one, under rule 6 and the other, under rule 7 were issued notifying the rates of charges for the issue of grazing and transit grazing licences. In respect of cattle belonging to residents of Madhya Pradesh, the grazing rate is Re. 1 per year for each animal in the case of goats and sheep. Nothing is to be charged in the case of buffaloes. The notification issued under rule 7 prescribes the routes to be followed by the cattle of Rajasthan and Gujarat while in transit through the State of Madhya Pradesh. It also stipulates that the owners of cattle must take the cattle through the State of Madhya Pradesh within a period of 45 days after the issue of licences. The prescribed grazing rates are Rs. 10 per animal in the case of buffaloes and Rs. 5 per animal in the case of sheep and goats.

Apparently the Government of Madhya Pradesh wants to inhibit the influx of cattle of other States (described in the rules as 'foreign cattle') by the method of charging higher grazing rates in their case than in the case of cattle belonging to the residents of Madhya Pradesh. This levy of higher rates, the prescription of the route to be followed by foreign cattle while in transit through Madhya Pradesh and the stipulation that the cattle must leave Madhya Pradesh in 45 days are questioned in these writ petitions. It is contended that the petitioner's Fundamental

Rights under Art. 14 and Art. 19 (e) (f) and (g) and the right under Art. 301 are contravened. On the other hand, it is contended on behalf of State of Madhya Pradesh that the rules prescribing grazing rates for 'foreign cattle; the route to be followed by 'foreign cattle' while in transit through Madhya Pradesh and the period for which 'foreign cattle' may remain within the boundaries of the State of Madhya Pradesh are made to regulate the influx and passage of 'foreign cattle' into and through Madhya Pradesh with a view to prevent devastation and to protect the forest wealth of State.

We are unable to see any rational basis for the distinction made between owners of cattle belonging to Madhya Pradesh and owners of cattle belonging to other States (described as owners of 'foreign cattle') and the levy of prohibited grazing rates on owners of the so-called 'foreign cattle'. Forests of Madhya Pradesh are not grazing grounds reserved for cattle belonging to residents of Madhya Pradesh only even as the towns and villages of Madhya Pradesh cannot be reserved for the residents of the original residents

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of Madhya Pradesh only. Accidents of birth and geography cannot furnish the credentials for such discrimination and authorise prejudicial treatment in matters of this nature. We do not say that geographical classification is never permissible. For example, a preference given by a State to its residents in the matter of admission to educational institutions maintained by the State from its revenues may be well justified. But we are unable to see any such justification for the levy of virtually penal grazing charges in the case of owners of cattle belonging to other States. The only attempt at justification is that the influx of 'foreign cattle' is resulting in the destruction of the forest wealth of the State. It is difficult to understand this justification. If cattle belonging to residents of Madhya Pradesh are allowed to graze, will it not lead to the same damage as by the cattle belonging to persons of other States? Surely, it cannot be that the Madhya Pradesh cattle are less destructive than the cattle belonging to persons of other States. Further if the object was to prevent all cattle from grazing in protected forests, such grazing could have been banned as in the case of reserved forests. Even in the case of the so-called foreign cattle, cattle belonging to owners who are rich, may yet have their cattle graze in the Madhya Pradesh forests but not cattle belonging to poorer graziers. Further, subject to reasonable restrictions which may be imposed in the interests of the general public, a citizen has the right under our Constitution to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practise any profession, or to carry on any occupation trade or business. Graziers, be they of Madhya Pradesh, Gujarat or Rajasthan, therefore, have the right to pass and repass through the State of Madhya Pradesh with their cattle in the pursuit of their occupation. The right is, of course, subject to reasonable restrictions in the interests of the general public. We are unable to discover any reasonable basis for classifying graziers into those belonging to Madhya Pradesh and those belonging to other States; nor are we able to discover any acceptable reason behind the restriction imposed on graziers of other States by the heavier charge made on them. We are convinced that there is no justification whatsoever for charging higher grazing rates for cattle belonging to persons of other States. In

regard to the prescription of the route along which the cattle have to be taken while in transit, however we find nothing wrong with it, since the object is obviously to prevent cattle straying and causing indiscriminate damage to forests. We are, however, unable to justify the ceiling of 45 days in which cattle must pass through the State of Madhya Pradesh. In the case of

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cattle belonging to residents of Madhya Pradesh, the grazing rate is levied for a period of one year. There is no reason why the charge A should be levied for 45 days in the case of persons belonging to other States. The apprehension that cattle, if allowed to graze in the same place for a long time, may destroy the pasture and foliage altogether is taken care of by the other rules which prescribe that the cattle may not graze in the same grazing unit for more than a month. In the circumstances, we quash the levy of higher grazing rates in the case of cattle belonging to persons of States other than Madhya Pradesh and direct the respondents to levy the same rates as they do in the case of cattle belonging to residents of Madhya Pradesh. The limit of stay of 45 days is also declared unconstitutional. The writ petitions are allowed accordingly. The petitioners will get their costs.

P.B.R.

Petitions allowed

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