A AVAS VIKAS SANSTHAN AND ANR.

v.

AVAS VIKAS SANSTHAN ENGINEERS ASSN. AND ORS.

MARCH 28, 2006

B [H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.]

Constitution of India, 1950—Articles 12 and 14—Contract Act, 1872—Section 23—State Government dissolved a State Society incurring heavy losses—Employees of the Society filed Writ Petition before High Court contending that the Society was an agent of the State and hence their services could not terminated being government employees—State formulated a Scheme of providing alternative employment to the employees in various local bodies subject to certain terms and conditions upon filing of an affidavit—Employees accepted alternative employment and filed affidavits—Single Judge of the High Court quashed the scheme of providing alternative employment—Division Bench of the High Court set aside order of the Single Judge—High Court, however, directed the State to give pay protection, continuity of past service for pensionary/retiral benefits and the benefit of 5th Pay Commission on notional basis to the employees—High Court also treated daily wagers as regular appointees and made available the benefits given to regular employees—Correctness of—Held, State has the power to abolish posts—Court cannot issue a Writ of **Mandamus** *to the State to continue with the services of the employees—On facts, employees are estopped from claiming the benefits and challenging the terms and condititons of the Scheme since they have accepted the Scheme and filed affidavits—There is also no pleading in the Writ Petition that the terms and conditions of the Scheme are contrary to the provisions of the Contract Act, 1872 or is violative of Article 14 of the Constitution of India—Hence the employees cannot claim the benefit of pay protection, continuity in service and the benefit under the 5th Pay Commission—Daily wagers cannot be put on par with regular employees under any law and hence no relief is granted to them—State, however, may sympathetically consider absorption subject to the conditions laid down.*

Appellant No. 1—a Society registered under the Societies Registration Act, 1860, was formed as a result of a Scheme formulated by Housing and Urban Development Corporation to set up a chain of building centres in

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the State. After a few years, the Society incurred heavy losses and it could not pay salaries to its employees. State Government took a decision to dissolve the Society. A

Employees of the Society filed Writ Petitions before High Court challenging the action of the State and the Housing Board contending that their services could not be terminated since the Society was an agent of the State and the State Housing Board and hence, the termination orders, if any, passed be quashed and they be retained in service with benefit of their past services; and that the order of the State to take them into service in the local bodies of the State at the lowest grade of services without any benefit of past services be quashed. The State and its Housing Board contended in the Writ Petition that the Society was not a State under Article 12 of the Constitution of India since it was neither financially nor administratively controlled by the State. B C

During the pendency of the Writ Petitions before the High Court, the State offered alternative employment in various local bodies of the State subject to filing of an affidavit accepting the terms and conditions. The employees accepted the terms and conditions and filed affidavits. D

Single Judge of the High Court allowed the Writ Petition of the employees. The High Court directed the State to pay unpaid salaries to the employees. The High Court also directed the State Housing Board to create a new cell and take the employees into it and quashed the policy of the State Government to give alternative employment in various local bodies. E

The State Government, Housing Board and the Society filed appeals before the Division Bench of the High Court. The employees also filed an appeal before the Division Bench of the High Court. The High Court maintained the direction of payment of unpaid salary to the employees but set aside the quashing of the policy of the State of providing alternative employment in various local bodies. The High Court, however, directed the State to give pay protection; continuity of past service for pensionary/ retiral benefits; and the benefit of 5th Pay Commission on notional basis to the employees. The High Court also treated daily wagers as regular appointees and made available the benefits given to regular employees. Hence the appeals filed by State, Housing Board, Society and the employees. F G

The State contended that the abolition of a post is an inherent right of H

A an employer particularly if there was lack of funds or heavy loss; that the employees, whose services have been terminated, have no right to seek re-employment or absorption in other departments of the State; that, even though there was no legal obligation to offer alternative employment, it framed a scheme and offered employment in other local bodies of the State; that the directions of the High Court will create additional financial burden upon the B various local bodies which absorbed the employees; that the employees have submitted affidavits to the State stating that their alternative employment with local bodies will be treated as fresh appointments and would not claim continuity of service, seniority, pay protection etc.; that the employees are estopped from challenging the terms and conditions of the alternative employment after filing C the affidavit; that the employees did not claim that the terms and conditions of alternative employment are unfair or that there was allegation that the employees were coerced or unduly influenced to submit the affidavit; that the benefit of 5th Pay Commission are not available to them since they were not government employees; that the daily wagers have no right to seek regular appointment from the State; that the Rajasthan Civil Services Rules, 1969 D are not applicable as the employees were not government servants; and that they did not raise any ground in the Writ Petition that the decision to liquidate the Society was *mala fide* and that the decision should be quashed.

The employees contended that the State should act as a model employer exhibiting fairness of action towards the employees; that they should be given E pay protection, seniority, continuity of service for pensionary/retiral benefits; that the terms and conditions of the alternative employment violate Article 14 of the Constitution of India and that the settlement is void under section 23 of the Contract Act, 1872; that any undertaking to the Court and contractual arrangement resultant thereto does not oust the jurisdiction or F the power of the Court to hear case or grant relief; and that the daily wage employees should be treated on par with other employees and should be entitled to similar benefits.

Disposing of the appeals, the Court

G HELD: 1.1. The power to abolish a post, which may result in the holder thereof ceasing to be a Government Servant, has got to be recognized. The measure of economy and the need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or abolish the post. In such an event, the H Court cannot, by a writ of *mandamus*, direct the employer to continue

employing such employees as have been dislodged. The employees of the Society have accepted alternative employment and filed an affidavit. They cannot now say that the judgment of the Division Bench of the High Court should be given effect. To they are estopped from claiming the benefits and challenging the terms and conditions of the fresh employment. The employees have no right to resile from the affidavits filed before the High Court. At no point of time, the employees raised any dispute as regards the fairness of the settlement. Having obtained the benefit, it was not open to them to turn down without justifiable reasons to contend that the settlement was not fair and they should be given pay protection, continuity of service for retiral benefits and placing the employees on par in the receiving Department.

[537-F, G; 538-A-D]

1.2. The State has acted fairly and benevolently eventhough it has no constitutional and legal obligation to offer alternative employment to the employees on the abolition of the posts. The State framed a scheme and offered employment in other local bodies of the government by relaxing the rules of such bodies and the terms and conditions were fixed without financial economic compulsions of the State. Thus the terms and conditions of such alternative employment cannot be challenged. There is also no pleading in the Writ Petition that the conditions contained in the affidavit of undertaking are contrary to Section 23 of the Contract Act, 1872 or violative of Article 14 or inconsistent with the Directive Principles of State Policy of the Constitution of India. The State is directed to strictly adhere to and implement its decision to offer employment in other local bodies in letter and spirit. All the erstwhile employees, if not already employed, should be employed in the local bodies as per the scheme formulated by the State in a war footing.

[535-E; 540-C, D]

Rajendra v. *State of Rajasthan,* [1999] 2 SCC 317 and *S.K. Nilajkar* v. *Telecom District Manager,* [2003] 4 SCC 27, relied on.

M. Ramanathan Pillai v. *State of Kerala,* [1973] 2 SCC 650; *K. Rajendran* v. *State of Tamil Nadu,* [1982] 2 SCC 273; *Bank of India* v. *O.P. Swarnakar,* [2003] 2 SCC 721; *State of Uttaranchal* v. *Jagpal Singh Tyagi,* [2005] 8 SCC 49; *Central Inland Water Transport Corporation Ltd. and Anr.* v. *Brajo Nath Ganguly and Anr.,* [1986] 3 SCC 156; *Delhi Transport Corporation* v. *D.T.C. Mazdoor Congress and Ors.,* [1991] 1 Supp. 1 SCC 600; *Gurmail Singh* v. *State of Punjab,* [1991] 1 SCC 748; *Prakash Ramachandra* v. *Maruthi,* [1995] Supp. 2 SCC 539; *National Building Construction Corporation* v. *Raghunathan,* [1998] 7 SCC 66; Federal Bank Ltd. Sagar

A Thomas, [2003] 10 SCC 733 and *Pradeep Kumar Biswas* v. *Indian Institute of Chemical Biology,* [2002] 5 SCC 111, referred to.

1.4. There is a Cabinet decision of the State that no pay protection should be granted to the employees. The cabinet decision was taken after taking into consideration the views of the Finance Department as it has huge financial B burden on the local bodies offering re-employment after relaxing their own recruitment rules. The undertaking by the employees when they were absorbed into other local bodies had the same stipulation. This being so, the claim for pay protection by the employees at this late stage cannot be made. Due to the absence of any legal right for pay protection to the employees, C such claims cannot be sought for. In the absence of any legal right of pay protection and fresh employment consequent upon on fresh appointment on humanitarian grounds, the decision of the High Court to grant protection of pay is unsustainable and liable to be interfered with.

[535-G, H 536-A; 538-D]

D 1.5. There is a Cabinet decision of the State that the benefit of past service is not to be counted for any purpose. The undertaking by the employees when they were absorbed into other local bodies had the same stipulation. Under the provisions of the Society Employees Service Regulation, 1993, the employees were having the benefit of contributing provident fund and were not entitled to any other pensionary/retiral E benefits. The employees have withdrawn provident fund including the employer's contribution after termination of service from the Society. Thus the services rendered by the employees with the Society cannot be counted for the purpose of pensionary/retiral benefits since such benefits were not available to them even in their parent organization. Therefore, such claim F for counting services rendered in the Society for the pensionary/retiral benefits cannot be made. [536-B; 539-A-C]

1.6. The recommendations of the 5th Pay Commission is applicable only to Government Servants. Since the employees of the Society are not government servants, they are not entitled to the benefits under 5th Pay G Commission Report. In the Writ Petition, there was no prayer for grant of benefit of 5th Pay Commission. Thus the High Court has erred in directing that the benefit of the recommendations of the 5th Pay Commission shall be given to the employees of the Society on notional basis. The employees would be governed by the terms and conditions of the local bodies where they have H been re-employed. [539-D, E]

A.I. Railway Parcel and Goods Porters Union v. *Union of India and Ors.*, **[2003] 11 SCC 590, referred to.** A

1.7. The daily wage employees cannot be put on par with regular employees under any law prevalent as of date. The finding of the High Court that they can be treated on par with regular employees and be given various reliefs is wrong and erroneous under law. Therefore, no relief is granted to the daily wage employees as their claim is not justified under law. However, the State may sympathetically consider absorption of these employees in the vacancy available if any in future by giving them preference to other new applicants in any of their local bodies etc. subject to the stated conditions laid down. [536-G, H; 537-A] B C

Punjab State Electricity Board v. *Malkiat Singh,* **[2005] 9 SCC 22, referred to.**

1.8. The State Civil Services (Absorption of Surplus Personnel) Rules, 1969 are applicable only to the government servants. The employees of the Society are not government servants and hence the Rules are not applicable to them. [541-D] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5302/2004.

From the Judgment dated 3.5.2002 of the High Court of Rajasthan in D.B. Civil Special Appeal No. 315/2002 in SBCWP No. 1750/1999. E

With C.A. Nos. 5303, 5305-5308, 5309-5311, 5312-5316, 5317-5322, 5323-5327, 5328-5330, 5331-5336, 5337, 5339, 5342-5348, 5349-5351, 5352-5354, 5356, 5357-5359, 5360-5365, 5366-5370, 5371-5376, 5377-5381, 5382-5385, 5386-5392, 5338 and 5340-5341 of 2004. F

Vijay Hansaria, Dr. Rajeev Dhawan, B.D. Sharma, Jatinder Kumar Bhatia, Sushil Kumar Jain, A.P. Dhamija, H.D. Thanvi, Prashant, Ms. Rani Maheshwari, Ms. Pratibha Jain, Manish Kumar, Ansar Ahmad Chaudhary, Ch. Shamsuddin Khan, Ms. Shobha, Annam D.N. Rao, Ms. Shweta Verma, Aruneshwar Gupta, Naveen Kumar, Anil Kumar Gupta-II and Mrs. K. Sharda Devi for the appearing parties. G

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. This batch of appeals arise from the H

A common final judgment and order dated 03.05.2002, passed by the High Court of Judicature for Rajasthan at Jaipur in D.B. Civil Special Appeal No. 315/2002 etc. etc. in S.B.C.W.P. No. 1750/99 etc. etc. whereby the High Court partly allowed the appeal of the appellants-herein by holding that the employees (respondents) are entitled to re-employment and the various reliefs claimed by them.

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Since all the appeals involve common question of law, they have been heard together with the consent of concerned parties and are being disposed of by this judgment.

C *Facts in brief:*

Avas Vikas Sansthan (in short 'the AVS') was registered as a Society under the Societies Registration Act, 1860 on 17.11.1988. The AVS was brought into existence to achieve certain objectives. The objects of the society were to collect information regarding low cost technology for construction of D houses, undertake field studies for development of appropriate low cost building materials, undertake construction works, imparting practical training etc. in the State of Rajasthan.

The AVS was brought into existence as a result of the Scheme formulated by the Housing and Urban Development Corporation, New Delhi, to set up E chain of building centres in the State of Rajasthan.

Appellant No.2 the Rajasthan Housing Board sanctioned a sum of Rs. 1-5 lakhs per building centre and provided land free of cost for setting up of 9 such centres in Rajasthan. The AVS was to raise its own resources; the State Government or the Rajasthan Housing Board did not have any control F over the AVS. The AVS had employed the respondents.

The AVS started functioning in the year 1989, but in the year 1997, it began to incur heavy losses and could not pay its employees their salaries after 01.12.1998. The Rajasthan Government decided that, in view of the financial and administrative conditions of the AVS, it should be dissolved G and the State Government directed the appellant-the Rajasthan Housing Board to take immediate steps to liquidate the AVS. The State Government also directed that the employees of the AVS would be adjusted on priority on the vacant posts of Municipal Boards, Municipal Councils, Jaipur Development Authority and other local bodies whenever posts fell vacant on the retirement H of the employees of such local bodies. By the resolution of the AVS dated

26.03.1999, the AVS was dissolved. A

The respondents (employees), feeling that their services might be terminated, filed a writ petition in the High Court on 26.03.1999, made the following averments:

* AVS is only an agent of the State Government of Rajasthan and of the Rajasthan Housing Board. B

* The services of the respondents, who were employees of the State Government/Rajasthan Housing Board, could not be terminated by the Rajasthan Housing Board or the State Government or the AVS and C

* Also if any termination order be passed it be quashed and they might be retained in service with benefit of their past services in all respects.

* The Government order dated 15.03.1999 was challenged by which the respondents were to be taken in service by local bodies viz. Panchayat, J.D.A. etc. at the lowest grade of services without any benefit of past services. D

AVS terminated the services of all its 46 daily wage employees on 31.03.1999. E

On 01.06.1999, State Government issued an order which contained directions regarding the manner in which the employees of the AVS would be given first appointment in the local self-Government institutions in Rajasthan without benefit of past service. The condition, which was put by the Government was that, they would be given employment on the lowest F post of pay drawn in AVS of direct recruitment and on the minimum of the grade and no benefit of past service would be given to them. An option was also given to the employees to retire under Voluntary Retirement Scheme, if they so desired.

The Rajasthan Housing Board and the State Government of Rajasthan G contested the writ petitions by filing replies.

* It was averred, *inter alia*, in the reply by the Rajasthan Housing Board that AVS was a registered Society under the Societies Registration Act, 1860. H

A * And it was neither financially nor administratively controlled by the State Government or the Housing Board and hence the said AVS could not be said to be a 'State' within the meaning of Article 12 of the Constitution of India and the employees were not employees of the State Government or Rajasthan Housing Board, they had no remedy against the State Government or the petitioner- Housing Board.

During the pendency of the writ petitions, an offer was made to the employees of the AVS to agree to be given new appointment in local self Government institutions on the condition mentioned in order dated 01.06.1999 of the State Government and the employees were asked to submit undertaking in the form of affidavits that they were willing to take employment in the Municipal Boards, Municipal Councils, J.D.A etc. on the conditions set out in the order and that on such affidavits being filed, they would be given employment in such local Government institutions.

The respondents and all the other permanent employees of the AVS submitted their affidavits and were given employment in the Municipal Boards, Municipal Councils, and J.D.A.

Learned Single Judge of the High Court allowed the writ petition and held as under:-

(a) Employees will be entitled to salary for the period worked by them;

(b) Rajasthan Housing Board to create a new cell in the name of the Low Cost Housing Centre or any other name and the employees would be employed in the said centre;

(c) The policy of the State Government to give alternate employment was quashed. However, the employees were given option to continue in the said employment if they so choose.

Feeling aggrieved, the Rajasthan Housing Board, the AVS and the State Government preferred appeals before the Division Bench of the High Court.

The Division Bench disposed of all the appeals by the impugned order. The Division Bench maintained the direction to pay unpaid salary. The direction to constitute a Low Cost Housing Centre and the quashing of State

Government decision to provide alternate employment was set aside. However, the Division Bench on the appeal filed by the employees directed grant of following benefits:

(i) pay protection;

(ii) service to be counted for the purpose of pension and other retirement benefits;

(iii) benefit of fixed period higher pay scale available to Government employees under Government Order dated 25.01.1992;

(iv) benefit of 5th Pay Commission to be available on notional basis;

(v) one Narendra Kumar Sharma and few other daily wagers to be treated as regular appointees as they were selected but not appointed on regular basis till date of dissolution;

(vi) certain employees including Brijesh Kumar Goel and R.K. Saini who were working at Latur Project in Maharashtra were also entitled to alternative employment in local bodies.

PARTICULARS OF APPEALS

The appeals in the present batch of cases may be divided in the following three categories:

A. The following 12 appeals have been filed by the RHB and AVS: Civil Appeal Nos. 5302/04, 5317-5322/04, 5312-5316/04, 5309-5311/04, 5323-5327/04, 5328-5330/04, 5331-5336/04, 5342-5348/04, 5305-5308/04, 5337/04, 5303/04.

B. The following 11 appeals have been filed by the State of Rajasthan:

Civil Appeal Nos. 5339/04, 5371-5376/04, 5366-5370/04, 5309-5352-5354/04, 5377-5381/04, 5357-5359/04, 5360-5365/04, 5386-5392/04, 5382-5385/04, 5356/04.

C. The following appeal have been filed by the Employees: Civil Appeal Nos. 5349-5351/04.

Against the decision of the Division Bench of the High Court, the appellants preferred the above appeals to this Court.

We heard Mr. Vijay Hansaria, learned senior counsel appearing for the

A appellant and Dr. Rajeev Dhawan, learned senior counsel, Mr. Aruneshwar Gupta and Ms. Shobha, learned counsel appearing for the respective respondents.

Mr. Vijay Hansaria, learned senior counsel for the appellants made the following submissions:

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(a) That after the dissolution of the AVS, in the writ petition preferred by the respondents no ground was taken saying that the liquidation was *mala fide* nor was it prayed that the decision to liquidate be quashed.

C (b) That on 18.05.1999 Cabinet decision was taken to absorb the employees of the AVS 'in principle' as decided on 09.03.1999 by prescribing certain terms and conditions after considering the opinion of the Finance Department.

(c) That there is no conflict between the Cabinet decisions dated D 09.03.1999 and 18.05.1999, neither is there any change in policy of the State Government nor the State Government has gone back on any promise made earlier. In the cabinet decisions dated 09.03.1999 only an 'in principle' decision was taken to adjust the employees of the AVS in other local bodies and 'modalities' of adjustment was worked out in the Cabinet decision dated E 18.05.1999.

(d) Thereafter the State Government wrote to all local bodies for appointment of employees of the AVS in their departments along with affidavits filed by the employees of the AVS showing their willingness to take employment in other local bodies. In 2000, F all the employees of the AVS were given alternate employment as fresh employment on certain terms and conditions. All the employees have submitted affidavits inter-alia stating that their appointment with local bodies will be treated as fresh appointment and will not claim continuity of service, seniority, pay protection etc. and that they will withdraw writ petition. Several employees G have even filed application for the withdrawal of the writ petition in terms of their undertakings.

(e) The writ petition was not amended challenging the terms of undertaking filed by the employees of Sansthan for securing employment with the local bodies. There is no allegation in the

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writ petition that the employees were coerced/forced/unduly influenced to submit the undertaking. A

Submissions on Merit

It was submitted by Mr. Hansaria that abolition of posts is a matter of policy and is an inherent right of the employer particularly on the closure of a project due to lack of funds and heavy loss. The natural consequence of abolition of posts in any organization is the termination of services of the employees engaged in such organization. It was further urged that the employees whose services have been terminated as a consequence of abolition of posts have no right to seek re-employment or absorption in other departments. Learned senior counsel relied on the view taken by this Court way back in 1973 in the case of *M. Ramanathan Pillai* v. *State of Kerala,* [1973] 2 SCC 650 that 'the discharge of the civil servant on account of abolition of post held by him is not an action which is proposed to be taken as a personal penalty but it is an action concerning the policy of the State whether a permanent post should continue or not. The power to abolish any civil post is inherent in every sovereign government. And such abolition will not entail any right on the person holding the abolished post the right to re-employment or to hold the same post. B C D

Learned senior counsel relied on the decision in *K. Rajendran* v. *State of Tamil Nadu,* [1982] 2 SCC 273 on the same issue in which this Court has held that, 'the question whether a person who ceases to be Government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the Court has no voice.' E

Citing the decision of this Court in the case of *Rajendra* v. *State of Rajasthan,* [1999] 2 SCC 317 and *S.M. Nilajkar* v. *Telecom District Manager,* [2003] 4 SCC 27 learned senior counsel submitted that when a project has been shut down due to want of funds the employer cannot by a writ of *mandamus* be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. And also that the same will act as a disincentive to the state to float such schemes in future. F G

With regard to the employment of 604 employees of the AVS, it was argued that the State of Rajasthan had no legal obligation to offer alternative H

A employment to the erstwhile employees of the Sansthan. But the State of Rajasthan did frame a scheme and offered employment in other local bodies of the government. Therefore the terms and conditions of such alternative employment cannot be challenged.

It was also submitted that additional financial burden will fall upon the B various local bodies which have absorbed the employees of the AVS, if the directions of the Division Bench of the Rajasthan High Court are enforced. It was further argued that the employees of the AVS did accept the alternative employment with the terms and conditions set out initially by way of an affidavit and therefore they are now estopped from claiming benefit and C challenging the terms and conditions of the fresh employment by citing the decision in the case of *Bank of India* v. *O.P.Swarnakar,* [2003] 2 SCC 721 which laid down that, "the scheme is contractual in nature. The contractual right derived by the employees concerned, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from D their earlier stand."

Placing reliance on a very recent decision of this Court in the *State of Uttaranchal* v. *Jagpal Singh Tyagi,* [2005] 8 SCC 49, learned senior counsel submitted that, "the employees did not, at any point of time, claim that the terms of settlement were not fair, therefore after obtaining some benefit, it E was not open to the employees to later turn away without justifiable cause and contend that the settlement was not fair."

On the question of Pay Protection and for counting services rendered in the AVS for pension and other retiral benefits claimed by the respondents, F the arguments put forward by the appellant was that on facts the Cabinet decision of 18-05-1999 specifically states that "no pay protection should be granted to the employees", the same was conveyed by the Rajasthan Housing Board letter dated 01-06-1999. This decision was taken after considering the views of the Finance Department. So also the undertaking by the employees when they were absorbed into other local bodies had the same stipulation, G therefore at this later stage such pay protection and counting of services for pension and other retiral benefits cannot be claimed for.

Coming to the claim of the respondents for the benefit of the Government order date 25.01.1992, it was argued by the appellants that the Government Order in question is applicable only to 'government servants' and as such the H employees of AVS are not entitled to the benefit of the said government

order. And also the employees would be governed by the terms and conditions of the local bodies where they have been reemployed. So also the benefit of the 5th Pay Commission is applicable only to government employees. Since the employees of the AVS are not govt. employees they are not entitled to the benefit of the 5th Pay Commission.

With regard to appointment of 46 daily wage employees, it was argued that after the dissolution of the Society, there is no right on the part of any employee to be re-employed. Therefore, it was argued that the daily wagers have no right seeking regular appointment. The decision of this Court in the case of *Punjab State Electricity Board* v. *Malkiat Singh,* [2005] 9 SCC 22 was relied on. It was held that, "it is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment". Thus it was argued that the Writ issued by the Division Bench of the High Court to treat the daily wagers at par with the regular appointees of Avas Vikas Sansthan is wrong.

Further it was argued by the appellant that the decision in the case of *Central Inland Waters Transport Corporation Limited & Anr.* v. *Brojo Nath Ganguly & Anr.,* [1986] 3 SCC 156 and *Delhi Transport Corporation* v. *D.T.C. Mazdoor Congress & Ors.,* [1991] Supp 1 SCC 600 have no application here because those cases relate to a term in the employment that even services of a permanent employee can be terminated on 3 months notice without assigning any reason and such condition was specifically assailed therein. The present matter relates to providing alternative employment to the employees of an organization that is liquidated and posts have been abolished. In such circumstances the employees of an organization that is liquidated has no right to seek re-employment.

It was argued that the reliance placed by the respondents on the provisions of Rajasthan Civil Services Rules, 1969 is wholly misconceived as the Rules mentioned apply only to government servants. Therefore, these rules will not apply to employees of the AVS.

Dr. Rajeev Dhawan, learned senior counsel for the respondent submitted as follows:-

According to learned senior counsel, the judgment of the Division Bench of the Rajasthan High Court is correct in so far as it gave:

(a) Pay protection (including benefit of higher scales for completing

A of 9,18 and 27 years)

(b) Counting of service for retiral benefits for long standing employees of the AVS.

Submissions on Law

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The State is expected to act as a model employer exhibiting 'fairness of action' towards long standing employees. Learned senior counsel relied on the decision of this Court in *Gurmail Singh* v. *State of Punjab,* [1991] 1 SCC 748. It was laid down by this Court that even though according to the provisions of Section 25-FF of the Industrial Disputes Act, 1947, retrenchment C compensation has been paid and accepted, the State was under a duty to treat employees who were on deputation and those who were dismissed equally because the state was a "model employer" exhibiting "fairness in action".

It was argued that the above case is an authority for the proposition that where a state body is shut down, it is part of the obligations of the state as D a model employer dedicated to fairness in action that subject to adjustments, employees who were on deputation and those who are dismissed should be absorbed subject to similar equities:-

There should necessarily be: -

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* Pay protection where appointments are made on a lower scale.
* Counting of Service for retiral benefits
* Placing the employees on par in the receiving departments including salary

F *Gurmail Singh* (supra) has also laid down that it would not be fair to allow absorbed employees to steal a march over the employees in the department into which they are absorbed. However the regular appointees of such local bodies should not be put at a disadvantageous position by the loss of seniority due to the absorption of the employees of the AVS.

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Following the decision in the case of *Central Inland Waters Transport Corporation Limited* (supra), it can be observed that:

1. Unfair labour contracts shock the conscience and are opposed to public policy.

H 2. Such unconscionability could be caused by economic duress

3. Inequality of bargaining powers vitiates contracts, such contracts also violate Article 14 of the Constitution

4. This Court in the present case applied Section 23 of the Contract Act and held the contract to be unconscionable and void.

"The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will when called upon to do so, strike down an unfair and unreasonable contract or an unfair or unreasonable clause in the contract, entered into by two parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men; one can only attempt to give some illustrations."

Further, learned senior counsel submitted that this Court in *Delhi Transport Corporation* v. *DTC Mazdoor Congress,* (supra) approved the *Central Inland decision* (supra) and struck down the unconscionable 'hire & fire' clause.

Our attention was invited to certain observations made by Ramaswamy, J. and B.C. Ray, J; which are as under:-

1. The State cannot impose unconscionable conditions and stated that such contracts were contrary to Article 14.

2. Public policy in contract be construed accordingly and be drawn from the constitution.

B.C. Ray, J. observed that there should not be any limitation on the freedom of contract and specifically approved *Central Inland* decision (supra) in respect of such contracts being contrary to Article 14 guaranteed under the Constitution. This Court further observed that, "The court has, therefore the jurisdiction and power to strike or set aside the unfavourable terms in contract of employment which purports to give effect to unconscionable bargain violating Article 14 of the constitution."

It was further observed in the case of *Prakash Ramachandra* v. *Maruthi,* [1995] Supp 2 SCC 539 that any undertaking to the court and contractual arrangement resultant thereto does not oust the jurisdiction or the power of the court to hear cases or grant relief.

A Learned counsel for the respondents while citing the decision in *National Building Construction Corporation* v. *Raghunathan,* [1998] 7 SCC 66 argued that a legitimate expectation is created where employees have been assured absorption on one basis, which is there altered to their detriment under coercive circumstances where they have not been paid and acted on the previous promise that they have tried to enforce in court. It was further argued that the decisions cited by the appellant on Article 311 and abolishing civil posts are exceptional and irrelevant to the present controversy.

Therefore, according to learned senior counsel, the law clearly establishes that,

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(a) The State must be a model employer and show fairness in action

(b) Even where all statutory requirements (such as Section 25 FF) and technicalities have been complied with, the State must be fair enough to absorb employees on a minimal fairness basis which includes:

D

(i) protection to pay scale

(ii) counting of past service for pensionary benefits

(iii) no seniority over new employees in the new organization

E (iv) equal treatment in future with all employees

(c) Unconscionable contracts and undertakings are contrary to section 23 of the Indian Contract Act, public policy, Article 14 of the Constitution and Directive Principles of state policies.

F (d) Undertakings not accepted by the lower court (and even if accepted) do not inhibit this Court's jurisdiction to hear a matter and grant relief.

With regard to the argument of the appellant's counsel that:—

(a) the employees should not be given pensions;

G

(b) the Division Bench should not have ordered increments at 7,13 & 27 years as are available to other employees the learned counsel argued that, if this was made practicable, the employees after joining the new department cannot be meted out discriminatory treatment. They will lose seniority, but they cannot be denied

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benefits available to others. The respondent's counsel also stated that a situation cannot be created where, a former AVS worker has no pension or Provident Fund and also not to discriminate by not to extending 9,18 & 27 years of service which would be available to others. A

Mr. Aruneshwar Gupta, learned counsel for the respondent made the following submissions:- B

That AVS falls within the definition of 'other authorities' under Article 12 of the Constitution and was managed, controlled and owned by the State of Rajasthan and was dealing with the affairs of the State by referring to the decisions of this Court in *Federal Bank Ltd.* v. *Sagar Thomas,* [2003] 10 SCC 733 and *Pradeep Kumar Biswas* v. *Indian Institution of Chemical Biology,* [2002] 5 SCC 111. C

It was further argued that the learned Single Judge clearly held that the entitlement of the employees was not on any humanitarian ground but because the employees had a right to be absorbed and to be treated in a reasonable, just and proper manner. D

According to Mr. Aruneshwar Gupta, the employees, who have been absorbed in the other authorities, were entitled to the following reliefs:—

1. Fitment in the stage of the pay scale, which they were already drawing in the Avas Vikas Sansthan and consequent increments. E
2. Arrears of pay on the basis of the above statement.
3. Seniority of the AVS *vis-a-vis* employees in the authorities in which they were absorbed. They are entitled to seniority in the other undertakings etc. on the basis of date of their substantive appointment. Therefore *inter se* seniority of the employees of Avas Vikas Sansthan who were absorbed in other authorities. F
4. Corresponding designation of post in the authorities in which they were absorbed. G

Ms. Shobha, learned counsel appearing for the daily wagers submitted that some of the daily wagers were declared qualified but kept in the waiting list for non-availability of sanctioned vacant posts. According to her, the High Court has rightly appreciated the facts and circumstances of the present controversy issued appropriate directions for absorption and that the balance H

A of equity lies in their favour in view of the fact that the respondents have successfully cleared the exemption for regular appointment and had to remain in the waiting list on the pretext that no vacant sanctioned post is available. It was also submitted that the appellants have absorbed/adjusted numerous employees of the AVS but few of them including the respondents have been left on the pretext that they were not the regular appointed employees. B Concluding her arguments, she submitted that they are also entitled for similar treatment being duly selected employees of the AVS. It is also relevant to mention that the employees were not appointed against any project and the termination order was passed due to financial inviability of the AVS and not because of some fault of respondent No.1.

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We have carefully considered the lengthy submissions made by learned counsel appearing for both the parties. We have also perused all the pleadings, annexures as well as the judgments of both the Single Judge and the Division Bench of the Rajasthan High Court

D In our opinion, the submissions made by learned senior counsel for the AVS merit acceptance and stand to reason in the peculiar facts and circumstances of the case. Though the arguments of Dr. Rajeev Dhawan and Mr. Aruneshwar Gupta, learned counsel appearing for the employees are attractive on the first blush, yet on a careful reconsideration of the same, it has no merits.

E

In our view, after the liquidation of the AVS due to any reason unless such liquidation was *malafide*, there exists no right on the employees of such liquidated society for reemployment. In the present case, the Rajasthan Government did formulate a scheme to absorb the employees of the society into various other organizations with various terms and conditions to which F the respondent employees agreed. There is no allegation in the writ petition that the employees were coerced/forced/unduly influenced to submit the undertaking. Therefore, at a later stage it is unfair to take claims of service conditions other than the ones that are stipulated and accepted earlier.

G In the case of *Rajendra* v. *State of Rajasthan,* [1999] 2 SCC 317 and *S.M. Nilajkar* v. *Telecom District Manager,* [2003] 4 SCC 27 where a project has been shut down due to want of funds the employer cannot by a writ of *mandamus* be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though H the employer did not have the funds available for the purpose. This finding

is applicable in the present matter and therefore the finding of the High Court is not fair to common conscience and also that the same will act as a disincentive to the state to float such schemes in future thereby reducing the employment opportunities of many.

POWER TO ABOLISH CIVIL POSTS

It is settled law that the power to abolish any civil post is inherent in every sovereign government and such abolition will not entail any right on the person holding the abolished post the right to reemployment or to hold the same post. In the present case, the State Government was benevolent enough to float a scheme to absorb such employees whose posts were abolished. Therefore, in our opinion, the arguments advanced by counsel for the respondents with regard to unfairness meted out to the employees of Avas Vikas Sansthan hold no water.

With regard to 604 employees of the AVS, it was argued that the State of Rajasthan had no legal obligation to offer alternative employment to the erstwhile employees of the AVS. But the State of Rajasthan in all fairness did frame a scheme and offered employment in other local bodies of the government. Thus, the terms and conditions of such alternative employment cannot be challenged. We are of the opinion, that the decision of the High Court granting relief of reemployment with pay protection, seniority and pension is erroneous. We, therefore, direct the State of Rajasthan to strictly adhere to and implement its decision to offer employment in other local bodies in letter and spirit.

We further make it clear that all the erstwhile employees, if not already employed, should be employed in the local bodies as per the scheme formulated by the Government of Rajasthan in a war footing.

PAY PROTECTION

On the question of Pay Protection claimed by the respondents, it is seen from the Cabinet decision of 18.05.1999 that "no pay protection should be granted to the employees". The same was conveyed by the Rajasthan Housing Board vide letter dated 01.06.1999. This decision was taken after considering the views of the Finance Department. So the undertaking by the employees when they were absorbed into other local bodies had the same stipulation. This being so, such claim for pay protection, at this late stage, cannot be made. Thus, considering the categorical condition that the employees will not

A be given any pay protection, and moreover due to the absence of any legal right for pay protection to the employees of the AVS, such claims, in our opinion, cannot be sought for.

With regard to the claim of the respondents for counting services rendered in the AVS, the Cabinet decision of 18.05.1999 specifically states B that "the benefit of past service is not to be counted for any purpose". The same was conveyed by the Rajasthan Housing Board letter dated 01.06.1999. Therefore the undertaking by the employees when they were absorbed into other local bodies had the same stipulation; therefore at this late stage such claim for counting services rendered in the AVS for the pension and other C retiral benefits, in our opinion, cannot be made.

Since the employees of the AVS are not treated as government servants, they are not entitled to claim the benefit of Government Order dated 25.01.1995, which is specifically applicable only to government employees and the benefit of the 5th Pay Commission Report also stands inapplicable as this was not D a claim that was sought by the respondents at any stage in any court that had entertained this matter. Also the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 will not apply as such to these employees of the AVS as they clearly do not fall within the definition of Surplus Personnel as defined in the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969.

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As regards the question of whether Rajasthan Housing Board can be considered 'State' under Article 12 of the Constitution, no serious arguments were made by either counsel for the parties and, therefore, we are not expressing any opinion on the same and decide the other issues on the basis F of the arguments advanced.

RIGHTS OF DAILY WAGERS

With regard to the appointment of 46 daily wage employees after the dissolution of the Society, we hold that, in the facts and circumstances of this G case there is no right on the part of any employee to be re-employed. Also daily wage employees cannot, by any stretch of imagination, be put on par with regular employees under any law prevalent as of date. The finding of the Division Bench that they can be treated on par with regular employees and be given various reliefs is wrong and erroneous under law. Therefore, we are not granting any relief to the daily wage employees as their claim is not H justified under law. However, the Government of Rajasthan may

sympathetically consider absorption of these employees in the vacancy available if any in future by giving them preference to other new applicants in any of their local bodies etc. subject to the following conditions:

1. The employees will be entitled to salary/wages from the date of their re-employment and shall not claim for any past period;
2. The employees will not be entitled to pay protection, benefit of GO dated 25.01.1992, 5th Pay Commission and the service rendered by the employees will not be considered for pension and/or other retrial benefits;
3. The appointment of Degree holder/Diploma holder Engineers shall be on the post of Junior Engineer on the minimum scale of pay;
4. The appointment of employees of Administrative Department would be on the post of Junior Clerk on the minimum scale of pay;
5. The appointment would be subject to suitability and physical fitness;
6. The alternative employment would be granted subject to availability of vacancy preferably within a period of 3 months.

If they are absorbed in future the same will be treated as a fresh employment and employees/appointees will be governed by the rules and regulations of the absorbing Department if they are found suitable.

POWER TO ABOLISH POSTS AS A MEASURE OF ECONOMY:

It is well settled that the power to abolish a post which may result in the holder thereof ceasing to be a Government Servant has got to be recognized. The measure of economy and the need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or abolish the post. In such an event, a Department which was abolished or abandoned wholly or partially for want of funds, the Court cannot, by a writ of *mandamus*, direct the employer to continue employing such employees as have been dislodged. In the instant case, the State of Rajasthan has framed a scheme and offered alternative employment in the other local bodies as a Welfare State on humanitarian

A grounds. As already noticed, the employees of the AVS have accepted alternative employment on terms and conditions of the local bodies and having filed a solemn statement by way of affidavit that they will not claim continuity of service by protection of seniority etc. nor will they challenge the terms of such employment and shall also withdraw the writ petition filed by them. They cannot now go around and say that the judgment of the B Division Bench should be given effect to. In our view, they are estopped from claiming the benefits and challenging the terms and conditions of the fresh employment. The employees have no right to resile from the affidavits filed before the High Court. We have searched in vain in order to see as to whether there is any material to show that the settlement was intended to frustrate the C order passed by the High Court. At no point of time, the employees raised any dispute as regards the fairness of the settlement. Having obtained the benefit, it was not open to them to turn down without justifiable reasons to contend that the settlement was not fair and they should be given pay protection, counting of service for retiral benefits and placing the employees on par in the receiving Department. The cabinet decision of not granting pay D protection was taken after taking into consideration the views of the Finance Department as it has huge financial burden on the local bodies offering re-employment after relaxing their own recruitment rules. In our view, the aforesaid categorical condition that the employees would not be entitled to pay protection and in the absence of any legal right of pay protection and fresh employment E consequent upon on fresh appointment on humanitarian grounds, the decision of the High Court to grant protection of pay is unsustainable and liable to be interfered with.

Dr. Rajeev Dhawan, learned senior counsel for the respondents, cited many decisions. Those cases, in our view, is distinguishable on facts and on F law. In those cases, the High Court has directed protection of pay on the facts and circumstances as can be seen from a perusal of the same.

The cabinet decision dated 18.05.1999 specifically decided that *their period of earlier service shall not be valid for any purpose.* This was specifically conveyed by the State Government to the Rajasthan Housing G Board vide letter dated 01.06.1999 and also the letter of the State Government dated 26.02.2000 to the various local bodies. It is stated that one of the terms of re-employment would be that earlier service tenure shall not be considered for any purpose. Furthermore, under the provisions of the AVS Employees Service Regulation, 1993, the employees of the AVS were entitled to provident H fund. Rule 14 provide as under:-

"An employee of Sansthan shall be required to subscribe to the Contributory Provident Fund in accordance with such Rules as may be prescribed by the Board of Management." A

The employees of the AVS were having the benefit of contributing provident fund and were not entitled to any other pensionary/retiral benefits. The employees have withdrawn provident fund including the employer's B contribution after termination of service from the AVS. It is thus crystal clear that the services rendered by the employees with AVS cannot be counted for the purpose of pension and other retiral benefits since such benefits were not available to them even in their parent organization and it was a specific condition of fresh employment that their past services with AVS will not be C considered for any purpose.

Even in *A.I. Railway Parcel & Goods Porters Union* v. *Union of India & Ors,* [2003] 11 SCC 590 at 603 page 34 one of us was a member (Dr. AR. Lakshmanan, J while giving various directions in the matter of regularisation of contract labour, this Court did not direct that the services rendered by the D contract labourers with the contractor would be counted for the purpose of grant of retiral benefits by the principal employer. The recommendations of the 5th Pay Commission is applicable only to Government Servants and as such the employees of AVS who are not government employees are not entitled to 5th Pay Commission even in the writ petition filed by the organisation there was no prayer for grant of benefit of 5th Pay Commission. E Thus, the High Court has erred in directing that the benefit of recommendations of 5th Pay Commission shall be given to the employees of the AVS on notional basis. We make it clear that the employees would be governed by the terms and conditions of the local bodies where they have been re-employed.

At the time of hearing, a submission under the heading *doubts of financial bona fides* was made. It is submitted that the said plea is without any pleading in the writ petition. There is no pleading either on facts or in the grounds in the writ petition that the averments contained in the note dated 09.03.1999 and 18.05.1999 to the effect that the AVS has no capital base or reserve capital and has huge financial outstanding is incorrect. It is also not G in dispute that the employees of the AVS could not be paid salaries of December, 1998 that amounted to about more than Rs.2 crores nor the writ petitioners/respondent employees have argued either before the Single Judge or before the Division Bench of the High Court that the liquidation of the AVS was *mala fide* and or extraneous consideration. So also there is no averment H

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A in the writ petition as regards the constitution of the AVS or the work of the AVS being transferred to the AVS. As a matter of fact, the AVS was incorporated under the Companies Act in the year 1996 and the AVS has majority share holding in AVS in the absence of any other pleading and contention raised before the High Court such submission on facts cannot at all be countenanced before this Court in the present proceedings. Likewise, the submission made
B by learned counsel appearing for the employees that the State has gone back on its decision and they have coerced the employees to agree to certain conditions cannot at all be countenanced.

FAIRNESS IN ACTION:

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In our opinion, the State of Rajasthan has acted fairly and benevolently though the State has no constitutional and legal obligation to offer alternative employment to the employees of the AVS upon abolition of posts. Consequent to the liquidation of the AVS itself, it had framed a scheme to adjust the employees in other local bodies by relaxing the rules of such bodies and
D terms and conditions were fixed without financial economic compulsions of the State. The present case is one of liquidation of an organisation and consequent abolition of post in the said organisation. There is also no pleading that the conditions contained in the undertaking are contrary to Section 23 of the Contract Act or violative of Article 14 of the Constitution or inconsistent
E with the directive principles of state policy. *The Central Inland Waterways* case (supra) and *Delhi Transport Corpn.* case (supra) relied on by these employees, in our view, have no application of the present case and distinguishable on facts and law. Those cases relate to a term in the employment that even services of a permanent employee can be terminated on 3 months' notice without assigning any reason and such condition was
F specifically assailed therein. However, the present case relates to providing alternative employment to the employees of an organisation that is liquidated and posts have been abolished. In such circumstances, this Court has held in a number of cases that the employees have no right to seek re-employment in any other organisation. So also, there has been no challenge in any of the
G case decided by the High Court to the terms and conditions of undertaking that they were unfair, arbitrary and are contrary to public policy and as such violative of Section 23 of the Contract Act or Article 14 of the Constitution of India or any directive principles of state policy.

The question of legitimate expectation has also not been raised at any
H stage and as such cannot be agitated before us in this court.

The reliance on the provisions of Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 is wholly misconceived in as much as the said rule apply only to "surplus personnel" who were "appointed to various services or posts in connection with the affairs of the state" in terms of Rule 2 of the said Rules. Surplus personnel have been defined in Rule 3(1) as follows:

> "Surplus Personnel" or "Surplus Employee" means the Government servant to whom the Rajasthan Services Rules, 1951 apply and who are declared surplus by the government or by the appointing authority, under directions of the government, on their being rendered surplus to the requirements of a particular department of the government due to the reduction of posts or abolition of offices therein as measures of economy or on administrative grounds but in whose case the Government decides not to terminate their services but to retain them in service by absorption on other posts."

A bare perusal of the aforesaid Rule clearly demonstrates that the rules are applicable only to the Government servants to whom Rajasthan Service Rules, 1951 apply. The employees of Avas Vikas Sansthan are not government servants nor Rajasthan Service Rules, 1951 were applicable to them and as such the provisions of Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 are not applicable in the present case.

Further submissions of the learned counsel that the employees must be posted on the posts earlier held by them is without any merit since these employees had no right to claim adjustments to other local bodies. The Cabinet decision dated 18.05.1999 have categorically stated as under:

> "All these appointments should be made to the lowest posts and engineers should be appointed only on the post of Junior Engineers and Employees of Administrative Departments should be appointed only on the post of Junior Clerk."

So also all these employees have given undertaking not to raise any dispute in the matter. Thus this contention is untenable and is liable to be rejected.

For the foregoing reasons, the impugned judgments of the High Court are set aside and we hold that all the civil appeals filed by the Rajasthan Housing Board, the AVS and the State of Rajasthan are allowed. The Civil

A Appeals filed by the employees stand dismissed. No costs.

Order

It was submitted by Mr. Badridas Sharma, learned counsel for the appellants, that the above appeals are of an entirely different type in which B the respondent had challenged the order dated 25.04.1998 of the Avas Vikas Sansthan and by that letter/order, it was pointed out that 10 employees including Mr. Radha Krishan Karwashra had not accepted to join and do the alternative work offered to them and, therefore, those persons were treated as no more in the service of the Avas Vikas Sansthan. That the order of 25.04.1998 was not at all related to dismissal of service of employees as a C result of dissolution of the Society. It was submitted that the writ petitions challenging the said order dated 25.04.1998 are still pending in the High Court at Jaipur in writ petition Nos. 5370/1998 and 5383/1998. Since this fact was pointed out by Mr. Badridas Sharma during the time of hearing of these appeals, we do not consider the merits of the claim made in this appeal. In D view of this, the above appeals are delinked from the batch of appeals in Civil Appeals Nos. 5302/2004. etc. etc. and disposed of accordingly. Both parties are at liberty to pursue the pending writ petitions before the High Court in accordance with law. No costs.

B.S. Appeals disposed of.

AKHIL BHARAT GOSEWA SANGH

v.

STATE OF A.P. AND ORS.

MARCH 29, 2006

[Y.K. SABHARWAL, CJ. AND TARUN CHATTERJEE, J.]

Industries (Development and Regulations) Act, 1951; Section 11(2)/ Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977/Andhra Pradesh Gram Panchayat Act, 1964; Section 131(3)/Notification dated July 25, 1991 issued by the Central Government and Notification dated February 3, 1992 issued by the State of Andhra Pradesh:

Application for grant of industrial licence to a company to run slaughter house—Issuance of No Objection Certificates by various authorities—State Government recommending grant of the licence—Central Government issuing Letter of Intent in terms of provisions of Industries (Development and Regulations) Act—Suspension of permission by Gram Panchayat—Suspension order lifted by the State Government—Challenge to—Reversed by a Single Judge of the High Court—Appeal against—Division Bench of the High Court held that since authorities concerned granted permission duly considering all the relevant facts, there was no ground for intervening and disturbing establishment of the slaughter house—On appeal, Held: Only after holding an enquiry and having satisfied, permission to run the slaughter house granted—Provisions relating to location requirements/distance prohibition are directory in nature—Central Government could issue licence even without imposing any conditions as to the distance prohibition—Since the licence was issued to the company, it amounts to waiver of the conditions—Besides, the licence issued to the company in terms of the industrial policy of the State Government, hence, the distance prohibition could not be considered to be a ground for cancellation of the licence/closing down of the unit—Since, question as to location requirement is a question of fact, it cannot allowed to be raised at this stage.

Grant of an Industrial Licence —Environment Protection Rules—Violation of—Held: State Pollution Control Board could prescribe higher standards of pollution control but could not lower the same—Since the company

A *had installed elaborate anti-pollution equipments, the company is directed to comply with the Rule by lowering down the pollution level to permissible limits—If the company fails to do so, it would be open to the authorities to direct closure of the company—Environment Protection Rules—Rule 3—Schedule I—Entry 50 B.*

B *Water Act; Sections 11 and 25:*

Right to information to members of public—Non-disclosure—Effect of—Held: Provisions under the Act does not confer any such right—Hence, issuance of NOC by the authorities not vitiated by reason of non-disclosure of information to the appellant—Constitution of India, 1950—Article 19(1)(a).

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Grant of Licence to run slaughter house—Effect on Cattle/buffaloes population—Held: Central Government report confirms that there was no reduction in the population of buffaloes since commencement of operation of the abattoir—Since findings/report of the expert bodies in scientific/technical matters would not ordinarily be interfered with by the Courts in exercise of power under Article 226/136 or 32 of the Constitution, it cannot be held that the functioning of the abattoir would result in reduction of buffaloes population—Constitution of India, 1950—Articles 32—136—226.

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Grant of permission to run a slaughter house **vis-a-vis** *Central Government Export Policy—Held: Despite directions by the Supreme Court to the company for reduction of its production to 50%, the total export of meat did not reduce—Striking down the existing meat export policy would result in discouraging the private entrepreneurs to invest in the meat industry—A Policy of the Government cannot be struck down merely on certain factual disputes—Directive Principles and Fundamental Duties cannot themselves serve to invalidate a policy—The policy, in question, does not violate the constitutional provisions—Hence, it cannot be struck down—Constitution of India, 1950—Articles 21—39(b) & (c)—47-48.*

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Ban on slaughter of bovine animals—Provisions under A.P. Act, 1977 **vis-a-vis** *Bombay Animal Preservation (Gujarat) Amendment Act, 1984—Interpretation of—Discussed.*

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Provisions of Mysore Prevention of Cow Slaughter and Cattle Prevention Act, 1964—Enforcement of—Held: State Government is directed to enforce and implement strictly the provisions under Sections 4, 8 to 11 and 18 of the Act.

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Constitution of India, 1950; Article 48: A

Directive Principles **vis-a-vis**—*Fundamental Rights—Whether the view taken by the Supreme Court in* **Mohd. Hanif Quareshi** *case requires modification in the light of a larger Bench decision of the Supreme Court in the case of State of Gujarat* **v.** *Mirzapur—Held: Yes, since the larger Bench has clarified that the protection available under Article 48 could be extended* B *to cattle which ceased to be milch or draught animals.*

Total prohibition of cattle slaughter—Issuance of writ of **mandamus**—*Held: It would not be appropriate to encroach upon the power of the State legislature to issue directions declaring total ban on slaughter of cattle, it* C *amounts to judicial legislation.*

A company had applied to the authorities of Andhra Pradesh State Government and the Central Government for grant of licence to run a slaughter house in a village of the said State. The company obtained No Objection Certificates from the authorities concerned; though No Objection D **Certificates were granted by the authorities subject to fulfilment of certain conditions, the State Government made recommendations for grant of an industrial licence to the company to set up abattoir at the selected site. The Central Government also granted a Letter of Intent under the provisions of the Industries (Development and Regulation) Act, 1951 for establishment of** E **the slaughter house for manufacturing and export of Frozen Buffalo and Mutton Meat. While construction of the abattoir had been progressing, the Gram Panchayat issued a notice in exercise of its power under Section 131 (3) of the Andhra Pradesh Gram Panchayat Act, 1964 suspending the permission granted by it earlier and directed the company to stop construction of the building for the factory/slaughter house until further orders. The** F **company filed a revision petition before the State Government questioning the issuance of the notice by the Gram Panchayat. The revision petition was allowed by the State Government. Against the order passed in the revision petition, two writ petitions were filed in the High Court by the organizations opposing the establishment of the slaughter house, and also by some** G **individuals. Admitting the petitions, Single Judge of the High Court ordered suspension of the operation of the order passed by the State Government. Aggrieved, the State Government as well as the company filed writ appeals which were admitted by a Division Bench of the High Court and the interim order passed by the Single Judge was stayed. The writ petitions were heard and disposed of by the High Court in terms of its order dated November 16,** H

A 1991 directing the State Government to prepare a detailed report regarding the water, air and environment pollution, if any, and *the likely effect of the setting up of the mechanized slaughter house by the company at the village concerned on the prevailing environment, and also its likely effect on the cattle wealth in the area,* after considering the representations which the writ petitioners and other interested parties may submit in writing in this regard.

In pursuance to the directions of the High Court, the State Government constituted a Committee (Krishnan Committee) to look into the matter. The Committee submitted its report, which was forwarded to the Central Government but the Central Government did not pass any orders on it. Further, writ petitions were filed by the various organizations, including the appellant, questioning the grant of permission for trial run of the slaughter house in question. The Division Bench of the High Court disposed of the writ petitions holding that since the authorities concerned had granted requisite permission duly considering all the relevant facts and circumstances, there exist was no ground for intervening with the establishment and operation of the slaughter house. It also directed prosecution of one of the petitioners for his mis-statement in the petitions. While disposing of the writ petition filed by the present appellant, the Division Bench of the High Court held that the question as raised by the appellant was already dealt with in the judgment, and therefore, there was no need to deal with it all over again. Hence the present appeals.

An interim order was passed by a Division Bench of this Court directing the Central Government to look into all the relevant aspects in terms of the directions of the High Court and to submit a report. The report so submitted by the Central Government was considered by this Court along with other report as submitted by the *Krishnan Committee* and came to a direction that with effect from 1st April 1997 the company shall function at half of its installed capacity; and that the appeals were due to be listed in due course.

Although the three connected appeals being C.A. Nos. 4711-4713 of 1998 (*Umesh & Ors.* v. *Karnataka & Ors.*) were also heard along with C.A. Nos. 3964-68 of 1994 (*Akhil Bharat Goseva Sangh & Ors.* v. *State of A.P. & Ors.*), the judgment in C.A. Nos. 4711-4713 of 1998 has been dealt with separately as the questions involved in these appeals were not in issue in C.A. Nos. 3964-68 of 1994. The questions which arose for determination in

these three appeals were: A

(i) As to whether the High Court erred in dismissing the writ petitions after holding that the State Government must strictly implement the provisions of the Mysore Prevention of Cow Slaughter and Cattle Prevention Act, 1964;

(ii) As to whether the view taken by this Court in *Mohd. Hanif Quareshi* v. *State of Bihar,* [1959] SCR 629 regarding implementation of Art. 48 of the Constitution, the directive principles *vis-a-vis* fundamental rights requires modification in the light of larger Bench decision in *Keshavananda Bharti* Case [1973] 4 SCC 225 and the subsequent decisions of this Court on the same issue; B C

(iii) As to whether the terms in Art. 48 are wide enough to include all categories of bovine cattle; and

(iv) As to whether section 5 of the 1964 Act is unconstitutional in so far as it does not impose a total prohibition of slaughter of bovine cattle and as to whether a writ must be issued directing the State Government to prohibit slaughter of all bovine cattle. D

The appellants contended that the question which was raised but not decided by this Court in its earlier orders and kept to be decided at the final stage of the present appeals, was as to whether the respondent, a slaughter house has been established in violation of location requirement as mentioned in the Letter of Intent of the Central Government for issuance of industrial licence to it; that since the location of the company is in violation of location requirement, and also located within the prohibition zone the company may be directed to close down its abattoir; that the State Government, having issued a General Order banning location of industries in Medak District, where the unit of the Company was located, it had wrongly granted permission to the company to run its abattoir in the same place/district, and therefore, the company must be directed to shut down its abattoir and the licence issued to it must be cancelled; that Andhra Pradesh Pollution Control Board (APPCB) by its consent order allowed limit for B.O.D. of 100 mg/Lit. whereas the maximum permissible limit specified in the Environment Protection Rules, 1986 is 30 mg./Lit (Rule 3, Schedule 1, Entry 50B); and that the consent of APPCB was in violation of the Act and Rules, and hence it must be quashed; that the consent order was in derogation of the right of the appellant to information in violation of Article 19(1)(a) of the Constitution; that the policy E F G H

A of the Government to encourage slaughter for export is subject to judicial review as policies which violate constitutional provisions are reviewable; that the policy violates Art. 39(b) and (c) of the Constitution as it serves to concentrate profits from cattle wealth in a few hands; that not only this policy violates Art. 47 of the Constitution as it leads to malnutrition but also Art. 48 which contains a positive command to the State to preserve and improve
B breeds and prohibit slaughter of milch and draught cattle regardless of their usefulness; that the policy also violates Art. 21 by depriving the society of the useful benefits of animals; that A.P. Act, 1977 does not mention any specific age limit under which cattle slaughter is prohibited and therefore criteria for determination of healthy and useful cattle is subjective and with
C a scope of maneuverability; that the A.P. Animal Husbandry Manual prescribes the age of slaughterable buffaloes as above 10 years; that the buffaloes are useful even till 15-20 years; and that since the agencies of the State Government also recommended ban on export of meat, the policy of the Central Government to export meat deserves to be struck down.

D Disposing of C.A. Nos. 3964-3968 of 1994 and partly allowing C.A.Nos. 4711 to 4713 of 1998, the Court

HELD: C.A. Nos. 3964-3968 of 1994:

1. Having been satisfied after holding enquiry, permission and/or
E licence was granted by the authorities concerned to the company for the purpose of making construction at the site in question and thereafter for running the slaughter house, it cannot be said that the company was permitted by the authorities first to make construction of the factory at the selected site and thereafter to run the slaughter house without being
F satisfied that the conditions for grant of permission and licence were observed by the company. [559-B-C]

2.1. Sub-section 2 of Section 11 of the Industries (Development & Regulation) Act by which conditions can be imposed as to the location of the undertaking by the Central Government, is only directory in nature and
G it would be open to the Central Government to issue licence without giving any conditions to the company as to the location of the undertaking. It is significant to note that the legislature in sub-section 2 of Section 11 has used the word 'may'. [572-G-H; 573-A]

2.2. The appellants have alleged for the first time before this Court
H the fact that the company is located within 13 km. from the standard urban

limits of the city of Hyderabad which falls within the prohibited zone. Even assuming, distance prohibition would be applicable to the case of the company in question. This distance prohibition may not stand in the way of the company from getting an industrial licence for the purpose of setting up the abattoir at the site in question. It is true that before issuance of licence, Letter of Intent (LOI) was issued by the Central Government, only wherein the location requirement was stated in a printed form. However, it is an admitted position that the Central Government did not make any query from the company about the distance between the Village, where the site is located, and the urban limits of the city of Hyderabad. By issuing the Industrial licence to the Company, even after knowing the proposed location of the unit, it must be said that the Central Government waived the location requirements, as mentioned in its LOI with regard to this unit. [572-A-B-C-D; 573-A-B]

2.3. Clause (2) of Paragraph 3 of the Notification dated February 3, 1992 which was issued by the State Government as a follow up action of the Notification dated July 25, 1991 issued by the Central Government under which permission/licence was required for industries located within 25 Km. from the periphery of State urban areas, specified the list of villages falling within the prohibited zone for which, location approval from the Central Government would be necessary except for non-polluting industries. In the present case, the activity of the company does not fall in the category of non-polluting industries. However, the Notification contains two lists - list A and List B. List A specified all the villages within the standard urban area of Hyderabad. Patancheru which falls within Medak District and is within the computation of 25 km. from the periphery of the standard urban area of Hyderabad falls under list B. Therefore, in terms of the distance there was requirement of obtaining an industrial licence by virtue of the Notification dated 3rd February 1992 of the State Government. In view of the admitted fact that industrial licence was granted by the Central Government and permission to run the slaughter house was granted by the State Government on the basis of the Industrial policy of the State Govt., the distance prohibition could not be considered to be a ground either for cancellation of the industrial licence or for closing down the unit. [573-D-E-F-G]

2.4. The question on location requirement is always a question of fact which cannot be permitted to be raised at this stage. However, it is open to the Central Government and the State Government to consider the distance prohibition as indicated in the LOI and the Notification and General Order of the State Government for the purpose of shifting the site to some other alternative place which would satisfy the location conditions. Subject to the

A above, this question is answered in favour of the company.

[574-F-G-H; 575-A]

3.1. The standards prescribed by the Andhra Pradesh Pollution Control Board (APPCB) for the company while issuing its consent for slaughtering operation to begin, were indeed in violation of the Environment Protection B Rules in so far as they prescribe a lower standard than was mandated by these Rules. The State Boards are permitted to prescribe higher standards than those mentioned in the Rules but are not permitted to lower the standard. The samples which were collected by the Department of Water and Waste Water Examination and Institute of Preventive Medicine from the company's C abattoir indicated violation of the standards prescribed under Environment Protection Rules. Though the company has installed elaborate anti-pollution equipment, it would be of no consequence if such equipment is in reality not bringing down the level of pollution below permissible limits. However, it cannot be overlooked that the company is continuing its operation for more than 10 years without any objection from the Andhra Pradesh Pollution D Control Board (APPCB). Therefore, considering all the circumstances, directly ordering closure of the company is not called for; rather appropriate directions may be given by APPCB to the company by rectifying its consent order in accordance with the Environment Protection Rules. In the event the company fails to comply with such directions from the APPCB, it would be E open to the authorities to direct closure of the company. [576-B-C-D-E-F]

3.2. Section 25 of the Water Act does not confer any right on members of the public to demand information from the APPCB prior to issuance of NOC to the company. Therefore, it cannot be held, that the NOC was vitiated by reason of non-disclosure of information to the appellant. [578-F]

F

3.3. Section 11 of the Water Act clearly provides that no act or proceeding of APPCB or any committee thereof shall be called in question, it can safely be concluded that even if there was some defect in the composition of the APPCB, that would not invalidate the consent order issued by it.

[579-F, G]

G

4.1. It cannot be doubted that the *Krishnan Committee* was in favour of the establishment of the slaughter house subject to the condition that it should raise its own cattle as required by it - initially to the extent of half and ultimately to the full extent. The Committee noted that the operation of the company would adversely affect the cattle population in and around the region H unless 50% of the demand of the abattoir was met through breeding of cattle

by the company itself. However, with the enactment of A.P. Act, the Legislature has regulated the slaughter of all bovine animals including buffaloes. For obtaining a permission from the competent authority to slaughter an animal, certain conditions are required to be fulfilled. In order to ascertain whether those conditions are fulfilled by the company or not, Animal Husbandry Department of the State of Andhra Pradesh has been deputing necessary officials to the plant of the company to monitor and undertake anti-mortem and post-mortem examinations and to implement the provisions of the Act.

[562-E-F; 584-A-B; E]

4.2. In compliance with the directions of this Court dated March 12, 1997, the Central Government filed a report. From the report, it appears that the expert committee of the Central Government had examined all issues, as directed by this Court. The Committee has correctly taken the figures of a block period of four years before commencement of operations and again figures of a block period of four years after commencement of operations by the company. This is in view of the fact that statistics/figures of one particular year cannot represent or give a proper picture as the number of cattle can very well vary due to natural calamities, large scale migration in view of urbanization etc. Nothing was found against the committee of the Central Government that it had gone wrong by proceeding on that basis and it was justified to take a block period of four years which would certainly indicate the trend or show whether there was any steep or persistent decline after the commencement of operations of the company. The figures/statistics as given by the Central Government in the report as well as the 16th Quinquennial and 17th Quinquennial Census would clearly indicate that there is an increase in the number of buffaloes and there is no reduction or decline much less a steep decline in the number of buffaloes in the Telangana region.

[584-F-G; 586-D-E-F-G]

4.3. It is now well-settled by various decisions of this Court that the findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by courts in the exercise of their power under Art. 226 of the Constitution or by this Court under Art. 136 or 32 of the Constitution. Moreover, *Krishnan Committee* has also not recommended closure of the unit because of cattle depletion but on the other hand suggested some measures that may be taken to minimize cattle depletion. Hence this Court find no reason to show its concern that the functioning of the abattoir would result in depletion of buffalo population in the Hinterland of the abattoir. [587-G-H; 589-C-D]

A *Systopic Laboratories (Pvt.) Ltd.* v. *Dr. Prem Gupta & Ors.*, [1994] Suppl. 1 SCC 160 and *K. Vasudevan Nair & Ors.* v. *U.O.I. & Ors.*, [1991] Supp. 2 SCC 134, relied on.

5. The Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 (A.P. Act, 1977) does not impose a total ban on B slaughter of a particular type of bovine animal, whereas in *Mirzapur's* case this Court dealt with the provisions of Bombay Animal Preservation (Gujarat Amendment) Act, 1994 which imposes a total ban on slaughter of cow and its progeny. So far as the A.P. Act, 1977 is concerned, there is no total ban on slaughter of buffaloes. Therefore, the submission of the appellant cannot at C all be accepted, as this Court is not concerned with the case of striking down a particular provision which imposes an absolute prohibition of slaughter of particular types of bovine animals. In *Mirzapur* case, it was, however, not held that permitting slaughter of bovine cattle by itself is unconstitutional.

[589-G-H; 590-A-B]

D *State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat and Ors.*, [2005] 8 SCC 534, followed.

Mohd. Hanif Quareshi & Ors. v. *The State of Bihar*, [1959] SCR 629, referred to.

E 6.1. As the policies taken by the Central Govt. and Agricultural and Processed Food Exports Development Authority (APFEDA), which is a creation of the Parliament for promotion of export and product development of scheduled products, the question of striking them down cannot arise. However, it will be always open to the Court to direct the Central Government or the State Government to renew or review its policy F and to make a fresh policy at any time if they find it to be expedient to do so. [590-G-H; 591-A]

6.2. It is the case of the Government as well as the abattoir that only those buffaloes which are unfit for milching, breeding and draught were G permitted to be slaughtered and are being slaughtered. In the decided case of *Mohd. Hanif Qureshi*, the issue was not whether the population of live stock was increasing or not but whether the population of healthy live stock was increasing. Although it was sought to be argued by the appellant that due to slaughter of buffaloes by the company, the population of healthy buffaloes was declining even then, it must be confirmed that there is no depletion of cattle/ H buffalo wealth due to operation of the company. Apart from that, it appears

from the record that the slaughterhouse of the company was built in accordance with European Economic Community Standards and is one of the most modern, scientific, integrated slaughterhouses in India. If in any way the company is directed to close down their factory the said action on the part of the Central Government would be to discourage private entrepreneurs to invest in the meat industry which will affect the reputation of India in the export market of meat. [591-E-F-G-H; 592-A]

Mohd. Hanif Quareshi & Ors. v. *The State of Bihar,* [1959] SCR 629, referred to.

6.3. In terms of the interim direction given by this Court on 12th March 1997, the production of the company was reduced to 50 %. However, the total export of meat from India did not reduce. For these reasons, this Court is unable to direct at this stage to strike down the policy regarding meat export from India to foreign countries. The policy of the Central Government cannot be easily struck down only because there was slight decline of cattle growth nor it can be struck down before looking into the entire aspect of the matter. It is also well settled that policy decision of the Government cannot be interfered with or struck down merely on certain factual disputes in the matter. It is not open to the Court to strike down such decision until and unless a serious and grave error is found on the part of the Central Government or the State Government. Such being the position, meat export policy of the Central Government cannot be struck down, as it does not violate the constitutional provisions. [592-A-B-C-D]

6.4. It is also the consistent policy of the Government of India to encourage export of meat and meat products. The current foreign trade policy also encourages export of meat provided that a designated veterinary authority certifies that it is not obtained from buffalo used for breeding and milching purposes. It is true that in the Constitution Bench decision of this Court in the case of *State of Gujarat* v. *Mirzapur* it has been held that the protection envisaged under Art.48 extended even to cattle that had ceased to be milch or draught, provided they fall within the category of milch and draught cattle. It has also been held that cattle forms the backbone of Indian agriculture and they remain useful throughout their lives. While dealing with Art. 48 and 48-A of the Constitution read with the fundamental rights, the Constitution Bench further held that both directive principles and fundamental duties must be kept in mind while assessing the reasonableness of legal restrictions placed upon fundamental rights. However, striking down a law or policy on the ground

A that it violates a directive principle or fundamental duty was not an issue before the Constitution Bench of this Court in the said case. It is true that in the said Constitution Bench decision it has been held that total prohibition of cow and cow progeny slaughter may be justified. However, it has not been held in that decision that laws and policies which permit such slaughter are unconstitutional. Therefore, the position of law remains that the directive B principles and fundamental duties cannot in themselves serve to invalidate a legislation or a policy. Moreover, the export policy itself permits only export of meat from buffaloes that are certified as not useful for milching, breeding or draught purposes. Therefore, if properly implemented, it cannot be said that the policy will necessarily have adverse consequences, especially in view C of the foreign exchange obtained through it. Hence, the argument of the appellant that the meat export policy, as made by the Central Government must be struck down, cannot be acceded to. [592-E-F-G-H; 593-A-B-C-D]

State of Gujarat v. *Mirzapur,* [2005] 8 SCC 534, followed.

D 7. In view of the fact that this Court by an interim order granted stay of the operation of the direction of the High Court for initiating prosecution of Appellant in C.A. No.3966/1994 under Section 195 of the Code of Criminal Procedure read with Section 191 of the Indian Penal Code, and considering the facts and circumstances of the case, no reason is found to proceed with the prosecution against the appellant any further. [594-G-H]

E

Civil Appeal Nos. 4711 to 4713 of 1998:

8. The High Court in the impugned order observed that the Government and its officers are required to strictly enforce and implement the provisions of Mysore Prevention of Cow Slaughter and Cattle Prevention F Act being the conclusion made by the High Court in the body of the judgment, in respect of Question No.1, it is proper at this stage to direct the State Government and its instrumentalities to strictly enforce and implement the provisions of Sections 4, 8 to 11 and 18 of the 1964 Act without going into this question in detail. Hence directed accordingly. [598-B-C]

G 9. According to the appellants, the view taken in the case of *Mohd. Hanif Quareshi & Ors.* v. *State of Bihar vis-a-vis* relationship between Directive Principles and Fundamental Rights requires modification in the light of the decision in the case of *Kesavananda Bharathi* v. *State of Kerala* and subsequent decisions. Since the decision of this Court in the case of *Mohd.* H *Hanif Quareshi & Ors.* v. *State of Bihar* has now been over-ruled on this point

by the Constitution Bench decision of this Court in *Mirzapur* case, this question is decided in favour of the appellants. [598-E-F-G-H] A

State of Gujarat v. *Mirzapur,* [2005] 8 SCC 534, followed.

Mohd. Hanif Quareshi & Ors. v. *State of Bihar,* [1959] SCR 629 and *Kesava Nanda Bharthi* v. *State of Kerala,* [1973] 4 SCC 225, referred to. B

10.1. In view of the Constitution Bench decision in the case of *State of Gujarat* v. *Mirzapur* overruling the decision of this Court in the case of *Mohd. Hanif Quareshi & Ors.* v. *State of Bihar*, it can no longer be held that the protection recommended by the directive under Art. 48 of the Constitution can be said to be confined only to cows and calves and those animals which are presently capable of yielding milk or of doing work as draught cattle. The aforesaid Constitution Bench decision has clarified that the protection under Art. 48 of the Constitution also extends to cattle which at one time were milch or draught but which have ceased to be such. [600-G-H] C

10.2. In the case of *Mohd. Hanif Quareshi,* it was held that cattle becomes useless after a certain age which is for the Legislature to determine and thereafter their maintenance is a burden on the economy of the country. This position has also been negatived by the decision of the Constitution Bench in the *Mirzapur* case. Therefore, the interpretation of Art. 48 of the Constitution has now been widened and "milch and draught cattle" include cattle which have become permanently incapacitated to be used for milch and draught purposes. Though, this question has been decided in favour of the appellants, it does not make any material difference to the final decision of this case. [601-A; F-G] D E

State of Gujarat v. *Mirzapur,* [2005] 8 SCC 534, followed.

Mohd. Hanif Quareshi & Ors. v. *State of Bihar,* [1959] SCR 629, referred to. F

11. Even though the decision in the Mirzapur case supports the submission of the appellants on the question Nos.2 and 3, the issuance of writ of *Mandamus* to compel total prohibition of cattle slaughter would only amount to judicial legislation and would encroach upon the powers of the State Legislature, as held by the High Court, which was the right approach made by it. That being the position, the question of declaring total ban on slaughter of cattle cannot be permitted and section 5 of the Act cannot be said to be *ultra vires* the Constitution. [602-E-F] G

H

A *State of Gujarat* v. *Mirzapur*, **[2005] 8 SCC 534, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3968/1994.

From the Final Judgment and Order dated 6.4.1993 of the High Court of Andhra Pradesh at Hyderabad in W.P. No. 13062/1992.

B WITH

C.A. Nos. 3967/94, 3966/94, 3864-65/94, 4711-4713/98.

N.N. Goswamy, Manmohan, B.S. Banthia, R.K. Joshi, Jasraj Shrimal, Sushil Kumar Jain, Mrs. Pratibha Jain, Mrs. Sheela Goel (NP), H.M. Singh C (NP), Dhruv Mehta, Mohit Chaudhry, Ms. Shalini Gupta, S.K. Mehta, Manoj Saxena, S.K. Mettra, Mohanprasad Meharia, Hemant Sharma, S.N Terdol, Ms. Divya Roy, Manish Jha, Ms. Bina Gupta, Sunil Kumar Jain, Manish Kumar, S. Borthakur, Ms. Pinky Anand, D.N. Govurdhan, Ms. Geetha Luthra, Nikhil Nayyar, Mrs. Urmila Sirur, D.S. Mahra (NP), Mrs. Revathy Raghavan D (NP), Mrs. D. Bharathi Reddy (NP) and Sanjay R. Hegde (NP) for the appearing parties.

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. Al-Kabeer Exports Limited (in short 'Company') is a public company formed for the purpose of carrying on the E business of processing meat, mainly for export purposes. The company with a view to establish a slaughter house in Rudraram village, in the Medak District of the State of Andhra Pradesh applied to the Gram Panchayat, Rudraram for the requisite permission to construct a factory and other buildings connected therewith. On 24th March 1989, the Gram Panchayat concerned, F issued a 'No Objection Certificate' (in short 'NOC'). After obtaining opinion of the District Medical and Health Officer, Director of Town Planning and Director of Factories, State of Andhra Pradesh, permission was granted to the company to run a slaughter house on the selected site on 29th June 1989.

Prior to this permission, the Andhra Pradesh Pollution Control Board G (for short 'A.P.P.C.B.') also issued a 'NOC' on the application of the company filed on December 30, 1988, subject to certain conditions concerning the treatment of effluents and air pollution. In the said NOC, it was *inter-alia* stipulated that the company shall obtain a second 'NOC' and a regular consent under Sections 25 and 26 of the Water (Prevention and Control of H Pollution) Act, 1974 from A.P.P.C.B. before commencing regular production.

The Director, Animal Husbandry Department, Government of Andhra Pradesh also issued a NOC in favour of the company by a letter dated July 13, 1989, subject to compliance with the provisions of Sections 5 and 6 of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 (in short the 'A.P. Act') and the instructions issued there under. Subsequently, on 18th July 1989 the Central Government (Ministry of Industry) granted a Letter of Intent (in short 'L.O.I.') under the provisions of the Industries (Development and Regulation) Act, 1951 (in short 'IDR Act') for establishment of a new industrial undertaking to the company at the selected site mentioned herein earlier for manufacturing of certain amount of Frozen Buffalo and Mutton Meat. The LOI was granted, subject to the following conditions:—"

"(a) Buffaloes to be slaughtered shall be subject to anti-mortem and post-mortem examination by the concerned authorities.

(b) Only old and useless buffaloes shall be slaughtered and for this purpose, their production and processing shall be subject to continuous inspection by the Municipal Authorities, Animal Husbandry and Health Department of the State Government or any other arrangement that the Central or the State Government may evolve for ensuring this.

(c) Slaughter of cows of all ages and calves of cows and buffaloes male or female, shall be prohibited.

(d) The company shall undertake measures for preserving and improving the breeds of the buffaloes by adoption of suitable animal husbandry practices in consultation with the State Government.

(e) At least 90% production of frozen buffalo meat would be exported for a period of ten years which may be extended by another five years at the discretion of the Government.

(f) Adequate steps shall be taken to the satisfaction of the Government to prevent air, water and soil pollution. Such anti-pollution measures to be installed should conform to the effluent and emission standards prescribed by the State Government in which the factory of the industrial undertaking is located.

(g) The new industrial undertaking or the industrial activity for effecting substantial expansion or for manufacture of new article shall not be located within:

A (i) 50 kilometers from the boundary of the standard urban area limits of any city having a population of more than 25 lakhs according to the 1981 census; or

(ii) 30 kilometers from the boundary of the standard urban area limits of any city having a population of more than 15 lakhs but less than
B 25 lakhs according to the 1981 census;

(h) In case the location of the industrial undertaking is in no Industry District, change of location from No Industry District to any other area including a notified backward area either within the same State or outside the State will not normally be allowed."

C

The recommendation was also made by the State of Andhra Pradesh to grant industrial licence to set up abattoir slaughter house at the selected site.

If we are permitted to read the various conditions for grant of LOI issued by the Central Government carefully, it would be evident that only old
D and useless buffaloes shall be available for slaughtering and their production and processing shall be subject to continuous inspection by the Municipal Authorities, Department of Animal Husbandry and Health Department of the State Government. Clause (c) of the LOI speaks of total prohibition of slaughtering of cows of all ages and calves of cows and buffaloes, male or
E female. Clause (d) invites the company to undertake measures of prohibiting and improving the breeds of the buffaloes by adoption of suitable animal husbandry practices in consultation with the State Government. Clause (e) of L.O.I. provides that 90% of the production of frozen buffalo meat would be exported for a period of ten years which may be extended by five years at the discretion of the Government. Clause (f) directs to take adequate steps to
F the satisfaction of the Government to prevent air, water and soil pollution and for this purpose anti pollution measures must be installed to enforce the effluent and emission standards prescribed by the State Government. Clause (g) of the LOI says that a new industrial undertaking shall not be located either for effecting substantial expansion or for manufacture of new article if
G the said location is situated within 50 km from the boundary of the standard urban area of any city having a population of more than 25 lakhs according to 1981 census or is located 30 km from the boundary of the standard urban area limit of any city having a population of more than 15 lakhs but less than 25 lakhs according to 1981 census. On 28th August 1991 the Agriculture and Processed Food Products Export Development Authority informed the
H company that the Government of India was keen to promote the export of

meat and meat products as part of its export drive. A

It is an admitted position that for the purpose of running the slaughter house, the company, as noted herein earlier, had applied for licences to various authorities of the State Government as well as of the Central Government. Having been satisfied and after holding enquiry, permission and/ or licence was granted to the company first for the purpose of making B construction at the site in question and thereafter for running the slaughter house. Such being the position and in view of the reasons given hereinafter we cannot apprehend that the company was permitted, by the authorities, first to make construction of the factory at the selected site and thereafter to run the slaughter house without being satisfied that the conditions for grant of C permission and licence were observed by the company.

It is not in dispute that on the basis of the LOI and permission granted by the State of Andhra Pradesh and other authorities including the APPCB, the company started its construction work for installation of buildings and machineries, for the purpose of running a slaughter house. When some D construction had progressed, the Executive Officer of the Gram Panchayat concerned issued a notice in the exercise of his power under section 131 (3) of the Andhra Pradesh Gram Panchayat Act, 1964 suspending the permission granted for construction of the factory building and other buildings to the company and thereby directed stoppage of constructions until further orders. Challenging this order of the Executive Officer, the company filed a Writ E Petition before the High Court of Andhra Pradesh. Some organizations opposed the proposed establishment of the slaughter house and they were impleaded as respondents to the said writ petition. The writ petition was, however, subsequently withdrawn by the company and instead a revision petition was filed before the State Government questioning the notice issued by the F Executive Officer on the suspension of the construction work which was permitted by the State Government. After hearing all the concerned parties, by an order dated 15th September 1990 the revision case was allowed by the State Government. A bare reading of this order would show that the order of the Executive Officer was not only directed to be set aside but also the period of completing the construction work was extended by one more year, from G 29th of June 1989. Against the order passed in the revision case, two writ petitions being W.P. No. 13763 and W.P. No.13808 of 1990 were filed in the High Court-one by these organizations who were impleaded in the earlier writ petition and the other by some individuals. These two writ petitions were admitted by a learned Single Judge of the High Court and by an interim H

A order, the operation of the order passed in the revision case was suspended pending decision of the two writ petitions. Against the aforesaid interim order, the State Government as well as the company filed writ appeals which were admitted by a Division Bench of the High Court and the interim order granted by the learned Single Judge was stayed by an interim order of the Division Bench of the High Court. When the writ appeals came up for final hearing, the parties before the Division Bench prayed that the writ petitions be disposed of on merits. Such stand having been taken by the parties before the Division Bench, the writ petitions were heard and disposed of by an order dated November 16, 1991 on merits with the following directions:-"

> "...However, we direct that the State Government shall prepare a detailed report regarding the water, air and environment pollution, if any, as at present in Rudraram and surrounding villages of Patancheru Mandal, Medak District having regard to the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 and the rules made thereunder, *the likely effect of the setting up of the mechanized slaughter house at Rudraram village on the prevailing environment, and also its likely effect on the cattle wealth in the area,* after considering the representations which the petitioners in these writ petitions and other interested parties may submit in writing in this regard. The petitioners herein and other interested persons shall submit the representations and other supporting material in writing to the State Government within four weeks from today. The State Government shall prepare and submit a detailed report to the Central Government within eight weeks from the date of receipt of the copy of this judgment. *On receipt of the report, the Central Government shall consider the same,* having regard to the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and the Industries (Development and Regulation) Act, 1951 *and pass appropriate orders in relation to the establishment of the mechanized slaughter house* (abattoir) at Rudraram village, Patancheru Mandal, Medak District, Andhra Pradesh, within eight weeks from the date of receipt of the report."
>
> (Emphasis supplied).

It may be kept in mind that this order of the Division Bench by which certain directions were made by it to the State Government as well as to the

Central Government was, however, not appealed before this Court. Pursuant to the directions given by the Division Bench in the aforesaid order, as noted hereinabove, the State Government constituted a Committee known as "Krishnan Committee" for examining and reporting the matters referred to in the order of the High Court. The Krishnan Committee constituted by the State Government submitted its report. It was noted in the report that some fundamentalist organizations opposed the establishment of the slaughter house on account of their religious and sentimental opposition to the slaughter of animals, whereas the Central Government and the Government of Andhra Pradesh permitted the setting up of this plant subject to the conditions imposed by them. So far as the pollution of air and water was concerned, the committee was of the opinion that if due observance of the safeguards stipulated by the several concerned departments, including Pollution Control Board was made by regular supervision, such pollution of air and water could be kept within a reasonable limit. So far as the depletion of the cattle wealth is concerned, the Committee upheld the objections of the Food and Agriculture Department in the following words:

> "There are valid reasons for believing that this argument is substantially valid. To start with the capacity of the plant is so large that with the existing cattle wealth and possible increases thereto, will not be able to provide adequate input to this factory for more than a year or two unless drastic action is taken to increase the cattle wealth in the surrounding areas. The Food and Agriculture Department have already brought out the fact that the cattle wealth in the surrounding areas as also in the other parts of the State is gradually going down and the cattle available for slaughter is around 1.76 lakhs animals per year. As against this, the existing slaughter houses in the State are already slaughtering animals to the extent of 2.01 lakhs, with the result that with the level of existing cattle wealth, there is no additional input likely to be available to cater to the huge capacity of the plant being established at Rudraram. Food and Agriculture Department has also brought out the fact that it will be difficult for the factory to adhere to the existing regulations of the provisions of the Prevention of Cruelty to Animals Act and Prohibition of Cow Slaughter Act, 1977 and every effort would be made to circumvent the provisions of this Act so that adequate input supply is maintained (for the?) factory. It was reported in the newspapers sometime ago that a similar factory established in Goa, after operation for one or two years had to drastically stop their operations for want of adequate input material."

A After expressing the opinion, the Krishnan Committee made the following recommendation as a condition for allowing the establishment of the slaughter house:

> "In the circumstances it is essential to insist on the Company to ensure that there is an effective programme to raise feed cattle on
B their own initiative for not less than 50% of the capacity so that the impact on the surrounding area is limited to this extent atleast. Further increases in capacity can be considered only if the company increases its own feed cattle. Eventually the Company will have to produce feed cattle for their entire extent of operations so as to minimise the
C impact on the existing cattle wealth.
>
> If this alternative is not acceptable to the Company, the proposal mentioned by the Food and Agriculture Department of starting a modem abattoir with an investment of about Rs. 15 crores may be directed to take over this plant and eventually the unhygenic private
D slaughter houses in and around the city and government slaughter houses can be closed and the meat requirement for the city may be met from this factory."

We have carefully examined the Report of the Krishnan Committee and its recommendation for allowing the establishment of the slaughter house.
E From a plain reading of the report and its recommendation, it cannot be doubted that the Krishnan Committee was in favour of the establishment of the slaughter house subject to the condition that it should raise its own cattle required by it - initially to the extent of half and ultimately to the full extent. The committee also opined that if the company was not willing to or not in
F a position to raise its own cattle then the company may not to be allowed to run or its capacity may be utilised to meet the existing requirement by diverting the cattle from the existing slaughter houses. From this recommendation, it may be said that the existing slaughter houses, big and small, government and private, were to be closed down and the slaughter house of the company would be utilised to meet the present domestic requirements. It also appears
G from the record that before forwarding this report to the Central Government, the Chief Secretary to the Government of Andhra Pradesh appended a Reference note which may not be required to be noted for our present purpose.

The report of the Krishnan committee was forwarded to the Central
H Government. The Central Government in its turn forwarded the report to the

A.P.P.C.B. for appropriate action. However, no order was passed by the Central Government on the said report at all, although, the Central Government was a party to the order of the High Court, as noted herein earlier. That apart, the High Court also in its judgment as noted herein earlier, made certain directions to the Central Government to pass an order after considering the report.

A Writ Petition being W.P.No. 6704 of 1991 was filed by two environmentalists for issuance of a writ, restraining the Hyderabad Metropolitan Water Supply and Sewerage Board and others from supplying/ selling water to the slaughter house of the company. An interim order was passed by the High Court on May 27, 1992 to the effect that the Hyderabad Metropolitan Water Supply and Sewerage Board and others be restrained from considering the proposals for sale of water to the company.

Dr. Kishan Rao appellant in Civil Appeal No. 3966 of 1994 along with Ahimsa Trust filed a Writ Application being Writ Petition No. 8193 of 1992. In this writ petition an interim order was passed to the effect that the NOC granted by the APPCB shall be subject to further orders in the writ application.

Akhil Bharat Goseva Sangh which is appellant in Civil Appeal No. 3968 of 1994 filed a Writ Application No. 10454 of 1992 questioning the grant of permission for trial run of the slaughter house of the company.

A Writ Application being Writ Petition No. 13062 of 1992 was filed by Dr. Kishan Rao along with one Smt. Satyavani questioning the permissions granted for the establishment of the slaughter house of the company. As noted hereinearlier, Writ Petition No. 8193/1992 was filed by Dr. Kishan Rao praying for similar reliefs which were prayed by him in Writ Petition No. 13062/1992. The Division Bench in the judgment under appeal had taken a serious objection to the filing of two Writ Petitions by Dr. Kishan Rao for similar reliefs and observed that there was mis-statement on the part of Dr. Kishan Rao saying that relief claimed in Writ Petition No. 13062/1992 and reliefs claimed in Writ Petition No. 8193/1992 were different. All these writ petitions were heard together and disposed of by the High Court by common judgment dated April 6, 1993. In the aforesaid judgment, the High Court in substance observed as follows:

(1) As the LOI granted by the Central Government and the provisions of the Andhra Pradesh Preservation of Cow Slaughter and Animal Preservation

A Act, 1977 permits slaughtering of only useless cattle and in view of the fact that maintenance of such useless cattle involves a wasteful drain on the nation's meager cattle feed resources, the Government of Andhra Pradesh and the Central Government were fully justified in granting permission for establishing and running the slaughter house.

B (2) In view of the agitations by some organizations the matter was re-examined and fresh discussions were made by different concerned departments of the State. On the question of slaughter policy of the State and on re-examination of the issues involved, the Director of Animal Husbandry observed on 21st December, 1990 that the establishment of slaughter house would not C really result in any depletion of cattle in the State.

(3) On 28.9.1991 the issue was again considered by the Director of Animal Husbandry, who reiterated his opinion expressed on 21.12.1990 which was also approved by the Andhra Pradesh Cabinet. In view of the aforesaid finding made by the Division Bench it was found by it that the establishment D of slaughter house of the company would have only "negligible effect" on rate cattle growth in the State.

(4) So far as the environment aspects were concerned, Division Bench found that the safeguards stipulated by APPCB and other authorities of the State were sufficient to ensure control of air and water pollution.

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Accordingly, the Division Bench was of the opinion that all the concerned authorities of the State having granted requisite permissions after duly considering all the relevant facts and circumstances, there was no ground for intervening with the establishment and operation of the slaughter house. In the said judgment while dismissing the writ petitions, the Division Bench F also directed prosecution of Dr. Kishan Rao for his mis-statement that he had not filed any other writ petition seeking similar reliefs.

We may restate that writ petition No.10454 of 1992 filed by Akhil Bharat Goseva Sangh was also disposed of by the Division Bench on the G same day. In Writ Petition No.10454 of 1992 the main contention of the petitioner was that the State Government had not complied with the directions made by the High Court in its judgment and order dated 16.11.1991 and in the said Writ Petition it was prayed that until and unless the State Government sent its report, in accordance with the direction of the Division Bench of the High Court, to the Central Government and the latter had taken decision

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thereon, the company be restrained from functioning. On this issue, the Division Bench held that this question was already dealt with in the judgment and therefore in this writ application there was no need to deal with it all over again. C.A.No.3968 of 1994 was preferred against this judgment in this Court.

C.A. Nos. 3966, 3967 and 3968 of 1994 have been preferred against the judgment of the Division Bench of the A.P. High Court delivered on 6th April, 1993. The appellant in C.A.No.3966 of 1994 is Dr. Kishan Rao, the appellant in C.A. No. 3967 of 1994 is Smt. Satyavani whereas the appellant in C.A.No.3968 of 1994 is Akhil Bharat Goseva Sangh.

Civil Appeal Nos. 3964-3965 of 1994 have been directed against the order of another Division Bench allowing the writ appeal preferred by the company under Clause 15 of the Letters Patent and setting aside the interlocutory order passed by a learned Single Judge in W.P. M.P. No.9367/1993 arising out of W.P. No. 7483/1993. In this way the five appeals against the judgments of the High Court of Andhra Pradesh were placed before us for final disposal which were heard in presence of the learned counsel for the parties.

By an order dated 25th October 1994 passed in C.A. No.3968/1994 with C.A. Nos.3964-3967/1994 (*Akhil Bharat Goseva Sangh* v. *State of A.P. and Ors.*,) reported in [(1995) Suppl.(1) SCC 370], the report of the Krishnan Committee was taken into consideration by a Division Bench of this Court which made the following observations:

> "We are of the opinion that the rejection of Krishnan Committee report in the above manner really amounts to slurring over the main recommendation of the said report. Moreover, the learned Judges have not dealt with the failure of the Central Government to consider the said report and pass appropriate orders pursuant to the directions of the High Court in its judgment dated November 16, 1991. The learned Judges have observed in the said judgment that it is not possible for the Court to go into conflicting reports of experts and that, therefore, they should leave the matter for the judgment of the Government. This observation again does not take into account the directions made by the said High Court in its judgment referred to above. They have also observed that the Director of Animal Husbandry has given his opinion or revised opinion, as the case may be, after taking into consideration the objections of the Food and Agriculture

department. Though no material has been brought to our notice in support of the said statement, we shall assume that it is so. Even then the fact remains that this reconsideration by Director, Animal Husbandry department is said to have taken place sometime in 1990, whereas even in 1992, the Food and Agriculture department was yet protesting with its views before the Krishnan Committee. Above all, the said reconsideration by the Director, Animal Husbandry department far prior to the judgment of the High Court dated November 16, 1991 does not relieve the Central Government of the obligation to consider the Krishnan Committee report and pass appropriate orders in the matter as directed by the judgment of the High Court dated November 16, 1991. It was for the Central Government to consider the said report taking into consideration the several facts and circumstances mentioned therein as also the contending views expressed by the several authorities and departments referred to therein. This, the Central Government has clearly failed to do.

There is another relevant consideration. The slaughter house has been in operation for the past eighteen months or so. It would be possible to find out the effect, if any of the operation of the slaughter house had on the cattle population of Medak and adjacent and nearby districts. It would equally be relevant to ascertain, if possible, what percentage of cattle slaughtered have been brought from other States and what percentage from the surrounding areas. In this connection, it is relevant to mention that the Animal Husbandry department has taken the total cattle population of the Andhra Pradesh State which is indeed misleading. The slaughter house is situated on the western border of Andhra Pradesh State, almost on the trijunction of Andhra Pradesh, Maharashtra and Karnataka. In such a situation, the slaughter house would rather draw its requirements of cattle from the surrounding and nearby districts rather than go all the way to far away districts of Andhra Pradesh State like Srikakulam, Visakhapatnam or for that matter, Nellore and Anantapur, which are situated several hundreds of miles away. The transport of cattle over long distance may induce the slaughter house to go in for cattle in the nearby areas, whether in Andhra Pradesh, Maharashtra or Karnataka - unless, of course, the cattle are available at far cheaper rates at distant places, which together with transport charges would make it more economic for the slaughter house to bring cattle from far away districts or from far away areas in the country. Therefore, taking the entire cattle population of the

Andhra Pradesh State is bound to convey an incorrect picture. Perhaps, it would be more appropriate to take into consideration the cattle population of, what the Krishnan Committee calls, the "hinterland" of the slaughter house.

In view of the fact that the controversy relating to the establishment of the slaughter house has been going on over the last several years, we think it appropriate that the Central Government should look into all relevant aspects, as directed by the High Court of Andhra Pradesh in its judgment dated November 16, 1991, forthwith and record its opinion before we take a final decision in the matter. The decision of the Central Government shall be recorded in a reasoned proceeding, which, shall be placed before this Court. The further orders to be passed would depend upon the contents of the report and the material so placed before us.

We may make it clear that we should not be understood to have expressed any opinion on the merits of the aspects which the Central Government has been directed to consider by the Andhra Pradesh High Court. Whatever we have said in this judgment is only to indicate the failure of the Central Government to abide by the said directions and to record reasons in support of the direction made herein. We have also not gone into the other questions raised by the learned counsel for the appellants. They can be considered at a later stage after the receipt of the material and the report from the Central Government." (Emphasis supplied)

From the above noted observations of this Court in the appeals, we find that the propriety of the Krishnan Committee report could be considered after the receipt of the material and report from the Central Government. Therefore, it cannot be said that by the aforesaid order of this Court at the intermediary stage this Court in fact rejected the report of the Krishnan Committee. On the other hand, it was made clear that such a report can be considered after submitting of the report of the Central Government in compliance with the directions made by this Court, as noted herein earlier. In compliance with the directions made by this Court in its order, a report was submitted and a further order in continuance of the order dated 25th October 1994, was also passed by this Court in the aforesaid appeals reported in *Akhil Bharat Goseva Sangh & Ors.* v. *State of A.P. & Ors.*, [1997] 3 SCC 707. From this order, it appears that the Central Government had constituted an inter-Ministerial committee

A headed by the Joint Secretary, Ministry of Food Processing Industry and three other Members. The committee in its report made the following conclusions and suggestions:-

(i) With regard to the pollution of air and water the suggestions and recommendations made by the Krishnan Committee as well as the
B expert opinion contained in it were good and acceptable. The Government of India in the Ministry of Environment and Forests have already accepted the same and the steps to implement have already been taken. The Environment Audit Report along with the Environmental Management Plan prepared by the Company
C were acceptable. *However, regular monitoring of pollution of air and water need to be continued by the Company itself as well as periodic checking by the Andhra Pradesh State Pollution Control Board.* (Emphasis supplied)

(ii) The Krishnan Committee's assumption and apprehensions on
D depletion of cattle due to establishment of M/s Al-Kabeer's slaughter house are not based on correct scientific analysis and adequate reasoning, and therefore, are not acceptable. From the facts and analysis it is obvious that amongst bovine animals, the project of M/s. Al-Kabeer is to utilize only the unproductive buffaloes and not cow and its progeny. In fact, adequate number
E of unproductive buffaloes were available for use in the slaughter house and other slaughter houses in Andhra Pradesh.

(iii) The Krishnan Committee's suggestion of State Government taking over M/s Al-Kabeer slaughter house for supply of meat for domestic requirement had gone contrary to the objective of giving
F permission for setting up of abattoir by M/s. Al-Kabeer, as well as Government of India's programme for increase of export of meat and meat products. *There is, however, need for modernizing the existing abattoirs in the State for which the State Government may take appropriate steps separately.*

G (iv) The suggestion of Krishnan Committee of the Company undertaking effective programmes to raise feed cattle for meeting 50% requirement of the abattoir was not practicable and therefore, not acceptable. However, as per the terms of the licence, *the Company should prepare a plan in consultation with the State Government and take up its implementation in conjunction with*

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the State Government for promoting better animal husbandry practices.

Number of petitions were filed by the appellants in the appeals challenging the report and finally this Court by its order dated 12th March 1997 (reported in 1997 (3) SCC 707) made the following observations :

"There is good amount of substance in the submissions of the learned counsel for the appellants. The statistics which constitute the basis of this Report submitted by the Government of India are not really relevant to the issue before us. As rightly pointed out by the learned counsel for the appellants, Al-Kabeer started functioning only in April 1993 and the effects and impact of its functioning will be known only if one studies the figures of availability and/or depletion of buffalo population over a period of one or two years after Al- Kabeer has started functioning. Merely showing that there has been a marginal increase in buffalo population between 1987 and 1993 is neither here nor there. Even if it is assumed that the 1993 figures refer to the figures up to September-October 1993, that will take only six months of working of Al- Kabeer. The proper impact of working of Al-Kabeer on the depletion of cattle, if any, would be known only if one takes into consideration the census figures of cattle in Telangana region or in the areas contiguous to Medak District (where the said unit is located), as the case may be, after at least two years of working of Al-Kabeer. In short, the position obtaining after April 1995 would alone give a correct picture. We cannot also reject the contention of the learned counsel for the appellants that the Government of India's Report is influenced to a considerable extent by the Report of Shri Yogi Reddy, the then Director of Animal Husbandry, Government of Andhra Pradesh, whose Report has been termed as "unauthorized" by the Special Secretary to the Government of Andhra Pradesh and thus disowned by the Government. Even according to the Government of India's Report, the requirement of Al-Kabeer is 1.5 to 2.0 lakh buffaloes every year, which is not an insubstantial figure. We must also take into consideration what the appellants' counsel call the inherent contradiction between the standard and quality of beef required for export and the provisions of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 and the effect of the decisions of this Court, which leave only old and infirm buffaloes for slaughter. We, therefore, think it appropriate that

A the Government of India should be called upon to send a fresh report after studying the impact and effect of the working of Al-Kabeer upon the buffalo population of the Telangana region of Andhra Pradesh and also of the areas adjacent to Al- Kabeer, two years after the commencement of the operations by Al-Kabeer. It is not possible for us to pass any final orders on the basis of the Report now submitted, B which as stated above, is based upon the statistics/census figures of cattle population including buffalo population for the period 1987 to 1993. Accordingly, we call upon the Central Government to submit a fresh report in the light of the observations made herein within six months."

C In the aforesaid order, an interim order was passed saying that with effect from 1st April 1997 the company shall function at half of the installed capacity and not its full installed capacity and the appeals were directed to be listed after 6 months.

D Pursuant to the order of this Court in the year 1997, a report was filed by the Central Government. In the direction made by this Court in 1997, this Court observed that the data starting from two years after the functioning of the Al-Kabeer abattoir (company) would give the correct picture of its effect on live stock population in the surrounding areas and directed the Central Government to file the same. In the report filed by the Central Government E data has been analysed through a comparison between a four year period immediately preceding the operation of the abattoir and four year period immediately after the functioning of the abattoir i.e. data between 1989-90 to 1992-93 was compared with data between 1993-94 to 1996-97. The data was compared by averaging the population of four year blocks before and after F working of the abattoir.

After making the comparison, the following has been reported:

(1) It is young stock and females over 3 years that had contributed to the sustenance of buffalo population. The increase in female and young stock clearly indicates that the functioning of the Al- G Kabeer Abattoir has not resulted in depletion of buffalo population in Telangana region. There exists adequate potential of buffalo population in these areas to sustain the demand from different sources for the buffaloes including that of Al-Kabeer abattoir.

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(2) Increases in buffalo population, especially in the latest year i.e. 1996-97, do not substantiate any consistent decline in buffalo population as a result of functioning of the Al-Kabeer abattoir (company). A

(3) Though there is a decrease in cattle population, that may not be related to the functioning of the Al-Kabeer, as beef from cattle is banned from export. B

Subsequently, in the year 1999 census data on cattle population of Andhra Pradesh namely 16th live stock census was submitted before this Court. As per the live stock census conducted, the total live stock population in the Andhra Pradesh State was calculated at 357.87 lakhs in 1999 with an increase of 8.7% over that of 1993 census. This increase was stated to be mainly due to the significant increase in bovine population to the extent of 22%. C

On behalf of the appellants, the first question that was raised and not decided by this Court in its earlier orders but kept to be decided at the final stage of the appeals, was whether Al-Kabeer Unit (company) has been established in violation of location requirement, as mentioned in the LOI of the Central Government for issuance of industrial licence to it. According to the appellants, since the location of Al-Kabeer is in violation of location requirement, as mentioned in the LOI of the Central Government and also the prohibition zone imposed by the State Government, and as Al-Kabeer (Company) is located within 13 K.M. from the urban limit of Hyderabad city, it must be held that Al-Kabeer (Company) must close down its abattoir. It was also urged that the Andhra Pradesh Government, having issued a General Order banning location of industries in Medak District, where the unit of the Company was located, had wrongly issued permission to the company to run its abattoir and in that view of the matter the company must be directed to shut down its abattoir and the licence issued to it must be cancelled. D E F

This submission was hotly contested by the learned counsel appearing for Al-Kabeer (Company). We have carefully examined the submissions of the learned counsel for the parties and also perused the records and the findings of the High Court regarding location requirement, as indicated in the LOI of the Central Government and the General Order of the State Government. In our view, this submission of the appellants, at this stage, cannot be accepted. At the outset, we may say that this question was not seriously argued by the learned counsel of the appellants before us, although in the written G H

A submissions filed by them, this question was tentatively raised. Since a submission was made on this account, we feel it appropriate to deal with this question. Before we deal with this question in detail, we may note that for the first time in this Court the appellants have alleged the fact that the Al-Kabeer unit (company) is located within 13 km. from the standard urban limits of the city of Hyderabad which falls within the prohibited zone.

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Even assuming, distance prohibition would be applicable to the case of Al-Kabeer (company), we are still of the view that this distance prohibition may not stand in the way of Al-Kabeer from getting an industrial licence for the purpose of setting up the abattoir at the site in question. It is an admitted C fact that in the application for grant of licence, Al-Kabeer (the Company), had stated the exact location where they were going to set up the abattoir, that is to say in Rudraram Village in the District of Medak of the State of Andhra Pradesh. When this application was processed by the Central Government, a thorough enquiry must have been made by it and only thereafter industrial licence was issued to the Company. It is true that before issuance D of licence, LOI was issued by the Central Government only wherein, this location requirement was stated in a printed form. It is an admitted position that the Central Government did not make any query from the company about the distance between Rudraram Village, where the site is located, and the urban limits of the city of Hyderabad.

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On a bare perusal of Section 11 of the IDR Act, it is evident that no person or authority shall, after the commencement of the Act, establish any industrial undertaking except in accordance with the licence issued in that behalf by the Central Government. That is to say, an embargo has been imposed on any person or authority to establish any new industrial undertaking F before obtaining a licence from the Central Government. Subsection 2 of section 11 however says that a licence or a permission under Sub-section 1 to establish a new industrial undertaking may contain such conditions including condition as to the location of the undertaking as the Central Government may deem fit to impose in accordance with the Rules. This subsection 2 of Section 11 empowers the Central Government to impose G conditions on the person or the authority as to the location of the undertaking. In our view, subsection 2 of Section 11 of the Act by which conditions can be imposed as to the location of the undertaking by the Central Government is only directory and it would be open to the Central Government to issue licence without giving any conditions to the company as to the location of H the undertaking. It is significant to note that the legislature in sub-section 2

of Section 11 has used the word 'may'. A

By issuing the Industrial licence to the Company, even after knowing the proposed location of the unit, it must be said that the Central Government waived the location requirements, as mentioned in its LOI with regard to this unit. B

Economic liberalization was made by the Central Govt. on 25th of July, 1991 and following the said policy, the Government of Andhra Pradesh also issued a Notification on 3rd February 1992 which was issued as a follow up action of the Notification of the Central Government dated 25th July 1991 under which permission/license was required for industries located within 25 km from the periphery of standard urban area. The Notification dated 3rd February 1992 of the State Government specified areas which would fall within or outside 25 km. from the periphery of the standard urban area in order to enable the entrepreneurs to take appropriate action. According to the appellants, the company is located within Rudraram village which is a prohibited zone from the periphery of the city of Hyderabad and therefore the company, in terms of the Industrial policy of the State Government, was not entitled to get an industrial licence to run the slaughter house. Clause (2) of Paragraph 3 of the Notification specified the list of villages falling within the prohibited zone for which, location approval from the Central Government would be necessary except for non-polluting industries such as electronics, computer software and printing industries. In the present case, the activity of the company does not fall in the category of non-polluting industries. However, this notification contains two lists. One list is A and the other is B. List A specified all the villages within the standard urban area of Hyderabad. Patancheru which falls within Medak District and is within the computation of 25 km. from the periphery of the standard urban area of Hyderabad falls under list B. Therefore, in terms of the distance there was requirement of obtaining an industrial licence by virtue of the Notification dated 3rd February 1992 of the State Government. In view of the admitted fact that industrial licence was granted by the Central Govt. on 11.11.1992 and permission to run the slaughter house was also granted by the State Government on the basis of the Industrial policy of the State Govt. of 3rd February, 1992, we are unable to hold that distance prohibition could be considered to be a ground either for cancellation of the industrial licence or for closing down the unit. C D E F G

Apart from that, we may keep it in mind that in pursuance of the LOI granted by the Central Government and the various permissions granted by H

A the State Government and other authorities, the company commenced construction of its factory in 1989. It should also keep in mind that before commencing its construction the following permissions/No Objection Certificates were taken by the Company:

(a) No Objection Certificate for site clearance from APPCB.

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(b) No Objection Certificate from the Director of Animal Husbandry, A.P.

(c) Letter of Intent from Ministry of Industry, Govt. of India.

(d) Two NOCs. from the Gram Panchayat to locate the factory as well as commence construction.

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(e) Permission from Medical and Health Department, A.P.

(f) Permission from the Director of Town and Country Planning.

D (g) Permission from Director of Industries, A.P.

(h) NOCs. from National Airport Authority, Hyderabad and Madras.

(i) NOC from AIR Headquarters, New Delhi.

E It also appears from the record that the Industrial licence was granted by the Central Government on the strong recommendation of the State Government. The unit commenced production in April 1993 after dismissal of a batch of Writ Petitions challenging the permissions granted by various authorities to commence production including that of the APPCB. The unit F achieved its full production in December 1993 and since then it is earning valuable and substantial foreign exchange for our country. Above all, the question on location, as noted herein earlier, was neither raised seriously before the High Court nor before us. It must also be noted that, in this regard various State authorities had granted permissions for the abattoir to be constructed and function at the selected site and production has been continuing G for the last 10 to 15 years. That apart, the question on location requirement is always a question of fact which cannot be permitted to be raised at this stage before us. However, we keep it open to the Central Government and the State Government to consider the distance prohibition as indicated in the LOI and the Notification and General Order of the State Government for the H purpose of shifting the site to some other alternative place which would

satisfy the location conditions. Subject to the above, this question is answered in favour of the Al-Kabeer (company). A

The next question that was urged by the learned counsel for the appellant before us which needs to be decided is whether Al-Kabeer (company) operates in violation of Environmental Acts and Rules. According to the appellants, no study has been made of the prevailing environment and the impact of Al-Kabeer on it. Therefore, it was contended that the precautionary principle has been ignored by the authority before granting permission to Al-Kabeer to run the slaughter house. B

The learned counsel appearing on behalf of Satyavani in C.A. No. 3967 of 1994 contended that APPCB by its consent order dated 21st December 1993 allowed limit for B.O.D. of 100 mg/Lit. whereas the maximum permissible limit specified in the Environment Protection Rules, 1986 was 30 mg./Lit (Rule 3, Schedule 1, Entry 50B). According to the learned counsel appearing for Satyavani the limit for suspended solids allowed by APPCB of 100 mg/Lit was in excess of limit of 50 mg/Lit. allowed in Rule 3, Schedule 1, Entry 50B of the Environment Protection Rules, 1986. Therefore, it was contended that the consent of APPCB was in violation of the Act and Rules, and accordingly it must be quashed. It was also contended on behalf of Satyavani that since the samples collected on 6th August 1994 from Al-Kabeer show that its B.O.D. in fact reached 150 mg/Lit. which was much beyond the permitted limit of 30 mg./Lit. and its suspended solid discharge was recorded at 140 mg/Lit. which was much beyond the permitted 50 mg./Lit., the question of giving consent to Al-Kabeer by the authorities could not arise at all as it had clearly violated the maximum permissible limit specified in the Environment Protection Rules, 1986. Accordingly, permission granted should be withdrawn. These submissions were strongly disputed by the learned counsel for Al-Kabeer (company). C D E F

From a careful consideration of the rival submissions of the parties on the question of environmental pollution, we find that this question was not seriously argued by the appellants during the course of hearing that the company had violated the norms under Environment Protection Rules, 1986. Thus we may not permit the appellant to raise this question before us. However, as environmental pollution has now become a public nuisance, we thought it fit to go into this question and decide the same. G

We have carefully examined the rival submissions made before us by the learned counsel for the parties on the aforesaid question. H

A From the record it appears that the recommendations regarding environment made by Krishnan Committee so far as the abattoir is concerned, were accepted by the Central Government as would be evident from this Court's order dated 12th March, 1997. It also appears from the record that Al-Kabeer Company had invested huge amount for installation of elaborate anti-pollution equipment, and operates the same with consent obtained from B APPCB. It is true that the standards prescribed by APPCB for Al-Kabeer while issuing its consent for slaughtering operation to begin, were indeed in violation of the Environment Protection Rules in so far as they prescribe a lower standard than was mandated by the aforesaid Rules. Under Rule 3 of the Rules, the State Boards are permitted to prescribe higher standards than C those mentioned in the Rules but are not permitted to lower the standard. Considering the fact that the permission to operate the abattoir was granted by the APPCB, the State Government and also by various authorities of the State 10 to 15 years back and considering the fact that Al-Kabeer had installed elaborate anti-pollution equipment by investing huge amount, we are of the view that Al-Kabeer must be directed to comply with the Environment D Protection Rules by lowering down the pollution levels at the abattoir to permissible limits, rather than to direct closure of the abattoir of the company. It also appears that the samples which were collected by the Department of Water and Waste Water Examination, Institute of Preventive Medicine, Narayanguda, Hyderabad from Al-Kabeer's abattoir indicated violation of E the standards prescribed under Environment Protection Rules. Though Al-Kabeer has installed elaborate anti-pollution equipment, it would be of no consequence if such equipment is in reality not bringing down the level of pollution below permissible limits. However, it cannot be overlooked that Al-Kabeer is continuing its operation for more than 10 years without any objection from the APPCB. Therefore, considering all the circumstances, we are of the F view that directly ordering closure of Al-Kabeer Abattoir is not called for; rather directions may be given to APPCB to rectify its consent order in accordance with the Environment Protection Rules and also to direct Al-Kabeer to strictly comply with that rectified consent order and Environment Protection Rules. In the event abattoir fails to comply with such directions G from the APPCB, it would be open to the authorities to direct closure of the Al-Kabeer unit. We are taking this view keeping in mind that the appellants had not seriously argued, during the course of hearing before this Court, that the company had in fact violated the standards laid down in the Environment Protection Act and Rules.

H It may also be noted that in the interim judgment dated 12.3.1997

reported in [1997] 3 SCC 707, this Court has noted the conclusions of the Central Government Committee in paragraph 2 wherein, it has recorded that the Committee had accepted the suggestions and recommendations made by the Krishnan Committee with regard to pollution of air and water. It has also been noted therein that the Environmental Audit Report and the Environmental Management Firm Report along with the Environmental Management Plan prepared by the company are acceptable. As already noted hereinearlier, the company has installed elaborate anti-pollution equipment, imported as well as indigenous. The company has been operating only after obtaining consent from APPCB which is regularly renewed. Insofar as standards for discharge of effluents from slaughterhouse and meat processing are concerned, the same is prescribed under Rule 3 read with entry 50-B of Schedule I of the Environment Protection Rules, 1986. In this connection Entry 50-B (b) of Schedule 1 of Environment Protection Rules 1986 is relevant as it prescribes the B.O.D., suspended solids & oil and grease limits. At this juncture it is also to be noted that Ministry of Environment, Government of India, by its letter dated 29th May 1995 fixed the standards for Al-Kabeer Exports Pvt. Ltd. at 100 B.O.D. and 30 B.O.D. for slaughterhouse and meat processing respectively. As Al-Kabeer has been operating on the basis of the norms specified by the Central Government and considering the fact that Al-Kabeer unit has been operating for more than 10 years without any objection form APPCB and keeping in mind the economic policy of the Central Government, we are of the view that Al-Kabeer may not be, at this stage, directed to stop their operation and close the unit. In view of our discussion made hereinbefore, and as APPCB reserves the right to take action against Al-Kabeer for violation of the terms and conditions imposed in its permission, it would be open for APPCB to direct Al-Kabeer to rectify the level of pollution below prescribed limits and in the event that it is not done they may direct Al-Kabeer to close down its abattoir. As noted hereinbefore, it is of course true that the prescribed limit of pollution by APPCB was in violation of the Environment Protection Rules, therefore in our view, directions must be given to APPCB to rectify its consent order and directions be given by them to the abattoir to comply with that rectified consent order in accordance with Rule 3 of the Environment Protection Rules.

A B C D E F G

In this connection, two further questions had arisen in relation to compliance with environment standards maintained by Al-Kabeer, which were raised by the appellant Shri Tukkoji, in C.A. Nos. 3964-65 of 1994.

The first question is whether the consent order of the APPCB was H

A vitiated because the reports of the analysts were not made available to Shri Tukkoji prior to the issuance of NOC. Learned counsel appearing for Shri Tukkoji contended that the consent order was in derogation of the right of Shri Tukkoji to information in violation of Article 19(1)(a) of the Constitution. According to Shri Tukkoji, he was not only entitled to receive the reports of the analysts relating to the effects of the functioning of the abattoir but also B to file objections prior to the issuance of N.O.C. This contention was accepted by the learned Single Judge of the High Court but was rejected by the Division Bench. The Division Bench in the impugned judgment observed as follows-

> "On a *prima facie* view of the various provisions of the Water Act and the corresponding provisions of the Air Act, in particular the C provisions of sections 16, 17, 20 and 25 of the Water Act *we are not inclined to hold at this stage that a third party has any right to seek information or material from the State Board at or before granting of consent by it under S. 25(3) of the Water Act.* It is not as if aggrieved party is left without a remedy. *After consent is granted....any* D *third party who feels aggrieved.....can make a complaint to the Court of a First Class Magistrate.....Apart from that the State Board has ample powers to review its order granting consent by modifying or revoking any existing condition....."*
>
> (Emphasis supplied)

E

We do not find any reason to disagree with this view of the Division Bench of the High Court. In this connection, we examined Section 25 of the Water Act in depth and, in our view, Section 25 of the Water Act does not confer any right on members of the public to demand information from the APPCB prior to issuance of NOC. Therefore, it cannot be held, that the NOC F was vitiated by reason of non-disclosure of information to the appellant Tukkoji prior to its issuance.

Thus, first question of Shri Tukkoji as argued by his learned counsel has no merit and it is hereby rejected. The second question raised is whether G the consent order was vitiated because the APPCB was improperly constituted. It was contended on behalf of Shri Tukkoji that APPCB was not validly constituted and that the Chairman and Member Secretary of APPCB did not possess the qualifications required under the Water Act, and accordingly the Board as constituted was not competent to issue consent order. In order to answer this question it would be beneficial if we reproduce the relevant

H

findings of the Division Bench which run as under :— A

> "We are not unaware of the contention of counsel for the petitioners that the Pollution Control Board did not really consist of scientific experts, and that in that sense, issue of No Objection Certificate by that body may not be considered as a result of informed expert opinion. That brush can as well paint the opinion of Shri H.K. Babu, B Secretary, Food and Agriculture, as also that of Shri R.V. Krishnan, Secretary, Energy, Forest, Environment, Science and Technology in the same hues. We are informed that some, at least, of the members of the Pollution Control Board was renowned scientists...."

It is true that Section 4(2)(a) of the Water Act requires the Chairman C of the APPCB to be 'a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with matters aforesaid, to be nominated by the State Government'.

Section 4(2)(f) of the Act requires the Member Secretary to possess D "qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control."

From the record, it appears that at the relevant time the Chairman and the Member Secretary of the APPCB did not possess these statutorily required E qualifications. The observation of the High Court in the judgment that some of the members of the APPCB were scientific experts, does not address this specific breach of the statutory requirement. In this connection, we, however, need to look into the provisions under Section 11 of the Water Act, which provides in terms that "No act or proceeding of a Board or any committee thereof shall be called in question *on the ground merely of the existence of* F *any vacancy in or any defect in the constitution of, the Board or such committee, as the case may be.*" Therefore, applying Section 11 of the Act which clearly provides that no act or proceeding of APPCB or any committee thereof shall be called in question, it can safely be concluded that even if there was some defect in the composition of the APPCB, that would not G invalidate the consent order issued by it.

Let us now come back to the most important question that needs to be decided in these appeals, which is about the issue of cattle depletion due to functioning of the Al-Kabeer abattoir. On this question, the appellant in C.A. No.3966/1994 advanced the following submissions :— H

A (a) Since the Al-Kabeer project involves slaughtering of prohibited cattle, which can be statistically shown to be inevitable, and is also evidenced on video the Govt. has a constitutional duty under the second part of Art.48 of the Constitution to prevent such slaughter as well as a duty to enforce the A.P. Preservation of Cow Slaughter and Animal Preservation Act, 1977.

B

(b) The slaughter rate of Al-Kabeer exceeds the renewal rate as would be evident from the reports submitted by the authorities before the High Court as well as before this Court.

C The appellant Satyavani in C.A. 3967/1994 made the following submissions:

(a) The report of the Central Govt. submitted on 12.9.1997 was misleading, because it had averaged, and then compared the figures for buffalo population in the four years before and after

D Al-Kabeer was set up, which disguises the fact that a decline in buffalo population had occurred subsequent to this setup. Further, the same persons responsible for preparing the earlier Govt. report of 1994- which was held to be misleading by this Court in its order dated 12.3.1997- were again involved in preparation of

E this report.

(b) The abattoir stopped taking animals from its hinterland subsequent to the Court's order of 12.3.1997, and instead began importing animals from other States. Thus, the figures of 2003 Livestock Census are not relevant to the issue at hand, and the effect of the

F abattoir on buffalo depletion can only be judged on the basis of statistics of approximately two years after its commencement— as observed by this Court in its order dated 25.10.1994. *Further, the 2003 Census itself shows a decrease in buffalo population in adjoining States of Karnataka and Maharashtra, from 1999 to 2003- indicating the effect the abattoir has had, through its*

G *importation of buffaloes from these States.* Moreover, the figures in the 2003 Livestock Census show abnormal and unrealistic growth of cattle population in districts of AP, which can not be accepted.

(c) The subsequent report of the Central Govt. dated 23.12.2003 itself

H vindicates the claim that cattle depletion has occurred due to Al-

Kabeer's operations.

(d) This depletion is not in relation to old and useless cattle, as Al-Kabeer necessarily must slaughter useful animals, for export, as pointed out by the Krishnan Committee Report. There are also no sufficient number of useless animals to meet its requirement of 1.5 to 2 lakh buffaloes per year, as is evident from the figures of successive census carried out by the Andhra Pradesh Directorate of Economics and Statistics. Further, the monitoring of Al-Kabeer, for compliance with the Andhra Pradesh Animal Preservation Act, is not effective, as reported by Dr. Jitendra Reddy, Special Officer, Govt. of A.P. Such unrestricted slaughtering of useful animals will worsen the already existing dung shortage in Andhra Pradesh.

The appellant Akhil Bharat Goseva Sangh in C.A. No. 3968/1994 made the following submissions:

(a) The Central Govt. report on buffalo population, as well as the 16th Quinquennial census figures (1999) of the Bureau of Economics and Statistics contains gross inconsistencies.

(b) The census was not carried out comprehensively, nor does it provide figures as to slaughter of buffaloes above 10 years, which are still useful.

(c) The 17th Quinquennial census (2003) is only provisional in nature, and does not categorize cattle based on age and use- hence it cannot be relied on by the Central Government.

(d) The census figures of 1999 and 2003 indicate growth rates which are inconsistent with the extent of cattle slaughter.

(e) Al-Kabeer cannot claim that it has a fundamental freedom to conduct a trade or business which violates the Fundamental Duty in Article 51A(g) of the Constitution to have compassion for living creatures, and is also destructive of the environment- this follows from the rule of harmonious construction.

(f) In any case, the freedom in Article 19(1)(g) of the Constitution cannot be permitted to be exercised if it is not in the interests of the general public. The slaughter of livestock in response to export demand creates acute scarcity of animals which will increase prices of milk, ghee, meat and other products. Further, such

A export-oriented slaughter-houses induce owners of animals to sell them despite their utility as milch or draught cattle. Depletion of cattle wealth also leads to loss of benefits from dung output of cattle, which is its most useful contribution. The Al- Kabeer project also leads to a net loss of employment, as more than one lakh persons are employed in activities in relation to cattle, besides depriving the nation of the benefits of live cattle. These effects constitute violation of Art. 21 of the Constitution.

(g) The Al-Kabeer project is operating in violation of various State animal preservation laws, as it has stated that it imports 70 percent of its buffalo requirement from other States, as well as the Prevention of Cruelty to Animals Act, 1960.

(h) Al-Kabeer cannot rely on the 1958 *Quareshi's* judgment, as that case concerned the rights of individual butchers, not businesses setup to earn profits from export. Moreover, the crux of that judgment, striking down the total ban on slaughter of old cattle, was scarcity of fodder resources—which no longer exists. Finally, the concept of 'usefulness' of cattle was placed before the Court in 1958 in only a narrow sense (milk, breeding and draught services) and the utility of dung was not considered.

E All these submissions of the appellants, as noted hereinbefore, were contested by Al-Kabeer in C.A. No. 3967 of 1994 and made the following reply: —

(a) The appellants had relied on a Central Govt. report dated 23.12.2003, which is based on 1999 census figures, to prove F cattle depletion. But in fact, this report indicates increase in buffalo population in Andhra Pradesh, despite operation of the Al- Kabeer project.

(b) There are sufficient number of useless buffaloes to meet Al-Kabeer's capacity, if figures over a year, and not simply a G given day, are taken into account. In one year, 9.4 lakh useless buffaloes are available in Andhra Pradesh, much more than the requirement of Al-Kabeer.

(c) The appellants had mistakenly inferred that useful buffaloes are being slaughtered by Al-Kabeer but the report shows H that, since milk production has increased along with meat

export, therefore young and productive animals are not being slaughtered. A

Further Al-Kabeer in C.A. No. 3968/1994 made the following reply :-

(a) The compliance by Al-Kabeer with the Andhra Pradesh Animal Preservation Act is monitored by the officials deputed by the Director, Animal Husbandry. B

(b) The report of the Expert Committee of the Central Govt. filed on 15.9.1997, pursuant to the order of this Court dated 12.3.1997, concluded that there would be no depletion effect on livestock in Andhra Pradesh, as a result of continuance of Al-Kabeer in full capacity. The method used in the report of relying on cattle population figures in block periods of four years before and after commencement of operations of Al-Kabeer was justified. The 16th and 17th Quinquennial Census figures also indicate that there has been an increase in the buffalo population in Telangana region, not a decline. Although reports have been challenged by the appellant, but it has now become a settled law that the findings made in such reports are not open to challenge unless it is shown that such findings are perverse, arbitrary and any prudent person cannot reach to such findings. C D

The respondent APEDA (Agricultural and Processed Food Exports Development Authority) in C.A. No. 3968/1994 supported the case of abattoir and in support thereof made the following submissions : E

(a) The appellants had not even made the case that Al-Kabeer is violating any of the conditions imposed on it for slaughter of buffalo. F

(b) The claim of the appellants that cattle population is declining on account of Al- Kabeer's operation is based on a wrong approach, because the issue is not whether the total population is decreasing or not, but whether the population of healthy livestock is decreasing. The census figures confirm that there has been no such depletion due to Al-Kabeer's operation. G

As noted hereinearlier, we have not only carefully examined the Krishnan Committee report but also the other reports submitted by the Central Government in pursuance of the directions made by this Court in its earlier H

A orders in 1994 and 1997. On cattle depletion the Krishnan Committee noted that the operation of Al-Kabeer would adversely affect the cattle population in and around the region unless 50% of the demand of the abattoir was met through breeding of cattle by Al-Kabeer itself. Before we go into this question we may note that the A.P. Act was enacted in the year 1977 (Act 11 of 1977). By this Act, the Legislature has regulated the slaughter of all bovine animals
B including buffaloes. Under section 6(1) no animal is allowed to be slaughtered unless a certificate in writing from the competent authority is obtained certifying that the animal is fit for slaughter. Sub-section (2) of Section 6 of the Act prohibits slaughtering of animals unless the competent authority grants a certificate in respect of an animal that it is not likely to become economical
C for the purpose of breeding, milching or draught. After carefully reading the conditions for obtaining a permission from the competent authority to slaughter an animal, we find that slaughtering an animal requires the following:

(a) Only old and useless buffaloes can be slaughtered.

(b) Buffaloes fit for milching, breeding or draught cannot be
D slaughtered.

(c) Cow and its progeny including calves of cows and calves of buffaloes cannot be slaughtered.

In order to see whether those conditions are fulfilled by Al-Kabeer, the
E Director, Animal Husbandry of State of Andhra Pradesh has deputed necessary officials of the rank of Veterinary Asstt. Surgeons to the plant of the company to monitor and undertake anti-mortem and post-mortem examinations and to implement the provisions of the Act.

As noted hereinearlier, in the interim direction made by this Court in
F these appeals on 12th March 1997 [1997] 3 SCC 707 , this Court directed the Central Govt. to give a report after studying the impact and effect of the working of Al-Kabeer upon the buffalo population of the Telangana Region of Andhra Pradesh and also of the areas adjacent to Al-Kabeer, two years after the commencement of the operations by Al-Kabeer. The Central
G Government in pursuance of the said direction made on 12th March 1997 filed a fresh report on 15th September 1997. From a reading of the said report, it appears to us that the expert committee of the Central Govt. had examined all issues, as directed by this Court in its judgment dated 12th March 1997. This considered opinion in the said report is as under:

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"on the examination of all observations mentioned in the judgment dated 12.3.1997 *the committee is of the opinion that there would not be any depletion effect on live stock population particularly buffaloe, sheep and goat in Medak and contiguous districts, Telangana region or in the State of Andhra Pradesh as a result of continuance of Al-Kabeer at the full capacity utilization."* (Emphasis supplied).

In support of this report the State Govt. also filed an affidavit on 15th November 1997 (See page 17 of the counter affidavit of Al-Kabeer Exports to I.A. No.10-14/1997) wherein the State Government noted that the report of the Central Govt. was based on the relevant data and the conclusions reached by the expert committee in its report were not improper. In paragraph 20 of the said affidavit, it has been stated that the State Govt. had deputed five veterinary Asstt. Surgeons to supervise the slaughtering work at the site of Al-Kabeer and only thereafter the State Govt. issued anti-mortem and post-mortem certificates. From the record, it is also evident that the Central Govt. had filed yet another report prepared by an Expert committee along with an affidavit dated 6th July 1998 . This affidavit and report were filed pursuant to the order passed by this Court on 13th April 1998 directing the Central Govt. and the state of Andhra Pradesh to file affidavits not only responding to the appellant's application for modification but also with regard to the cattle population of Andhra Pradesh in general and Telangana zone in particular. The report states as follows:

"The increase is much higher in Telangana region as compared to Andhra & Rayalaseema during the four year period of Al-Kabeer working and this has clearly indicated that Al-Kabeer working has no adverse impact on the buffalo population in Telangana region on in Medal area where the abattoir is located."

The detailed report at yet another place states:

"A comparison of the estimated population of buffaloes in milk during the four year period before working of Al-Kabeer abattoir and after working of Al-Kabeer abattoir indicates that similar to milch buffaloes, population of buffaloes in milk also increased during the four year period after working of Al-Kabeer abattoir. The increase is 23.40 percent in Medak and contiguous districts, 24.33 percent in Telangana and 17.17 percent in Andhra & Rayalaseema. An overall increase of 19.61 percent in the Andhra Pradesh State is observed.

A This clearly indicates that productive buffaloes are not slaughtered in Al-Kabeer abattoir as stated by the appellant and there would not be depletion of buffalo population as a result of Al-Kabeer functioning."

In conclusion the report states:

B *From the above it could be inferred that Al-Kabeer working at full capacity does not result in buffalo population either in any area of Andhra Pradesh or in the country...."*

(Emphasis supplied)

C On behalf of the appellant, it was argued that in the Central Govt. report figures/statistics were misleading inasmuch as it had taken an average of four years before the commencement of operations of Al-Kabeer and again of four year figures after the commencement of operations by Al-Kabeer. According to the appellants, the correct way was to see the figures immediately preceding the start of operations by Al-Kabeer and thereafter to see the figures two D years after commencement of operation of Al-Kabeer. In our view, this submission is fallacious and cannot be accepted. The committee of the Central Govt. has correctly taken the figures of a block period of four years before commencement of operations and again figures of a block period of four years after commencement of operations by Al-Kabeer. This is in view of the fact E that statistics/figures of one particular year cannot represent or give a proper picture as the number of animals/buffaloes/cattle can very well vary due to natural calamities large scale migration in view of urbanization etc. We do not find any thing to say that the committee of the Central Govt. had gone wrong by proceeding on that basis and it was justified to take a block period of four years which would certainly indicate the trend or show whether there was any F steep or persistent decline after the commencement of operations of Al-Kabeer. We must not forget that this Court has also seen that there is no sharp decline or consistent reduction in the number of useful buffaloes year after year after the commencement of operations of Al-Kabeer. The figures/ statistics as given by the Central Govt. in its report dated 15.9.1997 as well G as the 16th Quinquennial and 17th Quinquennial Census would clearly indicate that there is an increase in the number of buffaloes and there is no reduction or decline much less a steep decline in the number of buffaloes in the Telangana region, as argued by the appellant. The district-wise comparison for Telangana between the census of 1999 and 2003 as would be evident from the report is as follows :

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District	16th Census 1999	17th Census 2003
Mahaboobnagar	360749	356269 (-)
Rangareddy	211044	272342 (+)
Hyderabad	8870	31400 (+)
Medak	313988	367350 (+)
Nizamabad	267846	333989 (+)
Adilabad	208823	301014 (+)
Karimnagar	448896	441361 (-)
Warangal	438324	486779 (+)
Khhammam	498537	565810 (+)
Nalgonda	622827	592271 (-)

PERCENTAGE VARIATION

Year	A.P. State	Telangana Region
1999 census (over 1993 census	+ 5.3%	+4.6%
2003 census (over 1999 census	+ 10.35%	+ 10.91%

The appellant sought to challenge the veracity and correctness of the figures given in the report of the Central Govt. as well as in the Quinquennial census. In our view, this submission is devoid of merit. It is now well-settled by various decisions of this Court that the findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by courts in the exercise of their power under Art. 226 of the Constitution or by this Court under Art.136 or 32 of the Constitution. For this proposition, reliance can be placed on the decision of this Court in the case *Systopic Laboratories (Pvt.) Ltd.* v. *Dr. Prem Gupta & Ors.*, [1994] Suppl. 1 SCC 160.

A whether the findings of expert body in technical and scientific matters can be interfered with by the Court either under Art. 226 or by this Court under Art. 32 or 136 of the Constitution. Paragraph 19 is re-produced below:

> "Having considered the submissions made by the learned counsel for the petitioners and the learned Additional Solicitor General in this
B regard, *we must express our inability to make an assessment about the relative merits of the various studies and reports which have been placed before us. Such an evaluation is required to be done by the Central Government while exercising its powers under section 26-A of the Act on the basis of expert advice and the Act makes provision*
C *for obtaining such advice through the Board and the DCC.*
>
> (Emphasis supplied)

Para 20 is as follows:—

> "The learned counsel for the petitioners have urged that these
D studies and reports had been submitted on behalf of the petitioners and other manufacturers before the Sub-Committee of the DCC as well as the Experts Committee but there has been no proper consideration of the same by the experts as well as the DCC and the Board. In this context, it has been submitted that no medical expert
E in the field of clinical medicine in the treatment of asthma was associated in the committees and such experts alone could make a proper evaluation of the said studies. We find no substance in this contention. We have pursued the minutes of the meetings of the Board, the Sub-Committee of the DCC as well as the Experts Committee. The *minutes show that the material that was submitted*
F *on behalf of the manufacturers of the drugs in question was examined by the members and it is not possible to hold that there has been no proper consideration of the said material by the Experts Committee or the Sub-Committee of the DCC.* The complaint that experts in clinical medicine were not associated with the Committee does not
G appear to be justified. The minutes of the meetings of the experts to consider the views of the affected manufacturers, who represented against the proposed withdrawal of certain formulations moving in the market, which were held on September 8, 1987, October 16/17, 1987 and January 15/16, 1989 show that among the members were included Dr. O.D. Gulati, Dean, CAM Medical College, Karansad and Dr. J.P.
H Wali, Assistant Professor of Medicine, AIIMS, New Delhi, Dr. M.

Durairaj Consultant, Cardiologist, Director of Cardiology, Poona Hospital and Research Centre, Pune was also member of the Sub-Committee and had attended the meeting held on January 15/16, 1988. It cannot, therefore, be said that the medical experts in clinical medicine were not associated in the Experts Committee for evaluation of the material that was furnished by the manufacturers."(Emphasis supplied) A B

Similar is the view expressed by this Court in *K. Vasudevan Nair & Ors.* v. *U.O.I. & Ors.*, [1991] Supp. 2 SCC 134. We have in detail noticed the report of the Krishnan Committee and its recommendations in the earlier part of this judgment. In our view, Krishnan Committee has also not recommended closure of the unit because of cattle depletion but on the other hand suggested some measures that may be taken to minimize cattle depletion. C

For the reasons aforesaid and in view of the discussions made hereinabove and after considering the reports submitted by the committee of the Central Govt. and the 16th and 17th Quinquennial census and report of the Krishnan Committee , we do not find any reason to show our concern that the functioning of Al-Kabeer abattoir would result in depletion of buffalo population in the Hinterland of the abattoir. D

Before concluding this issue, let us deal with Submission No. (h) made by Akhil Bharat Goseva Sangh in C.A.No.3968 of 1994. On behalf of Akhil Bharat Goseva Sangh in Submission No.(h) it was urged that the decision in *Mohd.Hanif Quareshi & Ors.* v. *The State of Bihar,* [1959] SCR 629, would not help Al-Kabeer in any way as the position at present is completely different. In that decision, total ban on slaughter of old cattle was struck down on the ground that there was scarcity of fodder resources, which however, according to the Akhil Bharat Goseva Sangh, does not exist any longer. In the case of *State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat and Ors.*, reported in [2005] 8 SCC 534, it has also been held that in view of the position that exists now i.e. adequate availability of cattle feed resources, the question of striking down total ban on slaughter of old cattle for scarcity of fodder resources would not arise at all. In our view, this position cannot be disputed. However, in the present case, we are concerned with the A.P. Act, 1977 which does not impose a total ban on slaughter of a particular type bovine animal, whereas in *Mirzapur's* case (Supra) this Court dealt with the provisions of Bombay Animal Preservation (Gujarat Amendment) Act, 1994 which imposes a total ban on slaughter of cow and its progeny. So far as the A.P. Act, 1977 E F G H

A is concerned, there is no total ban on slaughter of buffaloes. Therefore, in our view, this submission of the Akhil Bharat Goseva Sangh cannot at all be accepted, as we are not concerned with the case of striking down a particular provision which imposes an absolute prohibition of slaughter of particular types of bovine animals. In Mirzapur case, it was, however, not held that B permitting slaughter of bovine cattle by itself is unconstitutional. This being the position, we are not in agreement with the learned counsel for the appellant that Submission No.(h) can come to their assistance for the purpose of banning of slaughter of buffaloes by Al-Kabeer.

The last question which was agitated by Akhil Bharat Goseva Sangh C (C.A. No. 3968/1994) but not agitated by the other appellants in the other appeals was whether the policy of the Central Govt. to promote export of meat violates constitutional provisions. According to the appellant, the policy of the Govt. to encourage slaughter for export is subject to judicial review as policies which violate constitutional provisions are reviewable. This policy D violates Art. 39(b) and (c) of the Constitution as it serves to concentrate profits from cattle wealth in a few hands. It was further submitted by Akhil Bharat Goseva Sangh that not only this policy violates Art. 47 of the Constitution as it leads to malnutrition but also Art. 48 which contains a positive command to the State to preserve and improve breeds and prohibit slaughter of milch and draught cattle regardless of their usefulness. The E learned counsel has also contended that this policy also violates Art. 21 by depriving the society of the useful benefits of animals. It was further submitted that the A.P. Act, 1977 does not mention any specific age limit under which cattle slaughter is prohibited and therefore the determination of healthy and useful cattle is subjective and with a scope of maneuverability. Although no F provision of the aforesaid Act prescribes the age of any slaughterable buffalo but the A.P. animal husbandry manual prescribes the age of slaughterable buffaloes as above 10 years. According to this appellant, these buffaloes are useful even till 15-20 years. Lastly, it was submitted that the agencies of the State Government also recommended ban on export of meat and such being G the position this Court may strike down the policy of the Central Govt. so far as the meat export policy is concerned. This submission of the appellant was contested by the learned counsel for the respondents, in particular, the learned Advocate for APEDA in C.A. No. 3968/1994. In our view, as the policies taken by the Central Govt. and APEDA, which is a creation of the Parliament for promotion of export and product development of scheduled H products, the question of striking down of the policy cannot arise. However,

it will be always open to the Court to direct the Central Govt. or the State Government to renew or review its policy and to make a fresh policy at any time if they find it to be expedient to do so. As noted herein earlier, APEDA is a statutory authority created by an Act of Parliament for promotion of export and product development of scheduled products. "Scheduled Product" has been defined in section 2(i) of the Act which means any of the agricultural or processed food products included in the Schedule. Item No.2 to the Schedule of the Act of 1985 mandates that APEDA shall promote export and development of scheduled products. It is the consistent policy of the Government of India to encourage export of meat and meat products, as would be evident from the following:

Export of buffalo meat is on the OGL list.

(i) Government of India in its Directive has stressed export of meat and meat products as thrust area.

(ii) Current "Foreign Trade Policy" encourage export of meat. It provides for export of meat of buffalo provided it is accompanied by a certificate from the designated veterinary authority to the effect that meat or offal are from buffalo not used for breeding and milching purposes.

It appears that the certificates that are to be or already issued was in conformity with the decision of the Constitution Bench's judgment in *Mohd. Hanif Qureshi's* case reported in [1959] SCR 629. It is the case of the Government as well as the abattoir that only those buffaloes which are unfit for milching, breeding and draught were permitted to be slaughtered and are being slaughtered. We have already discussed the decline of cattle population because of the operation of Al-Kabeer in this judgment hereinbefore. In *Mohd. Hanif Qureshi's* case reported in [1959] SCR 629 the issue was not whether the population of live stock was increasing or not but whether the population of healthy live stock was increasing. Although it was sought to be argued by the appellant that due to slaughter of buffaloes by Al-Kabeer, the population of healthy buffaloes was declining even then in view of our discussion made hereinearlier, it must be confirmed that there is no depletion of cattle/buffalo wealth due to operation of Al-Kabeer. Apart from that, it appears from the record that Al-Kabeer slaughterhouse was built in accordance with European Economic Community Standards and is one of the most modern, scientific, integrated slaughterhouses in India with an installed capacity of 15000 MT. If in any way Al-Kabeer is directed to close down their factory the

A said action on the part of the Central Government would be to discourage private entrepreneurs to invest in the meat industry which will affect the reputation of India in the export market of meat. As we have already noted, the interim direction given by this Court on 12th March 1997 by which the production of Al-Kabeer was reduced to 50 %, the total export of meat from India, which is about 1,70,000 MT., did not reduce. For the reasons aforesaid, B we are unable to direct at this stage to strike down the policy regarding meat export from India to foreign countries. We are of the view that the policy of the Central Government cannot be easily struck down only because there was slight decline of cattle growth nor it can be struck down before looking into the entire aspect of the matter. It is also well settled that policy decision of C the Government cannot be interfered with or struck down merely on certain factual disputes in the matter. It is not open to the Court to strike down such decision until and unless a serious and grave error is found on the part of the Central Government or the State Government. Such being the position, we are unable to strike down this meat export policy of the Central Government, as in our view, it does not violate the constitutional provisions. That apart, D the question regarding constitutionality as mentioned above was not argued before the High Court seriously. Accordingly, this submission of Akhil Bharat Goseva Sangh is hereby rejected.

Apart from that, from the discussion made hereinabove, we find that it E is also the consistent policy of the Government of India to encourage export of meat and meat products. The current foreign trade policy also encourages export of meat provided that a designated veterinary authority certifies that it is not obtained from buffalo used for breeding and milching purposes. It is true that in the Constitution Bench decision of this Court in the case of *State of Gujarat* v. *Mirzapur,* reported in [2005] 8 SCC 534 it has been held F that the protection envisaged under Art.48 extended even to cattle that had ceased to be milch or draught, provided they fall within the category of milch and draught cattle. In *State of Gujarat* v. *Mirzapur* (supra) it has also been held that cattle forms the backbone of Indian agriculture and they remain useful throughout their lives. While dealing with Art. 48 and 48-A of the Constitution read with the fundamental rights, the Constitution Bench further G held that both directive principles and fundamental duties must be kept in mind while assessing the reasonableness of legal restrictions placed upon fundamental rights. However, striking down a law or policy on the ground that it violates a directive principle or fundamental duty was not an issue before the Constitution Bench of this Court in the case of *State of Gujarat* H v. *Mirzapur* (supra). It is true that in the aforesaid Constitution Bench decision

it has been held that total prohibition of cow and cow progeny slaughter may be justified. However, it has not been held in that decision that laws and policies which permit such slaughter are unconstitutional. Therefore, the position of law remains that the directive principles and fundamental duties cannot in themselves serve to invalidate a legislation or a policy. Moreover, the export policy itself permits only export of meat from buffaloes that are certified as not useful for milching, breeding or draught purposes. Therefore, if properly implemented, it cannot be said that the policy will necessarily have adverse consequences, especially in view of the foreign exchange obtained through it. Accordingly, we are unable to accede to the argument of the learned counsel for the appellant that the meat export policy, as made by the Central Government must to be struck down.

For the reasons aforesaid, we are of the view that meat export policy need not be struck down subject to constant review by the Central Government in the light of its potentially harmful effects on the economy of the country.

In view of our discussion made hereinabove and for the reasons stated hereinearlier we are of the view that these appeals can be disposed off by giving the following directions:-

1. The APPCB is hereby directed to rectify its consent order given to Al-Kabeer following Rule 3 read with Schedule 1, Entry 50-B of the Environmental Protection Rules, 1986. In the event abattoir fails to comply with such rectified consent order of the APPCB, it would be open to the authorities to direct closure of the Al-Kabeer unit.

2. The APPCB is directed to file reports before the State Government as well as Central Government relating to compliance with the pollution standards by Al-Kabeer specified under its consent order in compliance with the Environmental Protection Rules, 1986, once in every three months.

3. The Company is directed to regularly monitor pollution of air and water by its abattoir. It is further directed to file a report of its compliance with the Environmental laws, particularly, the Environmental Protection Rules, 1986, before the APPCB every month.

4. Al-Kabeer is directed to file reports before the State Government on cattle population in its surrounding areas once every year.

A The State Government shall examine the correctness of the said report and thereafter take appropriate action.

5. The State Government is directed to monitor regularly and strictly in respect of Al Kabeer's compliance with all applicable laws, particularly the provisions of the Andhra Pradesh Prohibition of B Cow Slaughter and Animal Preservation Act, 1977, once every three months and to obtain reports on the same and thereafter to take necessary action for their proper implementation.

6. The Company is directed to prepare a plan in consultation with the State Government and take up its implementation in C conjunction with the State Government for promoting better animal husbandry practices within the next three months. The State Government is directed to take all the necessary steps for this purpose.

7. Modernizing the existing abattoirs in the state is advisable and in D that regard the State Government may take steps that it considers necessary.

8. Finally, the Central Govt. is directed to review the meat export policy, in the light of the Directive Principles of State Policy under the Constitution of India, and also in the light of the policy's E potentially harmful effects on livestock population, and therefore on the economy of the country.

However, we keep it open to the Central Government and the State Government to consider the distance prohibitions as indicated in the LOI, the Notifications and General Order of the State Government and in the event, F the Central Government or the State Government comes to the conclusion that the abattoir cannot be permitted to run their business at the site in question, in that case, the Central Government or the State Government, as the case may be, shall be entitled to proceed in accordance with law.

Considering the facts and circumstances of the case, and in view of the G fact that this Court by an interim order granted stay of the operation of the direction of the High Court for initiating a prosecution of Dr. Kishan Rao (Appellant in C.A. No. 3966/1994) under section 195 of the Code of Criminal Procedure read with Section 191 of the Indian Penal Code, we do not find any reason to proceed with this prosecution against Dr. Kishan Rao any further. H

In view of the disposal of appeals by this common judgment, all Interlocutory Applications and Contempt Petition pending, if any, shall also stand disposed of.

There will be no order as to costs.

In Civil Appeal Nos. 4711-4713 of 1998 :

Although these three appeals being C.A. Nos. 4711-4713 of 1998 (*Umesh & Ors.* v. *Karnataka & Ors.*) were heard along with C.A. Nos. 3964-68 of 1994, it was thought fit to deliver the judgment in C.A. Nos. 4711-4713 of 1998 separately, as the questions involved in these appeals were not in issue in C.A. Nos. 3964-68 of 1994. Accordingly, the judgment in these three appeals which involved common questions of law and fact is being delivered in the following manner:-

Before the Karnataka High Court, two writ petitions being W.P. Nos.32999-33000/1995 were filed by one N. Umesh and Hindu Jagarana Vedike. Another Writ Petition being Writ Petition No. 31217/1992 was filed in the same High Court by Smt. Sarojini Muthanna and H. Mangalamba Rao and others. In the Writ Petitions bearing W.P. Nos. 32999 of 1995 and W.P. No. 33000 of 1995 filed by Umesh and Hindu Jagaran Vedike, the following reliefs were sought :

(1) A writ in the nature of *Mandamus* commanding the respondents to strictly enforce the provisions of sections 4, 8, 9, 10, 11 and 18 of the Mysore Prevention of Cow Slaughter and Cattle Preservation Act, 1964 (in short "the 1964 Act") in Chamarajnagar Taluk of Mysore District and also to direct State Government to establish institutions for taking care of cows and other animals in accordance with the aforesaid provisions of the Act at the earliest.

(2) Declare section 5 of the 1964 Act as void and *ultra-vires* the spirit of the Directive Principles of the Constitution Act.37 and 48 and violative of Arts. 25 and 26 of the Constitution.

(3) Declare partial prohibition of slaughter of bovine cattle under 1964 Act as violative of Arts. 14, 15, 21, 25 and 26 of the Constitution. .

(4) Issue a writ of total prohibition of slaughter of bovine cattle in the whole of Karnataka.

Practically, the same reliefs were claimed by Sarojini Muthanna and

A Mangalamba Rao in W.P. No. 31217 of 1992. However, W.P. No. 31217 of 1992 relates to Kodagu and Coorg districts of Karnataka.

After exchange of affidavits and after hearing the learned counsel for the parties all the three Writ Petitions were rejected by the High Court by a common judgment dated 16th March 1998. Against this judgment the present B appeals have been preferred by the appellants which were admitted by this Court on grant of special leave and heard in presence of the learned counsel for the respective parties.

The relevant facts which are required to be taken into consideration in deciding these appeals are enumerated below.

C

The three Writ Petitions filed in the High Court were in the nature of Public Interest Litigations and the petitioners were prosecuting the Writ Petitions before the Court in representative capacity.

The first appellant herein is an honourary Animal Welfare Officer of D the Animal Board of India. Second appellant herein i.e. Hindu Jagarana Vedike is an organization which is working to uphold Hindu values and is interested in protecting sanctity of "cow". The third appellant herein is a native of Kodagu district and belongs to Kodava community of Hindus. The fourth appellant herein is a practicing Advocate and resident of Bangalore city.

E

In the erstwhile State of Coorg which now forms part of Karnataka State there had been a total prohibition of slaughter of cows and its progeny since slaughtering or killing of cows and calves or bullocks or oxen was considered an unpardonable sin and was considered as being opposed to sentiments, customs and religious beliefs of the natives of Coorg called F 'Kodavas'. Further all these religious sentiments had for long received statutory protection and had been followed before the reorganization of the State under the States Reorganization Act of 1956.

In the erstwhile State of Mysore, the Mysore Prevention of Cows Slaughter Act 1948 prohibited slaughter of cows, bulls, bullocks, buffaloes G and calves in order to conserve cattle wealth of the State. In 1964, after the merger of the former State of Coorg with the State of Mysore, a new enactment, namely, the Mysore Prevention of Cow Slaughter and Cattle Preservation Act 1964 (in short "1964 Act"), which repealed the 1948 Act, modified the animal slaughter laws in the State to the following effect :

H

(1) Slaughter of cows and calves of she buffaloes was totally prohibited (Section 4)

(2) Other bovine animals namely bulls, bullocks, buffaloes could be slaughtered after obtaining a certificate in writing from the competent authority that the animal is fit for slaughter i.e. it is above the age of 12 years or that the animal has become permanently incapacitated for breeding, draught or milch purposes due to injuries, deformities or any other cause. (Section 5)

Under Sec. 18 of the 1964 Act the State Government has the authority to establish or direct establishment of institutions to take care of cows and other animals.

Before us, the following questions had cropped up for decision:

1. Whether the High Court erred in dismissing the petitions all-together after holding that the State Government must strictly implement the provisions of the 1964 Act?

2. Whether the view taken by this Court in *Mohd. Hanif Quareshi* v. *State of Bihar* [1959] SCR 629 regarding implementation of Art. 48 directive principle *vis-a-vis* fundamental right guaranteed requires modification in the light of larger bench decision in *Keshavananda Bharti* Case [1973] 4 SCC 225 and the subsequent decisions of this Court?

3. Whether the terms in Art. 48 are wide enough to include all categories of bovine cattle?

4. Whether section 5 of the 1964 Act is unconstitutional in so far as it does not impose a total prohibition of slaughter of bovine cattle and whether a writ must be issued directing the State to prohibit slaughter of all bovine cattle in the State of Karnataka?

Before we decide these questions, we may keep in mind the findings arrived at by the High Court of Karnataka in the impugned judgment.

As noted herein earlier, we find from the reliefs claimed in all the three aforesaid Writ Petitions, a prayer was made seeking a writ in the nature of *Mandamus* commanding the respondents to strictly enforce the provisions of Sections 4, 8 to 11 and 18 of the 1964 Act in Chamarajnagar Taluk of Mysore District, Coorg District, Kodagu District and also to direct the State Government to establish institutions for taking care of cows and other animals in accordance

A with the aforesaid provisions of the Act at the earliest.

In paragraph 8, the High Court concluded in the impugned order on this relief in favour of the appellants and found that " *it is needless to state that the Government and its officers are required to strictly enforce and implement the provisions of the Act*". (Emphasis supplied). That being the B conclusion made by the High Court in the body of the judgment, in respect of Question No.1, we feel it proper at this stage to direct the State Government and its instrumentalities to strictly enforce and implement the provisions of Sections 4, 8 to 11 and 18 of the 1964 Act without going into this question in detail. It is needless to state that statutory provisions are required to be C strictly complied with and therefore it is the duty of the State authorities to comply with the aforesaid provisions of the 1964 Act. In this view of the matter, Question No.1 as framed herein earlier is decided in favour of the appellants by directing the State Government and other State authorities to strictly enforce and implement the provisions of Sections 4, 8 to 11 and 18 of the 1964 Act.

D

Even though this conclusion was arrived at by the High Court in favour of the appellants, ultimate decision, however, went against them i.e. Writ Petitions were dismissed in their entirety.

Let us now deal with the second issue raised by the appellants before E us. According to the appellants, the view taken in *Mohd. Hanif Quareshi & Ors.* v. *State of Bihar,* [1959] SCR 629 decision *vis-a-vis* relationship between Directive Principles and Fundamental Rights requires modification in the light of the decision in the case of *Kesavananda Bharathi* v. *State of Kerala,* [1973] 4 SCC 225) and subsequent decisions. We need not deal with this F aspect of the matter in detail in view of the recent decision of this Court in the case of *State of Gujarat* v. *Mirzapur,* [2005] 8 SCC 534. The decision of this Court in the case of *Mohd. Hanif Quareshi & Ors.* v. *State of Bihar* [1959] SCR 629 has now been over-ruled on this point by the Constitution Bench decision of this Court in *Mirzapur* case. Therefore, this question is decided in favour of the appellants. In *Mohd. Hanif Quareshi & Ors.* v. *State of Bihar,* G [1959] SCR 629 the contention that a law enacted to give effect to Directive Principles cannot be held to be violative of fundamental rights was rejected on the ground that :

> "a harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement H the directive principles but it must do so in such a way that its laws

do not take away or abridge the fundamental rights, for otherwise the protecting provisions of Chapter III will be "a mere rope of sand". A

(Emphasis supplied).

This view was, however, not accepted in the aforesaid Constitution Bench decision in the case of *State of Gujarat* v. *Mirzapur,* [2005] 8 SCC 534. The Constitution Bench noted that after the decision in *Kesavananda Bharathi* v. *State of Kerala,* [1973] 4 SCC 225 the position is : B

"A restriction placed on any fundamental right aimed at securing Directive Principles will be held as reasonable and hence intra vires subject to two limitations : first that it does not run in clear conflict with the fundamental right, and secondly that it has been enacted within the legislative competence of the enacting legislature under Part XI Chapter I of the Constitution." (Emphasis supplied) C

In Paragraph 22 of the decision in the case of *State of Gujarat* v. *Mirzapur,* it has been held as follows: D

"The restrictions which can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6); the provisions contained in the Chapter on Directive Principles of State Policy can also be pressed into service and relied on for the purpose of adjudging the reasonability of restrictions placed on the fundamental rights."(Emphasis supplied). E

Further, in the case of State of Gujarat vs. Mirzapur, so far as Arts. 48, 48-A and also Art. 51-A(g) are concerned the following was held:

"It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Art. 51-A of the Constitution play a significant role. The decision in *Quareshi-1* in which the relevant provisions of the three impugned legislations were struck down on the singular ground of lack of reasonability, would have been decided otherwise if only Art. 48 was assigned its full and correct meaning and due weightage was given thereto and Arts. 48-A and 51-A(g) were available in the body of the Constitution." (Emphasis supplied) F G H

A In view of the aforesaid admitted position in law, we therefore hold the question No.2, as framed, must be decided in favour of the appellants. This question, even though decided in favour of the appellants would not materially affect the decision of this appeal.

The third question which concerns interpretation of Art. 48 of the B Constitution shall now be dealt with.

In 1958 *Quareshi's* case it was held that:

> "the protection recommended by this part of the directive is, in our opinion, confined only to cows and calves and to those animals C which are presently or potentially capable of yielding milk or of doing work as draught cattle but does not, from the very nature of the purpose for which it is obviously recommended, extend to cattle which at one time were milch or draught cattle but which have ceased to be such." (Emphasis supplied).

D But in the case of *State of Gujarat* v. *Mirzapur* this position was overruled and it has been held that:

> "In our opinion, the expression 'milch or draught cattle' as employed in Article 48 of the Constitution is a description of a classification or species of cattle as distinct from cattle which by their E nature are not milch or draught and the said words do not include milch or draught cattle, which on account of age or disability, cease to be functional for those purposes either temporarily or permanently. The said words take colour from the preceding words "cows or calves". A specie of cattle which is milch or draught for a number of years F during its span of life is to be included within the said expression. On ceasing to be milch or draught it cannot be pulled out from the category of 'other milch and draught cattle." (Emphasis supplied).

Such being the position and in view of the Constitution Bench decision as aforesaid, it can no longer be held that the protection recommended by this G part of the directive under Art. 48 of the Constitution can be said to be confined only to cows and calves and those animals which are presently capable of yielding milk or of doing work as draught cattle. The aforesaid Constitution Bench decision has clarified that the protection under Art. 48 of the Constitution also extends to cattle which at one time were milch or draught but which have ceased to be such. A submission was made by the H

learned counsel for the parties on the usefulness of cattle. In 1958 *Quareshi's* case it was held that cattle becomes useless after a certain age which is for the Legislature to determine and thereafter their maintenance is a burden on the economy of the country. This position has also been negatived by the decision of the Constitution Bench in the aforesaid case, and it has been held by this Court as follows:

> "We have found that bulls and bullocks do not become useless merely by crossing a particular age.....The increasing adoption of non-conventional energy sources like Bio-gas plants justify the need for bulls and bullocks to live their full life inspite of their having ceased to be useful for the purpose of breeding and draught."
>
> (Emphasis supplied)

Following the aforesaid findings and on the basis of the findings that our economy has adequate cattle feed resources and alternative sources of nutrition, in the case of *State of Gujarat* v. *Mirzapur*, it was held as under:

> "The Legislature has correctly appreciated the needs of its own people and recorded the same in the Preamble of the impugned enactment and the Statement of Objects and Reasons appended to it. In the light of the material available in abundance before us, there is no escape from the conclusion that the protection conferred by impugned enactment on cow progeny is needed in the interest of Nation's economy. Merely because it may cause 'inconvenience' or some 'dislocation' to the butchers, restriction imposed by the impugned enactment does not cease to be in the interest of the general public. The former must yield to the latter." (Emphasis supplied)

Therefore, in our view, the interpretation of Art. 48 of the Constitution has now been widened and "milch and draught cattle" include cattle which have become permanently incapacitated to be used for milch and draught purposes. Hence, this question is decided in favour of the appellants. Though, this question has been decided in favour of the appellants, it does not make any material difference to the final decision of this case. It is the decision on the next issue i.e. issue No.4 that will have impact on final directions to be issued in this case.

Let us come to issue No.4, i.e. whether section 5 of the 1964 Act is unconstitutional in so far as it does not impose a total prohibition on slaughter of bovine cattle and whether a writ of *mandamus* must be issued to the State

A Government to impose a total ban on slaughter of bovine cattle in the State of Karnataka?

In *State of Gujarat* v. *Mirzapur* the impugned Act therein, provided for prohibition on slaughter of certain types of cattle. The Constitution Bench of this Court in that case held such a legislation to be constitutional in the light B of the finding that the legislation was in furtherance of the directive in Art. 48 of the Constitution and any enactment which furthers the cause in the directive principles of State Policy cannot be held to be unconstitutional. It was, however, not held that permitting slaughter of bovine cattle by itself is unconstitutional. In the case at hand, section 5 of the 1964 Act does not provide for a total prohibition on slaughter of bovine cattle. That being the C case, declaring section 5 of the 1964 Act as unconstitutional and directing the State Government to impose a total ban on slaughter of bovine cattle, as requested by the appellants, would lead to judicial legislation and would encroach upon the powers of the Legislature. Therefore, the prayer of the appellants in issue No.4 to issue a writ to the State Government to totally D prohibit slaughter of bovine cattle is rejected.

In view of our discussions made hereinabove, even though the Mirzapur decision supports the submission of the appellants on the questions Nos.2 and 3, the issuance of writ of *Mandamus* to compel total prohibition of cattle slaughter would only amount to judicial legislation and would encroach upon E the powers of the Karnataka Legislature, as held by the High Court, which, in our view, was the right approach made by it. That being the position, we are of the view that the question of declaring total ban on slaughter of cattle cannot be permitted and section 5 of the Act cannot be said to be *ultra vires* of the Constitution. For the reasons aforesaid, the appeals are allowed in part, F i.e. to the extent of directing the State Government to strictly enforce and implement the provisions of Sections 4, 8-11 and 18 of the 1964 Act and take action on any violations thereof. Further, it is directed that the State Government maintain proper institutions for providing care and protection to cattle in the light of section 18 of the 1964 Act.

G There will be no order as to costs.

S.K.S. CA.Nos. 3964-3968/1994 disposed of and CA. Nos. 4711 to 4713/1998.