



IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
KOHIMA BENCH

WA Nos. 7/2023 & 12/2024

I. WA No. 7/2023

1. People For Animals,
An animal welfare organization, through its Chairperson (Trustee),
namely, Ms. Maneka Sanjay Gandhi,
having its office at A-4, Maharani Bagh,
New Delhi-110065.
2. Human Society International/India,
A non-profit organization through its Managing Director,
Ms. Alokparna Sengupta,
Having its registered office at Shop No.39,
Shreeji Shopping Arcade, Seth Gopalji,
Hemraj Singh Compound, M.G. Road,
Borivali(E), Mumbai-400066.

.....Appellants.

-Versus-

1. Neizevolie Kuotsu alias Toni Kuotsu,
S/o Kevilazo Kuotsu,
Resident of House No.097, Middle Midlane,
Kohima, Nagaland.
2. Abei Zatsu,
Resident of Late Nekuosa Zatsu,
Resident of T Khel, Kohima Village,
Kohima, Nagaland.
3. Ketounyuu,
D/o Lt. Rubeihie,
Resident of D. Khel, Kohima Village,
Kohima, Nagaland.
4. The State of Nagaland,

Represented by the Chief Secretary,
Govt. of Nagaland, Nagaland Civil Secretariat,
Kohima, Nagaland.

5. The Commissioner of Food Safety,
Department of Family Health and Welfare,
Govt. of Nagaland, Nagaland Civil Secretariat,
Kohima, Nagaland.
6. The Kohima Municipal Council (KMC),
Represented by its Administrator,
Govt. of Nagaland, Kohima, Nagaland.
7. Food Safety and Standards Authority of India (FSSAI),
An autonomous body under the Ministry of Health and Family
Welfare, through its Chairperson, FDA Bhawan,
Kotla Road, New Delhi-110002.
8. The Union of India,
Represented by the Secretary,
Ministry of Health and Family Welfare, Govt. of India,
Room No.348, A Wing, Nirman Bhawan,
New Delhi-110011.

.....Respondents.

For the Appellants : Ms. Pinky Anand, Sr. Adv.,
Ms. Saudamini Sharma,
Mr. Samrat Pasricha,
Ms. Esha Dutta,
Mr. Siddharth Pandey,
Ms. Shaalini Agarwal,
Mr. Pfosekho Pfofte,
Ms. Chanya Jaitly,
Mr. Chubanungkum,
Ms. Shreya Paropkari.

.....Advocates.

For the Respondents : Mr. L. Iralu,
Ms. V. Suokhrie, Addl.AG, Nagaland,
Ms. Catherine Anichar.

.....Advocates.

II. WA No. 12/2024

Akhil Bharat Krushi Go Seva Sangh,
A registered charitable Trust, duly represented by its Member,
Shri Hiren D. Shah, S/o Shri Dinesh Chandra Shah,
Having its Regd. Office, Gopuri, Wardha,
Tal.: Wardha, Maharashtra-441001 and also at
101, Sunder Dham Co. Op. Hsg. Society,
Jambli Gali, Borivali (W), Mumbai,
Maharashtra-400092.

.....*Appellant.*

-Versus-

1. Neizevolie Kuotsu alias Toni Kuotsu,
S/o Kevilazo Kuotsu,
Resident of House No.097, Middle Midlane,
Kohima, Nagaland.
2. Abei Zatsu,
Resident of Late Nekuosa Zatsu,
Resident of T Khel, Kohima Village,
Kohima, Nagaland.
3. Ketounyuu,
D/o Lt. Rubeihie,
Resident of D. Khel, Kohima Village,
Kohima, Nagaland.
4. The State of Nagaland,
Represented by the Chief Secretary,
Govt. of Nagaland, Nagaland Civil Secretariat,
Kohima, Nagaland.
5. The Commissioner of Food Safety,
Department of Family Health and Welfare,
Govt. of Nagaland, Nagaland Civil Secretariat,
Kohima, Nagaland.
6. The Kohima Municipal Council (KMC),
Represented by its Administrator,
Govt. of Nagaland, Kohima, Nagaland.
7. Food Safety and Standards Authority of India (FSSAI),

An autonomous body under the Ministry of Health and Family Welfare, through its Chairperson, FDA Bhawan, Kotla Road, New Delhi-110002.

8. The Union of India,
Represented by the Secretary,
Ministry of Health and Family Welfare, Govt. of India,
Room No.348, A Wing, Nirman Bhawan,
New Delhi-110011.
9. People For Animals,
An animal welfare organization, having its office at
A-4 Maharani Bagh, New Delhi-110065,
Represented by its Chairperson (Trustee),
Ms. Maneka Sanjay Gandhi.
10. Human Society International/India,
Registered office at Shop No.39, Shreeji Shopping Arcade,
Seth Gopalji, Hemraj Singh Compound, M.G. Road,
Borivali (E), Mumbai-400066, represented by its
Managing Director, Ms. Alokporina Sengupta.

.....Respondents.

For the Appellant : Mr. Manish Singhvi, Sr. Adv.,
Ms. Siddh Vidya.

.....Advocates.

For the Respondents : Mr. Alezo Kire,
Ms. V. Suokhrie, Addl.AG, Nagaland,
Ms. Catherine Anichar,
Ms. Pinky Anand, Sr. Adv.,
Ms. Saudamini Sharma,
Mr. Samrat Pasricha,
Ms. Esha Dutta,
Mr. Siddharth Pandey,
Ms. Shaalini Agarwal,
Mr. Pfosekho Pfotte,
Ms. Chanya Jaitly,
Mr. Chubanungkum,
Ms. Shreya Paropkari.

.....Advocates.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
HON'BLE MR. JUSTICE BUDI HABUNG

Date(s) of Hearing :- 21.01.2026 & 22.01.2026

Date on which judgment is reserved :- 22.01.2026

Date of pronouncement of judgment :- **22.04.2026**

Whether the pronouncement is of the operative part of the judgment? :- N/A

Whether the full judgment has been pronounced? :- Yes

JUDGMENT AND ORDER
(CAV)

[***BUDI HABUNG, J.***]

Heard Ms. Pinky Anand, learned Senior Counsel, assisted by Ms. Saudamini Sharma, learned counsel; Mr. Samrat Pasriccha, learned counsel; Ms. Esha Dutta, learned counsel; Mr. Siddharth Pandey, learned counsel; Ms. Shaalini Agarwal, learned counsel; Mr. Pfosekho Pfofte, learned counsel; Mr. Medo Vero, learned counsel; Ms. Chanya Jaitly, learned counsel; and Mr. Chubanungkum, learned counsel for the appellant No. 1 in WA No. 7/2023 and respondent No. 9 in WA No. 12/2024.

2. Also heard Ms. Shreya Paropkari, learned counsel for the appellant No. 2 in WA No. 7/2023 and respondent No. 10 in WA No. 12/2024; Mr. Manish Singhvi, learned Senior Counsel, assisted by Ms. Siddh Vidya, learned counsel for the appellant in WA No. 12/2024; Mr. L. Iralu, learned counsel for the respondent Nos. 1, 2, and 3 in WA No. 7/2023; Mr. Alezo Kire, learned counsel for the respondent Nos. 1, 2, and 3 in WA No. 12/2024; Ms. V. Suokhrie, learned Addl. Advocate General, for the respondent Nos. 4 and 5; and Ms. Catherine Anichar, learned counsel for the respondent No. 6.

3. These two writ appeals, WA No. 7/2023 and WA No. 12/2024, have been filed assailing the judgment and order dated 02.06.2023 passed by the learned Single Judge, whereby the notification dated 04.07.2020 issued by the Chief Secretary, Government of Nagaland (respondent No.4) imposing a ban on the commercial import and trading of dogs, dog markets, as well as the commercial sale of dog meat in markets and dine-in restaurants was quashed. Since the challenge in both the appeals are to the same judgment and involve identical questions of law and fact, they are taken up together and disposed of by this common judgment.

4. The writ petitioners before the learned Single Judge are persons engaged in the trade of supplying dogs and selling dog meat in the State of Nagaland, and they earn their livelihood from the said business. The writ petitioners carried on the business of supplying dogs and selling dog meat in the State of Nagaland on the strength of licenses and permits issued by the Kohima Municipal Council.

5. It is not in dispute that the consumption of dog meat has traditionally been prevalent among certain Naga tribes of the State, and

by carrying out such trade, the writ petitioners/respondents No.1, 2 and 3 herein earned their livelihood.

6. It is submitted that on 04.07.2020, the Chief Secretary, Government of Nagaland (respondent No.4) issued a notification imposing a blanket ban on: (i) Commercial import and trading of dogs and dog markets; and (ii) Commercial sale of dog meat in markets and dine-in restaurants, and stated that any person found violating the said order shall be liable to be punished under Sections 428 and 429 of the Indian Penal Code, 1860, and Section 11 of the Prevention of Cruelty to Animals Act, 1960, and/or any other provisions of law as may be applicable. The said notification is reproduced bellow:

**"GOVERNMENT OF NAGALAND
OFFICE OF THE CHIEF SECRETARY
NAGALAND :: KOHIMA**

No.CSO/CORRES-19/CAB/2017

Dated Kohima, the 4th July 2020

NOTIFICATION

SUB: *Ban on import and sale of dog meat in the State.*

- 1. WHEREAS, the Central Government, Ministry of Health & Family Welfare has enacted the food safety & Standards Act 2006 (act, for short) and Food Safety & Standards (Food products Standards and Food Additives) Regulation 2011 (Regulation, for short), to regulate the safety of food articles safe for human consumption.*
- 2. AND WHEREAS, in Regulation 25(1) (a) of the FSSAI Regulation 2011 meat and meat products and as per sub-regulation 2.5.1(a) of Regulation 2011 "animal" means an animal belonging to any of the species specified below:*
 - (i) Ovines;*
 - (ii) Caprines;*
 - (iii) Suillines;*
 - (iv) Bovines; and*

and includes poultry and fish

AND WHEREAS, the slaughtering of any other species other than the ones listed in sub-regulation 2.5.1(a) of the Regulation is not permissible under the FSS Act and Regulation.

- 3. AND WHEREAS, for strict compliance of the FSS Act and Regulation and in order to regulate the safety of food articles safe for human consumption it is necessary to ban slaughter and sale of dog meat in the State of Nagaland.*
- 4. NOW THEREFORE, in consonance with the provisions of the FSS Act and Regulation, the following are banned with immediate effect:*
 - (a) Commercial import and trading of dogs and dog markets.*
 - (b) Commercial sale of dog meat in markets and dine in restaurants.*
- 5. Any person found violating this order shall be liable to be punished U.S 428 and 429 of the Indian Penal Code, 1860 and Section 11 Prevention of Cruelty to Animals Act, 1960 and or any such other provisions of law as may be applicable.*
- 6. This shall be enforced by the District Administration, Police, Municipal Administration and the Veterinary and Animal Husbandry Department severely as well as jointly.*
- 7. This is issued in pursuance to the approval of the Cabinet vide Memorandum No.CAB-2/2013 (Pt), dated 04.07.2020.*

(Temjen Toy)
Chief Secretary

No.CSO/CORRES-19/CAB/2017

Dated Kohima, the 4th July 2020.

Copy to:

- 1. The Commissioner and Secretary to Governor of Nagaland, Kohima for kind information.*
- 2. The ACS to Chief Minister, Nagaland, Kohima for kind information.*
- 3. The Sr. P.S to Deputy Chief Minister, Nagaland, Kohima for kind information.*

- 4.** *The Sr. P.S to All Ministers/Advisors, Nagaland, Kohima for kind information.*
- 5.** *The Sr. P.S to Speaker, Nagaland Legislative Assembly, Nagaland, Kohima for kind information.*
- 6.** *All AHoDs/ HoDs to the Government of Nagaland, Kohima for kind information.*
- 7.** *The Director, IPR for wide publicity.*
- 8.** *The Deputy Commissioners of all Districts for information and necessary action.*
- 9.** *The commissioner of Police Dimapur/All SPs, Nagaland, Kohima for information and necessary action.*
- 10.** *Office Copy.*

(Temjen Toy)
Chief Secretary"

7. The said notification was stated to have been issued purportedly pursuant to a Circular dated 06.08.2014 issued by the Director (Enforcement), Food Safety and Standards Authority of India (FSSAI), Ministry of Health and Family Welfare, which is stated to have clarified that the slaughter of animals other than those enumerated under Regulation 2.5.1(a) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, is not permissible. The said circular dated 06.08.2014 is reproduced as follows:

***"File No. No. 1-988/FSSAI/Imports/2014
Food Safety and Standards Authority of India
(Ministry of Health and Family Welfare)***

***FDA Bhavan, Kotla Road
New Delhi-110002
Date: 06 August, 2014***

Subject: Slaughtering of animals not permissible under the FSS Act and Regulations.

Your kind attention is invited towards Regulation 2.5 of the FSS (Food Product Standards and Food Additives) Regulations, 2011, wherein definitions of animals, carcass and meat are given.

As per sub-regulation 2.5.1 (a) "animal" means an animal belonging to any of the species specified below:-

(i) Ovines;

(ii) Caprines;

(iii) Suillines;

(iv) Bovines;

and includes poultry and fish.

The slaughtering of animals of any other species other than the one listed above is not permissible under the FSS Act and Regulations.

In view of the above, you are requested to kindly strengthen the vigil and ensure the compliance of the provisions of FSS Act, 2006.

Yours sincerely,

*(Bimal Kumar Dubey)
Director (Enforcement)*

To:

All the Food Safety Commissioners."

8. Being highly aggrieved, the writ petitioners in writ petition/respondents No.1, 2 and 3 herein challenged the notification dated 04.07.2020, *inter alia*, on the grounds of lack of statutory authority and jurisdiction of the Chief Secretary of the State of Nagaland; misinterpretation of the Food Safety and Standards Act, 2006, and the Regulations of 2011; and on the ground of violation of Articles 14, 19(1)(g) and 21 of the Constitution of India.

9. By judgment dated 02.06.2023, the learned Single Judge allowed the writ petition and quashed the impugned notification dated 04.07.2020 issued by the Chief Secretary, Government of Nagaland. In the said judgment and order, the learned Single Judge held that Regulation 2.5 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, prescribes the standards and procedure for processing meat of animals enumerated therein and does not prohibit the slaughter of animals not listed; that the definition of "food" under Section 3(j) of the Food Safety and Standards Act, 2006, is wide enough to include dog meat. It also held that the FSSAI exceeded its delegated powers under Section 16 of the Act by issuing the Circular dated 06.08.2014; and that the Chief Secretary, Government of Nagaland, was not the competent authority to issue the notification dated 04.07.2020 in view of Section 30 of the Food Safety and Standards Act, 2006 which vests such power in the Commissioner of Food Safety. It further held that the impugned notification issued by the Chief Secretary of the State of Nagaland lacked statutory backing and violated the constitutional rights guaranteed to the petitioners.

10. The appellants No.1 in Writ appeal No.7/2023 'people for Animals, claimed to be India's largest animal welfare organization working to rescue and rehabilitate injured, sick, and disabled animals across the states and Union Territories of India and the appellant No.2 a organization recognized by animal Welfare Board of India, involved in protection and conservation of wildlife claims to works against cruelty to animal and other related field and instrumental in preventing the trade and sale of dog meat globally, ending animal testing for cosmetics in India and intervening on behalf of wild life and farm animals.

11. Being aggrieved by the impugned judgment and order dated 02.06.2023 passed by the learned Single Judge, the appellants in W.A No.7/2024 preferred this writ appeal and contend that the impugned judgment and order dated 02.06.2023 passed by the learned Single Judge is legally erroneous in law and has overlooked the statutory framework governing food safety in the country. It is submitted that the learned Single Judge allowed the writ petition without properly considering the provisions of the Food Safety and Standards Act, 2006 and the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, which do not recognize dog meat as a permitted food item.

12. The appellants contended that the learned Single Judge failed to appreciate that the State Notification was only reiterating the existing Central law under the Food Safety and Standards Act, 2006 and the terms of Regulation 2.5.1 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011 framed thereunder. The Notification had been issued with Cabinet approval and was within the competence of the State authorities. However, the learned Single Judge quashed the Notification on the incorrect assumption that the State Chief Secretary (respondent No.4) who had issued the notification dated 04.7.2020 with cabinet approval lacked the power to issue the said notification. It is also contended that the writ petition did not challenge the validity of the Central Act or the Regulations, yet the learned Single Judge went beyond the scope of the petition and interpreted the statutory provisions and the central notification in a manner contrary to their plain meaning.

13. The appellants submitted that the entire controversy hinges on whether dog meat constitutes "food" under the Food Safety and Standard Act, 2006 (FSSA). Section 3(1)(j) of the FSSA defines "food" as any substance intended for human consumption.

14. It is argued that the Food Safety and Standards Act, 2006 is a parliamentary legislation enacted to regulate food safety and ensure that only safe and wholesome food is made available for human consumption. It is contended that Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011, had been framed/enacted on 01.08.2011 by the Ministry of Health and Family Welfare, Government of India, in exercise of the powers conferred u/s. 92(2)(e) *read with* section 16 of the Food Safety and Standards Act, 2006. Regulation 2.5.1 (a) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011, states that "animal" means an animal belonging to the following species i.e. Ovines; Caprines; Suillines; Bovines; Domestic Rabbits and includes poultry and fish, and deliberately excludes dogs from the ambit of permitted slaughtered meat/animal. Thus, the Regulations framed under the Act clearly define the animals whose meat may be used as food, and dogs are not included in that category. The learned Single Judge, by holding that the omission of dogs in the definition as due to oversight of the Respondent No.7 and the respondent No.8 since dog meat is consumed only in some parts of North East India, effectively and substituted judicial interpretation in place of clear statutory language, which is impermissible in law.

15. To support her argument, the learned senior counsel for the appellants relied on the decision of the Hon'ble Supreme Court in the case of ***R.S. Nayak vs. A.R. Antulay, reported in 1984(2)SCC 183***

(paragraph No.180), wherein it was held that when the language of a statute is clear and unambiguous, the duty of the court is to give effect to the natural meaning of the word used in the provision. The question of construction arises only in the event of an ambiguity; thus, the Court cannot read words into the statute or alter its meaning.

16. The appellants further argued that Under Section 11 of the Prevention of Cruelty to Animals Act, 1960 (PCA Act), killing animals is prohibited except when done for “food for mankind”. Since dog meat is not “food” under the FSSA, the exception under Section 11(3)(e) does not apply. Thus, killing dogs for commercial consumption attracts penal consequences under the PCA Act, and also under Section 325 of the Bharatiya Nyaya Sanhita (BNS). She further submitted that the FSSA has overriding effect under Section 89, and therefore its definition of food prevails over other laws.

17. The appellants submitted that the FSSAI Circular dated 06.08.2014 clarifies that only animals listed in Regulation 2.5.1(a) can be slaughtered for food. Slaughter of any other species is not permissible. It is submitted that the learned Single Judge did not set aside the said Circular. Therefore, the prohibition under the said circular continues to operate. It is submitted that the 2020 Notification issued by the Chief Secretary of Nagaland merely reiterates and enforces this existing legal position, and does not create a new prohibition. In support of her submission reliance is placed on the decision in **Hifzur Rahman Choudhary v. Union of India**, reported in **(2023) 1 GLT 478**, wherein, it was held that religious practices like animal sacrifice can continue but they must be done strictly in accordance with law meant to prevent cruelty and illegality.

18. It is submitted that the learned Single Judge quashed the notification on the ground that only the Food Safety Commissioner under Section 30 of the FSSA could issue such a prohibition and the Chief Secretary of the State is not authorized. The appellants contend that this finding is incorrect since Section 86, FSSA empowers the Central Government to issue directions to States for implementation of the Act and the 2014 Circular constitutes one such direction and the State is bound to comply with it. Further, Article 256 of the Constitution obligates States to ensure compliance with Parliamentary laws. According to the appellants, the 2020 Notification was issued pursuant to Central directions, and with the cabinet approval. Thus, the Chief Secretary acted in valid exercise of executive power to enforce central law. To support her arguments, Reliance is placed on the decision of ***Swaraj Abhiyan v. Union of India & ors.***, reported in **(2018) 12 SCC 170**; also on the decision in ***Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal***, reported in **(1983) 2 SCC 422**, which held that wrong source of power does not invalidate action.

19. The appellants also contend that the learned Single Judge failed to consider the serious public health risk arising from the dog meat consumption, including the risk of diseases such as rabies, Trichinellosis, Salmonella and E. coli infections. She submitted that the scientific studies indicate that the dog meat trade increases risk of zoonotic diseases, and poses a serious threat to public health. She further submitted that despite acknowledging these risks and the violation of several statutory provisions, including the Food Safety and Standards Act, 2006 and the Prevention of Cruelty to Animals laws, the learned Single Judge merely suggested awareness measures instead of upholding the prohibition. It is also contended that the right to carry on trade under Article 19(1)(g) of

the Constitution is subject to reasonable restrictions under Article 19(6) when public health and safety under Article 21 are involved. She placed Reliance on the related decision in ***Dhariwal Industries Ltd. & Anr. v. State of Maharashtra & Ors***, reported in 2012 SCC OnLine Bom 1370; ***Navtej Singh Johar & Ors. v. Union of India***, reported in (2018) 10 SCC 1 regarding *the right to health under Article 21*; and ***K. S. Puttaswamy & Anr. v. Union of India & Anr.***, reported in (2019) 1 SCC 1.

20. In response to the issue relating to Article 371A, the appellants submit that FSSA is a law relating to public health and food safety, not social or religious practices. Therefore, it does not require a resolution of the Nagaland Legislative Assembly. Even otherwise, no material has been placed to show that consumption of dog meat is an essential practice of Naga culture. Hence, Article 371A is not attracted. In this regard, reliance is placed on the decision in ***State of Bombay v. F.N. Balsara (pith and substance doctrine)***; and ***Commissioner of Police v. Jagdishwarananda (essential practice test)***.

21. The learned senior counsel for the appellants argued that the respondents No.1,2 and 3 engaged in the dog meat trade do not possess valid food safety licences under the FSSA and they were not complying with the mandatory hygienic and licensing requirements under the Food Safety laws and the Slaughter House Rules. Municipal permissions, if any, cannot substitute statutory licensing requirements. Therefore, they have no legal right enforceable under Article 226. However, the learned Single Judge, permitted them to continue their trade based on temporary licenses and livelihood considerations, despite the activity being contrary

to law. In this regard, she placed reliance on decision in ***Kishore Samrite v. State of U.P. (2013) 2 SCC 398.***

22. The appellants submitted that the learned Single Judge misinterpreted the provisions of the FSSA and Regulations and ignored the binding effect of the 2014 Circular and incorrectly held that the Chief Secretary lacked authority by overlooking the public health considerations; and granted relief despite absence of legal right in favour of the writ petitioners.

23. Accordingly, the appellants pray that the judgment dated 02.06.2023 be set aside and the Notification dated 04.07.2020 be upheld.

24. The appellant in writ appeal No.12/2024 represent the NGO- by name Akhil Bharat Go Seva Sangh, a registered Charitable trust claims to have contributed towards the Welfare of farmers, non-violence agriculture, animal welfare and their protection.

25. Being aggrieved by the impugned judgment and order dated 02.006.2023 passed by the Id. Single Judge, they also preferred this writ appeal No.12/2024 and contended that the learned Single Judge erred in law while passing the judgment dated 02.06.2023. The appellant contended that the Directive dated 06.08.2014 issued by the Food Safety and Standards Authority of India (FSSAI) has statutory backing under Section 16(5) of the Food Safety and Standards Act, 2006. The directive was issued by the Food Authority to all Food Safety Commissioners and therefore has the force of law. Although the writ petition challenged the said directive, the learned Single Judge did not set it aside. Hence, the directive continues to remain valid and enforceable, and the Food Commissioner of the State of Nagaland is legally bound to implement it.

26. The appellants further contended that the order dated 04.07.2020 issued by the Chief Secretary of the State directing implementation of the Central Government's directive is also legally valid. According to the learned counsel for the appellant, the Chief Secretary, as the head of the State administration, is responsible for ensuring that directions issued under a law made by Parliament are properly implemented in the State. The order of the Chief Secretary only supports and facilitates the implementation of the directive issued by the Food safety and Standard Authority of India and does not override the powers of the Food Commissioner.

27. The learned counsel for the appellant also argued that under Article 256 of the Constitution of India, every State is constitutionally obliged to ensure compliance with laws made by Parliament. Therefore, the State authorities, including the Chief Secretary, are duty bound to enforce the provisions of the Food Safety and Standards Act, 2006 and the directives issued under it. He further submitted that it is true that the Food Commissioner of the Nagaland State is required to abide by the orders passed by the Food Authority under the Food Safety Act of 2006, however, the Chief Secretary can also ensure that the directives issued by any statutory authority under a law made by the Parliament is duly carried out in the State. Thus, according to the appellant the order of the Chief Secretary dated 04.07.2020 is as equal/ complementary /supplementary to the directions issued by the Food Authority under Section-16(5) of the Food Safety Act of 2006. It is an addition and not derogation to the directive issued under Section-16(5) of the Food Safety Act, 2006, and it continues to be legally enforceable order. The learned senior counsel for the appellants further submitted that the executive

authorities of the State cannot ignore such directions and must ensure that the law is properly implemented.

28. The learned senior counsel for the appellants further submitted that the Food Safety and Standards Act, 2006 is a comprehensive legislation enacted to ensure the availability of safe and wholesome food for human consumption. The Act and the Regulations framed in 2011 clearly specify the animals whose meat may be used for human consumption. Dogs are not included in the list of permitted animals. Therefore, allowing the trade or consumption of dog meat would be contrary to the statutory scheme of the Act and the Regulations.

29. The appellants also emphasize the importance of public health under Article 21 of the Constitution and contended that Article-21 is also not an absolute right. Even if a certain right has been read as integral part of Article-21, they are subject to certain reasonable restrictions. This has been held by the Coram of Nine Judges Constitutional Bench in right to 'Privacy Case' (K. Puttaswamy (supra)). The relevant extract of the same is reproduced herein below:-

".....567. In view of the foregoing discussion, my answer to Question 2. Is that right to privacy" is a part of fundamental right of a citizen guaranteed under Part III of the Constitution. However, it is not an absolute right but is subject to certain reasonable restrictions, which the State is entitled to impose on the basis of social, moral and compelling public interest in accordance with law."

The learned senior counsel argued that the writ petition was filed by traders who wish to continue their trade without proper regulatory

control. While the right to carry on trade under Article 19(1)(g) exists, it is subject to reasonable restrictions, especially when public health and safety are involved. The right to life under Article 21 includes the right to safe and healthy food, but it does not give a person an unrestricted right to consume any food of his choice, particularly if it poses health risks.

30. The further contention of the appellants is that the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011 forms a complete code governing the slaughter of animals for human consumption. Only the animals specifically mentioned in the Regulations can be slaughtered and sold as meat. Since dogs are deliberately excluded from this list, their slaughter and sale as food cannot be permitted. The learned senior counsel for the appellants also point out that the issue of cultural practices under Article 371A of the Constitution was not raised by the original writ petitioners themselves, as they had clearly stated in their petition that they were not relying on cultural or customary practices to justify the consumption of dog meat. Therefore, according to the appellants, the learned Single Judge erred in law and the impugned judgment deserves to be set aside.

31. The learned Additional Advocate General, Nagaland, fairly submitted that the State Legislature had not expressly adopted the Food Safety and Standards Act, 2006, till date though administrative steps had been taken in that regard. She further submitted that the State respondent had also not filed any affidavit.

32. Mr. Iralu, the learned counsel for the writ petitioner/respondents No.1, 2 & 3 in Writ Appeal No.7 of 2023 supported the judgment of the learned Single Judge and submitted that the Food Safety and Standard Act, 2006 and the regulations do not impose any prohibition on the

slaughter or consumption of dog meat. He further submitted that any claim that dog meat is unsafe for consumption must be supported by scientific material, which is absent in the instant case, as claimed by the appellants. He also submitted that the consumption of dog meat has been prevalent among the Naga tribes of the State since time immemorial and is historically traceable back to their customs and traditional practices and that the banned imposed on them, amounts to interference in their livelihood. In support of his submissions, he referred to certain books published earlier based on research conducted by outsiders, wherein it is reflected that the Nagas had been consuming dog meat even during those times.

33. Mr. Iralu, the learned counsel for the respondents further submitted that the right to choose food of one's own choice forms part of personal liberty under Article 21 of the Constitution of India. Blanket ban order dated 04.07.2020 issued by respondent No.4 on slaughtering and sale of dog meat in market in the State of Nagaland and dine-in restaurants is not permission under the Food Safety Standard Act, 2006 and Regulation, 2011 and as such the same is violation of the Fundamental Right guaranteed under Article 19 (1) (g) and Article 21 of the Constitution of India. He also clarified that, if any action were warranted, it could only be taken by the Commissioner of Food Safety under Section 30 of the Act and that the respondent No.4 is not authorized and competent authority to issue the order/notification dated 04.07.2020. In support of his submissions, he placed reliance on the decisions reported in

- i. ***Hifzur Rahman Choudhury v. Union of India***, reported in ***2022 SCC OnLine Gau 1050***; and

ii. ***K.S. Puttaswamy (Privacy-9J) v. Union of India***, reported in ***(2017) 10 SCC 1***.

34. Mr. Alezo Kire learned counsel for the Respondent No 1,2 & 3 in Writ Appeal No.12/2024 (writ petitioners) supports the judgment of the learned Single Judge and submits that the impugned Notification dated 04.07.2020 was rightly set aside.

35. It is submitted that the Food Safety and Standards Act, 2006 (FSSA) does not confer any general power on the authorities to impose a blanket ban on any food item. Section 18 of the Act only lays down general principles. In particular, Section 18(1)(f) provides that where any food poses a health risk, the authorities are required to inform the public, and take appropriate preventive steps. Thus, the Act contemplates regulation and control, not a complete prohibition. Section 18(1)(f), read as under:

"In cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness, and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce, or eliminate that risk."

36. It is further submitted that, Sections 30 and 48 of the Act empower the Food Safety Commissioner to prohibit unsafe food only in specific situations and for a limited period, following due procedure. Therefore,

the power under the Act is limited and conditional, and cannot justify a general and permanent ban like the impugned Notification.

37. The learned counsel for the respondent Nos. 1, 2 & 3 submitted that the term "food" is broad and must be understood in its ordinary sense as something consumed for nourishment. It is argued that "Food" includes anything eaten for sustenance and nutrition. Dog meat has traditionally been consumed by certain communities, including Nagas, as a source of nutrition.

38. In support of his submission, he placed reliance on the following decision:

(i) ***Collector of Central Excise v. M/s Parle Exports (P) Ltd.***, reported in ***(1989) 1 SCC 345***, where at paragraph 6, it is held that Food is "that which nourishes and sustains the human body for growth, work, repair, and maintenance of vital processes."

(ii) ***Pyarali K. Tejani vs. Mahadeo Ramchandra Dange & Ors.***, reported in ***(1974) 1 SCC 167***, where at paragraph 14 it is held that, "It is commonplace knowledge that the word "food" is a very general term and applies to all that is eaten by man for nourishment and takes in subsidiaries."

39. Thus, merely because a particular item is not specifically mentioned in the Regulations, it cannot be excluded from the definition of food.

40. The learned counsel for the respondents no.1,2 and 3 further submitted that, there is no express prohibition in law against consumption of dog meat. In the absence of a clear legal bar, such activity cannot be treated as illegal. In this regard, he placed reliance on

the decision in ***Shashimani Mishra & Anr. vs. State of M.P & Anr.***, reported in ***ILR 2019 MP 1397***, where at paragraph 14, it is held that, *"the Court proceeds to examine as to what makes an act lawful or legal? and in the converse, what is unlawful or illegal? Where the law permits a certain act, there is no doubt that doing of that act would be legal. Similarly, where the law prohibits a particular act, the doing of that act would be illegal. However, where the law does not explicitly permit an act and neither prohibit it, or in other words, where the law of the land is completely silent about the legality or illegality of the act, would the doing of that act be unlawful, only because it is at conflict with the contemporary mores of the society and an overwhelmingly preponderant public perception of what is right? The liberty of an individual to act in any manner where such act is not prohibited under the law, is unfettered and unquestionable."* Therefore, the respondents contend that the State cannot impose restrictions based on moral or social perceptions alone, unless there is a clear statutory prohibition.

41. The learned counsel for the respondents dispute the appellants' claim that consumption of dog meat poses serious health risks. It is submitted that the materials relied upon by the appellants relate to foreign jurisdictions and different factual contexts. The learned respondents counsel contended that there is no conclusive scientific evidence showing that consumption of dog meat, by itself, is inherently unsafe. While referring to the submission of the learned counsel for the appellants, it is further pointed out that historical instances, such as the ban in Hong Kong, were influenced by specific circumstances like rabies outbreaks and social pressures, and cannot be directly applied in the present context.

42. The learned counsel for the respondents contended that the concerns of the appellant regarding slaughter, hygiene, and transport of animals are already addressed under existing laws, including the relevant Slaughter House Rules. As, such, there is no need for a complete ban when regulatory mechanisms are already in place.

43. In view of the above, the learned counsel for the respondents submitted that the impugned Notification lacked statutory authority, it imposed an excessive and unwarranted restriction, and the learned Single Judge rightly quashed the same. Accordingly, he submitted that the writ appeal deserves to be dismissed.

44. From the pleadings and the submission of the parties, the following points emerges for determination by this Court:

- i. Whether Regulation 2.5.1(A) of the FSS Regulations, 2011 prohibits the slaughter of animals not enumerated therein;
- ii. Whether the FSSAI Circular dated 06.08.2014 has statutory force so as to impose a ban;
- iii. Whether the Chief Secretary of the State of Nagaland was competent to issue the impugned notification dated 04.07.2020;
- iv. Whether the judgment passed by the learned Single Judge Warrants interference.

45. For a better understanding, Regulation 2.5.1 of the Food Safety and Standard (Food Products Standards and Food Activities) Regulations, 2011 is reproduced hereinbelow:

"2.5 Meat and Meat Products:"

2.5.1 Definition:

(a) "animal" means an animal belonging to any of the species specified below: -

(i) Ovines;

(ii) Caprines;

(iii) Suillines;

(iv) Bovines;

(v) Domestic rabbits (Oryctolagus cuniculus)] and includes poultry and fish.

[(b) "carcass" means the body of any slaughtered food animal after bleeding and dressing;

(c) "meat" means all edible parts (including edible offal) of any food animal slaughtered in an abattoir that are intended for or have been judged as safe and suitable for, human consumption;

(d) "offal" means all the body parts of slaughtered food animals other than carcass;

(e) "edible offal tissue" are those parts of an animal apart from meat from the carcass that are considered fit for human consumption;

(f) "meat food products" means any product prepared from meat and other ingredients through various processing methods in which meat should be the major ingredient of all the essential ingredients but shall not include the following products:

(i) Meat extracts, soup, stock and meat sauces;

(ii) Products containing fragments of meat, but which contain a quantity of meat or meat product not exceeding ten percent of the total weight of the final product;

(g) "slaughter" means killing of food animals for human consumption in an authorized slaughterhouse;

(h) "Slaughter house/ abattoir" means a licensed place/ building/ premises where food animals are slaughtered humanely in hygienic

manner with proper ante-mortem and post-mortem inspection by veterinarian for human consumption;

(i) "Egg" means eggs-in-shell other than broken, incubated or cooked eggs, laid by poultry species or birds meant for direct human consumption or for the preparation of egg products.]"

46. A careful reading of Regulation 2.5.1 of the Food Safety and Standard (Food Products Standards and Food Activities) Regulations, 2011, provides standards for the slaughter and processing of specified animals to ensure food safety. A plain reading of the Regulation shows that it regulates the manner of processing of meat of the enumerated animals; it does not impose any express or implied prohibition or bar on the slaughter or consumption of animals not listed therein. The omission of dogs from Regulation 2.5.1(A) cannot, by any interpretative process, be elevated to a statutory ban. Penal or prohibitory provisions must be explicit and unambiguous, particularly where they affect livelihood and traditional practices. It appears that the parent Act contemplates no such prohibition and that the Regulation is procedural and regulatory, not prohibitory. Therefore, we find force in the submission that the same cannot be mechanically applied so as to create a prohibition through delegated legislation.

47. With regard to the validity of the circular dated 06.08.2014, issued by the Food Safety and Standard Authority of India, it is contended that Section 16 of the FSS Act delineates the functions of the Food Safety and Standard Authority of India. While the Authority may issue advisories or directions to ensure food safety, it cannot, by way of a circular, create substantive provisions not contemplated by the Act or the Regulations.

48. The circular dated 06.08.2014 which purports to prohibit the slaughter of animals other than those contained in Regulation 2.5.1(A), finds no support in any express statutory provision. Such an exercise clearly transgresses the limits of delegated authority. Executive instructions cannot override or enlarge the scope of delegated legislation. Thus, the issue is decided accordingly.

49. Coming to the issue of competence of the Chief Secretary, Section 30 of the Act specifically vests enforcement powers in the Commissioner of Food Safety. The Act provides a complete statutory mechanism for the regulation, prohibition, or restriction of food articles in the interest of public health. Section 30 of the FSS Act, 2006 reads as under:

"30. Commissioner of Food Safety of the State. -

(1) The State Government shall appoint the Commissioner of Food Safety for the State for efficient implementation of food safety and standards and other requirements laid down under this Act and the rules and regulations made thereunder.

(2) The Commissioner of Food Safety shall perform all or any of the following functions, namely:-

(a) prohibit in the interest of public health, the manufacture, storage, distribution or sale of any article of food, either in the whole of the State or any area or part thereof for such period, not exceeding one year, as may be specified in the order notified in this behalf in the Official Gazette;

(b) carry out survey of the industrial units engaged in the manufacture or processing of food in the State to find out compliance by such units of the standards notified by the Food Authority for various articles of food;

(c) conduct or organise training programmes for the personnel of the office of the Commissioner of Food Safety and, on a wider

scale, for different segments of food chain for generating awareness on food safety;

(d) ensure an efficient and uniform implementation of the standards and other requirements as specified and also ensure a high standard of objectivity, accountability, practicability, transparency and credibility;

(e) sanction prosecution for offences punishable with imprisonment under this Act;

(f) such other functions as the State Government may, in consultation with the Food Authority, prescribe.

(3) The Commissioner of Food Safety may, by Order, delegate, subject to such conditions and restrictions as may be specified in the Order, such of his powers and functions under this Act (except the power to appoint Designated Officer, Food Safety Officer and Food Analyst) as he may deem necessary or expedient to any officer subordinate to him.

50. The contention of the appellant is that the order/notification dated 04.07.2020 is backed by the Cabinet decision. However, even assuming that the State Cabinet had taken a policy decision, the implementation of such a decision had to be carried out through the authority designated under the statute. The Chief Secretary, though high in the administrative hierarchy, cannot usurp statutory functions assigned to a specific authority when the Commissioner for Food Safety for the State of Nagaland has been appointed. Article 256 of the Constitution cannot be invoked to justify an action which is otherwise *ultra vires* the statute.

51. In this regard, the learned counsel for the respondents referring to the principle of law laid down by the Hon'ble Supreme Court submitted that where the law prescribes a thing to be done in a particular manner, following a particular procedure, it should be done in the said manner,

following the procedure prescribed by law. He also referred the decision of the Hon'ble Supreme Court in the case of ***R.S Nayak*** (supra) whereby it has been held that if the words statute is clean and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words in the statute would be self defeating. Similar principle has been laid down by the Hon'ble Supreme Court in the case of ***Grasim Industries Limited vs. Collector of Customs***, reported in ***(2002) 4 SCC 297***, where it has been observed that "*Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions*". Section 30 of Food Safety and Standard Authority of India authorized *The State Government to appoint the Commissioner of Food Safety for the State for efficient implementation of food safety and standards and other requirements laid down under the Act and the rules and regulations made thereunder who is the authority to issue any order in respect of the matter relating to Food safety in the state.*

52. The right to carry on trade guaranteed under Article 19(1)(g) of the Constitution of India, though subject to reasonable restrictions, cannot be curtailed by an executive order lacking statutory backing. Further, while Article 21 of the Constitution may not guarantee an absolute right to consume a particular food, any State interference must nonetheless satisfy the test of procedure established by law. In the absence of a valid law or statutory order, the impugned ban order/notification dated

04.07.2020 issued by the Chief Secretary of the State of Nagaland cannot be sustained.

53. Furthermore, the appellants could not place any material on record to demonstrate, or to show based on scientific reason that dog meat is per se unsafe for human consumption.

54. The rival submissions of the learned counsel for the parties have been heard and considered. Upon consideration of the entire matter, we find no infirmity in the judgment and order dated 02.06.2023 passed by the learned Single Judge. The impugned notification dated 04.07.2020 was issued by the Chief Secretary of the State of Nagaland without any authority of law and in excess of the executive power conferred upon him. On the basis of a circular lacking statutory force, the learned Single Judge rightly quashed the said notification.

55. In view of the observations made above, both the writ appeals, being WA No. 7 of 2023 and WA No. 12 of 2024, are dismissed being devoid of merit. The judgment and order dated 02.06.2023 passed in WP(C) No. 128(K) of 2020 is affirmed.

56. With the above, the writ appeals stand disposed of.

Sd/- Budi Habung
JUDGE

[ROBIN PHUKAN, J.]
(Dissenting)

57. I have carefully gone through the judgment, authored by my esteemed brother. However, I regret my inability to agree with the

judgment, so prepared by him. The reasons for disagreement are being noted in the following para.

Background Facts Leading to Filing of the Appeals :-

58. The background facts, leading to filing of the present appeals, are briefly stated as under:-

“The Parliament has enacted the Food Safety and Standards (FSS) Act, on 23.08.2006, with a view to consolidate the law relating to food and to establish the Food Safety and Standards Authority of India (FSSAI) for laying down science based standards for articles of food and to regulate their manufacture, storage etc. and to ensure availability of safe, wholesome food for human consumption. Along with the said Act, the Ministry of Health and Family Welfare has also framed Food Safety and Standards (FSS) Regulation on 01.08.2011, in exercise of power under Section 92(2)(e) read with Section 16 of the FSS Act. Regulation 2.5.1(a) of the FSS Regulation states that ‘animal’ means an animal belonging to the following species i.e. Ovines, Caprines, Suillines, Bovines, Domestic Rabbits and including poultry and fish, and excluded dog from the ambit of permitted slaughtered meat/animal. Thereafter, the Director (Enforcement), FSSAI/respondent No.7 has issued one Circular on 06.08.2014 under the aegis of the Ministry of Health and Family Welfare, reproducing the contents of the Regulation 2.5.1(a), and thereby reiterating that the slaughtering of any other species for food is not permissible under the FSS Act and Regulation thereunder.

Thereafter, the respondent No.4, the State of Nagaland, represented by the Chief Secretary, has issued one Notification on 04.07.2020, banning the commercial import, trading of dogs and dog markets as well as commercial sale of dog meat in markets and dine in restaurants, as it is unsafe for human consumption, and thereby reiterating the prevailing law i.e. FSS Act and Regulation 2.5.1(a) of FSS Regulation. The said Notification was issued as per direction of the Cabinet, after detailed deliberation on the import/commercial sale of dog/ dog meat in the State and due recognition of the exclusion of dogs/dog meat under the FSS Regulation. Thereafter, the respondent Nos.1—3, namely, Neizevolie Kuotsu alias Toni Kuotsu, Abei Zatsu and Ketounyuu, who are traders of dog meat, have preferred a civil writ petition, being WP(C) No.128/2020, on 02.09.2020, before the learned Single Judge, Kohima Bench, challenging the Notification dated 04.07.2020, and they also challenged the Cabinet decision directing the said Notification. It is the contention of the respondent Nos.1—3 that they have been carrying on the business of import/export/sale/trade in dog/dog meat for several years on the strength of trade licences granted by the respondent No.6 i.e. the Kohima Municipal Council (KMC) and the impugned Notification issued by the respondent No.4, during Covid time in the year 2020, impinged on their constitutional rights and privileges. Thereafter, vide order dated 25.11.2020, the learned Single Judge has stayed operation of the Notification primarily on the ground that the business/livelihood of the respondent Nos.1—3 has been adversely affected due to the said Notification and the prevailing Covid pandemic situation. The other respondents, being respondent

Nos.4 and 5 have filed their counter affidavit opposing the stance of the respondent Nos.1—3 and stating that the Notification has been legally issued as per Cabinet direction and in conformity with the prevailing law i.e. FSS Act/Regulation and that the respondent No.4 has the right to impose complete restrictions on the constitutional freedom to practice any occupation/trade/business in the interest of general public and to promote the common good of the people.

In the said writ petition, the appellants herein, being an animal welfare organization and interested in the welfare/protection/interest of dogs, preferred one intervention application in the said writ petition and the said application was allowed vide order dated 16.02.2021, and thereafter, the respondent Nos.1—3 had preferred an amendment application before the learned Single Judge for liberty to additionally challenge the Circular issued by the Director (Enforcement), FSSAI/respondent No.7, as they claimed to have no prior knowledge of the same and the same was allowed vide order dated 30.07.2021, and additionally impleaded respondent Nos.7 and 8 for complete and effective adjudication of the matter.

Thereafter, hearing learned counsel for both the parties, the learned Single Judge vide impugned judgment and order dated 02.06.2023 has allowed the writ petition by setting aside the notification issued by the respondent No.4 dated 04.07.2020.

Submission of the Respondent No. 1, 2 and 3 [original writ Petitioner No.1, 2 & 3] before the learned Single Judge.

58.1. The basic contentions of the petitioners before the learned Single Judge, was that the Notification dated 04.07.2020, issued by Respondent No. 4, is not permissible under the Food Safety Standard Act, 2006 and Regulation, 2011 banning on slaughtering and sale of dogs meat in market in the State Nagaland and dine-in restaurants, is violation of their fundamental right guaranteed under Article 19(1)(g) and Article 21 of the Constitution of India, as the petitioners deal with the business of import and export of dogs meat under valid trade license issued by the concerned Municipal Office. Further contention is that the consumption of dogs meat by Nagas, is historically traceable back to their customs and traditional practices and banned imposed on them, amounts to interference of their livelihood and further it is contended that the Respondent No.4, is not authorized and competent authority to issued such order by way of Notification dated 04.07.2020.

Submission of the Respondent No. 4 and 5 [State Respondent Nos. 1 & 2] before the learned Single Judge.

58.2. The basic contention of the respondent Nos.4 and 5 before the learned Single Judge, was that the Notification, dated 04.07.2020, was issued as per direction of the Cabinet Decision of the State Government and as per the Food Safety and Standards Act, 2006 and Regulation thereof, which does not permits the slaughter, sale and consumption of dogs meats in the Country and further, it is contended that the right to do business under Article 19(1)(g) of the Constitution of India, is always subject to reasonable restrictions under Article 19(6) of the Constitution of India.

Submission of the Respondent Nos. 7 & 8 [Original Respondent Nos. 4 & 5] before the learned Single Judge.

58.3. The basic contention of the Respondent Nos.7 & 8 [Original Respondent No. 7 & 8] before the learned Single Judge, was that the Food Safety Authority of India has been established under the Act, 2006 which mandated to consolidate the law relating to food and to establish Food Safety and Standard Authority of India for laying down science based standard, for article of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption, is food by human do not include dog or canine under the FSS Act, 2006 and Regulation, 2011.

The Submission of Respondent Nos. 9 & 10 [Intervener Respondent Nos. 6 & 7 before learned Single Judge:-

58.4. The basic contention of the Respondent No. 9 and 10 [6 & 7 in Writ petition] before the learned Single Judge, was that the Circular of the Food Safety Authority of India and the Notification dated 04.07.2020 of the State Government, were issued for enforcement of the Regulation, 2011. Their further contention was that any other animals, not mentioned in the said Regulation, 2011, is held not safe for human consumption and cannot be considered that the temporary import/export permit issued by the local Municipal Council, permitting the petitioners to import dogs from all over India, has been wrongly issued as dogs meat trade, is not permissible all over India, is serious transgression of various statues as well as, the Constitution of India and directives issued by Hon'ble Supreme Court of India. Their further contention is that right to carry out trade and business, as per Article 19(1)(g) of the Constitution of India, is subject to reasonable restrictions, imposed under Article 19(6) which permits the State to make any law imposing reasonable restrictions in the interest of the general public and to protect common people as such said

rights are not absolute. That the respondent No. 8 and 9 further contended the consumption of dog meat carries risk of diseases, like Rabies and illegal killing of dogs and their import/export/running of dogs farm/ confining dogs from killing for dogs meat trade, is definitely cruel and amounts to inflicting of unnecessary pain and suffering.

Points Arose for Consideration Before the learned Single Judge:-

59. In view of the pleadings of the parties and the contentions, so made by their respective counsel, the moot points, that arose for consideration before the learned Single Judge, can be summarize as under:-

- (i) Whether the Food Safety and Standard Authority of India had acted beyond its delegated powers, by issuing the Circular dated 06.08.2014?
- (ii) Whether slaughtering of animals of any other species, other than the one listed in Sub-Regulation 2.5.1(a), is permissible under the FSS Act, 2006 and Regulation 2011?
- (iii) Whether the Chief Secretary, Nagaland, has the authority to issue the Notification, dated 04.07.2020, banning commercial import, trading of dogs and dogs market as well as sale of dog meats in market and dine-in restaurants, while the Food Safety Commissioner is appointed in the State and the Circular, dated 06.08.2014 was addressed to Food Safety Commissioner only?
- (iv) Whether the Fundamental Rights of the petitioners, (respondent No.1-3, herein) and who are traders of dog meat, have been violated in view of impugned Notification dated 04.07.2020 ?

Findings and Decision of the learned Single Judge:-

60. It appears that while allowing the writ petition, the learned Single Judge had recorded its findings as under:

- I. The definition of food, given under the FSS Act in Section 3(j) is wide and liberal enough to include dog meat, since the Act has not defined animal, as defined in the Regulation and as such, the respondent No.7/FSSAI has acted beyond its duties and functions, under Section 16 of the FSS Act.
- II. Dogs have not been mentioned under the definition of 'animals' since dog meat is consumed only in some parts of the North Eastern States and the very idea of consuming dog meat is alien to other parts of the country. The thought of adding canine/dog as an animal for human consumption under Regulation 2.5.1(a) would be inconceivable, since consumption of dog meat would be considered unthinkable.

Regulation 2.5.1 of the FSS Regulation deals only with how to process the animals, mentioned therein and there is no provision in the regulation prohibiting the slaughter of any other animal for human consumption, not mentioned in Regulation 2.5.1(a) of the FSS Regulation.

- III. The respondent No.4 was not the appropriate authority to issue the impugned Notification, dated 04.07.2020, when Section 30 of the FSS Act provides for appointment of a Commissioner of Food Safety for the State for efficient implementation of food safety and standards and other requirements laid down under the Act.

The standards required to be maintained in the slaughter houses, as per the prescribed standard, under Chapter IV of the FSS Regulation, laying down the Specific Hygienic and Sanitary Practices to be followed by Food Business Operators have not been followed and the slaughterhouse Rules have also not been followed. But, this cannot justify the Notification dated 04.07.2020, instead, remedial steps can be taken for enforcing the various provisions of law under the Prevention of Cruelty to Animals Act and the Indian Penal Code.

The prohibition of sale and consumption of dog meat by the Executive Branch of the Government, without there being any law passed by the Legislature, in relation to trade and consumption of dog meat, is liable to be set aside, even though the Notification is said to have been passed in accordance with a Cabinet decision.

- IV. The impugned Notification, dated 04.07.2020, affects the respondent Nos.1—3's earning capacity and fundamental rights under Article 19(1)(g) and Article 21 of the Constitution to earn his livelihood and the freedom to consume food of his choice, however, can be restricted by reasonable restrictions prescribed by law.

The consumption of dog meat appears to be an accepted norm and food amongst the Nagas, even in modern times, wherein the respondent Nos.1—3 are able to earn their livelihood by transporting dogs and selling of dog meat. But, dog meat is not considered a standard food for human

consumption and is excluded from the definition of animals safe for human consumption.

Scientific research carried out in countries like China and Africa shows that the dog meat trade endangers the human population due to the risk of diseases like Rabies and Trichinella infection as well as increased antibiotic resistance and this is contrary to the belief that dog meat has medicinal value and awareness programs should be organized by the State respondents on such issues.

61. The aforesaid findings of the learned Single Judge are being assailed by the appellants, in both the appeals on multiple grounds. The appellants in **WA No.07/2023** have assailed the judgment of the learned Single Judge on following grounds:-

- A. The impugned judgment and order passed by the learned Single Judge affects vital and valuable rights of the appellants, the citizen of Nagaland and works towards serious injustice to the dog populace of India and the learned Single Judge has mechanically allowed the petition in utter disregard of the settled position of law, as laid down in the FSS Act and FSS Regulation, which does not permit consumption of dog meat and the impugned judgment is directly in the teeth of the settled position of law.**
- B. The learned Single Judge has materially ignored the Notification reiterating the prevailing central law i.e. FSS Act/Regulation and erroneously quashed the Notification, which was passed with approval of the State Cabinet on an incorrect premise that the respondent No.4 had no power to issue the impugned Notification.**

- C. The learned Single Judge has failed to appreciate that the petition does not challenge the central law i.e. FSS Act/Regulation themselves and yet, the learned Single Judge has reached beyond the scope of the petition in interpreting and negating the FSS Act/Regulation and the intent of respondent No.7.
- D. The learned Single Judge has failed to consider that the FSS Act is a central legislation that has taken into consideration all the factors while being passed and as such, it becomes law of the land and any activity, contrary to the said law cannot be permitted to continue.
- E. The learned Single Judge has failed to appreciate that the FSS Act and Regulation have to be adhered to, with respect to the subject of 'food', as they are special legislations enacted for the purpose of ensuring availability of safe, wholesome food for human consumption.
- F. The learned Single Judge has not even dealt with and allowed prayers 'B' and 'C' of the petition, praying for quashing and setting aside the Cabinet decision, approving the Notification as well as the Circular dated 06.08.2014, issued by the Director (Enforcement), FSSAI (respondent No.7) to all Food Safety Commissioners, including the respondent No.5, reiterating the terms of Regulation 2.5.1 of the FSS Regulation and stating that only such animals are allowed to be slaughtered and consumed. But, the learned Single Judge has failed to appreciate that the trade of dog meat in Nagaland cannot be effectively permitted just by quashing the said Notification without dealing with the prevailing law, the Cabinet decision, approving the Notification as well as the Circular dated 06.08.2014.

- G. The learned Single Judge has ignored the fact that the FSS Act had been enacted by the Parliament on 23.08.2006 to consolidate the laws relating to food and to establish the FSSAI/respondent No.7 for laying down scientifically reasoned standards for food articles and to regulate their manufacture, storage etc., and to ensure availability of safe, wholesome food for human consumption and also disregarded the fact that the FSS Regulation had been framed/enacted on 01.08.2011, by the Ministry of Health and Family Welfare in exercise of the powers conferred under Section 92(2)(e) read with Section 16 of the FSS Act and that Regulation 2.5.1(a) of the FSS Regulation states that 'animal' means an animal belonging to the species i.e. Ovines, Caprines, Suillines, Bovines, Domestic Rabbits and includes poultry and fish and deliberately excludes dogs from the ambit of permitted slaughtered meat/animal.
- H. The learned Single Judge has erroneously held that there is no basis for prohibition of dog meat, despite duly noting the power of the Central Government to make Regulation under Section 92 of the FSS Act and the notification of the FSS Regulation and erroneously held that dogs are absent from the definition of animals due to oversight/ignorance of the respondent No.7 and the respondent No.8, and since dog meat is consumed only in some parts of North East India and thereby ignored/undermined the competence/authority of the respondent No.7 and the respondent No.8, in framing the FSS Act/Regulation by substituting own views in the statutory arena of the respondent Nos.7 and 8 and such interpolation of the words in the

Parliamentary statute is beyond the power of the learned Single Judge.

- I. The learned Single Judge has failed to consider that the words cannot be read into a statute, which does not exist. Once the legislation is clear and unambiguous, no need for interpretation would arise, as held by the constitution bench of Hon'ble Supreme Court in the case of R.S. Nayak v. A.R. Antulay, reported in (1984) 2 SCC 183. And similar principle has been laid down by the Hon'ble Supreme Court in the case of Grasim Industries Ltd. v. Collector of Customs, Bombay, reported in (2002) 4 SCC 297.”
- J. The learned Single Judge has erroneously interpreted Regulation 2.5 of FSS Regulation, restricting its application to ‘processing’ of meat of animals defined under this clause, despite the plain letter of law and the learned Single Judge, despite noting the public health implications and fatal consequences of dog meat trade, including the risk of Rabies and Trichinella, has merely deemed it adequate to suggest the organization of awareness programmes by the respondent No.4, endangering the citizen of Nagaland.
- K. The learned Single Judge has failed to consider the right under Article 19(1)(g) is subject to reasonable restrictions and the right to life and health under Article 21 of the Constitution of India is paramount.
- L. The learned Single Judge has disregarded that the respondent Nos.1–3 are not even complying the prescribed hygienic and sanitary practices/standards under Chapter IV of the FSS Regulation. They seek to rely on the FSS Act,

while acting in direct contravention of the same and that mere temporary trade licenses from the respondent No.6 do not permit the respondent Nos.1–3 to carry out patently illegal food businesses in meat trade, let alone dog meat trade and feed citizen with unsanitary/unhygienic/untested dog meat.

- M. The learned Single Judge has also committed manifest error of fact and law in passing the impugned judgment by quashing the Notification despite acknowledging that consumption of dog meat in Nagaland leads to joint contravention of several laws including the FSS Act, FSS Regulation, Prevention of Cruelty to Animals Act and Slaughterhouse Rules.
- N. The learned Single Judge, in spite of acknowledging the contravention of prevailing central law, has stated that merely remedial step can be taken for enforcement of such laws. As held by Hon'ble Supreme Court in the case of Indian Council for Enviro-legal Action v. Union of India & Ors., reported in (1996) 5 SCC 281, wherein it has been held that enactment of law, but tolerating its infringement, is worse than not enacting a law at all and continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or not ought to be tolerated in any civilized society and it was also observed that when a law is enacted containing some provisions which prohibit certain type of activities, then, it is of utmost importance that such legal provisions are effectively enforced.

- O. The learned Single Judge has ignored that the respondent Nos.1–3, by treating dog meat as food contrary to the FSS Act/Regulation and thereby trading/feeding such illegal meat to the public and the food safety law recognizes certain animals as ‘food animals’, the Slaughterhouse Rules mandates that slaughter of animals meant for consumption can only be carried out in recognized/licensed slaughterhouses (Rule 3) that too only after pre-mortem examination of the animal by a registered veterinary doctor and under issuance of a fitness certificate (Rule 4) and there are also other mandatory compliances specified under the Slaughterhouse Rules such as that no animal can be slaughtered in a slaughterhouse in sight of other animals (Rule 6).
- P. The learned Single Judge has also failed to consider that the respondent Nos.1–3 are not legally entitled to carry on their trade in dog meat as Food Business Operators without the requisite license/registration under the FSS Act/Regulation.
- Q. The learned Single Judge has also failed to provide any basis for allowing the petition of the respondent Nos.1–3 and that the impugned judgment is liable to be interfered with for violation of the principle of natural justice and as such, it also violates Article 14, 19 and 21 of the Constitution.

61.1. On the other hand, the appellants in WA/12/2024, have assailed the judgment of the learned Single Judge on the following grounds:-

- a. The Learned Single Judge grossly erred in not appreciating the fact that the Regulation 2.5 of the Food Safety and Standards (Food Product

Standards and Food Additives) Regulation, 2011, is a comprehensive and complete code for the purpose of slaughter of animals for consumption. The very heading is "meat and meat products". The said Regulation 2.5.1(a) defines 'animals', Regulation 2.5.1(b) states about the 'carcass' of the animals which has been slaughtered. Therefore, it is quite clear that the carcass would include only those animals which can be slaughtered. Since the word 'animal' is well defined, no other animal could be slaughtered for the further purposes of meat. This is reinforced by the fact of the word 'meat' defined under section 2.5.1(c). The Regulation 2.5.1(c) clearly states about animal part of the carcass. Similarly, section 2.5.1(d) defines 'meat food products'. The word 'animal' animates the entire Regulation with regard to meat and meat products in Regulation 2.5.

- b. The Learned Single Judge failed to appreciate the fact that only those animals which are defined under section 2.5.1(a) of the Regulation of 2011 can be slaughtered and further sold as 'meat and meat products'.
- c. The Learned Single Judge erred in interpreting the entire set of regulations and if the interpretation put forward by the Ld. Single judge is to be true then there is no need for complete code of regulating meat and meat products of animals which can be slaughtered. The interpretation of the Ld. Single Judge would mean that only certain species could be allowed to be slaughtered. It cannot be stated that the animals which are not defined under Regulation 2.5.1(a) can still be slaughtered without any regulatory framework. This would be upending the entire purpose of Regulation of 2011 which seeks to regulate the slaughters of animals (as defined) and selling of meat and meat products.
- d. The Ld. Single Judge erred in not appreciating the fact that there is implicit prohibition to

not to slaughter any animal other than those defined under Regulation 2.5.1(a). Therefore, object of the law cannot be that certain animals which are not defined can be slaughtered/killed and sold in the market without any regulatory framework. A regulatory framework is essential for governing and monitoring the overall procedure and the absence of which would lead to lawlessness.

- e. The Learned Single Judge failed to appreciate the principles laid down by the Hon'ble Supreme Court of India in its various rulings, wherein the Apex Court has expounded that the animal rights under Article 21 of the Constitution of India, the animals though mute have right to survive and subsist. The non-anthropocentric view and the holistic survival for all sentient being has been taken by the Hon'ble Supreme Court of India.
- f. The Learned Single Judge failed to appreciate that the Hon'ble Supreme Court of India has pronounced that 'human centric' and 'human induced development' may lead to ecological disaster. That the animals also have an inherent right to be protected and there is an emergence of what is described as 'multi species jurisprudence'.
- g. The Ld. Single Judge failed to appreciate that the Apex Court has intervened and had given elaborate guidelines in the form of regulations and purposes of slaughter as well as selling of meat and meat products. The various guidelines have been considered by the law makers and are defined under various statutes. Therefore, it would be incongruous to hold that elaborate guidelines issued by the State would not apply to species which are not covered under the category of 'animals'. Such an incongruous interpretation would be nullifying to the very rationale of enacting regulations for the purposes of slaughter and selling of meat and meat products. Besides, it may lead to huge slaughter of animals

without any restrain or regulation. This would defeat the intended purpose of enacting the law.

- h. The Learned Single Judge failed to appreciate that construction of statute which furthers the conservation and preservation of animals should be given credence to. In the present case, the construction of regulation(s) has been done in such a manner which defeats the objective and even kills the animals without any compassion and compunction or regulatory framework.
- i. The Ld. Single Judge failed to appreciate that the Food Safety and Standards Authority of India ('FSSAI') is a statutory body constituted under the Act of 2006 and its powers and functions are well defined. The Section 16 of the said Act of 2006 defines the duties and functions of FSSAI. Section 16(1) clearly states that it is the duty of the FSSAI, for the purpose of distribution and manufacturing, processing, import of the food so as to ensure safe and wholesome food. Further, Section 16(5) of the FSSAI Act, empowers the food authority to issue directions. The FSSAI has issued directions to the State Government(s) to prevent the slaughtering of animals apart from species mentioned in regulation 2.5.1(a) of Regulation, 2011. Thus, the FSSAI vide letter dated 6th August, 2014 exercises it's power emanating under Section 16(1) of the Act read in conjunction with Section 16(5) of the Act. The Food Authority of India is the domain expert. The opinion of the expert should not be likely interfered with, the Food Authority has to discharge various obligations, and one of the obligations is to regulate the meat and meat products. The FSSAI has only issued directions to comply with the provisions of the Act. Therefore, no fault could be found with the aforesaid such direction.
- j. The Ld. Single Judge failed to appreciate that the Chief Secretary represents the highest administrative person in the State Government.

The Notification of 04th July, 2020 was passed by the State Government. It is relevant to mention that even if particular powers are delegated by the State Government, it does not denude of exercising its power. Besides, the Chief Secretary has only issued the letter in compliance of the order which was passed by the FSSAI, which is a statutory body under the statute. The State Government is bound to comply with all the directions which are issued by the FSSAI vide letter dated 14th July'2014 and it cannot ignore the same.

- k. The Ld. Single Judge failed to appreciate that the writ petition is silent with regard to the direction issued by the FSSAI. The Food Authority of India is a statutory body under the Act and the statute casts an obligation and duty upon the Food Authority to discharge its duty in accordance with the provisions of the Act. The Ld. Single Judge failed to appreciate the fact that the original petitioners/Respondent No.1, 2 & 3, have admittedly not challenged the Circular dated 06.08.2014 of the FSSAI.
- 1. The Ld. Single Judge failed to appreciate that the Food Authority has categorically directed that, apart from the animals specifically mentioned under Regulation 2.5.1(a), no other slaughter of animals should take place. The directions issued have a statutory flavor and the State Government is bound by the same. In absence of any challenge to directions issued on 6th August 2014 by the FSSAI, the compliance order of 2020 (as impugned and quashed) shall be of no consequence. The State Government is bound to follow the directions issued by the FSSAI. Therefore, the Notification dated 04.07.2020, issued by the Government of Nagaland, is in compliance with the directions issued by the FSSAI. In absence of the directions issued by the Food Authority, compliance order per se cannot be said as bad in the eyes of the law. The letter of Food Authority of India dated 6th August 2014

continues to be in operation and the State Government compliance, therefore, cannot be faulted with.

- m. The Ld. Single Judge failed to appreciate that besides, those who are challenging the Notification dated 04.07.2020, on the ground that the said Notification has taken away their right to freedom of trade and commerce, in violation of Article 304(b) of Constitution of India, have not approached this Hon'ble court with clean hands. The Ld. Single Judge has also ignored the Slaughter House Rules, 2001, as a matter of fact, the original petitioners are slaughtering animals (dogs) outside the slaughterhouse which is in clear violation of various provisions of Slaughter House Rules, 2001. The Rule 3 of Slaughter House Rules categorically provides that no animal shall be slaughtered except in licensed and recognized slaughterhouses. However, dogs are admittedly being slaughtered in the respective shops.
- n. The Ld. Single Judge has failed to appreciate that the dogs are being transported from one state to another state in clear violation of the Law of the Land. That, there are extensive provisions for the transportation of the animals under transport rules, framed under Prevention of Cruelty to Animals Act, 1960 as well as Rule 125(E) of the Motor Vehicles Act, 1988.
- o. The Ld. Single Judge also failed to consider that draft Regulations were made available by the FSSAI in the public domain for objections and suggestions as per the procedure and after due consideration of the objections and suggestions, the same were finalized and issued and dog meat which falls under the Canine Species does not appear as the species allowed to be slaughtered. Therefore, the said Notification dated 04.07.2020 which is in view of the Regulation 2.5.1(a) of the Food Safety and Standard Regulation, 2011,

clearly excludes dog meat and therefore, it is a banned meat product under the said Regulations.

- p. The Ld. Single Judge failed to appreciate that the Ministry of Health and Family Welfare, Government of India had issued a Letter No. 1-988/FSSAI/Imports/2014, dated 01.08.14 with regard to the slaughtering of animals not permissible under the FSS Act and Regulation, whereby, it has been clearly mentioned that slaughtering of any other species other than the one listed in Regulation 2.5.1(a) of the Food Safety and Standard (Food Product Standard and Food Additives) Regulation, 2011 is not permissible under FSS Act and Regulation. As stated above, since the Canine species does not fall under the regulation, the dog meat is a banned meat product. As such, the State has not committed any error or infirmity by issuing the Notification dated 04.07.2020, in banning the import and sale of dog meat in the State.
- q. The learned Single Judge has failed to appreciate the facts that the State of Nagaland, has taken a policy decision to banned the commercial trading of dog meats in the market, considering the health hazard impact on the public on consumption of dog meats but the said policy decision of the State Government in its Cabinet Decision, have not been put to challenged in the aforesaid writ petition, inasmuch as, the Notification dated 04.07.2020, issued by the Respondent No.4 is the consequential order of the policy decision of the State Government. Therefore, challenging the Notification issued by the Respondent no.4, is not, ifso facto, impugning the policy decision of the State Government is, as settled position of law, the policy decision is nor normally liable to interfere with.
- r. The Ld. Single Judge has erred in harmoniously interpreting the Regulations, the Notification, Prevention of Cruelty against Animals Act and the

Slaughter House Rules and narrowly considered only the rights of livelihood of the traders.

- s. The Ld. Single Judge erred in arriving at an conclusion that merely because the idea of consuming dog meat is alien to other parts of the country and that it is consumed in some North Eastern States and therefore, the canine species or dog as an animal for human consumption has not been mentioned in the definition of 'animals' in the said Regulation 2.5.1(a). Any regulation/law is drafted and enacted after due consideration of all the factors and prevalent conditions and if suitable exceptions are found, the same are specifically mentioned. The exclusion of canine species has various reasons and therefore, the same has been excluded from the definition.
- t. The Ld. Single Judge erred in justifying the consumption of dog meat as a customary practice by relying upon certain texts written by foreign authors on the culture of the Naga Tribes and some other Tribes, however, failed to appreciate those customs, if at all were prevalent during old times, in the modern times wherein dog meat is not considered as safe for human consumption due to various factors. The vague texts references mentioned in the impugned judgment do not indicate that the said practice is a deep rooted tradition among the Naga Tribe and if at all dog meat consumption was a prevalent practice, it must have been limited to consumption of indigenous local species or wild species found in the North Eastern part of the country, however, the selling and trading of dogs for meat involving importing of dogs from other states cannot be considered as a part of culture of the Naga Tribe or North Eastern culture, therefore, justifying dog meat consumption on basis of culture is erroneous.
- u. The Ld. Single Judge failed to appreciate the current scenario prevalent throughout the world wherein there is a social movement for ban of

consumption of dog meat and animal activists are working worldwide for the same. Reference may be made to the countries like Hongkong, Philipines, Taiwan, South Korea, Singapore, slaughtering and sale of dog meat is banned and in some countries it is punishable offence.

- v. The Ld. Single Judge failed to consider that the worldwide movement of ban on consumption of dog meat is due to various health hazards to humans, inhumane treatment to animals in transportation making them unfit for consumption, inappropriate slaughter, risk of diseases and all of this leading to several biological and environmental issues. India as a Country has several welfare legislations for protection of animals and therefore, such judgments rather go against the very purpose of idea of welfare of animals.
- w. The Ld. Single Judge failed to appreciate that merely by taking remedial steps for enforcing the prevalent laws for prevention of cruelty against animals or Indian Penal Code or Slaughter House Rules or conducting awareness programs will not resolve the hazards to humans due to consumption of dog meat.
- x. The Ld. Single Judge erred in justifying the consumption of dog meat on basis of cultural habits and right to livelihood of the traders, whereas, there are several such customary habits which were prevalent in the indigenous tribes across the country, however, the same have been banned due to varied reasons. The role of the State plays an important role in regulating such customary practices as it is the duty of the State to ensure public health and therefore, the State imposes reasonable restrictions on practice of such customs and rituals which hamper the public health.
- y. The Ld. Single Judge erred in not having a holistic approach towards the entire issue and merely proceeded to pass a Judgment which shows

concerns only with respect to the traders and their right to livelihood, whereas, completely turning blind eye towards the health hazards to humans, the cruelty caused to the animals and the overall impact of consumption of dog meat on entire ecological system.

62. Ms. Pinky Anand, learned Sr. Counsel for the appellants in WA No.07/2023, and Mr. Singhvi, learned Sr. Counsel for the appellants in WA No.12/2024, have advanced oral arguments, besides supplementing the same by written argument. I have carefully gone through the same.

63. In respect of the Issue No.(i) before the learned Single Judge i.e. whether the Food Safety and Standard Authority of India have acted beyond its delegated powers by issuing the Circular dated 06.08.2014, Ms. Pinky Anand, the learned Sr. Counsel for the appellants in WA No. 07 of 2023, submits as under:-

63.1. Despite a challenge, having been made against (i) 2014 Circular (ii) Cabinet decision dated 04.07.2020 and (iii) Notification of the Chief Secretary, dated 04.07.2020, vide impugned judgment has only quashed the 2020 Notification of the Chief Secretary on grounds of the authority of the Chief Secretary to issue the said Notification, for which the merits of the 2014 Circular, issuing prohibition on killing of animals for food not included in Regulation 2.5.1.(a), still continue to bind the authorities and apply to the State of Nagaland.

63.2. The FSSA is a comprehensive and self-contained code relating to food safety, standards, regulations and enforcement. This factum is solidified by virtue of Section 89 of the FSSA, wherein it is provided that FSSA shall have an overriding effect over all other laws. In support of her submission, she has referred to a decision of Hon'ble Supreme Court in

Sami Achyutanand Tirth v. Union of India (2016) 9 SCC (Paras 36-39)].

63.3. For Dog meat to be considered as food, it must be recognized as a food/meat product, under the FSSA and allied Regulations. "Food" is defined in Section 3(1)(j), FSSA as "any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), [...], but does not include any [...] live animals unless they are prepared or processed for placing on the market for human consumption. A live animal shall be considered food only if such animal is prepared or processed for placing on the market for human consumption.

63.4. The definition of food must be adopted from the Food Safety and Standards Act, 2006 [FSSA], which as per Section 89 has an overriding effect on all food related laws. Dog meat is not considered food under FSSA, in view of definition of food under Section 3(1)(j) r/w Regulation 2.5.1, of FSS (Food Products, Standards and Food Additives) Regulations 2011. Therefore, its killing is criminally penalised under the PCA Act as well as Section 325 of B.N.S. and the exception to killing of animals for food cannot be availed by the Respondent Nos. 1-3. She has relied upon a decision of this Court in **Hifzur Rahman Choudhary v. Union of India & Ors. (2023) 1 GLT 478: (2024) 1 Gauhati Law Reports 817** (Para 31, 37), wherein it has been held that dog meat does not constitute food, under the Food Safety and Standards Act, 2006 [FSSA] and allied Regulations.

63.5. To buttress her submission, she has referred to Regulation 2.5.1. (d) of the Food Additives Regulations, which provides that "meat food products" means any article of food or any article intended for, or capable

of, being used as a food which is derived or prepared from meat [...], and Regulation 2.5.1. (c) defines "meat" as "flesh and other edible parts of a carcass", and Regulation 2.5.1. (b) defines "carcass" as "dead body or any part thereof including the viscera of any animal which has been slaughtered" and Regulation 2.5.1. (a) defines an "animal" as "an animal belonging to any of the species specified [...] (i) ovines, (ii) caprines, (iii) Suillines, (iv) Bovines (v) Domestic Rabbits and includes poultry and fish".

63.6. The FSSA and allied Regulations do not envisage food/meat food products that are not "(i) ovines, (ii) caprines, (iii) Suillines, (iv) Bovines (v) Domestic Rabbits and includes poultry and fish." In the present case a "dog" does not fall within any of the aforesaid categories, and thus, by necessary omission, it is evident that dog meat cannot be deemed to be food. This omission is supported by the rule of interpretation; **"Expressio Unius est exclusio alterius** (i.e., the express mention of one thing implies the exclusion of all others). By the very intent and act of specifying the species groups in Regulation 2.5.1. (a), all other species not included in the list cannot be deemed to be an animal for the purposes of preparation of meat food products. She has also referred to a decision of Hon'ble Supreme Court in **Ethiopian Airlines v. Ganesh Narain Saboo (2011) 8 SCC 539 (Para 65)**], in support of her submission.

63.7. The Respondent Nos.1-3 (dog meat traders) have only challenged the 2020 Notification and the 2014 Circular. The FSSA and allied Regulations have not been challenged and their interpretation is not the subject matter of the underlying Writ.

63.8. The 2014 Circular states that animals deemed to be food under the FSSA, and allied Regulations shall be restricted to the species specified in

Regulation 2.5.1.(a) only. It states that "The slaughtering of animals of any other species other than the one listed above is not permissible under the FSS Act and Regulations." And a Division Bench of this Court in **Hifzur Rahman Choudhary (supra)** has upheld Regulation 2.5.1.(a) and 2014 Circular, restricting the definition of food to the animal species provided in the Regulation only.

64. However, Mr. Singhvi learned Sr. Counsel for the appellants in WA No.12 of 2024, submits that the Central Directives issued on 6th August, 2014 (having Legislative backing); and their survival and subsistence thereof for implementation even today are de-hors the impugned order passed by the learned Single Judge. He also pointed out the followings:-

- a) Though the Circular/Directive dated 06.08.2014, was assailed/challenged, but the same has not been set-aside by the learned Single Judge. Thus, Circular/Directive 06.08.2014 is operative and legally enforceable.
- b) The Directive of 06.08.2014, has been issued under Section-16 (5) of the Food and Standard Safety Act, 2006 (hereinafter referred to as 'the Food Safety Act of 2006'). It is issued by the Food Authority and addressed to the Food Commissioner(s).
- c) The Circular dated 06.08.2014, has legislative backing, and is a subsisting law. The legislative foundation and the legislative backing of the directive of 06.08.2014 can be located under Section-16(5) of the Food Safety Act of 2006.
- d) It is crystal clear that, as on date (today), the order of 06.08.2014, continues to operate, and therefore, the Food

Commissioner of the respective State is duty bound to implement the order passed by the Food Authority. Even if the subsequent order of the Chief Secretary seeking to implement the Central Government's Directive of 4th July, 2020 is held to be legally invalid, then also the Food Commissioner of the Nagaland State is legally bound to enforce/implement the same.

- e) Since, the directive of 06.08.2014, is not set aside by the learned Single Judge of the High Court- and not challenged in appeal by the petitioners before the learned Single Judge- the Circular of 06.08.2014 is legally enforceable under the statutory regime of the Food Safety Act, 2006.
- f) In absence of an appeal filed by the respondents herein, with respect to the Circular of 06.08.2014, issued under Section-16(5) of the Food Security Act of 2006, and the Union of India not being effectively rebutting the same, it would be legally impermissible to canvass the arguments to assail the Circular dated 06.08.2014, as is sought to be done by the Respondents herein.
- g) In the absence of filing of an appeal by the respondents with regard to order/directive of 06.08.2014, the respondents cannot assail the Circular of 06.08.2014.

65. On the other hand Mr. Iralu, learned counsel for the respondent Nos. 1-3 in WA NO. 07 of 2023, has raised following points for the consideration of this court:-

- (i) The definition of animal under FSS Regulation 2.5.1. is inconsistent with the definition of animal under Section 2(a) of Prevention of Cruelty to Animal Act..
- (ii) The FSS Act has not empowered any authority to ban dog meat.
- (iii) Though the Circular dated 06.08.2014 has not been set aside, yet it has been held that it is beyond the power of the authority.
- (iv) The ban on dog meat trade compromises the right to privacy [Article 21] and the right to trade [Article 19(1) (g)] of the Respondent Nos.1-3.
- (v) In view of Article 371A resolution of the State Assembly is necessary for extending application of the FSS Act in the state of Nagaland and no such resolution was adopted.
- (vi) The ratio laid down in the case of **Hifzur Rehman Chaudhury (supra)** is not applicable to the present matter.

66. Mr. Alezo Kire, learned counsel for the respondent Nos.1—3 in WA No.12/2024, has subscribed to the submission of Mr. Iralu, learned counsel for the respondent in WA No. 07 of 2023. However, he has referred to para 32 of the impugned judgment. He has also referred to another decision of a division bench of this court in **Tractor and Farm Equipment Ltd. vs. Secretary to the Govt. of Assam Department of Agriculture & Ors.** reported in **2004(1) GLT 117**, specially para No.26, to contend that a writ appeal is an appeal on principle and that is why, unlike an appeal, in an ordinary sense, such as

a criminal appeal, where the whole evidence on record is examined anew by the appellate Court, what is really examined, in a writ appeal, is the legality and validity of the Judgment and/ or order of the Single Judge and it can be set aside or should be set aside only when there is a patent error on the face of the record or the judgment is against the established or settled principle of law. He further submits that in intra-court appeal scope of interference is very limited.

67. Ms. Suokhrie, learned Additional Advocate General appearing for the respondent Nos.4 and 5 submits that the appeals are not preferred by State of Nagaland. She also submits that State legislature has not adopted any resolution in respect of application of the FSS Act and Regulation in the State.

68. Ms. Catherine Anichar, learned counsel for the respondent No.6, submits that the appeals are preferred by private parties not by the Kohima Municipal Council.

69. I have carefully considered the submissions of learned counsel for both the parties. Also, I have carefully gone through the relevant provisions of the FSS Act and the Regulation made thereunder, and also gone through the provisions of the Prevention to Cruelty to Animal Act. Also I have gone through the decisions referred by learned counsel for both the parties.

69.1. It is not in dispute that though the Circular dated 06.08.2014, was challenged in the Writ Petition No. 128/2020(K), yet the same was not interfered with by the learned Single Judge. However, Mr. Iralu, learned counsel for the respondent Nos. 1-3, pointed out during argument that the learned Single Judge had observed that issuance of such circular is

beyond the power and scope of the Authority. But, such observation lost its significance in view of the fact that the Circular has not been interfered with. In that view of the matter, the Circular is still holding the field and is legally enforceable.

69.2. It also appears that the said Circular, dated 06.08.2014, was issued under Section-16(5) of the Food Safety and Standards Act, 2006 addressing to the Food Commissioner(s). It is also worth mentioning here in this context that Section 16 of FSS Act deals with the duties and functions of Food Authority. And Sub-Section (5) provides that the Food Authority may, from time to time, give such direction on matters relating to food safety, which shall bind authorities, while exercising their powers under this Act. Thus, it appears that the Circular has legislative backing and Mr. Singhvi, learned Sr. counsel for the appellants in WA No.12 of 2024, has rightly pointed it out in his argument, and I find sufficient force in the same.

69.3. However, no appeal was filed by the respondent Nos.1—3 herein, for not interfering with the Circular dated 06.08.2014, by the learned Single Judge, in the impugned judgment. And as such, it would not be legally permissible for the respondents herein to assail the said Circular, in these appeals, filed by the present appellants.

69.4. Further, the respondents Nos.1-3, being the petitioners in the writ petition (C) No. 128 of 2020(K), have not challenged the FSS Act/Regulation. Being so, there arises no occasion for the learned Single Judge in dealing with the FSS Act/Regulation as well as negating the intent of the respondent No.7.

69.5. It is however a fact that the Act does not provide for a power of enforcement of the said prohibitions and nation-wide standards. However, perusal of Section 92(2)(e) of the FSS Act indicates that such power emanates from said Section under which the Food Authority, with previous publication and approval of the Central Government may make regulations; “[...] notify standards and guidelines in relation to articles for food meant for human consumption.” Though, the respondents No. 1 to 3 had referred to Section 18(f), 30(2)(a), 33(1) of the Act, yet, such submission appears to be devoid of any substance. Further it appears that under Section 86 of Act, the power for enforcement of the Regulation is provided. The section provides that the Central Government may give such directions, as it may deemed necessary, to a State Government for carrying out all or any of the provisions of this Act and the State Government shall comply with such directions.

69.6. In view of the aforesaid discussion, it cannot be said that the Food Safety and Standards Authority of India has acted beyond its power in issuing the Circular dated 06.08.2014.

69.7. Thus, the issue No. I, which arises for consideration before the learned Single Judge, has to be decided in affirmative and accordingly the same stands answered. And to the extent indicated above, this court is unable to agree with the finding so recorded by the learned Single Judge in the impugned judgment.

70. Moving forward to the Issue No. II, i.e. whether the slaughtering of animals of any other species other than the one listed in Sub-Regulation 2.5.1(a) is permissible under the FSS Act, 2006 and the Regulation of 2011 or not, this court finds that admittedly, canine or dog is not there in

the definition of 'animal' and since the word dog is not there, the same cannot be read in the statute.

70.1. It is to be noted here that as per Section 11(1)(l) r/w Section 11(3)(e) of PCA Act killing of an animal is a penal offence. However, killing an animal for food for mankind, is not included here. Notably, in Section 3(1)(j) of FSS Act, food is defined as whole definition. Further, the Food Additives Regulations, which was framed in exercise of the power conferred under Section 92(2)(e) read with Section 16 of the Act, lays down the standards in relation to articles of food meant for human consumption. It provides for the definition of the term 'animal' in Sub-Regulation 2.5.1(a), as only the species of animals listed thereunder.

70.2. Therefore, those animals, which are not included in the list, cannot be said to fall within the purview of the definition of food. On such count and on the principle of **expression unius**, which means that when a statute lists specific items, the canon creates a presumption that anything not on the list was deliberately excluded. Therefore, when the legislature made the Regulation 2.5.1., expressly excluding an animal in the list animal there, all other animal meat, which does not fall within the ambit of food and therefore, they cannot be killed for food. (See:- **Ethiopian Airlines v. Ganesh Narain Saboo (2011) 8 SCC 539 (Para 65)]**).

70.3. Further, in the case of **R.S. Nayak (supra)** Hon'ble Supreme Court has held that if the words of the statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words in the statute would be self-defeating. Similar principle has

been laid down by the Hon'ble Supreme Court in the case of **Grasim Industries Ltd. (supra)**. It has been observed in the said case that “where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provision.” Ms. Anand, learned counsel for the appellant in WA No.07 of 2023, has rightly pointed this out in her argument and this court finds substance in the same. This court is of the view that liberal interpretation cannot be given to Section 3(1)(j) under the FSS Act, so as to include dog, as the animal has not been included in the Regulation.

70.4. Notably in the case of **Hifzur Rahman Choudhury (supra) (PIL/49/2022 | 09-07-2022)**, while dealing with the issue of slaughtering of 'Camel' for food and in challenge to a letter dated 07.06.2022, where it has made mention of "animal" as an animal belonging to any of the species such as (i) Ovines; (ii) Caprines; (iii) Suillines and (iv) Bovines and includes poultry and fish, it has been held that the Food Safety and Standards Authority of India in its letter dated 07.06.2022 has referred to an earlier letter No. 1-988/FSSAI/Import/2014 dated 06.08.2014 wherein it had said that slaughtering of any other species 'other than the one listed above' is not permissible under the FSS Act, 2006 and the regulations framed there under. It is apposite to state that Section 92 of the FSS Act, 2006 has empowered the Food Safety and Standards Authority of India (the Food Authority, in short) to make regulations, with the previous approval of the Central Government and after previous publication, by notification, consistent with the FSS Act, 2006 and the rules made there under to carry out the provisions of the FSS Act, 2006. Clause (e) of Sub-Section (2) of Section 92 has

empowered the Food Authority to notify standards and guidelines in relation to articles of food meant for human consumption under Sub-Section (2) of Section 16 of the FSS Act, 2006. The Food Authority in exercise of the powers conferred by Clause (e) of Sub-Section (2) of Section 92 read with Section 16 of the FSS Act, 2006 has made a set of regulations viz. the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (the 2011 Regulations, in short). Sub-Regulation 2.5.1(a) of the 2011 Regulations has defined 'animal' and 'animal' means an animal belonging to any of the species specified below:-(i) Ovines; (ii) Caprines; (iii) Suillines; (iv) Bovines; (v) Domestic Rabbits (*Oryetolagus cuniculevs*) and includes poultry and fish. Both the letter dated 04.07.2016 and the letter dated 07.06.2022 of the AWBI had mentioned that the definition of 'animal' has effectively meant that Camels cannot be slaughtered for food at all. This part of the directive contained in the letter 07.06.2022 has not been specifically assailed by the petitioner in this writ petition.

70.5. Though it has been argued that the aforesaid decision is not applicable in the case in hand by the learned counsel for the respondent No.1-3, I am left unimpressed by such submission, on the said decision was rendered by a Division Bench of this Court and in the meantime attained finality having not been interfered in appeal. It has binding effect upon this Court in view of the decision of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, reported in (2017) 16 SCC 680.

70.6. Notably, the learned Single Judge has also observed the same in the impugned judgment that adding canine/dog as an animal for human consumption under Regulation 2.5.1(a) is inconceivable. But, its finding

that Regulation 2.5.1 of the FSS Regulation deals only with how to process the animals mentioned therein and there is no provision in the regulation prohibiting the slaughter of any other animal for human consumption, not mentioned in Regulation 2.5.1(a) of the FSS Regulation, to my considered opinion, and in view of aforesaid discussion and finding, cannot be concurred with. It is worth mentioning in this context that in view of Section 89 of the FSS Act it had overriding effect upon all other laws relating food.

70.7. In view of above, I am unable to agree with the finding so recorded by the learned Single Judge, on the Issue No. II, in the impugned judgment.

71. Moving forward to the issue No.III, i.e. whether the Notification dated 04.07.2020, issued by the Chief Secretary to Government of Nagaland, banning commercial import, trading of dogs and dogs market as well as sale of dog meat in market and dine-in Restaurants is valid, this court finds that the Notification, dated 04.07.2020, appears to be issued by the Chief Secretary, Nagaland, pursuant to the Circular, dated 06.08.2014, issued by the Food Safety and Standard Authority of India, under Section-16 (5) of the Food Safety and Standards Act, 2006 addressing to the Food Commissioner(s).

71.1. It is to be noted here that under the Executive Rule of Nagaland, the Chief Secretary is the head of all the departments. Though the Notification dated 04.07.2020, has been issued by the Chief Secretary, instead of the Commissioner of Food Safety for the State, though for efficient implementation of food safety and standards and other requirements laid down under the Act, provides for appointment of

Commissioner of Food Safety. It is also a fact that one Commissioner of Food Safety was appointed for the State of Nagaland.

72. Ms. Anand, the learned Sr. Counsel for the appellants in WA No.07 of 2023, has pointed it out during argument that the Ld. Single Judge in the impugned Judgment, has quashed the 2020 Notification, on the grounds of improper exercise of power by the Chief Secretary, yet, the Ld. Single Judge noted that under the FSSA, the power to ban/prohibit a food item rests with the Food Commissioner under Section 30, relying upon the judgment of the Hon'ble Supreme Court in **Marathwada University v. Seshrao Balwant Rao Chavan** reported in (1989) 3 SCC 132, in which it was held that- when an Act prescribes a procedure to do an act, then the said act can be done through the prescribed procedure only, but Ms. Anand has pointed out that there is no power of the Food Safety Commissioner to issue nation-wide standards and prohibitions under the Act, but Section 92(2)(e), the Food Authority with previous publication and approval of the Central Government may make regulations; "[...] notify standards and guidelines in relation to articles for food meant for human consumption." However, the Act itself provides for a remedy to enforce such orders and that is under Section 86 of FSS Act, whereby the Central Government may give directions to State to enforce regulations, which the State then shall apply.

72.1. The Central Government, by virtue of the 2014 Circular, had issued directions to all States to comply with the definition of animals (for the purposes of food) as provided in Regulation 2.5.1 (a). This 2014 Circular is given effect to as a direction of the Central Government to State Government as under Section 86 of the FSSA. In lieu of the aforesaid, it is binding upon the State to give effect to the letter and spirit of the

Circular. The 2020 Notification issued by the State Government through the Chief Secretary constitutes bona fide compliance with the 2014 Circular. The same is a separate and alternative power granted to the Centre and obligation cast upon the State Government to follow for the purposes of furthering the aims and objectives of the FSSA. Notwithstanding, the use of the alternate power granted to the Centre to issue directions, which the State Government shall comply with, under Section 86, FSSA.

72.2. Ms. Anand also submits that the 2020 Notification is further protected as an action under Article 256 of the Constitution; which states that "256. the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and, the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

72.3. The 2014 Circular constitutes exercise of directions to the State Government under Article 256 to comply with FSS Act and allied regulations, in compliance of which as mandated under the Constitution the State Government through the Chief Secretary issued the 2020 Notification. The said decisions of the Cabinet and the Chief Secretary are executive in nature, based on policy considerations and such executive power to further a central law may be exercised independently by the State at any juncture and cannot be interfered with.

72.4. The 2020 Notification issued by the Chief Secretary does not constitute independent or arbitrary exercise of power not provided for by the FSSA. On the contrary, the State Government called for a meeting of

its Council of Ministers, which decided and directed the Chief Secretary to issue the impugned Notification.

72.5. She also submits that, in view of the foregoing, it is evident that the 2020 Notification is valid and protected under Section 86 of the FSSA and/or Article 256 of the Constitution. In support of her submission, she has referred to a decision of Hon'ble Supreme Court in **Swaraj Abhiyan vs. Union of India & Ors.** reported in (2018) 12 SCC 170 (Para 33, 85), wherein the Hon'ble Supreme Court has upheld the powers of the State Government to enforce Central laws by virtue of Article 256.

73. On the other hand, Mr. Singhvi, the learned Sr. Counsel for the appellants in WA No.12 of 2024, submits that the Notification, dated 04.07.2020, issued by the Chief Secretary is supplementary to and in aid of Circular, dated 06.08.2014.

73.1. He pointed it out the following:-the Chief Secretary of State is legally bound under the Constitution of India to carry out all the directions issued by any statutory authority/ Union of India.

73.2. It is quite true that it is the Food Commissioner of the Nagaland State shall have to abide by the orders passed by the Food Authority under the Food Safety Act of 2006, but the Chief Secretary can also ensure that the directive issued by any statutory authority under the law made by the Parliament is carried out in the State. He cited an example that under the Central Act, the DGCA (Director General of Civil Aviation) may pass an order for purposes of removal of carcass near the Airport and the letter may be addressed to the competent Authority under the Central Act as Strewn Carcass may jeopardize flight evasion safety. However, the Chief Secretary may still direct that the removal of carcass

near the Airport area, is to the Municipal Authorities/Collectors/Police. Thus, Chief Secretary shall act in accordance with the Act of Parliament and orders issued there under removal of carcass can also involve the Municipal Authorities/Police. In the same way the Chief Secretary is obliged, under the Constitution, to carry out the directions issued by the Food Authority under the Food Safety Act of 2006.

73.3. The constitutional obligation of the Chief Secretary as a Head of the Executive to carry out the directions issued under the statute (Law made by the Parliament) or to facilitate the carrying out of the directions addressed to a statutory Authority. It is, therefore, crystal clear that the order of the Chief Secretary, dated 04.07.2020, is as equal/complementary/supplementary to the directions issued by the Food Authority under Section-16(5) of the Food Safety Act of 2006.

73.4. The Notification passed on 04.07.2020, is not a standalone order de-hors any statutory regime. Order of 04.07.2020, is an addition and not derogation to the directive issued under Section-16(5) of the Food Safety Act, 2006, and order of 04.07.2020, continues to be legally enforceable order.

73.5. The Notification of the Chief Secretary cannot be seen in isolation and/or even usurpation of the power exercised by the Food Commissioner. The Notification of 04.07.2020, is in the aid of orders dated 06.08.2014 to be primarily implemented by the Food Commissioner, and is only supplementary to directive of 06.08.2014, and does not supplant or superimpose order of 06.08.2014, passed under the law made by the Parliament (i.e. Food Safety Act of 2006).

73.6. Article-256 of the Constitution of India clearly states that the executive power of every State shall be so exercised as to comply with the laws made by the Parliament, and any existing law, which apply in that State. It is the constitutional obligation of the Chief Secretary as the Head of the Executive Power of the enforcement i.e. Bureaucracy, to ensure comply with the law made by the Parliament, and the existing law which apply in that State. Thus, it is the bounden duty of the Chief Secretary to ensure that the law made by the Parliament, which is applicable in the State of Nagaland i.e. Food Safety Act, is duly complied with or sedulously enforced. Thus, the Chief Secretary is under constitutional obligation to enforce the provisions of the Food Safety Act, and the orders issued there under. If the Food Authority has issued an order under Section-16(5) of the Food Security Act, it is not only the bounden duty of the Food Commissioner under the provisions of the Food Safety Act of 2006, but also a duty of the Chief Secretary to ensure its compliance. The Chief Secretary is not usurping the powers of Food Commissioner, but only ensuring the compliance of the directive in aid of the Food Commissioner. If any order issued under any statute by a statutory authority (law made by the Parliament) is to be complied with, then the State Government has to do the same. It's a mandatory duty of the State Executive to implement any directive under the law made by the Parliament. If the law mandates for a particular direction as issued on 06th August, 2014 under Food Safety Act of 2006, the Executive under Article-256 (First Part) of the Constitution is duly obliged to the same. Besides, in the case of '**Swaraj Abhiyan (supra)**' of Hon'ble Supreme Court has directed all States to comply with provision of Food Safety Act, 2006.

74. On the other hand Mr. Iralu, the learned counsel for the respondent Nos. 1-3, has supported the finding of the learned Single Judge in the impugned judgment. According to him while the Food Commissioner is appointed in the State of Nagaland to oversee the implementation of the provision of the FSS Act, the Chief Secretary, Nagaland is not empowered to issue such a Notification.

75. There appears to be substance in the submissions of the learned Senior Counsel for the appellants in both these appeals. It is not in dispute that the Commissioner of Food Safety was appointed in the State of Nagaland, under Section 30 of the FSS Act. But, being the administrative head of the State, the Chief Secretary/respondent No.4, has the authority to issue the impugned Notification despite appointment of the Commissioner of Food Safety under Section 30 of the FSS Act, while the same has been issued pursuant to a Circular issued by the respondent No.7, under the FASSI Act and Regulation, which read as under:-

File No. No. 1-988/FSSAI/Imports/2014
Food Safety and Standards Authority of India
(Ministry of Health and Family Welfare)

FDA Bhavan, Kotla Road
New Delhi-110002
Date 6 August, 2014

Subject:-Slaughtering of animals not permissible under the FSS Act and Regulations.

Your kind attention is invited towards Regulation 25 of the SS (Food Product Standards and Food Additives) Regulations, 2011, wherein definitions of animals, carcass and meat are given.

As per sub-regulation 2.5.1 (a) "animal" means an animal belonging to any of the species specified below:-

(i) Ovines,
(ii) Caprines;
(iii) Suillines,
(iv) Bovines,
and includes poultry and fish

The slaughtering of animals of any other species other than the one listed above is not permissible under the FSS Act and Regulations.

In view of the above, you are requested to Kindly strengthen the vigil and ensure the compliance of the provisions of FSS Act, 2006.

Yours sincerely,
(Bimal Kumar Dubey)
Director Enforcement

To:
All the Food Safety Commissioners

75.1. Notably, central legislation often delegates powers to state governments, by way of notifications, or under Article 258 of the Constitution, allowing states to exercise central functions. Being the Chief Secretary, as head of the state administration, respondent No.4 is vested with such powers. Reference in this context can be made to the Arms Act, 1959, where the Nagaland Chief Secretary was authorized by delegating power to issue orders or a notification, which is a function to be performed by the Central Government.

75.2. Moreover, the Nagaland Rules of Executive Business, under Article 166(3), allocate subjects to departments, but the Chief Secretary coordinates across departments and issues notifications on urgent or

inter-departmental matters with Chief Minister's approval. Existence of a separate department does not stand in the way of the Chief Secretary in issuing such Notification, when powers are delegated to them personally or if acting on behalf of the state government. Here in this case the State Cabinet had, vide a resolution, dated 04.07.2020, decided and directed the Chief Secretary, the respondent No.4, to issue such a Notification. Said resolution is available at page No. 160 of the WA No. 07 of 2023. Said resolution issued in the form of a Memorandum, is extracted herein below for ready reference:-

**GOVERNMENT OF NAGALAND CABINET SECRETARIAT
(CABINET CELL)**

**No. CAB-2/2013 (Pt) Dated, Kohima, the 4
July, 2020**

MEMORANDUM

**Sub: Minutes of the Cabinet meeting held on 3
July, 2020.**

**The undersigned is directed to forward
herewith an extract of the minutes of the
Cabinet meeting held on 3rd July, 2020, for
kind information and necessary action**

**Agenda No. 8: Ban on import and sale of dog
meat in the State.**

**The Cabinet deliberated on instances
coming to light of import and commercial
sale of dogs for their meat in the State.
The Cabinet observed that dog meat falls
within the family of canine which is
excluded from the provision of regulation
2.5 (d) (a) of FSSAI Regulation 2011 which
regulates and defines the meat sale and
consumption and thus the existing law does**

not permit the slaughter, sale and consumption of dog meat in the country.

The Cabinet after due deliberation decided for issuance of orders banning the following:-

- (i) Commercial import and trading of dogs and dog markets;
- (ii) Commercial sale of dog meat in markets and dine in restaurants;

Necessary orders will be issued by Chief Secretary in this regard backed by relevant sections of law and the same will be enforced by District Administration, Police, Municipal Administration and the Veterinary & Animal Husbandry severally as well as jointly.

Action taken on the matter may be intimated to the Cabinet Cell

Sd./

(NCHUMBEMO LOTHHA)

Additional Secretary to the Govt. of Nagaland

To

The Deputy Secretary to the Govt. of Nagaland. Office of the Chief Secretary, Nagaland, Kohima.

75.3. And it also appears that after issuance of said Memorandum, the Chief Secretary, Nagaland(respondent No.4) had issued the Notification, dated 04.07.2020, which is extracted herein below for ready reference:-

**GOVERNMENT OF NAGALAND
OFFICE OF THE CHIEF SECRETARY
NAGALAND::KOHIMA**

**No.CS0/CORRES-19/CAB/2017 Dated Kohima, the 4th
July2020**

NOTIFICATION

SUB: Ban on import and sale of dog meat in the State.

1. WHEREAS, the Central Government, Ministry of Health & Family Welfare has enacted the Food Safety & Standards Act, 2006 (Act, for short) and the Food Safety & Standards (Food Products Standards and Food Additives) Regulations 2011 (Regulation, for short), to regulate the safety of food articles safe for human consumption.
2. AND WHEREAS, in Regulation 2.5 (1) (a) of the FSSAI Regulation 2011 meat and meat products and as per sub-regulation 2.5.1(a) of the Regulation, 2011 "animal" means an animal belonging to any of the species specified below:
 - (i) Ovines;
 - (ii) Caprines;
 - (iii) Suillines;
 - (iv) Bovines;and includes poultry and fish.

AND WHEREAS, the slaughtering of any other species other than the ones listed in sub-regulation 2.5.1(a) of the Regulation is not permissible under the FSS Act and Regulation.

3. AND WHEREAS, for strict compliance of the FSS Act and Regulation and in order to regulate the safety of food articles safe for human consumption it is necessary to ban slaughter and sale of dog meat in the State of Nagaland.
4. NOW THEREFORE, in consonance with the provisions of the FSS Act and Regulation, the following are banned with immediate effect:

- a) Commercial import and trading of dogs and dog markets.
 - b) Commercial sale of dog meat in markets and dine in restaurants.
5. Any person found violating this order shall be liable to be punished U/S 428 and 429 of the Indian Penal Code 1860 and Section 11 of the Prevention of Cruelty to Animals Act, 1960 and/or any such provisions of law as may be applicable.
6. This shall be enforced by the District Administration, Police, Municipal Administration and the Veterinary & Animal Husbandry department severally as well as jointly.
7. This is issued in pursuance to the approval of the Cabinet, vide Memorandum No.CAB 2/2013 (Pt), dated 04/07/2020.

Sd./-(Temjen Toy)
Chief Secretary

No.CS0/CORRES-19/CAB/2017
July 2020

Dated Kohima, the 4

75.4. Thus, it becomes apparent that as per direction of the State Cabinet, the Chief Secretary had issued the impugned Notification dated 04.07.2020.

75.5. Further, it appears that while setting aside the impugned Notification, dated 04.07.2020, issued by the respondent No.4, the learned Single Judge, did not interfere with the Cabinet decision directing the Chief Secretary in issuance of the said Notification, and also the Circular, dated 06.08.2014, issued by the Director (Enforcement), Food Safety and Standards Authority of India/respondent No.7 under the aegis

of the Ministry of Health and Family Welfare. A careful perusal of the circular dated 06.08.2014, and also the Notification dated 04.07.2020, issued by the respondent No.4, it becomes clear that the basis of issuance of the impugned Notification dated 04.07.2020, is the circular dated 06.08.2014, and also the Cabinet decision dated 03.07.2020, and having not interfering with the circular dated 06.08.2014, which was also challenged by the respondent Nos.1—3, the source of power and the authority of the Director (Enforcement), Food Safety and Standards Authority of India/respondent No.7, under the aegis of the Ministry of Health and Family Welfare, to issue such a circular remained uncontroverted, and the Cabinet decision dated 03.07.2020, the source of power to issue the same remained untouched.

75.6. It also appears that though the respondent Nos.1—3 have challenged the Notification issued by the respondent No.4 and the respondent No.7, yet, the FSS Act and the Regulation framed there under, have not been challenged by the respondent Nos.1—3 in the writ petition. Therefore, the source of power i.e. the FSS Act and the Regulation and the Circular dated 06.08.2014 and also the Cabinet decision remained untouched by the learned Single Judge, though the Notification dated 04.07.2020, has been interfered with.

75.7. Thus, to recapitulate, on the following counts, the Notification, dated 04.07.2020, cannot be interfered with:-

- (i) Under Section 86 of the FSS Act, the Central Government can issue directions to the State Government to carry out the provisions of the Act.

- (iii) It was issued pursuant to the Circular dated 06.08.2014, which was issued under Section 16(5) of the FSS Act and as such it has legislative backing.
 - (iii) The State Cabinet, after due deliberation, on 3rd of July, 2020 had adopted a resolution for issuance of an orders banning-
 - (i) Commercial import and trading of dogs and dog markets;
 - (ii) Commercial sale of dog meat in markets and dine in restaurants;
- and directed the Chief Secretary to issue the Notification and pursuant to which, the Chief Secretary of the State had issued the Notification, dated 04.07.2020.
- (iv) The Notification dated 04.07.2020 is protected under Article 256 of the Constitution of India, which mandated the State to comply with the law made by the Parliament and any existing law which apply in that State.(herein FSS Act).
 - (v) The Cabinet Decision dated 3 July, 2020 has not been interfered with by the learned Single Judge, though a prayer at 'B' and 'C' was made in the writ petition No. 128 of 2020.
 - (vi) The source of power to issue the Notification remained uncontroverted.

75.8. In view of the aforesaid discussion and finding, I am unable to record concurrence with the finding of the learned Single Judge that the Chief Secretary has no authority to issue the Notification, dated 04.07.2020.

76. Now, coming to the Issue No. IV, i.e. whether the Fundamental Rights of the petitioners have been violated by issuing impugned Notification dated 04.07.2020, or not, it appears that the respondent Nos.1—3 have contended that the people of Nagaland have the right to choose their food and right to eat as per their choice, which also falls within the ambit of right to privacy, and the same has been affirmed by Hon'ble Supreme Court in the case of **Justice K. S. Puttaswamy (Retd.) and Anr. Vs. Union of India and Ors.**, reported in **(2017) 10 SCC 1**. It is also their contention that it is their fundamental right under Article 19(1)(g) and right to privacy under Article 21 of the Constitution.

76.1. The learned Single Judge also, in the impugned judgment, held that the Notification dated 04.07.2020 affects the right of the respondent Nos.1—3, under Article 19(1)(g) and Article 21 of the Constitution. It has also observed that Article 19(1)(g) has reasonable restrictions and that consumption of dog meat endangers the human population due to risk of diseases like Rabies and Trichinella infection as well as increased antibiotic resistance, as revealed by various scientific research papers/articles in countries like China and Africa. But, in spite of recording such a finding the learned Single Judge had set aside the impugned Notification dated 04.07.2020, for the reason discussed in the forgoing para.

76.2. There is no doubt that the citizen of this country have the right to trade under Article 19(1)(g) of the Constitution. But, this right is not an unfettered right and is always subject to reasonable restrictions in view of Article 19(6), including any enactment in the intent and common good of the general public. And indisputably, dog meat poses a serious public

health risk. And as such trade of dog meat compromises the right to health and life under Article 21. Further, right to health also form part of Article 21. Further right to privacy is also a fundamental right. And this right is also not an absolute right and subject to reasonable restriction as held by Hon'ble Supreme Court in para No. 567, in the case of Justice K. S. Puttaswamy (Retd.) (supra).

76.3. Notably, in paragraph No.567, in the case of Justice K. S. Puttaswamy (Retd.) (supra), Hon'ble Supreme Court held as under:-

"567. In view of the foregoing discussion, my answer to Question 2 is that "right to privacy" is a part of fundamental right of a citizen guaranteed under Part III of the Constitution. However, it is not an absolute right but is subject to certain reasonable restrictions, which the State is entitled to impose on the basis of social, moral and compelling public interest in accordance with law."

76.4. Further, in the aforementioned case, at paragraph No.638, Hon'ble Supreme Court has held as under:-

"638. The concerns expressed on behalf of the petitioners arising from the possibility of the State infringing the right to privacy can be met by the test suggested for limiting the discretion of the State:-

- (i) The action must be sanctioned by law;
- (ii) The proposed action must be necessary in a democratic society for a legitimate aim;
- (iii) The extent of such interference must be proportionate to the need for such interference;
- (iv) There must be procedural guarantees against abuse of such interference."

76.5. Further, it is to be noted here that Article 21 of the Constitution encompasses the 'right to food', which is essential for survival and subsistence. However, it does not extend to right to eat any particular food of one's choice. Nowhere in the judgment of **Justice K. S. Puttaswamy (Retd.) (supra)**, Hon'ble Supreme Court has held that a person, irrespective of any health hazard, has any fundamental right to eat food of his own choice. Since the public health is of paramount importance, no right construed under Article 21, can undermine the right to health.

76.6. Ms. Pinky Anand, learned Sr. Counsel for the appellant in WA No.07 of 2023 and Mr. Singhvi, learned Sr. Counsel for the appellant in WA No.12 of 2024 has rightly pointed this out at the time of argument. It is also their categorical contention that the respondent Nos.1—3, being traders of dog meat, and that too without any licence from the FASSAI, cannot, on behalf of the citizens, exercise that right though they have some right under Article 19(1)(g) of the Constitution. Had it been challenged by the people of Nagaland, then the matter would have stand on a different footing. Being traders, the respondent Nos.1—3 cannot, on behalf of the citizens, exercise the right to food and right to privacy. In that view of the matter, I am in respectful agreement with the submission of Ms. Anand and Mr. Singhvi.

76.7. Under the given facts and circumstances, this Court is unable to record concurrence with the submission advanced by Mr. Iralu, learned counsel for the respondent Nos.1—3 that the respondent Nos.1—3 have the right to trade dog meat and it compromises the right of privacy under Article 21 and right to trade under Article 19(1)(g) of the respondent Nos.1—3.

77. Moving forward to deal with the argument of the respondent No.1-3, regarding applicability of Article 371A of the Constitution of India, in the instant case, I find from the Affidavit dated 25.02.2025, filed by the State of Nagaland indicates that the State of Nagaland has not enacted the FSS Act by way of a Resolution of the Nagaland Legislative Assembly.

77.1. But, it appears that the respondent No.1-3, herein had not raised this issue before the Ld. Single Judge by placing any material or necessary pleadings on record that are necessary to determine whether such a Resolution is required. Over and above no finding was also returned by the Ld. Single Judge on this issue. Now, it has to be seen, whether, in fact a resolution is required to make applicable FSS Act in the State of Nagaland.

77.2. Before a discussion is directed to the issue, let it be seen the requirement of the Article 371A. This Article provides that no Act of Parliament, in respect of—(i) religious or social practices of the Nagas or (ii) Naga customary law and procedure shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides. A bare perusal of the Article reveals that only an Act of Parliament made “in respect of social practices of Nagas” shall require a Resolution. Notably, FSS Act was enacted with the objective to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

77.3. Thus, in order to substantiate applicability of Article 371A *qua* the FSS Act, it was incumbent upon the respondent No.1-3 herein, to establish that the FSS Act was enacted with regard to the social practice of the Nagas. Indisputably, the subject matter of the FSS Act is public health and safety. It was neither directly, nor substantially, enacted on the religious or social practice of the Nagas. Therefore, I am of the opinion that for making the FSS Act applicable in the State of Nagaland, no resolution of the State Legislature is required under Article 371A(1) of the Constitution.

77.4. Over and above, it appears that the State of Nagaland has been actively making efforts to implement various aspects of FSSA in the State. The decision of the State Cabinet, in Agenda item No.8 of meeting held on 3rd July, 2020, is the testament to the same. In the said meeting the Cabinet had discussed in respect of import and commercial sale of dogs for their meat in the State and observed that dog meat falls within the family of canine, which is excluded from the provision of regulation 2.5 (d) (a) of FSSAI Regulation 2011 which regulates and defines the meat sale and consumption, and thus, the existing law does not permit the slaughter, sale and consumption of dog meat in the country. The State Cabinet, while deliberating, about imposing a ban on import and sale of dog meat in the State, had observed that dog meat falls within the family of canine, which is excluded from the provision of regulation 2.5 (d) (a) of FSSAI Regulation 2011 and that the existing law does not permit the slaughter, sale and consumption of dog meat in the country. The Cabinet, in its wisdom, never found that the provision of Food Safety Act, in any manner come within the purview of the four grounds mentioned in the Article 371A(1)(a) of the Constitution of India.

77.5. It is to be noted here that there is a direction, issued by the Hon'ble Supreme Court in **Swami Achyutanand Tirth vs. Union of India**, reported in (2016) 9 SCC 699, to all the States, including the State of Nagaland, wherein, it was respondent No. 3, which read as under:-

“56.1. The Union of India and the State Governments shall take appropriate steps to implement the Food Safety and Standards Act, 2006 in a more effective manner.”

77.6. Further, in the case of **Commr. of Police vs. Acharya Jagadishwarananda Avadhuta**, reported in (2004) 12 SCC 770, Hon'ble Supreme Court has the occasion to deal with essential religious and social practice and held that essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion. It has also been held that the test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice.

77.7. In the case in hand the respondent No.1-3 had failed to establish that consumption of dog meat is a part or practice which is essential to the religion and without that part or practice the religion will be changed. Rather, it appears that they had failed to obtain food safety license from the appropriate authority. Further, it appears that the respondent in their Writ Petition (Civil) No.128 (K) of 2020 made a categorical statement on oath, to the effect that they does not seek to address the justification of

eating dog meat in the State of Nagaland in the context of 'culture and customs', which read as under:-

“5.6. ... that, however, without any prejudice to what has been stated above, it is submitted that this petition does not seek to address the justification of eating dog meat in the State of Nagaland in the context of its culture and customs. Rather, this petition is only confined to the issues highlighted above under paragraph 4, which are in the context of the Act and the Regulation.” [Emphasis supplied].

77.8. Thus, to the considered opinion of this court, the respondent No.1-3, cannot successfully assail the provisions of Food Safety Act, 2006 on the anvil of Article-371A of the Constitution of India, having the said plea, is specifically and categorically abandoned by them on oath, in the writ petition itself. Consequently, I find the submission of Mr. Iralu and Mr. Kire, learned counsel for the respondent Nos.1—3, devoid of substance and accordingly, the same stands repudiated. On the other hand this court finds sufficient merit in the submission of learned counsel for the appellants in both the appeals, and I am inclined to record concurrence to the same.

78. Under the given facts and circumstances and in view of the aforementioned discussion and finding, I am in respectful disagreement with the finding, so recorded by the learned Single Judge in the impugned judgment and order, dated 02.06.2023. The finding so recorded in the impugned judgment in respect of the Notification, dated 04.07.2020, so issued by the Chief Secretary, Nagaland, is against the established or settled principle of law, so discussed herein above. In that view of the matter, the decision of a division bench of this Court in **Tractor and Farm Equipment Ltd. (supra)** would not advance the

argument of Mr. Alezo Kire, learned counsel for the respondent No. 1-3 in Writ Appeal No. 12 of 2024.

79. And for the same reasons, as discussed herein above, I am also in respectful disagreement with the judgment authored by my esteemed brother.

80. In the result, W.A. No. 07/2023 and W.A. No. 12/2024 stand allowed. The impugned judgment and order, dated 02.06.2023, requires interference of this Court and accordingly, the same stands set aside and quashed. The parties have to bear their own costs.

81. In view of the divergence of opinion, the Registry is directed to apprise the matter to Hon'ble Chief Justice and to seek appropriate order on the administrative side.

Sd/- Robin Phuikan
JUDGE

Comparing Assistant