

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.504 OF 2002

Satbir Raika, Chairman,
Rajasthan Rabari Bhed evam
Unt Pashupalak Sangh and Others

Petitioner(s)

Versus

State of Madhya Pradesh and Others

Respondent(s)

WITH

WRIT PETITION (CIVIL) NO.51 OF 2000

O R D E R

Heard Mr. Pallav Shisodia, learned senior counsel for the petitioners and Mr. Naveen Sharma, learned counsel for the State of Madhya Pradesh.

The petitioners by the present writ petitions had challenged the Notification dated 30th June, 1986, which has been issued by the State of Madhya Pradesh in exercise of powers conferred by clause (a) of sub-section (2) of Section 26 of the Indian Forest Act, 1927, making certain rules regulating grazing in government forests situated in Madhya Pradesh. Rule 4 deals with regulation and entry of cattle in the forest for grazing. For the sake of completeness, we think it appropriate to reproduce Rule 4:-

"Regulation of entry of cattle in the forests for grazing:-

1. Cattle including the cattle allowed free grazing shall not be allowed to enter the forests without a valid grazing licence.

2. for purpose of grazing in the forests, the cattle shall be categorized as under:-

- (a) Domestic cattle.
- (b) Semi Commercial cattle
- (c) Commercial cattle

3. Domestic cattle shall only be permitted grazing in the Reserved Forests. Semi commercial and commercial cattle shall not be permitted grazing in the Reserved Forests.

4. Cattle will be permitted grazing in the Reserved and protected forests upto the limit of the carrying capacity of the grazing unit.

5. Depending upon the carrying capacity of a grazing unit grazing will be permitted to the cattle in the following order of preference:-

(a) Cattle of the listed villages in the following order:-

(i) 10 cattle units of the domestic cattle for each villager.

(ii) Remaining cattle units of domestic cattle.

(iii) Produce Pass Rules 1961 read with rule 33 of the forest financial Rules.

(iv) Domestic Cattle means cattle maintained for agricultural and bonafide domestic purpose by local usage and shall include cows, bulls bullocks and buffaloes.

(v) Grazing Licence means a licence issued by the Divisional forest officer or an officer or the Commission Vendor authorized by him for issuing a licence for grazing of cattle in the forests.

(vi) Grazing Unit means a unit of forest area declared open for grazing.

(vii) Grazing years means the period from the 1st July to the 30th June of the next year.

(viii) Incidence of Grazing means the maximum number of cattle units that may be permitted to graze pr hectare of a forest area.

(ix) Semi Commercial Cattle means cattle maintained for both bonafide domestic use as well as for commercial purposes by local usage and shall include goat horses, ponies, donkeys and mules.

(x) Transit Grazing Licence means a licence issued by the Divisional Forest Officer or an officer or the commission vendor authorized by him to issue a licence permitting the cattle to pass through the Reserved and protected Forests of the State."

Rule 8 deals with grazing for the cattle of the adjoining States. It reads as follows:-

"Grazing for the cattle of the adjoining States:-

(1) The grazing or transit grazing facilities shall also be available to the cattle of the cattle owners residing outside the State of Madhya Pradesh on the same terms and conditions and on the same fees as are provided in these rules subject to the carrying capacity of the forest.

(2) The State Government shall specify the point of entry and exist of cattle the route or routes to be followed the cattle of the adjoining States."

Rule 9 provides for grazing fee.

Mr. Shisodia, learned senior counsel appearing for the petitioners has drawn our attention to the decision rendered in Lakshman and Others vs. State of Madhya Pradesh

(1983) 3 SCC 275. In the said case, the issue that arose was that the State of Madhya Pradesh issued a notification pertaining to uninhibited passage of large herds of the animals through Madhya Pradesh on the backdrop that it may lead to large scale devastation of their forest wealth. After referring to the provisions of the Madhya Pradesh Grazing Rates Rules, 1974, and various other aspects, the Court opined that the Rules reflect that the State of Madhya Pradesh wants to inhibit the influx of cattle of other States which has been treated as 'foreign cattle' by the method of charging higher grazing rates in their case than in the case of cattle belonging to the residents of Madhya Pradesh. Dealing with the said facet, the Court held:-

"We are unable to see any rational basis for the distinction made between owners of cattle belonging to Madhya Pradesh and owners of cattle belonging to other States (described as owners of 'foreign cattle') and the levy of prohibited grazing rates on owners of the so-called 'foreign cattle'. Forests of Madhya Pradesh are not grazing grounds reserved for cattle belonging to residents of Madhya Pradesh only even as the towns and villages of Madhya Pradesh cannot be reserved for the residents of the original residents 128 of Madhya Pradesh only. Accidents of birth and geography cannot furnish the credentials for such discrimination and authorise prejudicial treatment in matters of this nature. We do not say that geographical classification is never permissible. For example, a preference given by a State to its residents in all the matter of admission to educational institutions maintained by the State from its revenues may be well justified. But we are unable to see any such justification for the levy of virtually penal grazing charges in the case of owners of cattle belonging to other States. The only attempt at justification is that the influx of 'foreign cattle' is resulting in the destruction of the forest wealth of the State. It is difficult to understand this justification. If cattle

belonging to residents of Madhya Pradesh are allowed to graze, will it not lead to the same damage as by the cattle belonging to persons of other States? Surely, it cannot be that the Madhya Pradesh cattle are less destructive than the cattle belonging to persons of other States. Further if the object was to prevent all cattle from grazing in protected forests, such grazing could have been banned as in the case of reserved forests. Even in the case of the so-called foreign cattle, cattle belonging to owners who are rich, may yet have their cattle graze in the Madhya Pradesh forests but not cattle belonging to poorer graziers. Further, subject to reasonable restrictions which may be imposed in the interests of the general public, a citizen has the right under our Constitution to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practise any profession, or to carry on any occupation trade or business. Graziers, be they of Madhya Pradesh, Gujarat or Rajashtan, therefore, have the right to pass and repass through the State of Madhya Pradesh with their cattle in the pursuit of their occupation. The right is, of course, subject to reasonable restrictions in the interests of the general public. We are unable to discover any reasonable basis for classifying graziers into those belonging to Madhya Pradesh and those belonging to other States; nor are we able to discover any acceptable reason behind the restriction imposed on graziers of other States by the heavier charge made on them. We are convinced that there is no justification whatsoever for charging higher grazing rates for cattle belonging to persons of other States. In regard to the prescription of the route along which the cattle have to be taken while in transit, however we find nothing wrong with it, since the object is obviously to prevent cattle straying and causing indiscriminate damage to forests. We are, however, unable to justify the ceiling of 45 days in which cattle must pass through the State of Madhya Pradesh. In the case of 129 cattle belonging to residents of Madhya Pradesh, the grazing rate is levied for a period of one year. There is no reason why the charge A should be levied for 45 days in the case of persons belonging to other States. The

apprehension that cattle, if allowed to graze in the same place for a long time, may destroy the pasture and foliage altogether is taken care of by the other rules which prescribe that the cattle may not graze in the same grazing unit for more than a month."

Being of this view, the Court quashed the higher grazing rates in the case of cattle belonging to persons of States other than Madhya Pradesh and directed the respondents to levy the same rates as they do in the case of cattle belonging to the residents of Madhya Pradesh. The Court also declared the period of stay of forty-five days as unconstitutional.

Thereafter, the State Government has brought in 1986 Notification. Mr. Shisodia, learned senior counsel has called in question the validity of the rates and also the route.

During the pendency of these writ petitions, the State of M.P. has brought out an amendment to the Notification by which the rates have been amended and other grievances have been addressed. The only grievance which is pointed out by Mr. Shisodia is that the Madhya Pradesh government has introduced a route by which the cattle from the State of Rajasthan are not allowed to go to the State of Maharashtra via State of Madhya Pradesh. As the same has not been challenged and Mr. Shisodia, learned senior counsel appearing for the petitioners, very fairly accepts that position, we direct the State Government to take into consideration the grievance of the Rajasthan Cattle Grazers Association so that they do not face difficulties to go through the State of M.P.

There can be no doubt that the forest has to be protected, but when it comes to stopping cattle from moving

from one place to another, there cannot be a prohibition as a route can be provided without allowing cattle to go by destroying any kind of reserved forests. The competent authority of the State Government shall keep in view the observations made in Lakshman and Others (supra), which we have reproduced herein-above. We are sure that the competent authority of the State shall not give another opportunity to the likes of the petitioners to litigate any further. It is the duty of the State Government to have an appropriate litigation policy to avoid litigation and not to give room to assail the action knowing fully well that certain aspects have been covered by the judgment of this Court. The State Government shall take the decision within ten weeks from today. When we say 'the observations to be kept in mind', it always means the reasonable restriction which also engulf the restriction as regards the route. We may hasten to add that the petitioners have suggested certain routes that also may be kept in mind keeping in view the observations made by this Court on the earlier occasion and what we have stated today.

The writ petitions are, accordingly, disposed of. There shall be no order as to costs.

.....CJI.
[Dipak Misra]

.....J.
[A.M. Khanwilkar]

.....J.
[Dr. D.Y. Chandrachud]

New Delhi
October 05, 2017.

ITEM NO.101

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.504/2002

SATBIR RAIKA & ORS.

Petitioner(s)

VERSUS

STATE OF M.P. & ORS.

Respondent(s)

WITH W.P.(C) No.51/2000 (X)

Date : 05-10-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. Pallav Shishodia, Sr. Adv.
Ms. Madhurima Tatia, Adv.
Ms. K. V. Bharathi Upadhyaya, AOR

For Respondent(s) Mr. Naveen Sharma, Adv.
Mr. Arjun Garg, Adv.
Mr. C. D. Singh, AOR

Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Shodhika Sharma, Adv.

Mr. S.S. Shamsbery, AAG
Mr. Amit Sharma, Adv.
Mr. Sandeep Singh, Adv.
Mr. Ankit Raj, Adv.
Ms. Indira Bhakar, Adv.
Mr. Milind Kumar, AOR

Mr. Pranay Ranjan, Adv.
Mr. Gautam Sharma, Adv.
Mr. M.K. Maroria, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The writ petitions are disposed of in terms of the
signed order.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Assistant Registrar

(Signed order is placed on the file)