

Case Note: Case concerning the setting up of a slaughter house, which was challenged on, amongst other grounds, the fact that it violated sections of the Water (Prevention and Control of Pollution) Act, 1974 and caused pollution.

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2006(3)SCALE617, (2006)4SCC162

IN THE SUPREME COURT OF INDIA

Decided On: 29.03.2006

Akhil Bharat Gosewa Sangh

v.

State of A.P. and Ors.

AND

Umesh and Ors.

v.

State of Karnataka and Ors.

Hon'ble Judges:

Y.K. Sabharwal, C.J. and Tarun Chatterjee, J.

JUDGMENT

Tarun Chatterjee, J.

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1. A1-Kabeer Exports Limited (in short 'Company') is a public company formed for the purpose of carrying on the business of processing meat, mainly for export purposes. The company with a view to establish a slaughter house in Rudraram village, in the Medak District of the State of Andhra Pradesh applied to the Gram Panchayat, Rudraram for the requisite permission to construct a factory and other buildings connected therewith. On 24th March 1989, the Gram Panchayat concerned, issued a 'No Objection Certificate' (in short NOC'). After obtaining opinion of the District Medical and Health Officer, Director of Town Planning and Director of Factories, State of Andhra Pradesh, permission was granted to the company to run a slaughter house on the selected site on 29th June 1989.

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

and Control of Pollution) Act, 1974 from A.P.P.C.B. before commencing regular production. The Director, Animal Husbandry Department, Government of Andhra Pradesh also issued a NOC in favour of the company by a letter dated July 13, 1989, subject to compliance with the provisions of Sections 5 and 6 of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 (in short the 'A.P. Act) and the instructions issued there under.

3. Subsequently, on 18th July 1989 the Central Government (Ministry of Industry) granted a Letter of Intent (in short 'L.O.I.') under the provisions of the Industries (Development and Regulation) Act, 1951 (in short IDR Act') for establishment of a new industrial undertaking to the company at the selected site mentioned herein earlier for manufacturing of certain amount of Frozen Buffalo and Mutton Meat, The LOI was granted, subject to the following conditions:

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

(b) Only old and useless buffaloes shall be slaughtered and for this purpose, their production and processing shall be subject to continuous inspection by the Municipal

Authorities. Animal Husbandry and Health Department of the State Government or any other arrangement that the Central or the State Government may evolve for ensuring this.

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

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

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

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

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

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

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

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

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

5. If we are permitted to read the various conditions for grant of LOI. issued by the Central Government, carefully, it would be evident that only old and useless buffaloes shall be available for slaughtering and their production and processing shall be subject to continuous inspection by the Municipal Authorities, Department of Animal Husbandry and Health Department of the State Government. Clause (c) of the LOI speaks of total prohibition of slaughtering of cows of all ages and calves of cows and buffaloes, male or female. Clause (d) invites the company to undertake measures of prohibiting and improving the breeds of the buffaloes by adoption of suitable animal husbandry practices in consultation with the State Government, Clause (e) of L.O.I, provides that 90% of the production of frozen buffalo meat would be exported for a period of ten years which may be extended by five years at the discretion of the Government. Clause (f) directs to take adequate steps to the satisfaction of the Government to prevent air, water and soil pollution and for this purpose anti pollution measures must be installed to enforce the effluent and emission standards prescribed by the State Government. Clause (g) of the LOT says that a new industrial undertaking Page 1802 shall not be located either for effecting substantial expansion or for manufacture of new article if the said location is situated within 50 km from the boundary of the standard urban area of any city having a population of more than 25 lakhs according to 1981 census or is located 30 km from the boundary of the standard urban area limit of any city having a population of more than 15 lakhs but less than 25 lakhs according to 1981 census. On 28th August 1991 the Agriculture and Processed Food Products Export Development Authority informed the company that the Government of India was keen to promote the export of meat and meat products as part of its export drive.

6. It is an admitted position that for the purpose of running the slaughter house, the company, as noted herein earlier, had applied for licences to various authorities of the State Government as well as of the Central Government. Having been satisfied and after

holding enquiry, permission and/or licence was granted to the company first for the purpose of making construction at the site in question and thereafter for running the slaughter house. Such being the position and in view of the reasons given hereinafter we cannot apprehend that the company was permitted, by the authorities, first to make construction of the factory at the selected site and thereafter to run the slaughter house without being satisfied that the conditions for grant of permission and licence were observed by the company.

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7. It is not in dispute that on the basis of the LOI and permission granted by the State of Andhra Pradesh and other authorities including the APPGB, the company started its construction work for installation of buildings and machineries, for the purpose of running a slaughter house. When some construction had progressed, the Executive Officer of the Gram Panchayat concerned issued a notice in the exercise of his power under Section 131 (3) of the Andhra Pradesh Grain Panchayat Act, 1964 suspending the permission granted for construction of the factory building and other buildings to the company and thereby directed stoppage of constructions until further orders. Challenging this order of the Executive Officer, the company filed a Writ Petition before the High Court of Andhra Pradesh. Some organizations opposed the proposed establishment of the slaughter house and they were impleaded as respondents to the said writ petition. The writ petition was, however, subsequently withdrawn by the company and instead a revision petition was filed before the State Government questioning the notice issued by the Executive Officer on the suspension of the construction work which was permitted by the State Government. After hearing all the concerned parties, by an order dated 15th September 1990 the revision case was allowed by the State Government. A bare reading of this order would show that the order of the Executive Officer was not only directed to be set aside but also the period of completing the construction work was extended by one more year, from 29th of June 1989.

8. Against the order passed in the revision, case, two writ petitions being W.P.No. 13763 and W.P.No. 13808 of 1990 were filed in the High Court - Page 1803 one by those organizations who were impleaded in the earlier writ petition and the other by some individuals. These two writ petitions were admitted by a learned Single Judge of the High Court and by an interim order, the operation of the order passed in the revision case was suspended pending decision of the two writ petitions. Against the aforesaid interim order, the State Government as well as the company filed writ appeals which were admitted by a Division Bench of the High Court, and the interim order granted by the learned Single Judge was stayed by an interim order of the Division Bench of the High Court. When the writ appeals came up for final hearing, the parties before the Division Bench prayed that the writ petitions be disposed of on merits. Such stand having been taken by the parties before the Division Bench, the writ petitions were heard and disposed of by an order dated November 16, 1991 on merits with the following directions:

...However, we direct that the State Government shall prepare a detailed report regarding the water, air and environment pollution, if any, as at present in Rudraram and surrounding villages of Patancheru Mandal, Medak District having regard to the, provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 and the rules made thereunder, *the likely effect of the setting up of the mechanized slaughter house at Rudraram village on the prevailing environment and also its likely effect on the cattle wealth in the area* after considering the representations which the petitioners in these writ, petitions and other interested parties may submit in writing in this regard. The petitioners herein and other interested persons shall submit the representations and other supporting material in writing to the State Government within four weeks from today. The State Government shall prepare and submit a detailed report

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to the Central Government, within eight weeks from the date of receipt of the copy of Oils judgment. *On receipt of the report, the Central Government shall consider the same,* having regard to the provisions of the Water (Prevention and Control of Pollution) Act. 1974. the Air (Prevention and Control of Pollution) Act. 1981, the Environment (Protection) Act. 1986 and the Industries (Development and Regulation) Act, 1951 *and pass appropriate orders in relation to the establishment of the mechanized slaughter house (abattoir) at Rudraram village. Patancheru Mandal, Medak District. Andhra Pradesh. within eight weeks from the date of receipt, of the report.* (Emphasis supplied).

9. It may be kept in mind that this order of the Division Bench by which certain directions were made by it to the State Government as well as to the Central Government was , however, not appealed before this Court. Pursuant to the directions given by the Division Bench in the aforesaid order, as noted herein above, the State Government constituted a Committee known as "Krishnan Committee" for examining and reporting the matters referred to in the order of the High Court. The Krishnan Page 1804 Committee constituted by the State Government submitted its report, It was noted in the report that some fundamentalist organizations opposed the establishment of the slaughter house on account of their religious and sentimental opposition to the slaughter of animals, whereas the Central Government and the Government of Andhra Pradesh permitted the setting up of this plant subject to the conditions imposed by them. So far as the pollution of air and water was concerned, the committee was of the opinion that if due observance of the safeguards stipulated by the several concerned departments, including Pollution Control Board was made by regular supervision, such pollution of air and water could be kept within a reasonable limit. So far as the depletion of the cattle wealth is concerned, the Committee upheld the objections of the Food and Agriculture Department in the following words:

There are valid reasons for believing that this argument, is substantially valid. To start with the capacity of the plant is so large that with the existing cattle wealth and possible increases thereto, will not be able to provide adequate input to this factory for more than a year or two unless drastic action is taken to increase the cattle wealth in the surrounding areas. The Food and Agriculture Department have already brought out the fact that the cattle wealth in the surrounding areas as also in the other parts of the State is gradually going down and the cattle available for slaughter is around 1,76 lakhs animals per year. As against, this, the existing slaughter houses in the State are already slaughtering animals to the extent of 2.01 lakhs, with the result that with the level of existing cattle wealth, there is no additional input likely to be available, to cater to the huge capacity of the plant being established at Rudraram. Food and Agriculture Department has also brought, out the fact that it will be difficult for the factory to adhere to the existing regulations of the provisions of the Prevention of Cruelty to Animals Act and Prohibition of Cow Slaughter Act, 1977 and every effort: would be made to circumvent the provisions of this Act so that adequate input supply is maintained (for the?) factory. It was reported in the newspapers sometime ago that a similar factory established in Goa,

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after operation for one or two years had to drastically stop their operations for want of adequate input material.

10. After expressing the opinion, the Krishnan Committee made the following recommendation as a condition for allowing the establishment of the slaughter house: In the circumstances it is essential to insist, on the Company to ensure that there is an effective programme to raise feed cattle 011 their own initiative for not less than 50% of the capacity so that the impact on the surrounding area is limited to this extent atleast. Further increases in capacity can he considered only if the company increases its own feed cattle. Eventually the Company will have to produce feed cattle for their entire

extent of operations so as to minimise the impact on the existing cattle wealth.

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If this alternative is not acceptable to the Company, the proposal mentioned by the Food and Agriculture Department of starting a modern abattoir with an investment of about Rs. 15 crores may be directed to take over this plant and eventually the unhygienic private slaughter houses in and around the city and government, slaughter houses can be closed and the meat, requirement, for the city may be met from this factory.

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

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

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

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

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

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16. A Writ Application being Writ Petition No. 13062 of 1992 was filed by Dr. Kishan Rao along with one Smt. Satyavani questioning the permissions granted for the establishment of the slaughter house of the company. As noted hereinafter, Writ Petition No. 8193/1992 was filed by Dr. Kishan Rao praying for similar reliefs which were prayed by him in Writ Petition No. 13062/1992. The Division Bench in the judgment under appeal had taken a serious objection to the filing of two Writ Petitions by Dr. Kishan Rao for similar reliefs and observed that there was mis-statement, on the part, of Dr. Kishan Rao saying that, relief claimed in Writ Petition No. 13062/1992 and reliefs

claimed in Writ Petition No. 8193/ 1992 were different.

17. All these writ petitions were heard together and disposed of by the High Court by common judgment dated April 6, 1993. In the aforesaid judgment, the High Court in substance observed as follows:

(1) As the LOI granted by the Central Government and the provisions of the Andhra Pradesh Preservation of Cow Slaughter and Animal Preservation Act, 1977 permits slaughtering of only useless cattle and in view of the fact that maintenance of such useless cattle involves a wasteful drain on the nation's meager cattle feed resources, the Government of Andhra Pradesh and the Central Government were fully justified in granting permission for establishing and running the slaughter house.

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

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

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

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

19. We may restate that writ petition No. 10454 of 1992 filed by Akhil Bharat Goseva Sangh was also disposed of by the Division Bench on the same day. Page 1807 In Writ. Petition No. 10454 of 1992 the main contention of the petitioner was that the State Government had not complied with the directions made by the High Court in its judgment and order dated 16.11.1991 and in the said Writ Petition it was prayed that until and unless the State Government sent its report, in accordance with the direction of the Division Bench of the High Court, to the Central Government and the latter had taken decision thereon, the company be restrained from functioning. On this issue, the Division Bench held that this question was already dealt with in the judgment and therefore in this writ application there was no need to deal with it all over again, C.A.No. 3968 of 1994 was preferred against this judgment in this Court.

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

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

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

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We are of the opinion that the rejection of Krishnan Committee report in the above manner really amounts to slurring over the main recommendation of the said report. Moreover, the learned Judges have not dealt with the failure of the Central Government to consider the said report and pass appropriate orders pursuant, to the directions of the High Court, in its judgment, dated November 16, 1991. The learned Judges have observed in the said judgment that it is not possible for the Court to go into conflicting reports of experts and that, therefore, they should leave the matter for the judgment, of the Government. This observation again does not take into account the directions made by the said High Court in its judgment referred to above. They have also observed that the Director of Animal Husbandry has given his opinion or revised opinion, as the case may be, after taking into consideration the objections of the Food and Agriculture department. Though no material has been brought to our notice in support, of the Page 1808 said statement, we shall assume that it is so. Even then the fact remains that this reconsideration by Director, Animal Husbandry department is said to have taken place sometime in 1990. whereas even in 1992. the Food and Agriculture department was yet protesting with its views before the Krishnan Committee. Above all, the said reconsideration by the Director. Animal Husbandry department far prior to the judgment of the High Court dated November 16, 1991 does not relieve the Central Government of the obligation to consider the Krishnan Committee report and pass appropriate orders in the matter as directed by the judgment of the High Court dated November 16. 1991. It was for the Central Government, to consider the said report taking into consideration the several facts and circumstances mentioned therein as also the contending views expressed by the several authorities and departments referred to therein. This, the Central Government has clearly failed to do.

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

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In view of the fact that the controversy relating to the establishment of the slaughter house has been going on over the last several years, we think it appropriate that the

Central Government should look into all relevant, aspects, as directed by the High Court of Andhra Pradesh in its judgment dated November 16, 1991. forthwith and record its opinion before we take a final decision in the matter. The Page 1809 decision of the Central Government shall be recorded in a reasoned proceeding, which, shall be placed before this Court. The further orders to be passed would depend upon the contents of the report and the material so placed before us.

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

(Emphasis supplied)

23. From the above noted observations of this Court in the appeals, we find that the propriety of the Krishnan Committee report could be considered after the receipt of the material and report from the Central Government. Therefore, it cannot be said that by the aforesaid order of this Court at the intermediary stage this Court in fact rejected the report of the Krishnan Committee. On the other hand, it was made clear that such a report can be considered after submitting of the report of the Central Government in compliance with the directions made by this Court, as noted herein earlier. In compliance with the directions made by this Court in its order, a report was submitted and a further order in continuance of the order dated 25th October 1994, was also passed by this Court in the aforesaid appeals reported in Akhil Bharat Goseva Sangh and Ors. v. State of A.P. and Ors. From this order, it appears that the Central Government had constituted an inter-Ministerial committee headed by the Joint Secretary, Ministry of Food Processing Industry and three other Members. The committee in its report made the following conclusions and suggestions:

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

(Emphasis supplied)

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(ii) The Krishnan Committee's assumption and apprehensions on depletion of cattle due to establishment of M/s Al-Kabeer's slaughter Page 1810 house are not based on correct scientific analysis and adequate reasoning, and therefore, are not acceptable. From the facts and analysis it is obvious that amongst bovine animals, the project of M/s. Al-Kabeer is to utilize only the unproductive buffaloes and not cow and its progeny. In fact, adequate number of unproductive buffaloes were available for use in the slaughter house and other slaughter houses in Andhra Pradesh.

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

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

24. Number of petitions were filed by the appellants in the appeals challenging the report and finally this Court by its order dated 12th March 1997 made the following observations :

There is good amount of substance in the submissions of the learned Counsel for the appellants. The statistics which constitute the basis of this Report submitted by the Government of India are not really relevant to the issue before us. As lightly pointed out by the learned Counsel for the appellants, Al-Kabeer started functioning only in April 1993 and the effects and impact of its functioning will be known only if one studies the figures of availability and /or depletion of buffalo population over a period of one or two years after Al- Kabeer has started, functioning. Merely showing that there has been a marginal increase in buffalo population between 1987 and 1993 is neither here nor there. Even if It is assumed that the 1993 figures refer to the figures up to September-October 1993, that will take only six months of working of Al- Kabeer. The proper impact of working of Al-Kabeer on the depletion of cattle,, if any, would be known only if one takes into consideration the census figures of cattle in Telangana region or in the areas contiguous to Medak District (where the said unit is Page 1811 located), as the case may be, after at least two years of working of Al-Kabeer. In short, the position obtaining after April 1995 would alone give a correct picture. We-cannot also reject the contention of the learned Counsel for the appellants that the Government of India's Report is influenced to a considerable extent by the. Report of Shri Yogi Reddy. the then Director of Animal Husbandry, Government of Andhra Pradesh. whose Report has been termed as "unauthorized" by the Special Secretary to the Government of Andhra Pradesh and thus disowned by the Government, Even according to the Government of India's Report, the 12

requirement of Al-Kabeer is 1.5 to 2.0 lakh buffaloes every year, which is not an insubstantial figure. We must also take into consideration what the appellants' counsel call the inherent contradiction between the 'standard and Quality of beef required for export and the provisions of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 and the effect of the decisions of this Court, which leave only old and infirm buffaloes for slaughter. We therefore, think it appropriate that the Government of India should be called upon to send a fresh report after studying the impact and effect of the working of Al-Kabeer upon the buffalo population of the Telangana region of Andhra Pradesh and also of the areas adjacent to Al- Kabeer. two years after the commencement of the operations by Al-Kabeer. It is not possible for us to pass any final orders on the basis of the Report now submitted, which as stated above, is based upon the statistics/census figures of cattle population including buffalo population for the period 1937 to 1993. Accordingly, we call upon the Central Government to submit a fresh report in the light of the observations made herein within six months.

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

26. Pursuant to the order of this Court in the year 1997, a report was filed by the Central Government. In the direction made by this Court in 1997, this Court observed that the data starting from two years after the functioning of the Al-Kabeer abattoir (company) would give the correct picture of its effect on live stock population in the surrounding areas and directed the Central Government to file the same. In the report filed by the

Central Government, date has been analysed through a comparison between a four year period immediately preceding the operation of the abattoir and four year period immediately after the functioning of the abattoir i.e. data "between 1989-90 to 1992-93 was compared with data between 1993-94 to 1996-97. The data was compared by averaging the population of four year blocks before and after working of the abattoir.
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27. After making the comparison, the following has been reported:

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

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

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

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

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

30. This submission was hotly contested by the learned Counsel appearing for Al-Kabeer (Company). We have carefully examined the submissions of the learned Counsel for the parties and also perused the records and the findings of the High Court regarding location requirement, as indicated in the LOT of the Central Government and the General Order of the State Government. In our view, this submission of the appellants, at this stage, cannot be accepted. At the outset, we may say that this question was not seriously argued by the learned Counsel of the appellants before us, although in the written submissions filed by them, this question was tentatively raised. Since a submission was made on this account, we feel it Page 1813 appropriate to deal with this question. Before we deal with this question in detail, we may note that for the first time in this Court the appellants have alleged the fact that the Al-Kabeer unit (company) is located within 13 km. from the standard urban limits of the city of Hyderabad which falls within the prohibited zone.

31. Even assuming, distance prohibition would be applicable to the case of Al-Kabeer

(company), we are still of the view that this distance prohibition may not stand in the way of Al-Kabeer from getting an industrial licence for the purpose of setting up the abattoir at the site in question. It is an admitted fact that in the application for grant of licence, Al-Kabeer (the Company), had stated the exact location where they were going to set up the abattoir, that is to say in Rudraram Village in the District of Medak of the State of Andhra Pradesh. When this application was processed by the Central Government, a thorough enquiry must have been made by it and only thereafter industrial licence was

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issued to, the Company. It is true that before issuance of licence, LOT was issued by the Central Government only wherein, this location requirement was stated in a printed form. It is an admitted position that the Central Government did not make any query from the company about the distance between Rudraram Village, where the site is located, and the urban limits of the city of Hyderabad.

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

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

34. Economic liberalization was made by the Central Govt. on 25th of July, 1991 and following the said policy, the Government of Andhra Pradesh also issued a Notification on 3rd February 1992 which was issued as a follow up action of the Notification of the Central Government dated 25th July 1991 under which permission/license was required for industries Page 1814 located within 25 km from the periphery of standard urban area. The Notification dated 3rd February 1992 of the State Government specified areas which would fall within or outside 25 km. from the periphery of the standard urban area in order to enable the entrepreneurs to take appropriate action. According to the appellants, the company is located within Rudraram village which is a prohibited zone from the periphery of the city of Hyderabad and therefore the company, in terms of the Industrial policy of the State Government, was not. entitled to get an industrial licence to run the slaughter house. Clause (2) of Paragraph 3 of the Notification specified the list of villages falling within the prohibited zone for which, location approval from. The Central Government would be necessary except for non-polluting industries such as electronics, computer software and printing industries. In the present case, the activity of the company, does not fall in the category of non-polluting industries. However, this notification contains two lists. One list is A and the other is B. List A specified all the villages within the standard urban area of Hyderabad. Patancheru which falls within Medak District and is within the compilation of 25 km. from the periphery of the

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standard urban area of Hyderabad falls under list B. Therefore, in terms of the distance

there was requirement of obtaining an industrial licence by - virtue of the Notification dated 3rd February 1992 of the State Government. In view of the admitted fact that industrial licence was granted by the Central Govt. on 11.11.1992 and permission to run the slaughter house was also granted by the State Government on the basis of the Industrial policy of the State Govt. of 3rd February, 1992, we are unable to hold that, distance prohibition could be considered to be a ground either for cancellation of the industrial licence or for closing down the unit.

35. Apart from that, we may keep it in mind that in pursuance of the LOI granted by the Central Government and the various permissions granted by the State Government and other authorities, the company commenced construction, of its factory in 1989. It should also keep in mind that, before commencing its construction the following permissions/No Objection Certificates were taken by the Company:

- (a) No Objection Certificate for site clearance from APPCB.
- (b) No Objection Certificate from the Director of Animal Husbandry., A.P.
- (c) Letter of Intent from Ministry of Industry, Govt. of India.
- (d) Two NOCs. from the Gram Panchayat to locate the factory as well as commence construction.
- (e) Permission from Medical and Health Department, A. P.
- (f) Permission from the Director of Town and Country Planning.
- (g) Permission from Director of Industries, A.P.
- (h) NOCs. from National Airport Authority, Hyderabad and Madras,
- (i) NOC from AIR Headquarters, New Delhi.

36. It also appears from the record that the Industrial licence was granted by the Central Government on the strong recommendation of the State Government. The unit commenced production in April 1993 after dismissal Page 1815 of a batch of Writ Petitions challenging the permissions granted by various authorities to commence production including that of the APPCB. The unit achieved its full production in December 1993 and since then it is earning valuable and substantial foreign exchange for our country. Above all, the question on location, as noted herein earlier, was neither raised seriously before the High Court nor before us. It must also be noted that, in this regard various State authorities had granted permissions for the abattoir to be constructed and function at the selected site and production has been continuing for the last 10 to 15 years. That apart, the question on location requirement is always a question of fact which cannot be permitted to be raised at this stage before us. However, we keep it open to the

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Central Government and the State Government to consider the distance prohibition as indicated in the LOI and the Notification and General Order of the State Government for the purpose of shifting the site to some other alternative place which would satisfy the location conditions. Subject to the above, this question is answered in favour of the Al-Kaheer (company).

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

38. The learned Counsel appealing on behalf of Satyavani in C.A. No. 3967 of 1994 contended that APPCB by its consent order dated 21st December 1993 allowed limit for B.O.D, of 100 mg/Lit, whereas the maximum permissible limit specified in the Environment Protection Rules, 1986 Was 30 mg./Lit (Rule 3, Schedule 1, Entry 50B). According to the learned Counsel appearing for Satyavani the limit for suspended solids allowed by APPCB of 100 mg/Lit was in excess of limit of 50 mg/Lit. allowed in Rule 3,

Schedule 1, Entry 50B of the Environment Protection Rules, 1986. Therefore, it was contended that, the consent of APPCB was in violation of the Act and Rules, and accordingly it must be quashed. It was also contended on behalf of Satyavani that, since the samples collected on 6th August 1994 from Al-Kabeer show that its B.O.D. in fact reached 150 mg/Lit. which was much beyond the permitted limit of 30 mg./Lit. and its suspended solid discharge, was recorded at 140 mg/Lit. which was much beyond the permitted 50 mg./Lit., the question of giving consent to Al-Kabeer by the authorities could not arise at all as it had clearly violated the maximum permissible limit specified in the Environment Protection Rules, 1986. Accordingly, permission granted should be withdrawn. These submissions were strongly disputed, by the learned Counsel for Al-Kabeer (company).

39. From a careful consideration of the rival submissions of the parties on the question of environmental pollution, we find that this question was not seriously argued by the appellants during the course of hearing that the company had violated the norms under Environment Protection Rules, 1986. Thus we may not permit the appellant to raise this question before us. Page 1816 However, as environmental pollution has now become a public nuisance, we thought it fit to go into this question and decide the same.

40. We have carefully examined the rival submissions made before us by the learned Counsel for the parties on the aforesaid question. From the record it appears that the recommendations regarding environment made by Krishnan Committee so far as the abattoir is concerned, were accepted by the Central Government as would be evident from this Court's order dated 12th March, 1997. It also appears from the record that Al-Kabeer Company had invested huge amount for installation of elaborate anti-pollution equipment, and operates the same with consent obtained from APPCB. It is true that the standards prescribed by APPCB for Al-Kabeer while issuing its consent for slaughtering

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

41. It may also be noted that in the interim judgment dated 12.3.1997 reported in MANU/SC/1122/1997, this Court has noted the conclusions of the Central Government Committee in paragraph 2 wherein, it has recorded that the Committee had accepted the suggestions and recommendations made by the Krishnan Committee with regard to pollution of air and water. Page 1817 It has also been noted therein that the Environmental Audit Report and the Environmental Management Firm Report along with the Environmental Management Plan prepared by the company are acceptable. As already noted hereinafter, the company has installed elaborate anti-pollution equipment, imported as well as indigenous. The company has been operating only after obtaining consent from APPCB which is regularly renewed. Insofar as standards for discharge of effluents from slaughter house and meat processing are concerned, the same is prescribed under Rule 3 read with entry 50-B of Schedule I of the Environment Protection Rules, 1986. In this connection Entry 50-B (b) of Schedule 1 of Environment Protection Rules 1986 is relevant as it prescribes the B.O.D., suspended solids & oil and grease limits. At this juncture it is also to be noted that Ministry of Environment, Government of India, by its letter dated 29th May 1995 fixed the standards for Al-Kabeer Exports Pvt. Ltd. at 100 B.O.D. and 30 B.O.D. for slaughterhouse and meat, processing respectively. As Al-Kabeer has been operating on the basis of the norms specified by the Central Government and considering the fact that- Al-Kabeer unit has been operating for more than 10 years

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without, any objection from APPCB and keeping in mind the economic policy of the Central Government, we are of the view that Al-Kabeer may not be, at this stage, directed to stop their operation and close the unit. In view of our discussion made hereinbefore, and as APPCB reserves the right to take action against Al-Kabeer for violation of the terms and conditions imposed in its permission, it would be open for APPCB to direct Al-Kabeer to rectify the level of pollution below prescribed limits and in the event that it is not done they may direct Al-Kabeer to close down its abattoir. As noted hereinbefore, it is of course true that the prescribed limit of pollution by APPCB was in violation of the Environment Protection Rules, therefore in our view," directions must be given to APPCB to rectify its consent order and directions be given by them to the abattoir to comply with that rectified consent order in accordance with Rule 3 of the Environment Protection Rules.

42. In this connection, two further questions had arisen in relation to compliance with environment standards maintained by Al-Kabeer, which were raised by the appellant Shri Tukkoji, in C.A. Nos. 396-1-65 of 1994.

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

On a prima, facie view of the various provisions of the Water Act and the corresponding provisions of the Air Act, in particular the provisions of Sections 16, 17, 20 and 25 of the Water Act we are not inclined to Page 1818 hold at this stage that a third party has any right to seek information or material from the State Board at or before granting of consent by it under Section 25(3) of the Water Act. It is not as if aggrieved party is left without a remedy. After consent is granted... any third party who feels aggrieved... can make a complaint to the Court of a First Class Magistrate... Apart, from that, the State Board has ample powers to review its order granting consent by modifying or revoking any existing

condition....

(Emphasis supplied)

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

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

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

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

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

47. From the record, it appears that at the relevant time the Chairman and the Member Secretary of the APPCB did not possess these statutorily required qualifications. The observation of the High Court in the judgment that some of the members of the APPCB were scientific experts, does notPage 1819 address this specific breach of the statutory requirement. In this connection, we, however, need to look into the provisions under Section 11 of the Water Act, which provides in terms that "No act or proceeding of a Board or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in or any defect in the constitution of, the Board or such committee, as the case may be." Therefore, applying Section 11 of the Act which clearly provides that 110 act or proceeding of APPCB or any committee thereof shall be called in question, it can safely be concluded that even if there was some defect in the composition of the APPCB, that would not invalidate the consent order issued by it.

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

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

Preservation Act, 1977.

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

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

a. The report of the Central Govt. submitted on 12.9.1997 was misleading, because it had averaged, and then compared the figures for buffalo population in the four years before and after Al-Kabeer was set up, which disguises the fact that a decline in buffalo population had occurred subsequent to this setup. Further, the same persons responsible for preparing the earlier Govt. report of 1994- which was held to be misleading by this Court in its order dated 12.3.1997- were again involved in preparation of this report.

b. The abattoir stopped taking animals from its hinterland subsequent to the Court's order of 12.3.1997, and instead began importing animals from other States. Thus, the figures of 2003 Livestock Census are not relevant to the issue at hand, and the effect of the abattoir on buffalo depletion can only be judged on the basis of statistics of approximately two years after its commencement- as observed by this Court in its order dated 25.10.1994. Further, the 2003 Census itself shows a decrease in buffalo population in adjoining States of Karnataka and Maharashtra, from 1999 to 2003- indicating the effect the abattoir has had, through its importation of buffaloes from these States. Moreover, the figures in the 2003 Livestock Census show abnormal and unrealistic growth of cattle population' in districts of AP, which can not be accepted.

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c. The subsequent report of the Central Govt. dated 23.12.2003 itself vindicates the claim that cattle depletion has occurred due to Al-Kabeer's operations.

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

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

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

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

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

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

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

f) In any case, the freedom in Article 19(1)(g) of the Constitution cannot be permitted to be exercised if it is not in the interests of the general public. The slaughter of livestock in

response to export demand creates acute scarcity of animals which will increase prices of milk, ghee, meat and other products. Further, such export-oriented slaughter-houses induce owners of animals to sell them despite their utility as milch or draught cattle. Depletion of cattle wealth also leads to loss of benefits from dung output of cattle, which is its most useful contribution. The Al- Kabeer project also leads to a net loss of employment, as more than one lakh persons are employed in activities in relation to cattle, besides depriving the nation of the benefits of live cattle. These effects constitute violation of Article 21 of the Constitution.

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

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

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

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

b. There are sufficient number of useless buffaloes to meet Al- Kabeer's capacity, if figures over a year, and not simply a given day, are taken into account. In one year, 9. 4 lakh useless buffaloes are available in Andhra Pradesh, much more than the requirement of Al-Kabeer.

c. The appellants had mistakenly inferred that useful buffaloes are being slaughtered by Al-Kabeer but the report shows that, since milk production has increased along with meat export, therefore young and productive animals are not being slaughtered.

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

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

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

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

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

b. The claim of the appellants that cattle population is declining on account of Al-Kabeer's operation is based on a *wrong approach*, because Page 1822 the issue is not

whether the *total* population is decreasing or not, but. whether the population of *healthy* livestock is decreasing. The census figures confirm that there has been no such depletion due to Al-Kabeer's operation.

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

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

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

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

55. In order to see whether those conditions are fulfilled by Al-Kabeer, the Director, Animal Husbandry of State of Andhra Pradesh has deputed necessary officials of the rank of Veterinary Asstt. Surgeons to the plant of the company to monitor and undertake antimortem

and post-mortem examinations and to implement the provisions of the Act.

56. As noted herein earlier, in the interim direction made by this Court in these appeals on 12th March 1997, this Court directed the Central Govt, to give a report after studying the impact and effect of the working of Al-Kabeer upon the buffalo population of the Telangana Region of Andhra Pradesh and also of the areas adjacent to Al-Kabeer, two years after the commencement of the operations by Al-Kabeer, The Central Government in pursuance of the said direction made on 12th March 1997 filed a fresh report on 15th September 1997. From a reading of the said report, it appears to us that the expert committee of the Central Govt. had examined all issues, as directed by this Court in its judgment dated 12th March 1997. This considered opinion in the said report is as under: on the examination of all observations mentioned in the judgment dated 12.3.1997 the committee is of the opinion that there Page 1823 would not be any depletion effect on live stock population particularly buffalos, sheep and goat in Medak and contiguous districts, Telanaana region or in the State of Andhra Pradesh as a result of continuance of Al-Kabeer at the full capacity utilization.

(Emphasis supplied).

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57. In support of this report the State Govt. also filed an affidavit on 15th November 1997 (See page 17 of the counter affidavit of Al-Kabeer Exports to LA. No. 10-14/1997) wherein the State Government noted that the report of the Central Govt, was based on the relevant data and the conclusions reached by the expert committee in its report were not improper. In paragraph 20 of the said affidavit, it has been stated that the State Govt. had deputed five veterinary Asstt. Surgeons to supervise the slaughtering work at the site of Al-Kabeer and only thereafter the State Govt. issued anti-mortem and post-mortem certificates. From the record, it is also evident that the Central Govt. had filed yet another report prepared by an Expert committee along with an affidavit dated 6th July 1998. This

affidavit and report were filed pursuant to the order passed by this Court on 13th April 1998 directing the Central Govt. and the state of Andhra Pradesh to file affidavits not only responding to the appellant's application for modification but also with regard to the cattle, population, of Andhra Pradesh in general and Telangana zone in particular, The report states as follows:

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

The detailed report at yet another place states:

A comparison of the estimated population of buffaloes in milk during the four year period before-working of AI-Kabeer abattoir and after working of AI-Kabeer abattoir indicates that similar to milch buffaloes, population of buffaloes in milk also increased during the four year period after working of AI-Kabeer abattoir. The increase is 23.40 percent in Medak and contiguous districts, 24.33 percent in Telangana and 17.17 percent in Andhra & Rayalaseema. An overall increase of 19.61 percent in the Andhra Pradesh State is observed. This clearly indicates that productive buffaloes are not slaughtered in AI-Kabeer abattoir as stated by the appellant and there would not be depletion of buffalo population as a result of AI-Kabeer functioning.

In conclusion the report states:

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

(Emphasis supplied)

58. On behalf of the appellant, it was argued that in the Central Govt. report figures/statistics were misleading inasmuch as it had taken an average of four years before the commencement, of operations of AI-Kabeer and again of four year figures after the commencement of operations by AI-Kabeer. According to the appellants, the correct way was to see the figures immediately preceding the start of operations by AIKabeer

and thereafter to see the figures two years after commencement of operation of AI-Kabeer. Page 1824 In our view, this submission is fallacious and cannot be accepted.
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The committee of the Central Govt. has correctly taken the figures of a block period of four years before commencement of operations and again figures of a block period of four years after commencement of operations by AI-Kabeer. This is in view of the fact that statistics/figures of one particular year cannot represent or give a proper picture as the number of animals/buffaloes/cattle can very well vary due to natural calamities large scale migration in view of urbanization etc. We do not find any thing to say that the committee of the Central Govt. had gone wrong by proceeding on that basis and it was justified to take a block period of four years which would certainly indicate the trend or show whether there was any steep or persistent decline after the commencement of operations of AI-Kabeer. We must not forget that this Court has also seen that there is no sharp decline or consistent reduction in the number of useful buffaloes year after year after the commencement of operations of AI-Kabeer. The figures/statistics as given by the Central Govt. in its report dated 15.9.1997 as well as the 16th Quinquennial and 17th Quinquennial Census would clearly indicate that there is an increase in the number of buffaloes and there is no reduction or decline much less a steep decline in the number of buffaloes in the Telangana region, as argued by the appellant. The district-wise comparison for Telangana between the census of 1999 and 2003 as would be evident, from the report is as follows :

District 16th Census 1999 17th Census 2003

Mahaboobnagar 360749 356269 (-)
Rangareddy 211044 272342 (+)
Hyderabad 8870 31400 (+)
Medak 313988 367350 (+)
Nizamabad 267846 333989 (+)
Adilabad 208823 301014 (+)
Karimanager 448896 441361 (-)
Warangal 438324 486779 (+)
Khamniam 498537 5658 10 (+)
Nalgonda 622827 592271 (-)

PERCENTAGE VARIATION

Year A.P. State Telaneana Region

1999 census (over + 5.3% +4.6%
1993 census
2003 census (over + 10.35% + 10.91%
1999 census

59. The appellant sought to challenge the veracity and correctness of the figures given in the report of the Central Govt. as well as in the Quinquennial Page 1825 census. In our view, this submission is devoid of merit. It is now well-settled by various decisions of 26

this Court that the findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by courts in the exercise of their power under Article 226 of the Constitution or by this Court under Article 136 or 32 of the Constitution. For this proposition, reliance can be placed on the decision of this Court in the case Systopic Laboratories (Pvt.) Ltd. v. Dr. Prein Gupta and Ors. 1994 Suppl.(1) SCC 160. Paragraphs 19 and 20 of this decision clearly give the answer on the question whether the findings of expert body in technical and scientific matters can be interfered with by the Court either under Article 226 or by this Court under Article 32 or 136 of the Constitution. Paragraph 19 is re-produced below:

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

(Emphasis supplied)

Para 20 is as follows:

The learned Counsel for the petitioners have urged that these studies and reports had been submitted on behalf of the petitioners and other manufacturers before the Sub-Committee of the DCC as well as the Experts Committee but there has been no proper consideration of the same by the experts as well as the DCC and the Board. In this context, it has been submitted that no medical expert in the field of clinical medicine in the treatment of asthma was associated in the committees and such-experts alone could make a proper evaluation of the said studies. We find no substance in this contention. We have pursued the minutes of the meetings of the Board, the Subcommittee of the DCC as well as the Experts Committee. The minutes show that, the material that was submitted on behalf of the manufacturers of the drugs in question was examined by the members and it is not possible to hold that there has been no proper consideration of the said material by the Experts Committee or the Subcommittee of the DCC. The complaint that experts in clinical medicine were not associated with the Committee does not appear to be justified. The minutes of the meetings of the experts to consider the views of the affected

manufacturers, who represented against the proposed withdrawal of certain formulations moving in the market, which were held on September 8, 1987, October 16/17, 1987 and January 15/16, 1989 show that among the members were included Dr. O.D. Gulati, Dean, CAM Medical College, Karansad and Dr. J.P. Wali, Page 1826 Assistant Professor of Medicine, AIIMS. New Delhi, Dr. M. Durairaj Consultant, Cardiologist, Director of Cardiology, Poona Hospital and Kesearch Centre, Pune was also member of the Sub-Committee and had attended the meeting held on January 15/16, 1988. It cannot, therefore, be said that, the medical experts in clinical medicine were not associated in the Experts Committee for evaluation of the material that was furnished by the manufacturers.

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(Emphasis supplied)

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

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

62. Before concluding this issue, let us deal with Submission No. (h) made by Akhil Bharat Goseva Sangh in C.A. No. 3968 of 1994. On behalf of Akhil Bharat Goseva Sangh in Submission No.(h) it was urged that the decision in *Mohd. Hanif Quareshi and Ors. v. The State of Bihar* 1959 SCR 629, would not help Al-Kabeer in any way as the position at present is completely different. In that decision, total ban on slaughter of old cattle was struck down on the ground that there was scarcity of fodder resources, which however, according to the Akhil- Bharat Goseva Sangh, does not exist any longer. In the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors.* reported in, it has also been held that in view of the position that exists now i.e. adequate availability of cattle feed resources, the question of striking down total ban on slaughter of old cattle For scarcity of fodder resources would not arise at all. In our view, this position cannot be disputed. However, in the present case, we are concerned with the A.P. Act, 1977 which does not impose a total ban on slaughter of a particular type bovine animal, whereas in Mirzapur's case this Court dealt with the provisions of Bombay Animal Preservation (Gujarat Amendment) Act, 1994 which imposes a total ban on slaughter of cow and its progeny. So far as the A.P. Act, 1977 is concerned, there is no total ban on slaughter of buffaloes. Therefore, in our view, this submission of the Page 1827 Akhil Bharat Goseva Sangh cannot at all be accepted, as we are not concerned with the case of striking clown a particular provision which imposes fan absolute prohibition of slaughter of particular types of bovine animals. In Mirzapur case, it was, however, not held that permitting slaughter of bovine cattle by itself is unconstitutional. This being the position, we are not in agreement with the learned Counsel for the appellant that Submission No. (h) can come to their assistance for the purpose of banning of slaughter of buffaloes by Al-Kabeer.

63. The last question which was agitated by Akhil Bharat Goseva Sangh (C.A. No. 3968/1994) but not agitated by the other appellants in the other appeals was whether the policy of the Central Govt. to promote export of meat violates constitutional provisions. According to the appellant, the policy of the Govt. to encourage slaughter for export is subject to judicial review as policies which violate constitutional provisions are review

able. This policy violates Article 39(b) and (c) of the Constitution as it serves to
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concentrate profits from cattle wealth in a few hands. It was further submitted by Akhil Bharat Goseva Sangh that not only this policy violates Article 47 of the Constitution as it leads to malnutrition but also Article 18 which contains a positive command to the State to preserve and improve breeds and prohibit slaughter of milch and draught cattle regardless of their usefulness .

64. The learned Counsel has also contended that this policy also violates Article 21 by depriving the society of the useful benefits of animals. It was further submitted that the A. P. Act, 1977 does not mention any specific age limit under which cattle slaughter is prohibited and therefore the determination of healthy and useful cattle is subjective and with a scope of maneuverability. Although no provision of the aforesaid Act prescribes the age of any slaughter able buffalo but the A.P. animal husbandry manual prescribes the age of slaughter able buffaloes as above 10 years. According to this appellant, these buffaloes are useful even till 15-20 years. Lastly, it was submitted that the agencies of the State Government also recommended ban on export of meat and such being the position this Court may strike down the policy of the Central Govt. so far as the meat export policy is concerned. This submission of the appellant was contested by the learned Counsel for the respondents, in particular, the learned Advocate for APED A in C.A.. No. 3968/1994. In our view, as the policies taken by the Central Govt. and APED A, which is a creation of the Parliament for promotion of export and product development of scheduled products, the question of striking down of the policy cannot arise. However, it will be always open to the Court to direct the Central Govt. or the State Government to renew or review its policy and to make a fresh policy at any time if they find it to be expedient, to do so. As noted herein earlier, APEDA is a statutory authority created by an Act of Parliament for promotion of export and product development of scheduled products, "Scheduled Product" has been defined in section 2(i) of the Act which means any of the agricultural or processed food products included in the Schedule. Item No. 2 to the Schedule of the Act of 1985 mandates that APEDA shall promote export and development of scheduled products. It is the consistent policy of the Government of India to Page 1828 encourage export of meat and meat products, as would be evident from the following:

Export of buffalo meat is on the OGL list.

- (i) Government of India in its Directive has stressed export of meat and meat products as thrust area.
- (ii) Current "Foreign Trade Policy" encourage export of meat. It provides for export of meat of buffalo provided it is accompanied by a certificate from the designated veterinary authority to the effect that meat or offal are from buffalo not used for breeding and milching purposes.

65. It appears that the certificates that are to be or already issued was in conformity with the decision of the Constitution Bench's judgment in Mohd. Hanif Qureshi's case reported in 1959 SCR 629. It is the case of the Government as well as the abattoir that only those buffaloes which are unfit for milching, breeding and draught were permitted to be
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slaughtered and are being slaughtered. We have already discussed the decline of cattle population because of the operation of Al-Kabeer in this judgment hereinbefore. In Mohd. Hanif Qureshi's case reported in 1959 SCR 629 the issue was not whether the population of live stock was increasing or not but whether the population of healthy live stock was increasing, Although it was sought to be argued by the appellant that due to slaughter of buffaloes by Al-Kabeer, the population of healthy buffaloes was declining even then in view of our discussion made hereinafter, it must be confirmed that there, is no depletion of cattle/buffalo wealth due to operation of Al-Kabeer. Apart from that, it appears from the record that Al-Kabeer slaughterhouse was built in accordance with

European Economic Community Standards and is one of the most modern, scientific, integrated slaughter houses in India with an installed capacity of 15000 MT. If in any way Al-Kabeer is directed to close down their factory the said action on the part, of the Central Government would be to discourage private entrepreneurs to invest in the meat industry which will affect the reputation of India in the export market of meat As we have already noted, the interim direction given by this Court on 12th March 1997 by which the production of Al-Kabeer was reduced to 50 %, the total export of meat from India, which is about 1,70,000 MT., did not reduce. For the reasons aforesaid, we are unable to direct at this stage to strike down the policy regarding meat export from India to foreign countries. We are of the view that the policy of the Central Government cannot be easily struck down only because there was slight decline of cattle growth nor it can be struck down before looking into the entire aspect of the matter. It is also well settled that policy decision of the Government cannot be interfered with or struck down merely on certain factual disputes in the matter. It is not open to the Court to strike down such decision until and unless a serious and grave error is found on the part of the Central Government or the State Government. Such being the position, we are unable to strike down this meat export policy of the Central Government, as in our view, it does not violate the constitutional provisions. That apart, the question regarding constitutionality as mentioned above was not argued before the High Court seriously. Accordingly, this submission of Akhil Bharat Goseva Sangh is hereby rejected.

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

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or fundamental duty was not an issue before the Constitution Bench of this Court in the case of State of Gularat v. Mirzapur. It is true that in the aforesaid Constitution Bench decision it has been held that total prohibition of cow and cow progeny slaughter may be justified. However, it. has not been, held in that decision, that laws and policies which permit such slaughter arc unconstitutional. Therefore, the position of law remains that the directive principles and fundamental duties cannot in themselves serve to invalidate a legislation or a policy. Moreover, the export policy itself permits only export of meat from buffaloes that are-certified as not useful for milching. breeding or draught purposes. Therefore, if properly implemented, it cannot be said that the policy will necessarily have adverse consequences, especially in view of the foreign exchange obtained through it. Accordingly, we are unable to accede to the argument of the learned Counsel for the appellatant that the meat export policy, as made by the Central Government must to be struck down.

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

68. In view of our dismissal made hereinabove and for the reasons stated hereinafter we are of the view that these appeals can be disposed off by giving the following directions:

1. The APPCB is hereby directed to rectify its consent order given to Ai~ Kabeer following Rule 3 read with Schedule 1, Entry 50-B of the Environmental Protection Rules, 1986. In the event abattoir fails to comply with such rectified consent order of the APPCB, it would be open to the authorities to direct closure of the AI-Kabeer unit.
2. The APPCB is directed to file reports before the State Government as well as Central Government relating to compliance with the pollution Page 1830 standards by AI-Kabeer specified under its consent order in compliance with the Environmental Protection Rules, 1986, once in every three months.
3. The Company is directed to regularly monitor pollution of air and water by its abattoir. It is further directed to file a report of its compliance with the Environmental laws, particularly, the Environmental Protection Rules, 1986, before the APPCB every month.
4. AI-Kabeer is directed to file reports before the State Government on cattle population in its surrounding areas once every year. The State Government shall examine the correctness of the said report and thereafter take appropriate action.
5. The State Government is directed to monitor regularly and strictly in respect of AI Kabeer's compliance with all applicable laws, particularly the provisions of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977, once every three months and to obtain reports on the same and thereafter to take necessary action for their proper implementation.

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6. The Company is directed to prepare a plan in consultation with the State Government and take up its implementation in conjunction with the State Government for promoting better animal, husbandry practices within the next three months. The State Government is directed to take all the necessary steps for this purpose.
7. Modernizing the existing abattoirs in the state is advisable and in that regard the State Government may take steps that it considers necessary.
8. Finally, the Central Govt. is directed to review the meat export policy, in the light of the Directive Principles of State Policy under the Constitution of India, and also in the light of the policy's potentially harmful effects on livestock population, and therefore on the economy of the country.

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

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

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71. In view of the disposal of appeals by this common judgment, all Interlocutory Applications and Contempt Petition pending, if -any. shall also stand disposed of. There will be no order as to costs.

In Civil Appeal Nos. 4711-4713 of 1998:

72. Although these three appeals being C.A. Nos. 4711-4713 of 1998 Umesh and Ors. v. Karnataka and Ors. were heard along with C.A. Nos. 3964-6S of 1994, it was thought, fit

to deliver the judgment in C.A. Nos. 4711-4713 of 1998 separately, as the questions involved in these appeals were not in issue in C.A. Nos. 3964-68 of 1994. Accordingly, the judgment in these three appeals which involved common questions of law and fact is being delivered in the following manner:

73. Before the Karnataka High Court, two writ petitions being W.P. Nos. 32999-33000/1995 were filed by one N. Umesh and Hindu Jagarana Vedike. Another Writ Petition being Writ Petition No. 31217/1992 was filed in the same High Court by Smt. 32

Sarojini Muthanna and H. Mangalamba Rao and Ors. In the Writ Petitions bearing W.P. Nos. 32999 of 1995 and W.P. No. 33000 of 1995 filed by Umesh and Hindu Jagaran Vedike, the following reliefs were sought :

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

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

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

(4) Issue a writ of total prohibition of slaughter of bovine cattle in the whole of Karnataka, Practically, the same reliefs were claimed by Sarojini Muthanna and Mangalauiba Rao in W.P. No. 31217 of 1992. However, W.P. No. 31217 of 1992 relates to Kodagu and Coorg districts of Karnataka.

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

75. The relevant facts which are required to be taken into consideration in deciding these appeals are enumerated below. The three Writ Petitions filed in the High Court were in the nature of Public Interest Litigations and the petitioners were prosecuting the Writ Petitions before the Court in representative capacity.

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

77. In the erstwhile State of Coorg which now forms part of Karnataka State there had been a total prohibition of slaughter of cows and its progeny since slaughtering or killing of cows and calves or bullocks or oxen was considered an unpardonable sin and was

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considered as being opposed to sentiments, customs and religious beliefs of the natives of Coorg called ' Kodavas'. Further all these religious sentiments had for long received statutory protection and had been followed before the reorganization of the State under the States Reorganization Act. of 1956.

78. In the erstwhile State of Mysore, the Mysore Prevention of Cows Slaughter Act 1948 prohibited slaughter of cows, bulls, bullocks., buffaloes and calves in order to conserve cattle wealth of the State. In 1964, after the merger of the former State of Coorg with the

State of Mysore, a new enactment, namely, the Mysore Prevention of Cow Slaughter and Cattle Preservation Act 1964 (in short "1964 Act"), which repealed the 1948 Act. modified the animal slaughter laws in the State to the following effect:

- (1) Slaughter of cows and calves of she buffaloes was totally prohibited (Section 4)
- (2) Other bovine animals namely bulls, bullocks, buffaloes could be slaughtered after obtaining a certificate in writing from the competent authority that the- animal is fit for slaughter i.e. it is above the age of 12 years or that the animal has become permanently incapacitated for breeding, draught or milch purposes due to injuries, deformities or any other cause. (Section 5)

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

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

1. Whether the High Court erred in dismissing the petitions all-together after holding that, the State Government, must, strictly implement the provisions of the 1964 Act?
2. Whether the view taken by this Court in Mohd. Hanif Ouareshi v. State of Bihar 1959 SCR 629 regarding implementation of Article 48 directive principle vis-a-vis fundamental right guaranteed requires modification in the light of larger bench decision in Keshavananda Bharti Case and the subsequent decisions of this Court?

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3. Whether the terms in Article 48 are wide enough to include all categories of bovine cattle?
4. Whether Section 5 of the 1964 Act is unconstitutional in so far as it does not impose a total prohibition of slaughter of bovine cattle and whether a writ must be issued directing the State to prohibit slaughter of all bovine cattle in the State of Karnataka?

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

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

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

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

84. Let us now deal with the second issue raised by the appellants before us. According to the appellants, the view taken in Mohd. Hanif Quareshi and Ors. v. State of Bihar 1959 SCR 629 decision-vis-a-vis relationship between Directive Principles and Fundamental

Rights requires modification in the light of the decision in the case of Kesavananda Bharathi v. State of Kerala and subsequent decisions. We need not deal with this aspect of the matter in detail in view of the recent decision of this Court in the case of State of Gujarat v. Mirzapur. The decision of this Court in the case of Mohd. Hanif Quareshi and Ors. v. State of Bihar 1959 SCR 629 has now been over-ruled on this point by the Constitution Bench decision of this Court in Mirzapur Page 1834 case. Therefore, this question is decided in favour of the appellants. In Mohd. Hanif Quareshi and Ors. v. State of Bihar 1959 SCR 629 the contention that a law enacted to give effect to Directive Principles cannot be held to be violative of fundamental rights was rejected on the ground that:

a harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of Chapter' III will be "a mere rope of sand".

(Emphasis supplied).

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85. This view was, however, not accepted in the aforesaid Constitution Bench decision in the case of State of Gujarat v. Mirzapur. The Constitution Bench noted that after the decision in Kesavananda Bharathi v. State of Kerala the position is :

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

(Emphasis supplied)

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

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

(Emphasis supplied).

Further, in the case of State of Gujarat v. Mirzapur so far as Articles 48, 48A and also Article 51A(g) are concerned the following was held:

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

(Emphasis supplied)

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

87. The third question which concerns interpretation, of Article 48 of the Constitution shall now be dealt with.

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In 1958 Quareshi's case it was held that:

the protection recommended by this part of the directive is, in our opinion confined only

to cows and calves and to those animals which are presently or potentially capable of yielding, milk, or of doing work as draught cattle, but does not, from the very nature of the purpose for which it is obviously recommended, extend to cattle which at one time were milch or draught cattle but which have ceased to be such.

(Emphasis supplied).

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

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

(Emphasis supplied).

88. Such being the position and in view of the Constitution Bench decision as aforesaid, it can no longer be held that the protection recommended, by this part of the directive under Article 48 of the Constitution can be said to be confined only to cows and calves and those animals which are presently capable of yielding milk or of doing work as draught cattle. The aforesaid Constitution Bench decision has clarified that the protection under Article 48 of the Constitution also extends to cattle which at one time were milch or draught but which have ceased to be such. A submission was made by the learned Counsel for the parties on the usefulness of cattle. In 1958 *Quareshi's* case it was held that cattle becomes useless after a certain age which is for the Legislature to determine and thereafter their maintenance is a burden on the economy of the country. This position has also been negated by the decision of the Constitution Bench in the aforesaid case, and it has been held by this Court as follows:

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

(Emphasis supplied)

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

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

(Emphasis supplied)

90. Therefore, in our view, the interpretation of Article 48 of the Constitution has now been widened and "milch and draught cattle" include cattle which have become permanently incapacitated to be used for milch and draught purposes. Hence, this question is decided in favour of the appellants. Though, this question has been decided in

favour of the appellants, it does not. make any material difference to the final decision of this case. It is the decision on the next issue i.e. issue No. 4 that will have impact on final directions to be issued in this case.

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

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

93. In view of our discussions made hereinabove, even though the Mirzapur decision supports the submission of the appellants on the questions Nos. 2 Page 1837 and 3, the issuance of writ of Mandamus to compel total prohibition of cattle slaughter would only amount to judicial legislation and would encroach upon the powers of the Karnataka

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Legislature, as held by the High Court, which, in our view, was the right approach made by it. That being the position, we are of the view that the question of declaring total ban on slaughter of cattle cannot be permitted and Section 5 of the Act cannot be said to be ultra vires of the Constitution. For the reasons aforesaid, the appeals are allowed in part, i.e. to the extent of directing the State Government to strictly enforce and implement the provisions of Sections 4, 8-11 and 18 of the 1964 Act and take action on any violations thereof. Further, it is directed that the State Government maintain proper institutions for providing care and protection to cattle in the light of Section 18 of the 1964 Act.

There will be no order as to costs.