

GAHC020003292020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/128/2020

VERSUS

THE STATE OF NAGALAND AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF NAGALAND,
NAGALAND CIVIL SECRETARIAT, KOHIMA, NAGALAND

2:THE COMMISSIONER OF FOOD SAFETY

DEPT. OF HEALTH AND FAMILY WELFARE
GOVT. OF NAGALAND
NAGALAND CIVIL SECRETARIAT
KOHIMA
NAGALAND

3:THE KOHIMA MUNICIPAL COUNCIL(KMC)
REPRESENTED BY ITS ADMINISTRATOR
GOVT. OF NAGALAND
KOHIMA

4:FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA(FSSAI)
AN AUTONOMOUS BODY UNDER THE MINISTRY OF HEALTH AND
FAMILY WELFARE
REPRESENTED BY ITS CHAIRPERSON
FDA BHAWAN
KOTLA ROAD
NEW DELHI - 110002

5:THE UNION OF INDIA

REPRESENTED BY THE SECRETARY

MINISTRY OF HEALTH AND FAMILY WELFARE

GOVERNMENT OF INDIA
ROOM NO.348 A WING
NIRMAN BHAVAN
NEW DELHI - 110011

6:PEOPLE FOR ANIMALS

AN ANIMAL WELFARE ORGANISATION HAVING ITS OFFICE AT A-4
MAHARANI BAGH
NEW DELHI - 110065
REPRESENTED BY ITS CHAIRPERSON(TRUSTEE)
MS. MANEKA SANJAY GANDHI

7:HUMANE SOCIETY INTERNATIONAL/INDIA

A NON PROFIT ORGANISATION RECOGNISED BY THE ANIMAL
BOARD OF INDIA AND REGISTERED UNDER THE COMPANIES ACT
1956
HAVING ITS REGISTERED OFFICE AT SHOP NO.39
SHREEJI SHOPPING ARCADE
SETH GOPALJI
HEMRAJ SINGH COMPOUND
M.G ROAD
BORIVALI(E)
MUMBAI - 400066 REPRESENTED BY ITS MANAGING DIRECTOR
MS.ALOKPARNA SENGUPT

Advocate for the Respondent : GOVT ADV NL

Linked Case : I.A.(Civil)/27/2023

PEOPLE FOR ANIMALS AND ANR
AN ANIMAL WELFARE ORGANISATION HAVING ITS OFFICE AT A-4
MAHARANI BAGH
NEW DELHI-110065
REPRESENTED BY ITS CHAIRPERSON (TRUSSTEE)
MS. MANEKA SANJAY GANDHI

2: HUMAN SOCIETY INTERNATIONAL/INDIA
REGISTERED OFFICE AT SHOP NO. 39
SHREEJI SHOPPING ARCADE
SETH GOPALJI
HEMRAJ SINGH COMPOUND
M.G. ROAD
BORIVALI(E)
MUMBAI-400066
REPRESENTED BY ITS MANAGING DIRECTOR
MS ALOKPORNA SENGUPTA
VERSUS

4:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY

NAGALAND KOHIMA

5:THE COMMISSIONER OF FOOD SAFETY
DEPT. OF HEALTH AND FAMILY WELFARE
GOVT. OF NAGALAND

6:THE KOHIMA MUNICIPAL COUNCIL (KMC)
REPRESENTED BY ITS ADMINISTRATOR
GOVT. OF NAGALAND

7:FOOD SAFETY AND STANDARTS AUTHORITY OF INDIA(FSSAI)
AN AUTONOMOUS BODY UNDER THE MINISTRY OF HEALTH AND
FAMILY WELFARE
REPRESENTED BY ITS CHAIRPERSON
FDA BHAWAN
KOTLA ROAD
NEW DELHI-110002

8:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE. GOVT. OF INDIA
ROOM NO. 348
A WING
NIRMAN BHAWAN NEW DELHI-110011

Advocate for : D.J. KAPIL
Advocate for : appearing for MR. NEIZEVOLIE KUOTSU ALIAS TONI
KUOSU AND 8 ORS

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (CAV)

Date : 02.06.2023

Heard Mr. L Iralu, learned counsel for the petitioners along with Ms. Shrieya Poropkarie, learned counsel for respondents Nos. 6 & 7, Ms. V Suokhrie, learned Addl. Advocate General for the State respondents Nos. 1 & 2 and Ms. Limanaro, learned counsel for respondents Nos. 4 & 5

2. This petition filed under Article 226 of the Constitution is for issuance of the appropriate writ for violation of the petitioners' Fundamental Rights under Article 14, 19 & 21 of the Constitution and for violation of principles of natural justice, which according to the petitioners have been violated by Notification No. CSO/CORRES-19/CAB/2017 dated 04.07.2020, banning the commercial import, trading of dogs and dog markets as well as commercial sale of dog meat in markets and dine in restaurants, while, the petitioners have an Import/Export permit, dated 03.06.2020, issued by the Kohima Municipal Council, which allows the petitioner to import dogs to Kohima and have been earning their livelihood by selling dog meat for the past many years.

3. The learned counsel for the petitioners, Mr. L. Iralu, submits that the impugned notification dated 04.07.2020 banning the commercial import, trading of dogs and dog markets as well as commercial sale of dog meat in markets and dine in restaurants was issued under the Food Safety Authority of India and under the Food Safety and Standards Act, 2006 (Henceforth referred to as FSS Act, 2006) and under Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011 (Henceforth referred to as Regulation, 2011).

4. The learned counsel for the petitioner submits that a circular dated 06.08.2014 issued by the Food Safety and Standard Authority of India states that the Regulation 2.5 of the Food Safety and Standards (Food Product

Standards and Food Additives) Regulation, 2011 has defined animals, carcass and meat and sub-regulation 2.5.1(a) has defined "animal". Regulation 2.5.1(a) of Regulation 2011, defines 'animal' as under:- "*(a) 'animal' means an animal belonging to any of the species specified below:-*

- (i) *Ovines;*
- (ii) *Caprines;*
- (iii) *Suillines*
- (iv) *Bovines; and includes poultry and fish."*

The slaughtering of animals of any other species other than the one listed in sub-regulation 2.5.1(a) is not permissible under the FSS Act, 2006 and Regulation, 2011 and to strengthen the vigil and ensure the compliance of the provisions of FSS Act, 2006.

The impugned notification dated 04.07.2020 was then notified, by the State Government which states that the slaughtering of any other species other than the ones listed in Sub-Regulation 2.5.1(a) of the Regulation is not permissible under the FSS Act and Regulation. And in order to regulate the safety of food articles safe for human consumption, the band on slaughtering and sale of dog meat in the State of Nagaland is found to be necessary. Thus, under the provisions of FSS Act and Regulation, the commercial import and trading of dog and dogs' market and commercial sale of dog meat in markets

and dine in restaurants are band. Any person found violating this order shall be liable to be punished under Section 428 & 429 of the Indian Penal Code and Section 11 of the Prevention of Cruelty to Animals Act, 1960.

5. The learned counsel for the petitioners submits that his first contention is that the Regulation, 2011 has not expressly or impliedly prohibited slaughter of any specific animals not mentioned in regulation 2.5.1(a) of Regulation, 2011 for human consumption. Likewise, the Food Safety and Standards Act, 2006 has also not prohibited the slaughter of animals not mentioned in regulation 2.5.1(a) However, the Regulation,2011, has been wrongly interpreted by the Food Safety Authority of India and the state respondents, therefore the impugned notification dated 04.02.2020 is not in consonance with the Food Safety and Standards Act, 2006/ FSS Act, 2006.

6. The learned counsel, Mr. L. Iralu, on elaborating the said contention submits that, the petitioners have been dealing with supply and selling of dogs meat and have been earning their livelihood as such for the past many years. That is the culture and custom of the Nagas to eat dog's meat which has been mentioned in some to the earliest ethnographical and anthropological accounts of the Nagas. The learned counsel mentions of the books authored by J.H Hutton published in 1921 by Macmillan and Co., Limited St. Martin's Street, London in "*The Angami Nagas, With Some Notes on Neighbouring Tribes*"

where accounts of dog meat eaten by the Nagas is recorded and how dog meat is regarded to have medicinal value. J.P Mills, an ethnographer has also given accounts of how dogs are eaten by the Nagas in his book, '*The AO Nagas*' published in 1926 and '*The Rengma Nagas*' published in 1937, published by Macmillan and Co., Limited St. Martin's Street, London.

7. Mr. L Iralu, learned counsel for the petitioners submits that on reading of the preamble of the FSS Act,2006, the object and reasons for enacting the act is, to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India, for laying down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to endure availability of safe and wholesome food for human consumption.

8. The learned counsel submits that the FSS Act, 2006, has given an exhaustive definition of "food" under Section 3(j) and wherein primarily *Food* would mean '*any substance, whether processed, partially processed or unprocessed, which is intended for human consumption*'. The FSS Act, 2006, defines "substance" under section 3(zw) as '*any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour*'. Thus, the meaning of food under the FSS Act, 2006 would mean any substance which is intent for human consumption and in view of the above

definition of food under the FSS Act, 2006, 'food' would mean a solid natural substance which is the meat of any animal, which is not prohibited to be killed for human consumption by any law for the time being in force, thus, dog meat falls under the definition of food as specified in the FSS Act, 2006.

9. The learned counsel submits that the Regulation, 2011 was made by the Food Safety and Standards Authority of India under clause (e) of sub-section (2) of section 92 read with section 16 of the FSS Act, 2006. Clause (e) of sub-section (2) of section 92 reads that, the Food Safety and Standards Authority of India may provide and notify the standard and guidelines in relation to articles of food meant for human consumption. Section 16(2) of the Act lays down the duties and functions of Food Authority, which is detailed and comprehensive, as to how the Food Authority is to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food for consumption. The impugned notification dated 04.07.2020 was passed under regulation 2.5.1(a) of Regulation, 2011 and the Food Safety & Standard Authority of India. However, neither the FSS Act,2006 nor the Regulation, 2011, specified that animals not included in the definition of 'animal' under regulation 2.5.1(a) of the Regulation, 2011 are prohibited from being slaughtered for human consumption.

10. The learned counsel for the petitioner submits that the definition of

animal contained in the Regulation, 2011, is only for the purpose of maintaining and/or regulating the standard of meat of those animals specified there under, and have not implied that animals not included in the said definition are excluded or prohibited from being slaughtered for human consumption. That the definition of food under Section 3(j) of the FSS Act, 2006, is wide enough to include dog meat. The Regulation, 2011, is not intended for prohibition, but to regulate the standard of food for human consumption. In the absence of any provision to the contrary, merely because the standard has not been specified for those animals not mentioned in Regulation 2.5.1 of the Regulation, 2011, does not rendered other species of animals not mentioned in the regulation from being banned and from being slaughtered for human consumption.

11. The learned counsel for the petitioner submits that the purpose of the FSS Act, is in the preamble of the act, and thereafter, in the Regulation, 2011, which is to lay down science based standard for articles of food and ensuring the food consumed by the citizens are scientifically safe. The learned counsel led the court through the Regulation 2011 on how various food items such as Dairy products, Fruit and vegetable products, cereals and cereal products and meat and meat products were to be processed for food items to make them safe for human consumption. The concerned authorities under the regulation are only to notify and maintain the standards.

12. The learned counsel further submits that the FSS Act, 2006 has delegated and empowered the Food Authority of India to make rules/ regulations under clause (e) of sub-section (2) of section 92 read with section 16 of the FSS Act, 2006. Thus the Regulation, 2011 is principally a delegated legislation and the parent FSS Act, 2006, has empowered the Food Authority to issue enactment to serve the purpose of the FSS Act, 2006. The learned counsel submits that in a principle of delegation, the delegate which is the Food Authority of India is not authorised to act beyond the powers conferred by the Act. If we are to accept the interpretation of the Food Authority of India and the State Government, it would amount to the narrowing of the definition of food. The definition of food is wide under the FSS Act, 2006 and the delegated legislation must be consistent with the other parliamentary acts. The Food Authority of India is not empowered to narrow the scope of the FSS Act, 2006 and the Food Authority has not been given the authority to issue any prohibition order banning the consumption of dog meat under the FSS Act or the Regulation, 2011. The intention of the Act is seen from the preamble and the Regulation, 2011, is only to monitor and also ensured that the food is processed scientifically making it safe for human consumption and has only laid down the ways in which the animals defined under Regulation in 2.5 (I)(a) has to be processed for hygienic human consumption. Non inclusion of dogs or any other animal under the regulation does not mean that the consumption of dog meat has been

prohibited by the said regulation. That the impugned order dated 04.07.2020 has no legal backing and is in violation of the fundamental rights and legal right of the petitioner as enshrined under article 19 and 21 of the Constitution. The petitioners is being denied the right to consume the food of their choice and to earn their livelihood when Import /export permit dated 03.06.2020 has been issued by the Kohima Municipal council for the petitioner to trade in dog meat.

13. The learned counsel further submits that the definition of animal as allowed in the Regulation, 2011, is narrow and it is only for the process in which the food is to be prepared for the safe consumption of the citizen, if the definition of the animal as per the Regulation, 2011, is to be taken as defined therein, it would be in contravention with the definition of animal under Section 2(a) of the Prevention of Cruelty of Animal's Act, 1960, (hereafter referred as PC Act), which defines "animal" as ;(a) *"animal means any living creature other than a human being"*. The definition of "animal" provided in the PC Act is wide enough to include dog and any act done in the process of transporting, slaughter and preparing dog meat as food item for human consumption, without inflicting unnecessary pain or suffering would not amount to cruelty under the PC Act. Thus, the consumption of dog meat would not attract any offence under the PC Act.

14. The learned counsel for the petitioner further refers to the definition of

'animal' under the Wild Life (Protection) Act, 1972 where the Act defined 'animal' and 'wild animal' as follows:-

"Section 2(1) means "animal" includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs.

Section 2 (36) "wild animal" means any animal specified in Schedules I to IV and found wild in nature."

Thus from the above definitions, the definition of animals is not narrowed down, as done in the Regulation, 2011, which was only for the process and preparation of some animals to make them safe for human consumption. The learned counsel submits that domestic rabbits was quite recently included in definition of animal under the regulation 2.5(1)(a) vide the 2017 Amendment of the Regulation. However, even prior to the amendment, there was no prohibition on consumption of domestic rabbits. As such, merely because the species of domestic rabbits that was not previously mentioned does not mean that the species were not consumed as food item, because there is no law/ legislation as such prohibiting their consumption. That the Food Safety & Standards Act, 2006, the PC Act and the Wild Life Act have to be read harmoniously. On the harmonious reading of these three Acts the term 'animal' is narrowed only in the Regulation, 2011, where there is no specific prohibition of killing of dogs or consumption of dog meat. That there are also other species of animals which are also consumed by

the Nagas and not included in the definition of animals in the Regulation,2011 such as snakes, rats etc.

15. The learned counsel for the petitioner submits his second contention that the impugned Notification dated 04.07.2020 was issued by the Chief Secretary, who has no authority to issue the impugned notification under the FSS Act, 2006. Section 30 of the act mandates the State Government to appoint the Commissioner of Food Safety for the State to implement the provisions of the Act within the State. Accordingly, the Department of Health & Family Welfare, Govt. of Nagaland, Kohima, has appointed its Commissioner & Secretary as the Commissioner of Food Safety for the State of Nagaland/respondent No. 2.

16. The learned counsel for the petitioners submits that his third contention is that the impugned order, which was not issued in accordance with the procedures and principles prescribed in the Act, is a violation of the principle of natural justice. A perusal of section 30 (2)(a), section 33 & 34 of the FSS Act provides for the three types of prohibition orders that can be passed under the Act. The functions of the Commissioner of Food Safety is limited to prohibition orders in the interest of public health and relates to manufacture, storage, distribution or sale of any article of food, either in the whole of the State or any area or part thereof for such a period, not exceeding one year, as may be specified in the order notified in this behalf in the Official Gazette. Section 34

of the FSS Act has a provision for issue of prohibition orders under “emergency prohibition notice”. The detailed procedure to be followed is provided under this section, as to how and under what circumstances, the order can be passed by the Commissioner of Food & Safety. None of the above provisions were followed when the impugned order dated 04.07.2020 was issued by the Chief Secretary, who has no authority to issued such an order.

17. The learned counsel for the petitioner submits that, the fourth contention is, while assuming that the Act and its Regulation has no application with regards to prohibition of sale and consumption of dog meat, the Executive branch of the Government is not competent to pass the impugned notification, without there being any law passed by the legislation in relation to trade and consumption of dog meat. The impugned notification is said to have been passed in accordance with a Cabinet decision taken on 04.07.2020. However, such a decision taken by Cabinet has no backing/basis of any law or legislation. The impugned notification dated 04.07.2020, as such, is illegal and violates the petitioner’s Fundamental Rights under Article 19(1)(g) and Article 21 of the Constitution. The learned counsel submits that it is a settled proposition of law that restrictions to the Fundamental Rights under Article 19 & 21 can be imposed only through a law passed by the Legislator. That the rights of the petitioners under Article 304(b), which is their Right to Freedom of trade has also been violated and this has also affected the livelihood of the petitioners.

18. The learned counsel for the petitioners also submits that dog's meat is consumed widely in Kohima and the right of the petitioners and their customers to eat dog's meat, forms a part of their right to privacy as enshrined under Article 21 of the Constitution. The consumption of dog's meat is a part of the custom of the Nagas and has been practiced since long. He further submits that the account of the history of Nagas which is duly published and should be taken notice of by the Court as provided under Section 57 of the Indian Evidence Act.

19. The learned counsel for the petitioner has relied on the following authorities in support of his submissions.

For delegated legislation cannot narrow the scope of the parent Act the following cases were cited

1. **Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd., (2015) 9 SCC 209**
2. **Mahachandra Prasad Singh (Dr.) v. Chairman, Bihar Legislative Council, (2004) 8 SCC 747**
3. **Pyarali K. Tejani v. Mahadeo Ramchandra Dange, (1974) 1 SCC 167**
4. **Kerala Samsthana Chethu Thozhilali Union v. State of Kerala, (2006) 4 SCC 327**
5. **Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187**
6. **LIC of India v. Retired LIC Officers Assn., (2008) 3 SCC 321**
7. **Hotel Balaji v. State of A.P., 1993 Supp (4) SCC 536**

For the submission that Chief Secretary has no authority and that there is a procedure established by the Act, he cited

8. **Marathwada University v. Seshrao Balwant Rao Chavan, (1989) 3 SCC 132**

9. **Sahni Silk Mills (P) Ltd. v. ESI Corpn., (1994) 5 SCC 346 :**

10. **Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422:**

For the submission that there can be no violation of Article 19 & 21 by a executive fiat the following cases were cited

11. **Godawat Pan Masala Products I.P. Ltd. v. Union of India, (2004) 7 SCC 68**

12. **BishambharDayal Chandra Mohan v. State of U.P., (1982) 1 SCC 39**

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

14. For violations of natural justice cases cited are

Godawat Pan Masala Products I.P. Ltd. v. Union of India, (2004) 7 SCC 68

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

20. Ms. Shrieya Poropkarie, learned counsel for the respondent Nos. 6 & 7, on the other hand, submits that the petitioners have challenged the notification of the Food Safety Authority of Indian and the notification of the State Government. The petitioners are trying to show that the notifications are not covered by the Regulation, 2011, however, the Food Safety Authority of Indian notification and the notification of the state government, are word verbatim replication of regulation 2.5 of the Regulation, 2011 and thus the notifications

are not an interpretation of the regulation as claimed by the petitioners. The notification of the Food Safety Authority of India and the notification of the State government are the enforcement of the Regulation, 2011 and are not an interpretation.

21. The learned counsel for the respondents 6&7 submits that the FSS Act, 2006 had been enacted by the Parliament on 23.08.2006 to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India/Respondent No. 4, for laying down science based standards for articles of food and to regulate their manufacture, storage etc and to ensure availability of safe, wholesome food for human consumption. The Regulations, 2011 had been framed/enacted on 01.08.2011 by the Ministry of Health and Family Welfare in exercise of powers under Section 92(2)(e) R/w Section 16 of the FSS Act, 2006. The learned counsel further submits that the draft Regulations, 2011 were made public before it was brought before the Parliament and later enacted. There was no objection or protest while the matter was made public and public comments were invited, which are then finalised and laid before the Parliament. Now, at this later stage the petitioners cannot object to the definition of animals which is given under regulation 2.5 of Regulation, 2011, which has narrowed down the definition of animals which are safe for human consumption. Any other animal not mentioned in the regulation is held not safe for human consumption and cannot be considered as food.

22. The learned counsel submits that the regulations do not narrow down the definition of food, but has mentioned the animals which are safe for human consumption. Special legislations are created for specific subjects, because there is a specific need, specific enactment is made for specific reasons and special laws have been enacted with specific purposes. The Regulation, 2011, is to carry forward the purpose for which the Food Safety Act, 2006 has been enacted so that there is wholesome and safe food available for the consumption of the public. Likewise the PC Act is an acted for specific reasons that is to protect the act of cruelty against the animals, while the Wild Life (Protection) Act is for a specific purpose that is for protection of the wild animals which are not domesticated. These specific and special Acts are not to be read together and therefore, the definition of "animals" in the PC Act or the Wild Life (Protection) Act cannot be read with the FSS Act, 2006 and the Regulation,2011, since the definition of animals in these two acts are not animals which are meant for human consumption.

23. The learned counsel for respondent Nos.6 & 7 further submits that the petitioners have not placed on record any licenses/registration for functioning as Food Business Operators under the FSS Act, 2006 as required under Section 31 of the FSS Act, 2006. The petitioners seek to rely on the FSS Act, 2006 while acting in direct contravention of the Act. Mere temporary trade licenses from the Municipal Corporations do not permit the Petitioners to carry out food business

in meat trade, let alone dog meat trade. Furthermore, the temporary Import/Export Permit issued by the Kohima Municipal Council, permitting the petitioners to import dogs from all over India, has been wrongly issued as dog meat trade is not permissible all over India. In other States and is a serious transgression of various statutes including the PC Act, the India Penal Code, 1860 (IPC) as well as the Constitution of India and various directives issued by the Hon'ble Supreme Court regarding destruction/removal of street dogs and rabies elimination in matter titled '**Animal Welfare Board of India v/s People for Elimination of Stray Troubles &Ors.'** [Civil Appeal no. **5988/2019** (Earlier bearing SLP(C) No. 691/2009).

24. The learned counsel for the petitioners no.6 & 7 further submits that though the petitioners have contended that their right to privacy under Article 21 of the Constitution of India is being contravened. It is submitted that the right to privacy does not grant the petitioners to carry out illegal dog meat trade as part of the unlicensed and unregistered food businesses in terms of the FSS Act/Regulations. The right to carry out trade and business as per Article 19(1) (g) of the Constitution of India is subject to reasonable restrictions imposed under Article 19(6). Article 19(6) permits the State to make any law imposing reasonable restrictions in the interest of the general public and to protect the common good of the people. That the fundamental rights are subject to reasonable restrictions

25. The learned counsel also submits that the Chief Secretary has a constitutional duty under Article 256 of the Constitution to ensure the public safety and the well being of the citizens and has the full authority to issue the impugned notification since the consumption of dog's meat is against the interest of health of the people. Various scientific research papers/articles state that the dog meat trade endanger the human population due to risk of diseases like Rabies and Trichinella infection as well as increased antibiotic resistance. She, further, submits that the dogs have been smuggled and brought into the market of Kohima/Nagaland in a pathetic state where dogs are tied and put in gunny bags with their mouth tied for long periods of time with no food or water to drink. In such light, the illegal killing of dogs and their import/export/running of dog farms/confining of dogs to kill them for dog meat trade is definitely cruel and amounts to infliction of unnecessary pain and suffering. That cruelty to dogs due to this trade is evident from the photographs collected and enclosed in the affidavit of the respondents. The traders in dog meat do not have any legal license and do not follow any of the prescribed standard under chapter IV of the Regulation, 2011 with Specific Hygienic and Sanitary Practices to be followed by Food Business Operators engaged in the manufacture, processing, storing and selling of meat and meat products. The chapter deals with how slaughter houses are to be maintained and specific requirements for use and maintenance of slaughter house, and rule 4 of the Slaughter House Rules,2001under the PC

Act. The Slaughter House Rules, 2001 provides for detailed requirements by which animals can be slaughtered and used for human consumption. None of these requirements for safe and hygienic slaughter of animals have been followed and are in contravention of the existing laws. The dog families have been re-allocated without any authority and are in fact smuggled and brought into market. The **Hon'ble Supreme Court in AWBI vs A.Nagaraja (2014) 7 SCC 547** observed these statutory rights of animals to be a parallel to the fundamental rights we enjoy under Article 21 of the Constitution of India is in jeopardy. She further submits that the books published regarding the consumption of dog meat by the Nagas are not historical records and are not the customs and usage. She submits that it is necessary to prove is that the consumption of dog meat has been practiced for such a long period and with such invariability as to show that it is as the established governing rule of a particular locality. The learned counsel has cited the decision of the Apex Court in **Salekh Chand v. Satya Gupta, (2008) 13 SCC.**

26. Miss learned Addl. Advocate General for State respondents 1&2 submits that the notification dated 04.07.2020 were issued by the Government of Nagaland after due approval of the cabinet reiterating the position of law with regard to import and sale of dogs for the purpose of human consumption as contain in FSS Act, 2006 and the Regulation, 2011. That regulation 2.5 deals with meat and meat products that can be inter alia distributed, sold and placed

in the market for human consumption. The definition of animals under regulation 2.5.1(a) defines animals which does not include canine or dogs. That with regard to the slaughter and consumption of animals not permissible under the act, the Authority has issued notification dated 06.08.2014 wherein slaughter of animals of any species other than the ones mentioned in Regulation 2.5.1 a of Regulation, 2011 is not permissible under the Act. Thus the existing law does not permit the slaughter, sale and consumption of dog meat in the country. The cabinet after due consideration had observed that dog meat falls under the family of canine which is excluded from the provision of animals under 2.5.1 (a)of Regulation 2011, thus commercial sale of dog meat is excluded from the provision of the regulation 2.5.1(d) of Regulation,2011 which regulates animals and defines the meat for sale and consumption. The Cabinet therefore decided for issuance of the following impugned orders, banning the commercial import and trading of dog, commercial sale of dogs meat in markets and dine in restaurant. The learned Addl. AG further submits that the power to ban commercial sale of dogs and dogs meat is with the Authority and dogs not being under the definition of meat food products has the authority to ban the commercial import and trading of dog, commercial sale of dogs meat in markets and dine in restaurant.

27. The learned Addl. AG also submits the Right to do business under article 19 (1) (g) is subject to reasonable restriction article 19(6) of the constitution in

the interest of the general public. Thus the state notification 14.07.2020 is in conformity with the FSS Act, 2006 and the Regulation, 2011 and based on the policy taken by the Government.

28. Miss Dimanaru, learned counsel for respondent No 4&5 submits that the Food Safety Authority of India has been established under the Act, 2006, with mandated to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption. The definition of animals meant for consumption as food by humans do not include dog or canine under the FSS Act, 2006 and the Regulation, 2011.

29. I have heard and considered the submissions made by both the parties.

30. The main issue for consideration is whether the Food Safety and Standards Authority of India had acted beyond its delegated powers by issuing the circular dated 06.08.2014, stating that the Regulation 2.5 of the FSS (Food Product Standards and Food Additives Regulation, 2011 has defined animals, carcass and meat wherein sub-regulation 2.5.1(a) has defined "animal". The slaughtering of animals of any other species other than the one listed in sub-

regulation 2.5.1(a) is not permissible under the FSS Act, 2006 and Regulation, 2011 and whether in pursuance of the circular the State of Nagaland had rightly issued the impugned notification 14.07.2020 dated, banning the commercial import, trading of dogs and dog markets as well as commercial sale of dog meat in markets and dine in restaurants.

31. This court finds it fit to first peruse the objective or preamble of the FSS Act, 2006 which is herein reproduced;

"An Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto"

Accordingly, the Food Safety and Standards Authority of India (henceforth referred as FSSAI) was established under Section 4 & 5 of the FSS Act, 2006. The duties and functions of the Food Safety and Standards Authority is laid out in section 16 of the FSS Act 2006. Section 16 of the FSS Act, 2006 states that it shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food. That the Food Safety and Standards Authority may by regulations specify various standards and guideline in relation to articles of

food, which have been listed in detail.

32. The Food Safety and Standards(Food Products Standards and Food Additives) Regulation, 2011/Regulation,2011 was thus enacted under section 16 read with section 92(2)(e) of the FSS Act, 2006.

“Section 92 provides the Power of Food Authority to make regulations.–

(1) The Food Authority may, with the previous approval of the Central Government and after previous publication, by notification, make regulations consistent with this Act and the rules made there under to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:–

(e) Notifying standards and guidelines in relation to articles of food meant for human consumption under sub-section (2) of section 16;”

In view of the above, the the Food Safety and Standards (Food Products Standards and Food Additives) Regulation/ Regulation 2011 was enacted for notifying standards and guidelines in relation to articles of food meant for human consumption. Accordingly, regulation2.5.1(a) of Regulation 2011, defined ‘animal’ which are meant for human consumption for which standards and guidelines are laid out ,so that the meat of the food animals are safe and suitable for human consumption.

Regulation2.5.1(a) defined ‘animal’ as under:- *“(a) ‘animal’ means an animal*

belonging to any of the species specified below:-

- (i) *Ovines;*
- (ii) *Caprines;*
- (iii) *Suillines*
- (iv) *Bovines;and includes poultry and fish."*

(b) "carcass" means the dead body or any part thereof including the viscera of any animal which has been slaughtered (c) "meat" means the flesh and other edible parts of a carcass (d) "meat food products" means any article of food or any article intended for, or capable of, being used as a food which is derived or prepared from meat by means of drying, curing, smoking, cooking, seasoning, flavouring, freezing or following a method of processing meat akin to any of the above methods,.

Domestic rabbits was also added in the definition of animal vide an amendment in 2017.

Under the definition of 'animals', Canine or dogs have not been mentioned, which is not surprising since the meat of dogs is consumed only in some parts of the North Eastern states and the very idea of consuming dog meat is alien in other parts of the country. The thought of adding canine/dogs as an animal for human consumption under regulation 2.5.1(a) would be inconceivable, since consumption of dog meat would be considered unthinkable.

33. This court however, do not find any grounds not to accept the account of dog meat being consumed by different tribes in Nagaland recorded in the books authored by J.H Hutton in "*The Angami Nagas, With Some Notes on Neighbouring Tribes*" and J.P Mills, in his book, '*The AO Nagas*' and '*The Rengma Nagas*' published by Macmillan and Co., Limited St. Martin's Street, London published in 1921,1926 and published in 1937 respectively. There is also a belief that dog meat is also to having medicinal value. The consumption of dog meat appears to be an accepted norm and food amongst the Nagas even in modern times, wherein the petitioners are able to earn their livelihood by transporting dogs and selling of dog meat. But, dog meat is not considered the standard of food for human consumption and excluded in the definition of animals safe for human consumption.

34. A perusal of regulation 2.5 of regulation.2011, shows that it provides for a detailed procedure as to how the meat of the animals defined under regulation 2.5.1(a)is to be processed scientifically to make the meat of the 'animals' safe and suitable for human consumption. Thus the regulation deals with only how to process the 'animals' mentioned and there is no provision in the regulation, prohibiting the slaughter of any other animal for human consumption, not mentioned in regulation 2.5.1(a) of the Regulation, 2011. On perusal of the FSS Act, 2006, the definition of food is given under Section 3(j)

and wherein primarily Food would mean 'any substance, whether processed, partially processed or unprocessed, which is intended for human consumption. This definition is wide and liberal enough to include dog meat, since the act has not defined 'animal ' as defined in the regulation. It is seen that Sections 33 & 34 provide for certain circumstance under which prohibition notices/orders can be passed which are however not prohibiting the slaughter of any other animal for human consumption, not mentioned in regulation 2.5.1(a) of the Regulation, 2011. The Food Safety and Standards Authority of India was delegated the power to ensure availability of safe and wholesome food for human consumption by make regulations consistent with the Act. On perusal of section 16 of the FSS Act 2006, wherein the Duties and Functions of the Food Authority is listed it is seen that there is no mention of power to issue prohibition orders by Food Safety and Standards Authority of India thus it appears that the Food Safety and Standards Authority of India have acted beyond its duties and function under section 16 of the FSS Act, 2006.

The Apex court in **Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd., (supra)** noted that;

"51. In Indramani Pyarelal Gupta v. W.R. Natu [AIR 1963 SC 274] , the Court has held that one of the tests to determine whether a statutory body is vested with a particular power is to see whether exercise of such power is contraindicated by any specific provision of the enactment bringing such statutory body into

existence. In Tata Power Co. Ltd. v. Reliance Energy Ltd. [(2009) 16 SCC 659] , it has been ruled that save and except for the exercise of regulatory power which is specifically recognised by the statute, it is not open to the regulatory body to exercise a power which is not incorporated in the statute."

35. It is also noted that the impugned notification dated 04.07.2020 was issued by the Chief Secretary, however, it is noted that the State Government under section 30 of the FSS Act, 2006 had appointed the Commissioner & Secretary, the Department of Health & Family Welfare, Govt. of Nagaland as Commissioner of Food Safety for the State, to implement the provisions of the Act within the State.

The Apex Court in **Marathwada University v. Seshrao Balwant Rao Chavan, (supra)** held that

" It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. Halsbury's Laws of England (Vol. I, 4th End., para 32) summarises these principles as follows:

"32. Sub-delegation of powers.— In accordance with the maxim delegatus non potest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary

implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind."

36. In view of the above this court is constraint to hold that the Chief Secretary was not the appropriate authority to issue the impugned order dated 04.07.2020 when section 30 of the FSS Act, 2006 provides for appointment of a Commissioner of Food Safety for the state for efficient implementation of food safety and standards and other requirements laid down under the Act.

37. From the photos annexed in the Affidavit of the respondents no.6 & 7, it is appears that the dogs meant for slaughter have been subjected to much discomfort pain& suffering. The standards required to be maintained in slaughter houses as per the prescribed standard under chapter IV of the Regulation, 2011 with Specific Hygienic and Sanitary Practices to be followed by Food Business Operators engaged in the manufacture, processing, storing and selling of meat and meat products and Prevention and Cruelty to Animals. (Slaughter House) Rules 2001, does not appear to have not been followed. However the above observations cannot justify order dated 04.07.2020 issued under the Food safety & Standards Act, 2006 and Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011,banning the commercial

import, trading of dogs and dog markets as well as commercial sale of dog meat in markets and dine in restaurants. Instead remedial steps can be taken for enforcing the various provisions of law under the Prevention of Cruelty to Animals Act, 1960 and the Indian Penal Code. Ms. Shrieya Poropkarie, the learned counsel for the respondents no.6 & 7 has brought to the notice of the court that various scientific research papers/articles in countries like China and African countries show that the dog meat trade endanger the human population due to risk of diseases like Rabies and Trichinella infection as well as increased antibiotic resistance. This is contrary to the belief that dog meat has medicinal value. Awareness programmes should be organized by the state respondents on such issues.

38. It is seen that the petitioners are said to have an Import/Export permit, dated 03.06.2020, issued by the Kohima Municipal Council, which allows the petitioner to import dogs to Kohima and the petitioners have been earning their livelihood by selling dog meat for the past many years. The impugned notification dated 04.07.2020, as such, can be said to affect the petitioner's earning capacity. Fundamental Rights under Article 19(1)(g) and Article 21 of the Constitution to earn his livelihood and the freedom to consume food of his choice however can be restricted by reasonable restrictions prescribed by law. The prohibition of sale and consumption of dog meat, by the Executive branch of the Government, without there being any law passed by the legislation in

relation to trade and consumption of dog meat is liable thus to be set aside even though the impugned notification dated 04.07.2020 is said to have been passed in accordance with a Cabinet decision.

39. The Apex Court in **K.S. Puttaswamy (Privacy-9J.) v. Union of India, (supra)** held that :

“The interrelationship of Articles 19 and 21, if understood, as stated in para 363, the authority of the State to deprive any person of his liberty is circumscribed by certain factors:

(1) It can only be done under the authority of law.

(2) “Law” in the context means a valid legislation.

(3) If the person whose liberty is sought to be deprived is a citizen and that liberty happens to be one of the freedoms enumerated in Article 19(1), such a law is required to be reasonable within the parameters stipulated in clauses (2) to (6) of Article 19, relevant to the nature of the entrenched freedom(s), such law seeks to abridge.”

40. In **Bishambhar Dayal Chandra Mohan (supra)** the Apex court held that:

“27. The quintessence of our Constitution is the rule of law. The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In State of M.P. v. Thakur Bharat Singh [AIR 1967 SC 1170:the Court repelled the contention that by virtue of Article 162, the State or its officers may, in the exercise of executive authority, without any legislation in support thereof,

infringe the rights of citizens merely because the legislature of the State has power to legislate in regard to the subject on which the executive order is issued. It was observed:

"Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority."

41. In view of the above observations and reasoning and in light of the judgments of the Apex court mentioned above this court is constraint to set aside and quash the order dated 04.07.2020 issued by the state respondents banning the commercial import, trading of dogs and dog markets as well as commercial sale of dog meat in markets and dine in restaurants.

42. Accordingly, WP (C) 128 of 2020 along with I.A. (Civil)No. 27 of 2023 stands allowed and disposed of.

JUDGE

Comparing Assistant