

**IN THE HIGH COURT OF GUJARAT
AT AHMEDABAD**

R/Special Civil Application No.21004 of 2018

**PRISHA OVERSEAS ENTERPRISE PVT LTD
THROUGH DIRECTOR PRASHANT ARVINDBHAI SHUKLA**

Vs

UNION OF INDIA

Harsha Devani & Bhargav D Karia, JJ

Dated: April 01, 2019

**Appellant Rep by: Mr Mihir Joshi, Sr. Adv. With Mr Mtm Hakim
& Saquib S Ansari**

**Respondent Rep by: Mr Pk Jani, Addl. Adv. General With Mr
Uktarsh Sharma, Asst. Govt Pleader & Mr Nirzar S Desai**

**Cus - Export of livestock through Tuna Port of the Deendayal
Port Trust - In the present case, the notification dated 14.12.2018
issued by the State Government in exercise of powers under
clause (b) of sub-section (1) of section 4 of the Gujarat Essential
Commodities and Cattle (Control) Act, 2005, the communication
dated 14.12.2018 of the Directorate of Animal Husbandry
addressed to the Commissioner of Customs, and the
communication dated 14.12.2018 issued by the Under Secretary,
Home Department to the Superintendent of Police, Kutch
(West), Gandhidham are subject matter of challenge**

HELD:

**Validity of the notification dated 14.12.2018 issued under section
4(1)(b) of the Cattle Control Act**

**Without recording an opinion as envisaged in sub-section (1) of
section 4 of the Cattle Control Act, the question of making an
order regulating the maintenance of cattle does not arise -
therefore, while the notification provides for regulating the
maintenance of cattle, the condition precedent for making such
order has not been satisfied, which renders the impugned
notification unsustainable in law as not being in consonance
with the statutory provision under which it has been issued - on
a bare reading of sections 6 and 7 of the Prevention and Control**

of Infectious and Contagious Diseases in Animals Act, 2009, it is clear that in case of infectious and contagious diseases steps have to be taken under that Act and not under the Cattle Control Act - the second ground on which the notification has been issued is, therefore, not a relevant ground on which a notification under section 4(1)(b) of the Cattle Control Act can be issued even if the condition precedent for taking action under clauses (a) and (b) thereof is satisfied, inasmuch as, there is a specific enactment for taking action in that regard - in the present case, the effect of the impugned notification is that the petitioners herein are totally prevented from pursuing their ordinary avocation of life namely, exporting livestock, and there is nothing on record to show as to how such a blanket ban on entry of animals even by way of transit, as is sought to be suggested on behalf of the respondents, is consonant with the general interest of the public - the impugned notification, therefore, is also not in consonance with section 8 of the Cattle Control Act.

[para 12.11, 12.13, 12.15]

Whether the notification dated 14.12.2018 issued under section 4(1)(b) of the Cattle Control Act would be applicable to cattle in transit?

If Rule 70 of the Transport of Animals Rules, 1978, requires food and fodder to be carried during the journey, the question of cattle in transit impacting the availability of fodder in the drought affected area would not arise - for the purpose of maintaining or increasing the supply of cattle, transport of cattle in transit would have no relevance as the same has nothing to do with the maintenance or increase in the supply of cattle within the drought affected area - the contention that the impugned notification would not apply to cattle in transit, therefore, merits acceptance.

[para 13.4, 13.5]

Whether the impugned notification dated 14.12.2018 under section 4(1)(b) of the Gujarat Essential Commodities and Cattle (Control) Act, 2005 has been issued in colourable exercise of powers?

The object behind the issuance of the impugned notification as well as the impugned communications is to prevent export from Tuna Port as the State Government does not have any power to directly prevent exports, export and import being a subject falling in the Union List - so what cannot be done directly by the State Government is sought to be done indirectly under the guise of exercise of powers under section 4(1)(b) of the Act. The impugned notification, therefore, clearly has been issued in colourable exercise of powers and deserves to be struck down.

[para 14.9, 15]

Requirement of quarantine certificate for export of livestock

When there is no mandate to satisfy the quarantine requirements in case of import of livestock by the importing country, the State authorities, who otherwise have no concern with the import export policy, cannot insist on compliance thereof.

[para 16.4]

Validity of the communication dated 14.12.2018 of the Directorate of Animal Husbandry

The requirement under the rules is for providing a certificate signed by a qualified Veterinary Surgeon and it need not be a certificate provided by the Directorate of Animal Husbandry in exercise of powers as a delegate of the Central Government - however, to the extent the Director has requested the Commissioner of Customs not to allow export of live animals from Tuna, Kandla Port of Gujarat until specified facility for Animal Quarantine and Certification is established by Department of Animal Husbandry, Dairying and Fisheries, Government of India and that non-compliance of the guidelines of the Government of India in this regard can amount to disrepute to the image of the country and can adversely impact the interest of the country as a whole is concerned, the same being beyond the bounds of his authority, cannot be sustained - the impugned letter dated 14.12.2018 deserved to be set aside to that extent.

[para 17.1]

Validity of the communication dated 14.12.2018 of the Under Secretary, Home Department addressed to the Superintendent of Police, Kutch (West)

The fact that such instructions have been issued only to the Superintendent of Police Kutch (West), that too, on the same day when the Chief Minister addressed the press informing that exports from Tuna Port were being prohibited, indicates that the same has not been issued bona fide, but under the guise of compliance of the provisions of the Prevention of Cruelty to Animals Act and the Transport of Animals Act, in effect and substance, it is the export of livestock from Tuna Port which is sought to be prevented - evidently, therefore, the impugned communication has been issued in colourable exercise of powers with an oblique intention to prevent export from Tuna Port and is also discriminatory, inasmuch as it discriminates between animals being transported into and within Kutch District, and the animals being transported into and within other districts of the State and is, therefore, violative of article 14 of the Constitution of India - under the circumstances, the impugned communication dated 14.12.2018 issued by the Home Department to the Superintendent of Police, Kutch (West), cannot be sustained.

[para 18]

For the foregoing reasons, the petition succeeds and is, accordingly, allowed - the impugned notification dated 14.12.2018 issued by the State Government in exercise of powers under section 4(1)(b) of the Gujarat Essential Commodities and Cattle (Control) Act, 2005; the impugned letter dated 14.12.2018 issued by the Under Secretary, Home Department to the Superintendent of Police, Kutch (West); as well as the letter dated 14.12.2018 of the Director of Animal Husbandry addressed to the Commissioner of Customs, to the extent indicated above, are hereby quashed and set aside.

[para 19]

Special Civil Application allowed

Case laws cited:

Animal Welfare Board of India v. A Nagraja - (2014) 7 SCC 547.....para 3.5, 6.....referred

Amarnath Sonkar v. Union of India - (2005) 13 SCC 87.....para 7.4.....referred

Akhil Bharat Goseva Sangh v. State of A.P. - (2006) 4 SCC 162.....para 7.5.....referred

Mangalam Organics Ltd. v. Union of India - 2017-TIOL-187-SC-CX.....para 8.4.....referred

Census Commissioner v. R. Krishnamurthy - (2015) 2 SCC 796.....para 8.5.....referred

Parisons Agrotech (P) Limited v. Union of India - 2015-TIOL-189-SC-CUS.....para 8.6.....referred

Central India Spg. Weaving & Mfg. Co. Ltd. v. Municipal Committee - AIR 1958 SC 341.....para 10.2, 13, 13.5.....relied upon

Tehseen S. Poonawalla v. Union of India - (2018) 9 SCC 501.....para 10.6.....referred

JUDGEMENT

Per: Harsha Devani:

1. By this petition under Article 226 of the Constitution of India, the petitioners seek the following substantive reliefs:-

"(A) THIS HON'BLE COURT MAY BE PLEASED TO hold that the impugned notification and communication (Annexure A to C) dated 14.12.2018 as grossly illegal, unconstitutional and violative of the fundamental rights of the Petitioners.

(B) THIS HON'BLE COURT MAY BE PLEASED TO quash and set aside the Notification No.VHD/122018/1847/P-1 dated 14.12.2018 by the Respondent No.6-Agriculture, Farmers' Welfare and Cooperation Department (Annexure-A), communication dated 14.12.2018 by the Respondent No.7-Directorate of Animal Husbandry to the Respondent No.1-Commissioner of Customs (Annexure-B), communication dated 14.12.2018 by the Respondent No.5-Home Department to the Police Superintendent, Kuchch (West), Gandhidham (Annexure-C).

(D) THIS HON'BLE COURT MAY BE PLEASED TO direct the Respondent Authorities to permit export of the livestock through Tuna Port of the Deendayal Port Trust as was being permitted earlier and in pursuance to the order dated 30.11.2018 passed by this Hon'ble Court in Special Civil Application No.17433 of 2018 = 2018-TIOL-2628-HC-AHM-CUS and order dated 6.12.2018 passed in Special Civil Application No.17424 of 2018.

(F) THIS HON'BLE COURT MAY BE PLEASED TO direct the Respondent No.5-Home Department to make sure through the Superintendent of Police, Kuchchh (West) Gandhidham, that the transporters of the livestock are not harassed by the so-called animal right activist and officers of the Directorate of Animal Husbandry."

2. This petition arises in the backdrop of the following facts:-

2.1 The petitioners and other exporters are engaged in the business and since even prior to independence they have been exporting livestock regularly from Tuna Port, Taluka Anjar, District Kutch. The petitioners export livestock, that is, goats and sheep to Middle East Asian countries through country crafts (Mechanized Sailing Vessels) on traditional routes. Such export is carried out from the Tuna Port managed by the Deendayal Port Trust. It is the case of the petitioners that they have obtained necessary Import Export Code (IEC) from the Directorate General of Foreign Trade under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and, therefore, are eligible for exporting livestock. According to the petitioners, the Tuna Port is the only port for export of the livestock from the western coast of India and is used exclusively for export of livestock to Middle East Asian countries from even prior to independence and for regular and uninterrupted export since the last forty years. The peculiarity of the Tuna Port is that, it is a small port having a small creek with low water draft and, therefore, no other big and heavy vessel and/or ship can sail there and, therefore, except for export of livestock through wooden mechanised sailing vessels, there is no other import-export traffic at Tuna Port.

2.2 By a letter dated 6.8.2018, the District Magistrate and Collector, Kutch formed a three member committee to inspect

and submit report about alleged violations under the Prevention of Cruelty to Animals Act, 1960 for the consignment scheduled to be exported on 6.8.2018 and further prohibited movement of livestock through Tuna Port until further orders. The petitioners and other exporters challenged the said order by presenting a writ petition before this court being *Special Civil Application No.12462 of 2018*. By an order dated 18.9.2018, this court stayed the order dated 2.8.2018 passed by the Collector and District Magistrate, Kutch and further permitted the petitioners to export the livestock after complying with the requisite rules and regulations for export.

2.3 Pursuant to the said order, the petitioners and other exporters took steps to export the livestock by completing all the requisite requirements and formalities. On 27.9.2018, the petitioners and other exporters filed their shipping bills which were accepted for export by the respondent customs authorities without any objection. Therefore, the petitioners made an application to the Traffic Manager of the Deendayal Port Trust to gate in the livestock, but at that point of time, the Traffic Manager of the Deendayal Port Trust did not permit to gate in the livestock and, therefore, Let Export Order (LEO) could not be issued and livestock could not be exported.

2.4 Being aggrieved by the continuous denial of permission to gate in the livestock and non-consideration of various representations made by the petitioners to the Traffic Manager of Deendayal Port Trust, on 29.10.2018, the petitioners made an application being Civil Application No. 2 of 2018 in *Special Civil Application No.12462 of 2018* for further orders and directions against the respondents therein including the Traffic Manager of the Deendayal Port Trust. In view of the filing of the civil application, the Traffic Manager of Deendayal Port Trust acceded to the request of the petitioners and granted permission to export the livestock as per the directions of this court in its order dated 18.9.2018. Accordingly by an order dated 27.11.2018, the civil application came to be disposed of.

2.5 After the Traffic Manager of Deendayal Port Trust granted permission to gate in the livestock, on 13.11.2018, the petitioners filed shipping bills for export of livestock before the Superintendent of Customs, Old Tuna Port. The petitioners also

submitted copies of invoices and EDF Form issued by the Reserve Bank of India, purchase order, valid veterinary health and vaccination certificate, fumigation and pest control certificate, copy of the agreement with the buyers and affidavit of the Ship Master along with the shipping bill. However, vide letter dated 13.11.2018, the second respondent Superintendent of Customs raised certain queries and inter alia sought documents/clarifications. On 14.11.2018, the petitioners clarified and explained the said queries and also made a detailed representation to the customs authorities to permit export of the livestock as the petitioners had complied with all the rules and regulations for export of the livestock. Thereafter, as the petitioners had complied with all the rules and regulations and produced all necessary documents, the third respondent, Superintendent of Customs permitted export of livestock, more particularly, in view of the order dated 18.9.2018 passed by this court.

2.6 Thereafter, by a letter dated 16.11.2018, the third respondent Superintendent of Customs informed the petitioners that the applicability of certain guidelines with respect to export of livestock are under consideration with the Customs House, Kandla and that after consideration thereof, the shipping bill will be considered. Being aggrieved, the petitioners filed writ petitions before this Court being Special Civil Application No.17424 of 2018 and *Special Civil Application No.17433 of 2018 = 2018-TIOL-2628-HC-AHM-CUS*. Vide orders dated 30.11.2018 and 6.12.2018 passed in the above referred writ petitions respectively, this court quashed and set aside the letter dated 16.11.2018 passed by the third respondent Superintendent of Customs. Thereafter the Superintendent of Customs assessed the shipping bills and permitted export of livestock. It is the case of the petitioners that though so-called animal rights activists tried to create impediments in the export of livestock, several exports took place thereafter.

2.7 Subsequently on 14.12.2018, the Chief Minister of Gujarat addressed a press conference declaring that the State of Gujarat will ban export of livestock from Tuna Port with immediate effect and on the same day, that is, 14.12.2018, the Agriculture, Farmers' Welfare and Cooperation Department issued a

notification in exercise of powers conferred by clause (b) of sub-section (1) of section 4 of the Gujarat Essential Commodities and Cattle (Control) Act, 2005 (hereinafter referred to as "the Cattle Control Act") prohibiting movement of any cattle from outside into any drought affected area.

2.8 On the same day, by a letter dated 14.12.2018, the Director of Animal Husbandry, Gujarat State, informed the Commissioner of Customs that the Government of Gujarat has decided to withdraw the services provided for health checkup of live animals with immediate effect as they are not as per the norms prescribed in the letters referred to therein. That, they are also requesting the Government of India for setting up of required quarantine facility at Tuna, Kandla Port at the earliest. He further urged the Commissioner of Customs not to allow export of live animals from Tuna, Kandla Port of Gujarat, until specified facility for Animal Quarantine and Certification is established by the Department of Animal Husbandry, Dairying and Fisheries, Government of India.

2.9 On the same day, that is, 14.12.2018, the Under Secretary, Home Department, addressed a communication to the Superintendent of Police, Kutch (West), Gandhidham, informing her to strictly comply with the provisions of the Prevention of Cruelty to Animals Act, 1960 and the Transport of Animal Rules, 1978, by setting up check posts at various places which would be manned by police officers, employees, representatives of Animal Husbandry Department and representatives of Animal Welfare Organisations and would keep round the clock vigil, etc.

2.10 Since the resultant effect of issuance of the notification under section 4(1)(b) of the Cattle Control Act, the withdrawal of certification services and the setting up of check posts under the Prevention of Cruelty Act and the Transport of Animal Rules, is prevention of exports of livestock through Tuna Port, the petitioners have filed the present petition seeking the reliefs noted hereinabove.

3. In response to the petition, an affidavit-in-reply dated 22nd January, 2019, has been filed on behalf of the respondents No.6 and 7, wherein it has been averred that the notification dated 14.12.2018 has been issued by the Agriculture, Farmers' Welfare

and Cooperation Department under the Gujarat Essential Commodities and Cattle (Control) Act, 2005 in view of the powers conferred by clause (b) of sub-section (1) of section 4 of that Act, whereby the movement of cattle into any drought affected area from outside has been prohibited. It is further stated that the communication having the same date has been made by the Director of Animal Husbandry, Gujarat State, to the Commissioner of Customs, whereby it was brought to his attention that the Government of Gujarat has withdrawn the services provided for health checkup of live animals with immediate effect as the said exercise cannot be carried out in consonance with the norms prescribed as per the communications made by the Department of Animal Husbandry, Dairying, Fisheries, Ministry of Agriculture and Farmers' Welfare dated 10.9.2018 and 4.10.2018 as well as the communication of the Animal Welfare Board of India dated 1.10.2018, highlighting such conditions which are required to be followed as a precedent. It is further stated that a communication has been addressed by the Under Secretary, Home Department to the Superintendent of Police, Kutch (West), Gandhidham whereby it was requested that it may be ensured by the Superintendent that the rules and norms are properly followed and for that purpose check post must also be created and the said check post must ensure that all documents and other requirements for the purpose of any movement of animals is in place.

3.1 It is further stated that the petitioners have contended that as far as the issue of quarantine of live animals is concerned, the same is not mandatory as the country of export, that is, UAE does not mandate any quarantine certification as they themselves carry out the same and it has also been contended that as far as quarantine certification is concerned, it is only mandatory for the import of live animals as per the circular dated 2.3.2007 issued by the Central Board of Excise and Customs, and that if the notifications and communications Annexures A, B and C are permitted to be operated, it would adversely affect the interest of those involved in the activity of export of live animals, that is, sheep and goats which are freely exportable under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade Policy, 2015-2020.

3.2 It is stated that insofar as the impugned notification (Annexure-A) is concerned, the Department always carries out a comprehensive exercise to come to a conclusion of declaring a particular area as a drought affected area and the said exercise is carried out and the Government has taken into account the conditions such as rainfall deficiency, decline in availabilities of ground and surface water, poor crop conditions and parameters related to remote sensing and socio economic parameters, etc. to ascertain the distress situation that is likely to develop in the area affected by this condition through sample field verification and on the basis of report available from the Collector of the concerned districts has decided to declare drought of a severe/moderate nature in the areas of the State. The said notification has been issued as it was necessary and expedient to regulate movement of cattle into any drought affected area as the cattle in such drought affected area are at stake on account of short availability of fodder and the cattle have become prone to infectious diseases.

3.3 It is further averred that insofar as the communication addressed to the Commissioner of Customs is concerned, it has also been made pursuant to communications dated 10.9.2018 and 4.10.2018 of the Department of Animal Husbandry, Dairying, Fisheries and Ministry of Agriculture and Farmers' Welfare as well as a communication of the Animal Welfare Board of India dated 1.10.2018, which prescribes the condition precedent for allowing export of live animals strictly as per extant provisions of rules and regulations for transport of livestock, proper medical examination certification by the appropriate/designated authorities, quarantine procedure and certification for export of livestock and prevention of cruelties to animals for the same. It is further stated that the veterinary certificate for animal health from the appropriate designated authority is mandatory before export of live animals. The requirement for the purpose of Animal Quarantine and Certification Services (AQCS) is also mandatory and by this Government of India envisages provision of internationally accepted certification services for the livestock and livestock products exported to other countries from India conforming to health requirements prescribed in International Zoo Sanitary Code. It is further stated that thus, it does not merely include

quarantine that is raised as an issue. Had it been the case that only the quarantine aspect would have been the consideration, the petitioners' contention that the live animals are to be exported to UAE, would have had any substance, however, even the health check-up, which otherwise is required to be carried out as per the norms and the same falls under the authority of the Union of India. It is further averred that since the specified and required facilities prescribed in the above communication for export of live animals are not available for animal quarantine and certification services either at Tuna-Kandla Port or anywhere in Gujarat State, the Government of Gujarat decided to withdraw the services provided for health check up with immediate effect.

3.4 It is further averred that in terms of the communication dated 10.9.2018 of the Ministry of Agriculture and Farmers Welfare through its Department of Animal Husbandry, Dairying, Fisheries (Trade Unit) Delhi addressed to the Animal Husbandry Department, as many as eight requirements are required to be fulfilled for the purpose of export of live animals which includes the international guidelines standards OIE (Office International Des Epizooties, Paris) and most importantly at serial No.6 in the said communication, proper medical examination certification by proper designated authorities is highlighted. The Terrestrial Animal Health Code has been formally adopted by the World Assembly of OIE delegates, which is the highest decision making body for the International Organization. The Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009, in its preamble clearly indicates that India is one of the member Countries of Office International Des Epizooties, Paris, and, therefore, it is obligatory on the part of India to follow the required norms prescribed and certificate is required to be issued by the competent authorized authorities with reference to the inspection. As far as the competent authority is concerned, it would be official veterinarians as per the OIE Code, who can be termed as Animal Quarantine and Certification Services Veterinarians. It is also averred that as far as the quarantine stations in India are concerned, there are six such stations at New Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Bangalore, such veterinarians as per the OIE code are available at six

centers and, therefore, whether it be quarantine or certification as per the code, it is only such designated veterinarians who have the authority to issue certification of such veterinarians and under the Central Government, that is, the Department of Animal Husbandry, Dairying, Fisheries and, therefore, the communication dated 14.12.2018 to the Commissioner of Customs has been issued wherein lack of specified and required facilities by appropriate/designated authority to issue certificate in view of communications dated 10.9.2018, 4.10.2018 and 1.10.2018 has been highlighted. It is also averred that various communications have been made by the State Government through its Department of Animal Husbandry, whereby clarification and guidelines have been sought for the purpose of veterinary certification and quarantine procedure to be carried out at the said port under the supervision of Department of Animal Husbandry, Dairying and Fisheries, Government of India. However, such communications have not been responded by the Government of India and, therefore, ultimately as the OIE guidelines and norms were not being followed, the Government of Gujarat has withdrawn such certification.

3.5 Insofar as the communication addressed to the Superintendent of Police is concerned, it is stated that it is only with a view to ensure that no illegality is committed in transporting the animals so as to ensure that there is no cruelty to the animals as per the Prevention of Cruelty to Animals Act, 1960 especially section 32 thereof which empowers search and seizure and, therefore, also, the said communication can also not be termed as contrary to law as the powers are vested under the said Act. Reliance has also been placed upon the decision of the Supreme Court in the case of *Animal Welfare Board of India v. A Nagaraja, (2014) 7 SCC 547*.

4. In response to the affidavit-in-reply, the petitioners have filed a rejoinder, wherein it has been inter alia stated that health certificates/fit to travel certificate of animals are issued under rule 2(a) and rule 65(a) of the Transport of Animals Rules, 1978 framed under the Prevention of Cruelty to Animals Act, 1960 and under section 30(c) of the Indian Veterinary Council Act, 1984. Moreover, the same are issued for transport of livestock through road or train and, therefore, are not at all relevant in the instant

case of export of livestock to another country through mechanized sailing vessels but would be relevant only for transport of livestock up to Tuna Port. Furthermore it is a matter of record that there has not been even a single incident of any contravention of the aforesaid laws by the petitioners or any other person while transportation of livestock to Tuna Port. It is further averred that export of the livestock through Tuna Port is sought to be restricted and prohibited on the basis that quarantine facility is not available in the State of Gujarat, even though quarantine of livestock before export is neither mandatory nor relevant and is only required for import of livestock as mandated by Circular No. **13/2007-Cus** dated **2.3.2007**, issued by the Central Board of Excise and Customs. Furthermore, insofar as the present case is concerned, the importing country, that is, UAE does not mandate any quarantine certificate at the export point, but the inspection and quarantine of the livestock is carried out at the destination country, namely, UAE by its own authority as per its own law at import point. This is also evident from the fact that the consignments of the petitioners have been cleared for the last forty years, and even after the order dated **6.12.2018** passed by this court. Moreover, in any view of the matter, the Dubai Municipality, Public Health Department, Veterinary Service Section, inspects the livestock and quarantines the same as per their law before releasing the consignment to the importers. It is further averred that as per the Import Permit issued by the UAE also, no condition is stipulated for import of livestock, that is, sheep and goats; whereas for import of pet animals like cat and dogs, numerous conditions including quarantine and vaccinations are mentioned in the Import Permit, which clearly and unambiguously establishes that livestock is freely exportable as per Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade Policy 2015-2020 and the Export Policy 2018 and livestock is freely importable in the UAE without any conditions.

4.1 It is further averred that the notifications dated **19.9.1983** and **19.7.1985** were issued under "Export Trade Control" in Import and Export Policy 1983-84 under the provisions of the Imports and Exports (Control) Act, 1947 by the Chief Controller of Imports and Exports. The said Act came to be repealed in 1992 by the Foreign Trade (Development and Regulation) Act, 1992.

Moreover, the "Export Trade Control" was replaced with the Export Import (EXIM) Policy, which is now called the "Foreign Trade Policy" and is revised from time to time, and such revised policies are notified at the interval of every five years. At present, the Foreign Trade Policy 2015-2020 is in force, whereas the latest Export Policy 2018 has been notified on 31.1.2018 and the same is required to be adhered to and followed. It is the case of the petitioners that the notifications dated 19.9.1983 and 19.7.1985 under "Export Trade Control" in Import and Export Policy 1983-84 under the provisions of the now repealed Imports and Exports (Control) Act, 1947 being obsolete, redundant and inconsistent with the present Foreign Trade (Development and Regulation) Act, Foreign Trade Policy of 2015-2020, Export Policy 2018 are not all relevant and the provisions contained therein are of no consequences.

4.2 It is further averred that the fifth respondent Home Department has directed the Superintendent of Police, Kutch (West), Gandhidham to set up check points to enable and facilitate the animal right activists and officers of the Directorate of Animal Husbandry to inspect the vehicle transporting the livestock. According to the petitioners, the forceful and illegal acts of the so-called animal rights activists of inspecting the vehicles without any authority of law is being ordered and rather promoted. The said communication also intends to promote disregard for rule of law and lynch mob mentality amongst the people. It is further the case of the petitioners that the communication dated 14.12.2018 is issued only to the Superintendent of Police, Kutch (West), Gandhidham, which again makes it clear that the only intention and purpose of the said communication is to prohibit and restrain export of livestock through Tuna Port by illegally stopping the vehicles transporting the livestock to the Tuna Port.

4.3 It is further averred that the only reason for issuance of the impugned notifications and communications dated 14.12.2018 is to prohibit and restrain export of livestock through Tuna Port which is otherwise legally permissible as per the Foreign Trade (Development and Regulation) Act, Foreign Trade Policy of 2015-2020 and Export Policy of 2018.

5. An affidavit-in-reply has also been filed on behalf of the respondents No.2 and 3, wherein it has inter alia been stated that vide letter dated 4.12.2018 they have been informed that the Government of Gujarat has decided to withdraw the facility of health checkup of animals to be exported and it has been urged by the respondent No.7 not to allow export of live animals from Tuna, Kandla Port until specified facility of Animal Quarantine and Certification is established by the Department of Animal Husbandry, Dairying and Fisheries, Government of India. After that no shipping bill has been presented before the said respondents and in the meantime, the said respondents have also taken up the matter with the Regional Officer of the Animal Quarantine and Certification Services, Mumbai. It is further averred that the Public Notices dated 19.9.1983 and 19.7.1985 makes quarantine of sheep mandatory before export. It appears that for want of adequate facilities, the respondent No.7 has withdrawn health checkup and quarantine facilities at Tuna. In view of the Public Notice dated 19.9.1983, export of sheep can be allowed without quarantine only if foreign buyers specifically contract for export without quarantine formalities and exporters produce contract (in original) to this effect to the licensing authority. It is further stated that in the past export consignments were cleared on the basis of health/quarantine certificates issued by the local Veterinary Officer of Anjar having jurisdiction over the Tuna Port and, therefore, clearance of past consignments cannot be compared with the present situation when the respondent No.7 has withdrawn the quarantine and health checkup services for want of adequate facilities.

6. An additional affidavit has been filed on behalf of the respondent No.6, wherein a copy of the guidelines framed by the Bureau of Indian Standards for Transport of Livestock called "Transport of Livestock Code of Practice 2007, a copy of Transport of Animal Rules, 1978 framed by the Central Government under section 38(2)(h) of the Prevention of Cruelty to Animals Act, 1960, a copy of the Prevention of Cruelty to Animals Act, 1960, a copy of the decision of the Supreme Court in the case of Animal Welfare Board v. A. Nagaraja (supra) and relevant guidelines with reference to certification by OIE have been placed on record. It is averred that even if the importing country does not insist upon such Animal Quarantine Certificate,

India being signatory to OIE, it is mandatory for the State Government and the authorities to follow the same. That, India is signatory to World Trade Organisation (WTO) and, therefore, is bound by the measures stated in paragraph No.2 of the Trade Notice No.18 of 2018 dated 23.10.2017 issued for non-compliance Sanitary and Phyto-sanitary measures by Indian Exporters/Importers. It is further averred that the Government of India has issued directives for Animal Quarantine and Certification Services. The State Government has been corresponding and requesting the Central Government to make facilities for carrying out Animal Quarantine Certification Services since 2014 and has also stated its inability to go into such certification services. A copy of the Chapters 7.2, 7.3 and 7.4 of the Terrestrial Animal Health Code has also been placed on record.

6.1 It is further averred that reliance placed by the petitioners on a few orders and judgments in *Special Civil Application No.12462 of 2018*, *Special Civil Application No.17424 of 2018* and *Special Civil Application No.17433 of 2018 = 2018-TIOL-2628-HC-AHM-CUS* would not help the case of the petitioners as the Animal Husbandry Department and Director of Animal Husbandry, Gujarat were not parties to the said proceedings and in none of those proceedings, the notifications and communications have been challenged.

7. Mr. Mihir Joshi, Senior Advocate, learned counsel with Mr. M.T.M Hakim and Mr. Saquib Ansari, learned advocates for the petitioners, submitted that continuous efforts have been made by the State to prevent export of live animals from Tuna Port, and lastly, the three impugned notifications/communications have been issued for the purpose of blocking exports.

7.1 It was submitted that though export of livestock is free and there is no restriction, under the guise of the impugned notification dated 14.12.2018 issued under section 4(1)(b) of the Cattle Control Act, the movement of livestock is prohibited. It was contended that the State does not have the power to control what is exported at the port and that an order under the Cattle Control Act which restrains cattle from coming into the State, cannot prevent livestock from coming into the port. According to the learned counsel, in any case, the impugned notification

would not cover passing of cattle through the drought affected area and cannot control inter-State or intra- State movement. It was submitted that to fall within the ambit of the impugned notification, the cattle must be coming to the drought affected area as a terminal point whereas in case of the petitioners, the livestock are only required to pass through and, therefore, the State cannot rely upon the impugned notification to stop exports. It was argued that the Cattle Control Act notification can have no application to restrain exports as it would amount to giving extra territorial jurisdiction.

7.2 It was pointed out that by the impugned communication dated 14.12.2018 of the Directorate of Animal Husbandry, Gujarat State, the services delegated by the Central Government to the State authority have been withdrawn to create a situation whereby certificates cannot be issued and, therefore, exports cannot be made. It was submitted that the withdrawal of animal quarantine and certification services (AQCS) is deliberate, with a view to create a situation to block exports without authority. It was submitted that the delegate withdrawing the power vested in him is unknown. It was contended that the sudden withdrawal of certification facilities without affording an alternative impedes exports and is prima facie intended to block the exports. It was submitted that quarantine of livestock before export is not mandatory in case of export of livestock inasmuch as quarantine of livestock before export is only required if that is necessitated by the importing country. It was submitted that in the instant case, the importing country UAE does not mandate any quarantine certificate at export point but the quarantine of livestock is carried out at the destination country UAE by its own authority as per its own law at import point.

7.3 It was next submitted that the impugned communication dated 14.12.2018, issued to the Superintendent of Police, Kutch (West) to set up check posts to enable and facilitate animal rights activists and officer of the Directorate of Animal Husbandry to inspect the vehicles transporting livestock for violation of the Transport of Animal Rules, results in empowering animal rights activists to inspect vehicles without any authority of law and promotes vigilantism. It was contended that there is an element

of the State trying to control free exports in all the impugned notification/communications.

7.4 Reliance was placed upon the decision of the Supreme Court in the case of *Amarnath Sonkar v. Union of India*, (2005) 13 SCC 87 wherein the court has held that it is for the railways to comply with their obligations. Blanket order prohibiting transportation of pigs by parcel vans without providing for adequate alternative is wholly arbitrary and illegal.

7.5 Reference was made to the decision of the Supreme Court in the case of *Akhil Bharat Goseva Sangh v. State of A.P.*, (2006) 4 SCC 162, wherein it has been held 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 buffaloes used for breeding and milching purposes.

7.6 The learned counsel submitted that considering the timing and the manner in which the impugned notification under the Cattle Control Act as well as the impugned communications have been issued, which result in preventing export, it is evident that the impugned notification has not been issued for the apparent purpose as stated in the notification, but in colourable exercise of powers to indirectly block exports as the subject of import and export falls within the domain of the Central Government and the State Government has no authority to regulate exports. It was, accordingly, urged that the impugned notification as well as the impugned communications having been issued in colourable exercise of powers are required to be set aside and the petition deserves to be allowed.

8. Vehemently opposing the petition, Mr. P.K. Jani, learned Additional Advocate General appearing on behalf of the respondent State authorities, submitted that the State Government under section 4(1)(b) of the Cattle Control Act has taken a conscious decision that there is shortage of fodder and drinking facility. Satisfaction is recorded that movement of cattle from area outside the drought affected area to the drought affected area should be prohibited. It was submitted that by virtue of the said notification there shall be no entry of cattle to

the drought affected area, which would mean even by way of transportation. It was submitted that the petition calls in question the notification dated 14.12.2018 issued under section 4(1)(b) of the Cattle Control Act as well as the decision of the Director of Animal Husbandry withdrawing veterinary certification facilities. The impugned notification under section 4(1) of the Cattle Control Act has been issued as maintenance of cattle is at stake due to short availability of fodder and to prevent the spread of infectious and contagious diseases. Referring to the history of the matter, it was submitted that insofar as the order of the District Magistrate and the judgment and order dated 30.11.2018 passed by this court are concerned, they were all on a different footing and have nothing to do with the controversy in issue in this case. It was submitted that it is only the reasonableness of the notification which has to be seen. As regards the contention of the petitioners that quarantine certification is not required for export of livestock to UAE, it was submitted that any animal that is to be exported would require a quarantine certificate whether or not the importing country requires it. Insofar as the communication dated 14.12.2018 issued to the Superintendent of Police, Kutch (West) is concerned, it was stated that the same shall be amended by substituting representative of animal rights groups with member of Society of Prevention for Cruelty to Animals.

8.1 It was submitted that the notification dated 14.12.2018 issued by the State Government is in exercise of delegated power under section 4(1)(b) of the Cattle Control Act. These powers of delegated legislation under section 4(1)(b) are exercised in accordance with the scheme of section 4(1)(b) of the Cattle Control Act. By the notification dated 14.12.2018, movement of cattle into the drought affected area is prevented. So there is no intra-State entry if the area is declared to be drought affected. It was submitted that fifty one talukas of the State Government have been declared drought affected and movement into such drought affected areas from other areas is prohibited irrespective of the fact as to whether the person intends to do business within Gujarat or the animals are merely transported through the drought affected area. It was submitted that the contention that the petitioners are deprived of the legitimate right of export business is not correct as the notification applies

across the board to all persons and has not been issued in the context of the petitioners.

8.2 According to the learned Additional Advocate General, once the requirements of section 4(1)(b) of the Cattle Control Act are satisfied, the maintenance of cattle and availability is part of section 4(1)(b). It was submitted that if there is concentration of large number of animals in the drought affected area, it would strain fodder and drinking water as well as other things, and, therefore, entry of such cattle into drought affected area is restricted. It was submitted that the submission of the petitioner that it is a transit route cannot be accepted for the reason that fifty one talukas of the State have been declared drought affected and it is not possible to supervise, manage or administer the entry and exit points to determine transit with entries from all corners being open.

8.3 It was urged that the State Government notification dated 14.12.2018 is issued because of drought and scanty rainfall and is not a permanent prohibition but for a limited period of time till the drought situation improves. Such regulatory measures are intended for maintaining cattle in drought affected areas of fifty one talukas of different districts in the State. It was contended that such power having been exercised by the State Government in exercise of delegated legislation, the parameters to test its validity would be different from judging the administrative decisions of any authority. This is a legislative function having been conferred by the Legislature upon the State Government, the broader principles of judicial review of administrative actions of the administrative authority will not apply and strict principles would apply for considering the legality and correctness thereof. According to the learned Additional Advocate General, the State is the appropriate authority as it is manned by people's representatives who know the requirements of the people at large at a greater level than other persons.

8.4 Reliance was placed upon the decision of the Supreme Court in the case of *Mangalam Organics Ltd. v. Union of India, (2017) 7 SCC 221 = 2017-TIOL-187-SC-CX*, wherein the court held that the issuance of notification under section 11C of the Central Excise Act is in the nature of subordinate legislation and that directing the Government to issue such a notification would

amount to take a policy decision in a particular manner, which is impermissible.

8.5 Reliance was also placed upon the decision of the Supreme Court in the case of *Census Commissioner v. R. Krishnamurthy*, (2015) 2 SCC 796 for the proposition that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion.

8.6 Reference was also made to the decision of the Supreme Court in the case of *Parisons Agrotech (P) Limited v. Union of India*, (2015) 9 SCC 657 = **2015-TIOL-189-SC-CUS**, wherein the court has held that the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once the parameters of article 14 are satisfied, there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the court has to respect such a decision of the Executive as the policy making is the domain of the Executive and the decision in question has passed the test of the judicial review. The court concluded that in a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

8.7 It was submitted that while judicially reviewing the validity of the notification, the same may be considered in the light of delegated legislation and not administrative action.

8.8 It was submitted that insofar as the impugned communication dated 14.12.2018 issued by the Director of Animal Husbandry is concerned, it was submitted that by Notification No.19 of 1985, the Central Government conferred powers on the State Government to provide certification facilities which was in fact a function of the Central Government which was entrusted to the State Government. In fact, it was an intra-State decision between the Central Government and State Government. It was submitted that by the impugned communication the State Government has only conveyed to the Customs authorities, the decision of the State Government to withdraw the facilities of services of providing health checkup of live animals. It was emphatically argued that the petitioners cannot insist that the State Government should provide such facilities and cannot seek a direction to the State Government to provide such facilities, which is not its function.

8.9 Insofar as the communication dated 14.12.2018 addressed to the Superintendent of Police, Kutch (West) is concerned, as recorded hereinabove, it was submitted that the same is consistent with the provisions of the Prevention of Cruelty to Animals Act and is in accordance with the Transport of Animal Rules whereby norms are prescribed for transportation of animals. It was contended that the petitioners cannot complain as to why the provisions the Prevention of Cruelty to Animals Act are to be implemented and why the provisions of the Transport of Animal Rules are to be made applicable. It was, however, submitted that the concerned authority will correct the impugned letter so as to replace the Jeev Daya member with a member of the SPCA.

8.10 It was submitted that the instructions issued by the State on 14.12.2018 may be appreciated in the context of article 48 of the Constitution of India. Reference was made to article 48 of the Constitution, which provides for organisation of agriculture and animal husbandry, as well as article 253 of the Constitution, which provides for legislation for giving effect to international agreements to submit that all the actions taken by the State

Government are in consonance with the provisions of articles 48 and 253 of the Constitution of India.

8.11 Next, it was submitted that section 113 of the Customs Act provides for confiscation of export goods attempted to be improperly exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under that Act or any other law for the time being in force. According to the learned Additional Advocate General, any other law for the time being in force would include a law of the State as well as the notification dated 14.12.2018 issued in exercise of powers under section 4(1)(b) of the Cattle Control Act. It was urged that the exercise of powers by the State Government is in accordance with law, though the same may incidentally affect the petitioners. It was submitted that the impugned notification has not been issued to prevent export of livestock but to prevent movement of cattle into drought affected areas. Therefore, even export is subject to section 113 of the Customs Act, which does consider prohibition and restriction of other laws. If other law prohibits then the goods attempted to be exported can be confiscated.

8.12 As regards the contention that the impugned communication has been issued in colourable exercise of powers, it was submitted that consequent to the notification dated 30.10.2018 for declaring drought affected areas based on the facts mentioned therein, the State Government has issued the notification dated 14.12.2018 under section 4(1)(b) of the Cattle Control Act prohibiting any entry of cattle from other areas for the reasons set out in the notification. It was submitted that the power is conferred by the legislature to the State Government which is a quasi legislative function different from general administrative power and that the charge of colourable exercise of power is misplaced in the facts of the present case. It was submitted that the State stands by what is stated in the affidavit and that the petition being devoid of merits, no relief deserves to be granted to the petitioners and that the petition deserves to be dismissed.

9. Mr. Nirzar Desai, learned senior standing counsel for the respondents No.2 and 3, placed reliance upon the averments made in the affidavit-in-reply filed on behalf of the said

respondents which are already recorded hereinabove. The attention of the court was invited to the communication dated 31.12.2018 of the Assistant Commissioner, (In-charge), Old Tuna Port, addressed to the Regional Officer, Animal Quarantine and Certification Services, requesting him to inform him as to whether any facility of health/vaccination certification in export of live sheep and goats by the said Department is available at Tuna Port; the reply of the Regional Officer dated 19.1.2019 to the said communication; as well as the communication dated 5.2.2019 of the Assistant Commissioner, In-charge Old Tuna Port addressed to the Regional Officer, inquiring from him as to whether quarantine of sheep and goats prior to export has been made mandatory under any statutory provision as well as to inform the legal provisions in respect of issuance of health/fitness certificate of goats and sheep meant for export; and the reply dated 14.2.2019 of the Regional Officer, wherein he has inter alia stated that no such statutory provision has been made mandatory by the Government of India; however, quarantining of animal and issuance of quarantine health certificate solely depend upon the requirements of importing country. It was submitted that insofar as the said respondents are concerned, no shipping bill has been presented before the customs authorities and, hence, no cause of action arises against the said authorities.

10. In rejoinder, Mr. Mihir Joshi, learned counsel for the petitioners, submitted that if the exports are governed by the new policy, the substantial issue in the petition regarding requirement or otherwise of quarantine certificate would not survive. It was submitted that as per the procedure prescribed by the Government, there is no requirement of quarantine certificate and certificate as required can be given by a qualified veterinarian. No other customs or import export procedure seems to be mandatory. It was submitted that in view of the Foreign Trade Policy 2015-2020, the earlier notifications are rendered non-operative and it is only the requirement of importing country which is required to be seen inasmuch as AQCS is not mandatory unless the importing country requires the same. It was submitted that insofar as phyto-sanitary and sanitary measures are concerned, the same are required to be

complied with wherever they are required and that AQCS may not be considered as an impediment to export of livestock.

10.1 Dealing with submissions advanced by the learned Additional Advocate General, it was submitted that according to the petitioners, the notification dated 14.12.2018 issued under the Cattle Control Act does not apply to them at all as they are not bringing livestock into the drought affected area as a terminal point but only in transit for the purpose of export. Insofar as the validity of the impugned notification is concerned, it was submitted that ingress of cattle has nothing to do with maintenance of supply or increasing supply and that section 4(1) contemplates maintenance or increase of supply and not decrease thereof.

10.2 Reliance was placed upon the decision of the Supreme Court in the case of *Central India Spg. Weaving & Mfg. Co. Ltd. v. Municipal Committee, AIR 1958 SC 341*, for the proposition that lexicologically, the words import and export do not have any reference to goods in 'transit'. Goods which are in transit or are being transported can hardly be called goods "imported into or exported from" because they are neither being exported or imported but are merely goods carried across a particular stretch of territory or across a particular area with the object of being transported to their ultimate destination. It was submitted that the impugned notification prohibits movement of cattle into any drought affected area, which would not take within its ambit transport of livestock only for the purpose of transit for the purpose of export.

10.3 As regards the contention that the impugned notification had been issued in independent exercise of powers, it was submitted that the timing of the notification makes it suspect which gives reason to believe that it has been issued in colourable exercise of powers. It was submitted that if the notification was illegal, the question of colourable exercise of powers would not arise. It was submitted that on the same day, that is, 14.12.2018, the Head of the Executive says that export of livestock is being stopped and on the same day, the impugned notifications and communications are issued which is a *res ipsa loquitor* situation.

10.4 Insofar as the contention that the notification is operative only for a short period, it was submitted that notification covers the period of six months from 1st December 2018 viz. till 31st May, 2019; whereas by virtue of a notification of the Government of India under the Merchant Shipping Act, shipping bodies are not permitted to sail during foul weather. It was submitted that the Government issues foul weather area notification for the period 1st June to 31st August under Schedule IV of MS (Sailing Vessels) Rules, 1997. It was submitted that in effect and substance, exports would be blocked till 31st August, 2019.

10.5 As regards the contention that the action of the State is in consonance with the Directive Principles of State Policy, it was submitted that by virtue of article 162 of the Constitution, the executive power of the State is co-terminus with the legislative power. It was submitted that Entry 41, List I of the Seventh Schedule to the Constitution of India which relates to import and export finds place in the Union List and, hence, it is the Parliament which has exclusive power to legislate in that regard and therefore, the executive power in respect of import and export vests in the Central Government. It was contended that by resorting to the Directive Principles of State Policy, the State Government cannot encroach upon the power of the Central Government.

10.6 As regards the decisions on which reliance has been placed by the learned Additional Advocate General, it was submitted that the same would have no applicability to the facts of the present case. Insofar as reliance placed upon article 253 of the Constitution which relates to legislation for giving effect to international agreements is concerned, it was submitted that under that article it is the Parliament which has the power to make any law for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body and the State Government has no power in that regard. Reliance was placed upon the decision of the Supreme Court in the case of *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501, wherein the court held thus:

"17. There can be no shadow of doubt that the authorities which are conferred with the responsibility to maintain law and order

in the States have the principal obligation to see that vigilantism, be it cow vigilantism or any other vigilantism of any perception, does not take place. When any core group with some kind of idea take the law into their own hands, it ushers in anarchy, chaos, disorder and, eventually, there is an emergence of a violent society. Vigilantism cannot, by any stretch of imagination, be given room to take shape, for it is absolutely a perverse notion. We may note here that certain applications for intervention and written notes have been filed in this regard supporting the same on the basis that there is cattle smuggling and cruel treatment to animals. In this context, suffice it to say that it is the law-enforcing agencies which have to survey, prevent and prosecute. No one has the authority to enter into the said field and harbour the feeling that he is the law and the punisher himself. A country where the rule of law prevails does not allow any such thought. It, in fact, commands for ostracisation of such thoughts with immediacy.

18. Lynching is an affront to the rule of law and to the exalted values of the Constitution itself. We may say without any fear of contradiction that lynching by unruly mobs and barbaric violence arising out of incitement and instigation cannot be allowed to become the order of the day. Such vigilantism, be it for whatever purpose or borne out of whatever cause, has the effect of undermining the legal and formal institutions of the State and altering the constitutional order. These extra-judicial attempts under the guise of protection of the law have to be nipped in the bud; lest it would lead to rise of anarchy and lawlessness which would plague and corrode the nation like an epidemic. The tumultuous dark clouds of vigilantism have the effect of shrouding the glorious ways of democracy and justice leading to tragic breakdown of the law and transgressing all forms of civility and humanity. Unless these incidents are controlled, the day is not far when such monstrosity in the name of self-professed morality is likely to assume the shape of a huge cataclysm. It is in direct violation of the quintessential spirit of the rule of law and of the exalted faiths of tolerance and humanity.

19. Mob vigilantism and mob violence have to be prevented by the Governments by taking strict action and by the vigil society

who ought to report such incidents to the State machinery and the police instead of taking the law into their own hands. Rising intolerance and growing polarisation expressed through spate of incidents of mob violence cannot be permitted to become the normal way of life or the normal state of law and order in the country. Good governance and nation building require sustenance of law and order which is intricately linked to the preservation of the marrows of our social structure. In such a situation, the State has a sacrosanct duty to protect its citizens from unruly elements and perpetrators of orchestrated lynching and vigilantism with utmost sincerity and true commitment to address and curb such incidents which must reflect in its actions and schemes."

It was submitted that the Supreme Court in the above decision has held that mob vigilantism should be prevented by the Governments by taking strict action in respect of any such incident, whereas by the impugned letter dated 14.12.2018 issued to the Superintendent of Police, Kutch (West) in effect and substance the State Government is promoting vigilantism.

11. It is in the backdrop of the facts and contentions noted hereinabove that the challenge to the impugned notification/communications is required to be considered. In the present case, the notification dated 14.12.2018 issued by the State Government in exercise of powers under clause (b) of sub-section (1) of section 4 of the Gujarat Essential Commodities and Cattle (Control) Act, 2005, the communication dated 14.12.2018 of the Director of Animal Husbandry addressed to the Commissioner of Customs, and the communication dated 14.12.2018 issued by the Under Secretary, Home Department to the Superintendent of Police, Kutch (West), Gandhidham are subject matter of challenge.

Validity of the notification dated 14.12.2018 issued under section 4(1)(b) of the Cattle Control Act.

12. Insofar as the impugned notification dated 14.12.2018 issued under section 4(1)(b) of the Cattle Control Act is concerned, on behalf of the petitioners Mr. Joshi submitted that the same would not be applicable to livestock in transit and therefore, would not be applicable to the petitioners. It was contended that the requirements of section 4(1)(b) of the Cattle Control Act are

not satisfied inasmuch as, no opinion is formed that it is necessary and expedient so to do to maintain or increase the supply of cattle. It was submitted that the object of the section is to maintain or increase the supply of cattle whereas the notification prohibits entry of cattle into the specified areas, which has no connection with the maintenance or increase of supply of cattle. It was emphatically argued that the timing of the notification read with the press note issued by the Chief Minister (Annexure-D) and the letter dated 14.12.2018 written by the Chief Minister to the Union Minister, Ministry of Commerce and Industry, clearly establish that the impugned notification has not been issued for the purpose stated therein but for the oblique purpose of preventing exports, which makes it clear that the impugned notification has been issued in colourable exercise of powers.

12.1 On behalf of the respondents, the learned Additional Advocate General submitted that the State Government under section 4(1)(b) of the Cattle Control Act has come to a conscious decision that there is shortage of fodder and drinking facility and has recorded satisfaction that movement of cattle from outside area to the drought affect area should be curtailed. It was submitted that when the notification says that cattle are at stake, it means that maintenance of cattle is at stake due to short availability of fodder which would affect the maintenance of cattle. It was further submitted that the State Government has issued the notification dated 14.12.2018 because of the drought which is not a permanent prohibition, but is for a limited period of time till the drought situation improves. Such regulatory measures are intended for maintaining cattle in drought affected areas of fifty one talukas of different districts in the State and that the exercise of power is in accordance with law. That, though the notification may incidentally affect the petitioners, it has not been issued to prevent export of livestock, but to prevent movement of cattle into drought affected areas.

12.2 In the above background, the validity of the impugned notification dated 14.12.2018 issued under clause (b) of sub-section (1) of section 4 of the Cattle Control Act, may be examined.

12.3 For the purpose of better understanding the controversy in issue it may be germane to refer to the object of the Cattle Control Act and the provisions of section 4 thereof.

12.4. The object of the Cattle Control Act as stated in the preamble reads thus:

"An Act to provide, in the interests of the general public, for the control and regulation of the production, movement, supply and distribution of, and trade and commerce in certain commodities and the maintenance and movement of cattle in the State of Gujarat.

Whereas it is expedient to provide, in the interest of the general public, for the control and regulation of the production, movement, supply and distribution of certain commodities essential to the life of the community and for the control and regulation of trade and commerce therein, and for the maintenance, licensing and movement of cattle, and the licensing of dealers in such commodities and cattle, and for certain other purposes;"

12.5 Thus, the Cattle Control Act has been enacted inter alia with the object of controlling and regulating the maintenance and movement of cattle in the State of Gujarat as it is expedient to provide, in interest of the general public, to control and regulate the maintenance, licensing and movement of cattle and licensing of dealers in cattle.

12.6 Section 4 of the Act, insofar as the same is relevant for the present purpose, reads thus:

4. Powers to control production, supply, distribution, etc.

(1) If the State Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing the supply, or for securing the equitable distribution and availability at fair prices, of any essential commodity or cattle, it may, by order provide-

(a) for regulating or prohibiting the production, supply and distribution of, or trade and commerce in, such essential commodity,

(b) for regulating or prohibiting movement, supply and distribution of or trade and commerce in, or for regulating the maintenance of cattle."

12.7 On a perusal of sub-section (1) of section 4 of the Cattle Control Act, it emerges that a condition precedent for the purpose of exercise of powers thereunder is that the State Government has to form an opinion that for maintaining or increasing the supply, or for equitable distribution and availability at fair prices of an essential commodity or cattle, it is necessary and expedient to do so. Upon forming such opinion, in case of essential commodities, the provisions of clause (a) can be resorted to, and in case of cattle, the provisions of clause (b) can be resorted to.

12.8 Since this case relates to cattle, it is permissible for the State Government to issue a notification under section 4(1) (b) of the Cattle Control Act, upon forming an opinion that for the purpose of maintaining or increasing the supply, or equitable distribution and availability at fair prices of cattle, it is necessary and expedient so to do, to make an order providing for regulating or prohibiting movement, supply and distribution of or trade and commerce in, or for regulating the maintenance of cattle. In the present case, by the impugned notification dated 14.12.2018, the State Government has formed the opinion that certain areas have been declared drought areas and in such drought areas of the State, the cattle is at stake on account of short availability of fodder and the cattle have become prone to infectious diseases, therefore, it is necessary and expedient to regulate the movement of cattle into any drought affected area and therefore, in exercise of powers under clause (b) of sub-section (1) of section 4 of the Cattle Control Act, the Government of Gujarat has passed the order prohibiting the movement of cattle into any drought affected area from outside.

12.9 On a plain reading of the impugned notification, it is amply clear that there is no opinion formed that it is necessary and expedient to regulate movement of cattle into the drought area for maintaining or increasing the supply or for equitable distribution and availability at fair prices of cattle. The opinion formed is that cattle are at stake on account of short availability of fodder and cattle having become prone to infectious diseases.

12.10 On a perusal of sub-section (1) of section (4) of the Cattle Control Act, what emerges is that for the purpose of taking action in terms of clause (b) thereof, the State Government has to first form the opinion that it is expedient to do so for maintaining or increasing the supply of cattle. The key word is "supply". The expression "supply" means to make available to someone; to provide. Maintaining supply of cattle would mean to make available cattle to the extent they are already being supplied, whereas increasing the supply would mean to increase the number of cattle which are being brought in. However, no such opinion is discernible in the impugned notification.

12.11 On behalf of the respondent State authorities, the learned Additional Advocate General has contended that clause (b) of sub-section (1) of section 4 of the Cattle Control Act, provides for making an order inter alia for regulating the maintenance of cattle and that when the notification says that cattle are at stake it means that maintenance of cattle is at stake due to short availability of fodder which would affect the maintenance of cattle. In the opinion of this court, the said contention does not merit acceptance for the reason that subsection (1) of section 4 of the Cattle Control Act requires the State Government to first form an opinion that it is necessary and expedient so to do for maintaining or increasing the supply, or for equitable distribution and availability at fair prices of cattle, whereafter it can pass an order for regulating the maintenance of cattle. Without recording an opinion as envisaged in sub-section (1) of section 4 of the Cattle Control Act, the question of making an order regulating the maintenance of cattle does not arise. Therefore, while the notification provides for regulating the maintenance of cattle, the condition precedent for making such order has not been satisfied, which renders the impugned notification unsustainable in law as not being in consonance with the statutory provision under which it has been issued.

12.12 Apart from the fact that the condition precedent for exercise of powers under sub-section (1) of section 4 of the Cattle Control Act is not satisfied, one of the reasons for issuing such notification is that cattle have become prone to infectious diseases. Insofar as the second reason viz. cattle have become prone to infectious diseases is concerned, it may be pertinent to

note that insofar as prevention and control of infectious and contagious diseases is concerned, there is a specific statute viz. the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009. Sections 6 and 7 of that Act which are relevant for the present purpose read as under:

6. Notification of controlled areas and free areas.-

(1) The State Government may, with the object of preventing, controlling or eradicating any scheduled disease, by notification, declare any area to be a controlled area in respect of any scheduled disease affecting any species of animal and any other species that may be susceptible to the disease specified in the said notification.

(2) The State Government shall also cause the substance of the notification issued under sub-section (1) to be published in a local newspaper in the vernacular language and by declaration in loud voice and by beating drums in the area.

(3) Where a notification has been issued under subsection (1), all animals of the species in the controlled area shall be subjected to compulsory vaccination against that disease, and be subjected to such other measures against the disease, in such manner and within such time as the State Government, may, by public notice, direct.

(4) The State Government shall make available necessary vaccine and it shall be obligatory on the part of every owner, or the person in charge of an animal which is required to be vaccinated under sub-section (3), to get the animal compulsorily vaccinated.

(5) Where the State Government is satisfied, on a report received from the Director or otherwise, that, in any controlled area, any of the scheduled diseases affecting any species of animal is no longer prevalent, it may, by notification, declare the area to be a free area in respect of that disease in relation to the particular species of animal.

(6) Where a notification has been issued under subsection (5), no animal of the species or of any other susceptible species with regard to which it is a free area shall be allowed to enter the

free area unless duly immunized by vaccination against that particular disease.

7. Prohibition of movement of animals from controlled area.-

(1) Where a notification has been issued under subsection (1) of section 6 declaring any area as a controlled area in relation to any disease affecting any species of animals, no animal belonging to that species shall be moved from the place where it is kept.

(2) The Director may, for the purpose of control, prevention or eradication of any scheduled disease, in respect of any area, by order published in the Official Gazette, prohibit the movement of all animals belonging to any species specified therein, from the place where it is kept, to any other place.

(3) Nothing contained in sub-sections (1) and (2) shall be deemed to prohibit-

(a) the movement of any animal referred to therein, from the place where it is kept, to the nearest place where it can be got vaccinated, so long as the animal is being moved for the purpose of its immunization by vaccination; or

(b) the movement of any such animal, so long as it is accompanied by a valid certificate of vaccination to indicate that the animal is duly immunized against the particular disease and it bears proper mark of such vaccination."

12.13 On a bare reading of the above provisions, it is clear that in case of infectious and contagious diseases steps have to be taken under that Act and not under the Cattle Control Act. The second ground on which the notification has been issued is, therefore, not a relevant ground on which a notification under section 4(1)(b) of the Cattle Control Act can be issued even if the condition precedent for taking action under clauses (a) and (b) thereof is satisfied, inasmuch as, there is a specific enactment for taking action in that regard.

12.14 It is a well settled legal position that while interpreting a statutory provision, the scheme of the Act as a whole and object for which it was enacted have to be taken into consideration. Therefore while interpreting the provisions of section 4 of the

Cattle Control Act one has to keep in mind the provisions of section 8 thereof. Section 8 of the Cattle Control Act reads thus:

"8. Ordinary avocations of life to be interfered with as little as possible.- Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the general interest of the public."

12.15 Thus, while acting in pursuance of the Act, any authority or person is required to ensure that interference with ordinary avocations of life and the enjoyment of property is as little as may be consonant with the general interest of the public.

Whereas in the present case, the effect of the impugned notification is that the petitioners herein are totally prevented from pursuing their ordinary avocation of life namely, exporting livestock, and there is nothing on record to show as to how such a blanket ban on entry of animals even by way of transit, as is sought to be suggested on behalf of the respondents, is consonant with the general interest of the public. The impugned notification, therefore, is also not in consonance with section 8 of the Cattle Control Act.

Whether the notification dated 14.12.2018 issued under section 4(1)(b) of the Cattle Control Act would be applicable to cattle in transit?

13. Examining the applicability of the impugned notification to the facts of the present case, on behalf of the petitioners, it was submitted that in any case the impugned notification would not cover passing through and cannot control inter-State movement. According to the petitioners, what the impugned notification prohibits is movement of any cattle from outside into the drought affected area, which would mean that cattle cannot be brought into the drought affected area if such area is the terminal point where the cattle are to be kept, but since the petitioners are bringing livestock in the drought affected area during the course of transit and the terminal point is not within the drought affected area, the impugned notification would not be applicable to them. Reliance was placed upon the decision of the Supreme Court in *Central India Spinning and Weaving & Manufacturing Co. Ltd. v. Municipal Committee, AIR 1958 SC 341* wherein it has been held thus:

"5. The High Court was of the opinion that

"The words 'export' and 'import' have no special meaning. They bear the ordinary dictionary meaning, which has been the foundation for the decisions to which I have referred in the opening portion of my opinion. These words mean only 'taking out of and bringing into' "

The appellant's contention is that the words "imported into or exported from" do not merely mean "to bring into" or to carry out of or away from but also have reference to and imply the termination or the commencement of the journey of the goods sought to be taxed and therefore goods in transit which are transported across the limits of a Municipal Committee are neither imported into the municipal limits nor exported therefrom. It is also contended that even if the words 'imported into or exported from' are used merely to mean "to bring into" or "to carry out of or away from" the qualifying of the tax by the adjective "terminal" is indicative of the terminus ad quem or terminus a quo of the journey of the goods and excludes the goods in transit. The respondent on the other hand submits that the tax is leviable merely on the entry of the goods into the municipal limits or on their exit therefrom and the word "terminal" has reference to the termini of the jurisdictional limits of the municipality and not to the journey of the goods. The efficacy of the relative contentions of the parties therefore requires the determination of the construction to be placed on the really important words of which are "terminal tax", "imported into or exported from" and the "limits of the Municipality. " In construing these words of the statute if there are two possible interpretations then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him.

6. "Import" is derived from the Latin word importare which means "to bring in" and 'export' from the Latin word exportare which means to carry out but these words are not to be interpreted only according to their literal derivations. Lexicologically they do not have any reference to goods in 'transit' a word derived from transire, bearing a meaning similar to transport ie. to go across. The dictionary meaning of the words 'import' and 'export' is not restricted to their derivative

meaning but bear other connotations also. According to Webster's International Dictionary the word "import" means to bring in from a foreign or external source; to introduce from without; especially to bring (wares or merchandise) into a place or country from a foreign country in the transactions of commerce; opposed to export.

7. Similarly "export" according to Webster's International Dictionary means 'to carry away; to remove; to carry or send abroad especially to foreign countries as merchandise or commodities in the way of commerce; the opposite of import.' The Oxford Dictionary gives a similar meaning to both these words.

8. The word "transit" in the Oxford Dictionary means the action or fact of passing across or through; passage or journey from one place or point to another: the massage or carriage of persons or goods from one place to another: it also means to pass across or through (something) to traverse, to cross. Even according to the ordinary meaning of the words which is relied upon by the respondent, goods which are in transit or are being transported can hardly be called goods "imported into or exported from" because they are neither being exported nor imported but are merely goods carried across a particular stretch of territory or across a particular area with the object of being transported to their ultimate destination which in the instant case was Nagpur.

9. The respondent's counsel sought to support his argument by referring to the following cases decided by various Indian High Courts where the words 'import' and "export" were construed as meaning "bring in" or "take out of or away from" and it was also held that goods in transit are also covered by the words 'imported into' or exported from'.

22. By giving to the words "imported into or exported from" their derivative meaning without any reference to the ordinary connotation of these words as used in the commercial sense, the decided cases in India have ascribed too general a meaning to these words which it appears from the setting, context and history of the clause was not intended. The effect of the construction of 'import' or "export" in the manner insisted upon

by the respondent would make rail-borne goods passing through a railway station within the limits of a Municipality liable to the imposition of the tax on their arrival at the railway station or departure therefrom or both which would not only lead to inconvenience but confusion, and would also result in inordinate delays and unbearable burden on trade both inter-State and intra-State. It is hardly likely that that was the intention of the legislature. Such an interpretation would lead to absurdity which has, according to the rules of interpretation, to be avoided. "

13.1 It was submitted that transit of cattle through the drought affected area cannot be equated with bringing in cattle as the same leads to an absurdity, inasmuch as the same would result in prohibiting even transport of cattle through the drought affected area.

13.2 On the other hand, the learned Additional Advocate General argued with vehemence that the effect of the impugned notification is that there shall be no entry to the drought affected area, which would also include transportation. It was contended that movement into fifty one talukas which are declared to be drought affected areas from other areas is prohibited irrespective of the fact as to whether the person intends to do business within Gujarat. The submission of the petitioner that it is a transit route cannot be accepted inasmuch as it is not possible to supervise entry and exit points to determine transit.

13.3 Insofar as the notification not being applicable to animals in transit is concerned, this court finds substance in the submission made by the learned counsel for the petitioners. As can be seen from the impugned notification, it has been issued on the ground that in the drought affected areas the cattle is at stake on account of short availability of fodder and because the cattle have become prone to infectious diseases.

13.4 In this regard, reference may be made to the provisions of Chapter VI of the Transport of Animals Rules, 1978, which have been made in exercise of powers conferred by clause (k) of sub-section (2) of section 38 of the Prevention of Cruelty to Animals Act, 1960, which apply to transport of sheep and goats. These rules are applicable to the transport of sheep and goats by rail or road involving journeys of more than six hours. Rule 70 thereof,

provides that sufficient food and fodder shall be carried to last during the journey and watering facility shall be provided at regular intervals. Thus, if the rule requires food and fodder to be carried during the journey, the question of cattle in transit impacting the availability of fodder in the drought affected area would not arise.

13.5 The Supreme Court in Central India Spg., Wvg. & Mfg. Co. Ltd. v. Municipal Committee, (supra) has held that goods which are in transit or are being transported can hardly be called goods "imported into or exported from" because they are neither being exported or imported but are merely goods carried across a particular stretch of territory or across a particular area with the object of being transported to their ultimate destination. The court further held that the effect of the construction of "import" or "export" in the manner insisted upon by the respondent would make rail-borne goods passing through a railway station within the limits of a Municipality liable to the imposition of the tax on their arrival at the railway station or departure therefrom or both which would not only lead to inconvenience but confusion, and would also result in inordinate delays and unbearable burden on trade both inter-State and intra-State. It is hardly likely that was the intention of the legislature. Such an interpretation would lead to absurdity which has, according to the rules of interpretation to be avoided. Adverting to the facts of the present case, assuming for the sake of argument that the notification is otherwise valid, if cattle enter into the drought affected area on a permanent basis and are to be kept there, it may have an impact on the short availability of fodder in the area and, therefore, the State Government may be justified in prohibiting entry of the same. But insofar as cattle in the course of transit are concerned, which are just passing through, it would not be permissible for the State Government to prohibit the same, inasmuch as, the route for transport of animals from one State to another may be through a drought affected area; it does not mean that by resorting to the impugned notification, transport of cattle through the drought affected area even for the purpose of transit can be prohibited as the same would lead to an absurdity and is therefore required to be avoided. For the purpose of maintaining or increasing the supply of cattle, transport of cattle in transit would have no relevance as the

same has nothing to do with the maintenance or increase in the supply of cattle within the drought affected area. The contention that the impugned notification would not apply to cattle in transit, therefore, merits acceptance.

Whether the impugned notification dated 14.12.2018 under section 4(1)(b) of the Gujarat Essential Commodities and Cattle (Control) Act, 2005 has been issued in colourable exercise of powers?

14. Insofar as the notification having been issued in colourable exercise of powers is concerned, on behalf of the petitioners reference was made to the history of the case to point out that continuous efforts have been made by the State to prevent export of animals from Tuna Port and that under the guise of the notification, the movement of livestock for the purpose of export is curtailed. It was submitted that import and export across customs frontiers and trade and commerce with foreign countries are matters which fall under entry 41 of List I of the Seventh Schedule to the Constitution of India, namely, the Union list and the State Government has no power to either permit or prohibit import or export across the customs frontiers. It was submitted that the State does not have the power to control what is exported at the port and hence, the impugned notification has been issued in colourable exercise of power to do indirectly what the State cannot do directly.

14.1 On behalf of the respondents, the learned Additional Advocate General submitted that the impugned notification has been issued in independent exercise of powers under section 4(1)(b) of the Cattle Control Act and has no connection with preventing export of livestock. May be as a fall out of the impugned notification, the petitioners are not in a position to bring in cattle into the drought affected areas for the purpose of export, but on that count it cannot be said that the notification which has been issued in exercise of powers vested in the State Government has been issued in colourable exercise of powers. It was submitted that the notification dated 30.10.2018 declaring drought in the areas enumerated therein is based on the facts mentioned therein. Consequent upon that notification, the State Government issued notification dated 14.12.2018 prohibiting any entry from other areas for the reasons set out in the notification.

It was submitted that the power is conferred by the legislature to the State Government and is a quasi legislative function different from a general administrative power and that the charge of colourable exercise is misplaced in the facts of the present case. It was further submitted that the notification has no permanent effect and has been issued for a short period covering the period of drought and hence, also the charge of colourable exercise of powers is not sustainable.

14.2 Insofar as the allegation of colourable exercise of powers is concerned, it may be necessary to refer to the history of the case which is somewhat chequered. Firstly by a letter/order dated 6.8.2018, the District Magistrate and Collector, Kutch formed a three member committee to inspect and submit a report about alleged violation under the Prevention of Cruelty to Animals Act, 1960 for the consignment scheduled to be exported on 6.8.2018 and further prohibited movement of livestock through Tuna Port until further orders. Thereafter the Traffic Manager of Deen Dayal Port Trust did not permit to gate in the livestock and, therefore, Let Export Orders could not be issued and livestock could not be exported. It was only after the petitioners filed a civil application in *Special Civil Application No. 12462 of 2018*, that the Traffic Manager acceded to the request of the petitioners. Thereafter when the petitioners filed bills of entry, the Superintendent of Customs kept them on hold in view of representations received by his office. The petitioners were, therefore, constrained to approach this court by way of writ petition being *Special Civil Application No. 17433 of 2018 = 2018-TIOL-2628-HC-AHM-CUS* which came to be decided by a judgment and order dated 30th November, 2018, whereby the court set aside the communication of the Superintendent of Customs keeping the shipping bills on hold and directed him to process the shipping bill of the petitioner in accordance with law without any further delay. Pursuant to the said judgment the Superintendent of Customs assessed the shipping bills and permitted export of livestock. However, the trial and tribulations of the petitioners and similarly situated persons did not end there. Soon thereafter, on 14.12.2018 the Chief Minister addressed a press conference declaring that the State of Gujarat will ban export of livestock from Tuna Port with immediate effect. At this juncture, reference may be made to the contents of

the press note at Annexure D to the petition, which as translated into English reads thus:

"The Chief Minister Shri Vijaybhai Rupani has taken a decision which touches the feelings of mute animals by suspending exports from Tuna-Kandla Port with immediate effect.

He has expressed the animal welfare object to the effect that keeping in view the instructions issued recently in the context of exports of live animals by the Government of India and the Animal Welfare Board of India, till the standards in terms of the guidelines are satisfied in Gujarat, with immediate effect exports of live animals shall not take place.

The Chief Minister addressed a letter to the Central Commerce Minister Shri Suresh Prabhu in this regard and informed him that the local certification approval granted by the Government till date keeping in view these guidelines, have become meaningless in view of the new rules.

In this letter to the Central Minister, the Chief Minister has requested that till quarantine station and certification facilities are available, during that period permission to export animals from Kandla Port be stopped.

Moreover, adequate mechanism for strict implementation of the provisions of the Gujarat Transport of Animals Rules, 1978 and the Prevention of Cruelty to Animals Act 1960 and the international standards for transport of animals be made available. In the meanwhile the police administration has been also instructed to strictly comply with these laws.

Moreover, with the object that illegal exports of animals do not take place from Tuna Port, the Home Department is expeditiously setting up a check post. The police administration will keep watch for twenty four hours and will not permit any live animal to be exported.

instructed the Society for Prevention of Cruelty to Animals (SPCA) in all the districts of the State and more particularly Kutch District to take appropriate action in accordance with the provisions of the Prevention of Cruelty to Animals Act.

In this letter sent by the Chief Minister, it has been requested that the Central Government bring an immediate resolution in this regard.

Instructions have also been issued to the Customs Superintendent at Tuna Port that till the Government of India gives appropriate guidance, he may not permit such exports."

14.3 On the same day, the Chief Minister, Gujarat State also addressed a letter dated 14.12.2018 to the Union Minister, Ministry of Commerce and Industry inter alia informing him that there is no specified and required facility for Animal Quarantine & Certification Services (AQCS) at Tuna, Kandla Port or anywhere in Gujarat State. The certification services were rendered by local government veterinary officer only for the health point of view which is not sufficient as per the Government of India rules and regulations in this regard. Earlier, Director of Animal Husbandry, Gujarat State has made several written requests for establishment of a new quarantine station in Gujarat State but no response has been received from the Government of India till date. In pursuance to the advisory issued by Department of Animal Husbandry, Dairying and Fisheries, Government of India vide letters dated 10.9.2018 and 4.10.2018 as well as by Animal Welfare Board of India vide letter dated 1.10.2018, the State Government has stopped local certification of health with immediate effect. This has been communicated to the concerned authorities by the State Government by letter dated 14.12.2018. He has further urged the Central Minister to instruct the concerned authorities not to issue any permit for the export of live animals from Tuna, Kandla Port of Gujarat until specified facility for Animal Quarantine and Certification is established by Department of Animal Husbandry, Dairying and Fisheries, Government of India. It is further stated that non-compliance of the guidelines by the Government of India in this regard can amount to disrepute to the image of country and can adversely impact the interest of the country as a whole.

14.4 On the same day, the impugned notification dated 14.12.2018 came to be issued under section 4(1)(b) of the Cattle Control Act prohibiting movement of cattle into the drought affected area. Furthermore, on the same day, that is, 14.12.2018

the Director of Animal Husbandry addressed a communication to the Commissioner of Customs, Kandla which reads thus:

"I am attaching Government of India, Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture and Farmers' Welfare Letter No.F.No.L-110111/21/20117, dated 10.09.2018 & 04.10.2018 as well as by Animal Welfare Board of India vide dated 1.10.2018 in which the conditions precedent for allowing exports of live animals, are listed out. I will request you to kindly take note of these letters and conditions.

At present, No specified and required facilities are available for Animal Quarantine & Certification Services (AQCS) neither at Tuna, Kandla Port nor anywhere in Gujarat State. The certification services are rendered by local Government Veterinary Officer as authorized by Ministry of Commerce, Government of India vide notification dated 19th July, 1985 for issuing a certificate in respect of quarantine of live buffaloes and live Sheep & Goats (Adult) intended for export from Tuna, Kandla Port.

In view of this, Government of Gujarat has now decided to withdraw the services provided for health check-up of live animals with immediate effect as they are not as per the norms prescribed in above letters. We are also requesting Government of India for setting up of required quarantine facility at Tuna, Kandla Port at the earliest.

I urge upon, therefore, not to allow export of the live animals from Tuna, Kandla Port of Gujarat until specified facility for Animal Quarantine and Certification is established by Department of Animal Husbandry, Dairying and Fisheries, Government of India. Noncompliance of the guidelines of the Government of India in this regard can amount to disrepute to the image of the country and can adversely impact the interest of the country as a whole. I will be grateful for your prompt action and reply."

14.4 Thus, the Directorate of Animal Husbandry, which had been delegated the task of rendering certification services by the Ministry of Commerce by its notification dated 19th July, 1985 has refused to further render such services. The matter does not end there, inasmuch as, the Director has further requested the

Customs Commissioner not to allow export of live animals from Tuna Kandla Port of Gujarat until specified facility for Animal Quarantine and Certification is established by Department of Animal Husbandry, which is a pointer to the intention behind such letter. On a conjoint reading of this letter dated 14.12.2018 of the Director of Animal Husbandry and the above letter of the Chief Minister addressed to the Union Minister, Ministry of Commerce and Industry, it is manifest that the same are more or less identically worded to a certain extent.

14.4 Again on the same day, that is 14.12.2018, the Under Secretary, Home Department, Government of Gujarat addressed a communication to the Superintendent of Police, Kutch (West) wherein as translated into English, it has been stated thus:

"Subject: In the matter of overloading of animals during the course of transport.

Madam

In the context of the above subject it may be informed that special provisions have been made for transport of animals under the Transport of Animals Rules, 1978 framed under the Prevention of Cruelty to Animals Act, 1960. The Police Department as well as the Animal Husbandry Department is required to take special care that during the course of transport of animals they are not subjected to any physical or mental difficulties. It has come to notice that during the course of transport, more animals than the specified number are loaded in the vehicle. Keeping this matter in view, you are requested to take the following steps:

(1) For the purpose of proper implementation of the rules in the case of transport of animals, as many posts as deemed necessary be set up in your area.

(2) At this checkpost police officers/employees, representatives of the Animal Husbandry Department as well as animal welfare organisations will remain present round the clock.

(3) The police department shall have to take special care as to whether animals are transported in accordance with the rules.

(4) The officer of the Animal Husbandry Department shall ascertain as to whether necessary documents for transport of animals and proper facility for food is available, whether the provisions specified for transport of animals are satisfied and where necessary lodge cases against the offenders.

You are requested to make arrangements to implement the above instructions with immediate effect."

14.5 It may be pertinent to note that upon a query being raised by this court as to whether such letters had been addressed to the Superintendents of Police of all the districts, the learned Additional Advocate General had, after taking instructions, informed the court that such letter was addressed only to the Superintendent of Police, Kutch (West).

14.6 Thus from the sequence of events noted hereinabove, it is evident that under one pretext or the other the State authorities have been making attempts to prevent export of livestock from Tuna Port, all of which were foiled as the petitioners approached this court and pursuant to the orders passed by this court from time to time, each hurdle came to be removed. Lastly by a judgment and order dated 30th November, 2018, the letter dated 16.11.2018 of the Superintendent of Customs, Old Tuna Port whereby he had kept on hold the shipping bills of the petitioner on the ground that he had received various representations, came to be quashed and set aside. Thereupon, the petitioners were able to make some exports. However, such relief was short lived, as immediately thereafter, the State authorities came out with other ways to prevent export of livestock from Tuna Port by issuing the impugned notification as well as the communications referred to hereinabove.

14.7 In the above backdrop, it is evident that under the guise of exercise of powers under section 4(1)(b) of the Cattle Control Act, the State Government in effect and substance seeks to prevent export of livestock from Tuna Port. This fact is further fortified by the fact that the communication to strictly implement the provisions of the Cruelty to Animals Act and the Transport of Animals Act has been issued only to the Superintendent of Police, Kutch (West). It is not as if in the ordinary course animals would be being transported only in Kutch district, except that insofar as export of livestock is

concerned it is only from Tuna Port that such exports take place in the State of Gujarat. Therefore, when it is only the Superintendent of Police, Kutch (West) is instructed to take steps to ensure strict compliance of the provisions of the Transport of Animal Rules by setting up a number of check posts (though neither the Prevention of Cruelty to Animals Act nor the Transport Rules envisage setting up of check posts) and to keep a round the clock vigil, it is evident that the object behind such instructions is to create hurdles in the export of livestock from Tuna Port.

14.8 Besides. on the same day that the Chief Minister announced that export from Tuna Port will not be allowed, the Director of Animal Husbandry addressed a letter to the Commissioner of Customs, Kandla informing him about the withdrawal of certification services rendered by that department in view of the notification of the Ministry of Commerce, Government of India and further requested him not to permit export till AQCS facilities are provided in the State of Gujarat. Since export of animals requires certificate from the concerned authorities, withdrawal of the same without providing for any alternate arrangement is another device to create hurdles in the export of animals.

14.9 Considering the overall facts of the case in the light of the chequered history which indicates that right from August, 2018, under one pretext or the other, the State authorities have been attempting to prevent export from Tuna Port; the communications addressed by the Chief Minister to the Central Minister as well as the letter of the Director of Animal Husbandry which show that both have requested that exports may not be permitted till ACQS facilities are provided; it is only the Superintendent of Police Kutch (West) who has been instructed to set up check posts to ensure compliance of the provisions of the Prevention of Cruelty Act and the Animal Transport Rules; all of which make it manifest that the object behind the issuance of the impugned notification as well as the impugned communications is to prevent export from Tuna Port as the State Government does not have any power to directly prevent exports, export and import being a subject falling in the Union List, this court is of the considered view that the

impugned notification has been issued in colourable exercise of powers to do indirectly what cannot be done directly.

15. For the reasons recorded hereinabove, this court is of the opinion that the impugned notification does not meet with the requirements of section 4(1)(b) of the Cattle Control Act as it has not been issued on the ground that it is expedient or necessary to do so for maintaining the supply or increasing the supply of cattle or for securing equitable distribution and availability at fair prices of cattle. Considering the manner in which the State authorities under one pretext or the other have been trying to prevent export from Tuna Port and considering the press note issued by the Chief Minister, it is apparent that the impugned notification has been issued with the intention of prohibiting export which is otherwise not a State subject. So what cannot be done directly by the State Government is sought to be done indirectly under the guise of exercise of powers under section 4(1)(b) of the Act. The impugned notification, therefore, clearly has been issued in colourable exercise of powers and deserves to be struck down.

Requirement of quarantine certificate for export of livestock:

16. Insofar as the requirement of quarantine certificate for the purpose of export of livestock is concerned, it has been asserted on behalf of the State Government that under the Government guidelines and international convention, it is mandatory to follow the quarantine procedure whether or not the importing country requires the same and that non compliance of the same can amount to disrepute to the image of the country and can adversely impact the interest of the country as a whole. In this regard, it may be noted that export and import are subjects which fall in the Union List and the State Government has no concern with the same. The Animal Husbandry Department of the State Government has been delegated powers for certification by the Central Government, which it has now refused to exercise. Besides, as to whether there is due compliance of the requirements of law for the purpose of exporting livestock falls within the domain of the customs authorities and the State Government has no concern with the same. However, it appears that with a view to appease a section of the society which is averse to export of livestock from Tuna

Port, the State Government has swung into action and has from time to time taken all steps to ensure that the petitioners and other similarly situated persons are not able to export livestock from Tuna Port.

16.1 Moreover, a perusal of the Export Trade Control Public Notice dated 19th September 1983 shows that export of live buffaloes and sheep was allowed only from Bombay and Kandla Ports and further that quarantine procedure laid down may not be insisted upon where the foreign buyers have specifically contracted for export without quarantine formalities. Exporters shall produce contract (in original) to this effect to the licensing authority. Paragraph 8 thereof provides that export of live goats shall continue without any quarantine and vaccination formalities and would be subjected to general veterinary inspection and certification as hitherto.

16.2 Insofar as the conventions, guidelines etc. on which reliance has been placed on behalf of the State Government are concerned, the same are not mandatory in nature and are more particularly concerned with ingress of animals and not export of animals.

16.3 Moreover, from the communication dated 31.12.2018 of the Assistant Commissioner of Customs, Old Tuna Port, it appears that the above public notice and other notices were issued in respect of the export policy prevailing at the relevant time but the current export policy does not stipulate such condition. The said officer has also issued a communication dated 5.2.2009 to the Regional Officer inter alia requesting him to inform him whether the quarantine of sheep and goats prior to export has been made mandatory under any statutory provision, in response to which the Regional Officer by a communication dated 14.2.2019, has stated that no such statutory provision has been made mandatory by the Government of India and that quarantining of animals and issuance of Quarantine Health Certificate solely depends upon the requirements of the importing country. Thus, the authorities who are entrusted with the supervision and control over exports and imports have stated that requirements of quarantine are not mandatory in case of exports unless the importing country requires the same. In the facts of the present case, the petitioners have placed on

record two types of export orders one for pet animals and another for sheep and goats to point out that in case of pet animals the export order itself mandates various procedures to be followed, whereas in case of sheep and goats there are no conditions whatsoever.

16.4 In the opinion of this court, when there is no mandate to satisfy the quarantine requirements in case of import of livestock by the importing country, the State authorities, who otherwise have no concern with the import export policy, cannot insist on compliance thereof.

Validity of the communication dated 14.12.2018 of the Directorate of Animal Husbandry.

17. Insofar as the impugned communication dated 14.12.2018 issued by the Director of Animal Husbandry informing the Commissioner of Customs that the State Government has decided to withdraw the services provided for health checkup of live animals with immediate effect as they are not as per the norms prescribed in the letters referred to therein is concerned, while such communication does not appear to have been issued with a bona fide intention, inasmuch as considering the date of issuance thereof, which coincides with the press statement of the Chief Minister wherein a decision has been taken not to allow export of live animals from Tuna, nonetheless whether or not to provide such services is within the domain of the State Government and the court cannot interfere therewith. However, the Government of India has issued Directives in respect of Animal Quarantine and Certification Services, a copy whereof has been annexed as Annexure-AAVII to the affidavit-in-reply filed on behalf of the respondent No.6. The said directions provide for export procedures and reads thus:--

"EXPORT PROCEDURES

This programme envisages provision of an Internationally acceptable certification service for the export of livestock & livestock product to other countries from India confirming to the health requirements of the importing country and the health regulations prescribed in the International Zoo Sanitary Code.

1. Documents required cum check list with Application Form for EXPORT OF LIVESTOCK

1. Copy of valid Import/Export Licence or Permit as the case may be. If no permit/licence is required then undertaking from the exporter/owner in this regard.

2. Official health requirement/format of the importing country. If no prescribed health requirement/format then undertaking from the exporter/owner in this regard.

3. Fulfilled health requirement of importing country including testing, treatment, vaccination etc. (if applicable).

4. Self certified copies of present health documents including vaccination record of the animal.

5. Undertaking and declarations as per requirement.

6. Documents of origin, if applicable/asked.

7. Copy of airway bill/journey details of animal.

8. Any other document if required during examination of application.

9. Authorization letter if owner is not approaching directly."

17.1 On a perusal of the check list for export of livestock as referred to hereinabove, it is evident that if no prescribed health/format is provided for by the importing country, an undertaking of the export/owner in this regard is sufficient. The same also provides for fulfilling health requirement of importing country including testing, treatment, vaccination, etc. The learned counsel for the petitioners has pointed out that insofar as the export of sheep and goats to the importing country is concerned, there are no official health requirements prescribed by the said authority. Attention was also invited to Chapter VI of Transport of Animal Rules which provides for Transport of sheep and goats, rule 65(a) whereof provides that a valid health certificate by a qualified veterinary surgeon to the effect that the sheep and goats are in a fit condition to travel by rail or road and are not suffering from infectious or contagious or parasitic disease shall accompany each consignment. Clause (c) thereof provides that the certificate shall be in form specified in Schedule-J. Schedule-J provides the proforma for certificate of

fitness to travel sheep and goats, and requires that such certificate should be signed by a qualified Veterinary Surgeon. Therefore, the requirement under the rules is for providing a certificate signed by a qualified Veterinary Surgeon and it need not be a certificate provided by the Directorate of Animal Husbandry in exercise of powers as a delegate of the Central Government. However, to the extent the Director has requested the Commissioner of Customs not to allow export of live animals from Tuna, Kandla Port of Gujarat until specified facility for Animal Quarantine and Certification is established by Department of Animal Husbandry, Dairying and Fisheries, Government of India and that non-compliance of the guidelines of the Government of India in this regard can amount to disrepute to the image of the country and can adversely impact the interest of the country as a whole; is concerned, the same being beyond the bounds of his authority cannot be sustained. The impugned letter dated 14.12.2018 deserved to be set aside to that extent.

Validity of the communication dated 14.12.2018 of the Under Secretary, Home Department addressed to the Superintendent of Police, Kutch (West).

18. Insofar as the communication dated 14.12.2018 issued by the Under Secretary, Home Department to the Superintendent of Police, Kutch (West) is concerned, it is an admitted position that such communication has been issued only in respect of Kutch district and not in any other district. As already discussed hereinabove, transport of animals takes place throughout the State of Gujarat and hence, if the provisions of the Prevention of Cruelty to Animals Act and the Transport of Animals Act are required to be strictly complied with it has to be all over the State. The fact that such instructions have been issued only to the Superintendent of Police Kutch (West), that too, on the same day when the Chief Minister addressed the press informing that exports from Tuna Port were being prohibited, indicates that the same has not been issued bona fide, but under the guise of compliance of the provisions of the Prevention of Cruelty to Animals Act and the Transport of Animals Act, in effect and substance, it is the export of livestock from Tuna Port which is sought to be prevented. Evidently, therefore, the impugned

communication has been issued in colourable exercise of powers with an oblique intention to prevent export from Tuna Port and is also discriminatory, inasmuch as it discriminates between animals being transported into and within Kutch District, and the animals being transported into and within other districts of the State and is therefore, violative of article 14 of the Constitution of India. Under the circumstances, the impugned communication dated 14.12.2018 issued by the Home Department to the Superintendent of Police, Kutch (West), cannot be sustained.

19. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned notification dated 14.12.2018 issued by the State Government in exercise of powers under section 4(1)(b) of the Gujarat Essential Commodities and Cattle (Control) Act, 2005; the impugned letter dated 14.12.2018 issued by the Under Secretary, Home Department to the Superintendent of Police, Kutch (West); as well as the letter dated 14.12.2018 of the Director of Animal Husbandry addressed to the Commissioner of Customs to the extent indicated in paragraph 17.1 above; are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

20. At this juncture, the learned Assistant Government Pleader has requested that this order be stayed for a further period of six weeks so as to enable the respondents to approach the higher forum.

21. Considering the fact that this court has found that the impugned notification and letters have been issued in colourable exercise of powers with a view to prevent export of animals from Tuna Port, the request is declined. Besides, staying this order for six weeks would render the petition infructuous.