Reserved On : 21/10/2026
Pronounced On : 30/10/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13977 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No
	YES	

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M/S TAJ RESTAURANT OWNER AAKIB AMINBHAI KHAN & ORS.
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR. ASARAR L. MANSURI(18390) for the Petitioner(s) No. 1,2,3,4,5,6,7
MS FARHANA Y MANSURI(2526) for the Petitioner(s) No. 1,2,3,4,5,6,7
MR. G H VIRK GOVERNMENT PLEADER WITH MS. DHARITRI PANCHOLI, AGP, MR. BRIJENSINGH THAKUR, AGP MR. SHAUNAK VYAS AGP f for the Respondent(s) No. 3,4,5,6,7
MR DEEPAK P SANCHELA(2696) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

CAV JUDGMENT

1. The genesis of the matter lies in the context of dispute arising from the closure of the restaurants/eateries of the petitioners. In view of the notification dated 10th August 2026 issued by the learned District Magistrate, Gir Somnath, in exercise of powers conferred under Section 33(1)(w)(ii) and Section 33(6) of the Gujarat Police Act, 1951, prohibiting preparation, sale and storage of non-vegetarian food as well as eggs on the routes and areas specified therein at Prabhas

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Patan, Taluka; Veraval, District Gir Somnath, is subject matter of challenge.

2. The petitioners, thus, who are running the hotels being aggrieved by the aforesaid action of the respondent State authorities, have approached this Court under Article 226 and Article 227 of the Constitution of India, essentially praying for the following reliefs :

> "A. Be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the Notification No. MAG/C/ Pra.Pa/08/2026 dated 10.08.2026, **ANNEXURE -'E'** as well as Prelimnary Notification dated 10.07.2026, **ANNEXURE 'C'** to this petition, issued by respondent No. 6, to the extent it prohibits or is sought to be applied so as to prohibit the preparation, sale and storage of non-vegetarian food and eggs at the hotels and restaurants of the petitioners, being establishments situated beyond 500 meters from Shree Somnath Temple and not located on any road used for visiting the said Temple;
>
> B. Be pleased to in the alternative, and without prejudice to prayer (A) above, issue a writ of mandamus or any other appropriate writ, order or direction, directing Respondent No. 6 to reconsider the petitioners' objections dated 13.07.2026 and 11.08.2026 to the Preliminary Notification dated 10.07.2026 and Permanent Notification dated 10.08.2026, afford the petitioners a reasonable opportunity of hearing, and pass a fresh, reasoned and speaking order thereon before enforcing the impugned Notification against the petitioners' establishments;
>
> C. Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing stay inasmuch as by directing the respondent authorities and their subordinate officers not to

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> interfere with, obstruct, forcibly close down, or otherwise disturb the lawful business of the petitioners' hotels and restaurants, save in accordance with due process of law;
>
> D. Be pleased to the extent that pending the admission, hearing and final disposal of this petition, stay the operation, implementation and effect of the impugned Notification dated 10.08.2026 **ANNEXURE-'E'**, insofar as it applies to, or is sought to be enforced against, the hotels and restaurants of the petitioners;
>
> E. Be pleased till pending the admission, hearing and final disposal of this petition, restrain respondent authorities and their officers, subordinates and agents, by an order of ad-interim or interim injunction, from sealing, closing down, disconnecting utilities of, or otherwise coercively acting against the hotels and restaurants of the petitioners;
>
> F. Be pleased to pass such other and further orders as may be deemed fit and proper;"

3. The present petition was filed on 3rd September 2026 and was registered on 24th September 2026. The matter was notified for admission hearing on 7th October 2026. Since the respondent authorities represented through their respective counsels, were served with advance copies of the petition, the request of learned Government Pleader representing State authorities to place on record the relevant documents by way of affidavit was accepted. On 13th October 2026, the learned Assistant Government Pleader appearing for respondent nos. 3 to 7 has placed on record the affirmed copy of the affidavit filed by the learned Collector and District Magistrate, Gir Somnath. The matter was thereafter substantially heard and on 21st October 2026, on conclusion of arguments of learned

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counsels representing the respective parties, was reserved for orders. During the course of hearing of the petition, learned counsel appearing for the petitioners had urged for interim orders, seeking permission to operate their respective restaurants. However, the aforesaid prayer of the petitioner was vehemently opposed by learned Government Pleader by submitting that without issuance of any notice or grant of interim relief, the matter may be taken up for final hearing at the admission stage. In view thereof, with the consent of learned counsels appearing for the respective parties, the matter was heard finally.

4. In order to appreciate the controversy involved in the present petition, it would be appropriate to consider the facts emerging in the background as can be gathered from the record are as under:

4.1 The petitioners have been carrying on lawful business / occupation of running vegetarian and non-vegetarian hotels and restaurants at Prabhas Patan, Taluka Veraval, District Gir Somnath, for the last 35 to 40 years. The petitioners claim to be holding valid trade licenses issued by respondent No. 2-Municipality and are also registered and licensed under the Food Safety and Standards Act, 2006 and the Rules framed thereunder. The petitioners' establishments are situated on the Veraval- Una State Highway, Prabhas Patan- Veraval-Una Road and their buildings are duly sanctioned with proper parking arrangements.

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4.2 The respondent No. 6 -District Magistrate, Gir Somnath, in exercise of powers conferred under Section 33(1)(w)(2) of the Bombay Police Act, 1951, issued Notification being no. MAG/C/73/06 on 7th March 2006, thereby imposing a ban on storage and sale of eggs/ fish meat in the radius of 500 meters of Somnath Temple as well as on the route from Somnath Bus Stand Chowk to Somnath Temple. Subsequently, the Chairman, Executive Committee, Veraval Patan Joint Municipality (respondent No. 2), passed Resolution No. 110 dated 13th April 2018 declaring a veg zone on the ground of religious sentiments being likely to be hurt as well as the status of Somnath Seva Sangh being not damaged, imposed restrictions on the route from St. Mary School to Katli Market Yard in view of the power conferred under the Gujarat Provincial Municipal Corporations Act, 1963. The petitioner Nos. 3, 4, and 6 along with one M/s. Moon Restaurant, being affected by such resolution of the Municipality being passed without affording any opportunity and without giving any notice by issuing a preliminary Notification affecting their valuable fundamental rights guaranteed under Article 19(1)(g) of the Constitution, were constrained to approach this Court by way of a writ petition which was submitted on 15th September 2018 and was registered as Special Civil Application No. 14356 of 2018.

4.3 In the aforesaid petition, the petitioners therein have prayed for issuance of a writ of certiorari or a writ in the

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nature of certiorari seeking quashing and setting aside of the so-called Notification dated 13th April 2018 issued by the Municipality. Pending the hearing of the aforesaid petition, the interim prayer for stay against implementation, operation and execution of the impugned Notification dated 13th April 2018 was also prayed for. In the aforesaid writ petition, considering the grounds raised, the learned Single Judge of this Court, vide oral order dated 16th January 2019, had issued notice which was made returnable on 20th February 2019. The respondent No. 6- Collector and District Magistrate, Gir Somnath, had submitted a detailed affidavit-in-reply on 8th April 2019. The petition involving similar issues of facts and law is thus pending consideration, wherein till date no interim relief has been granted in favour of the petitioners therein.

4.4 Pending the aforesaid writ petition, it further transpires on record that a third Notification dated 26th January 2019 came to be issued by the District Magistrate, Gir Somnath - respondent No. 6 herein, once again invoking the powers conferred under Section 33(1)(w)(2) read with Section 33(6) of the Gujarat Police Act, 1951, putting a similar ban on the specified routes, (1). The area of 500 meters radius of Somnath Temple; (2). The main routes fall within the limits of 500 meters radius of Somnath Temple; (3). The main road leading to Somnath Temple as well as Triveni Sangam Road; (4). From Hamirji Circle to Gaurikund Checkpost Road; (5). Veneshwar Checkpost to Good Luck Circle (Shankh Circle) (6). From Shankh Circle to Safari Circle - Hiran River. It is required to be noted here that there is no challenge to the

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aforesaid notification dated 26th January 2019 as reported by the parties to the proceedings.

4.5 Despite the aforesaid notification being in force, the learned District Magistrate- respondent No. 2 herein once again issued preliminary Notification dated 10th July 2026, calling for objections from the affected parties with regard to the proposed ban to be enforced on the specified routes. The respondent No. 2, while issuing such notification, has taken into consideration the various representations made by the religious as well as social organizations between the period May 2026 to August 2026 requesting the authority to impose an absolute ban by declaring the area as a veg zone. The respondent No. 2 proceeded to issue the final Notification dated 10th August 2026 under Section 33(1)(w)(2) read with Section 33(6) of the Gujarat Police Act, 1951, notifying in all seven public routes falling under the prohibited area. These mainly include the routes from: (1). Bhalka Mandir to Bhidia Circle; (2). Bhidia Circle to Sang Circle; (3). Sang Circle to Safari Circle; (4). Safari Circle to Prajapati Dharamshala Cross roads; (5). Gita Mandir to Hamirji Circle; (6). Hamirji Circle to Sang Circle; (7). The entire area falls within the radius of 500 meters of Somnath Temple. The petitioners who own hotels/restaurants serving vegetarian as well as non-vegetarian food falling under the aforesaid prohibited area, being aggrieved by such ban, have approached this Court challenging the aforesaid notification as being ultra vires, illegal, being issued without authority of law and in violation of the fundamental rights guaranteed under Article 226 of the

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Constitution of India.

Submissions on behalf of Petitioners :

5. Learned advocate Mr. Mansuri appearing for the petitioner had stated that petitioners are carrying on lawful business of running vegetarian and non-vegetarian hotels situated at Prabhas Patan, Taluka Veraval, District Gir Somnath, since last 35 to 40 years. It was further stated that restaurants are duly licensed establishments as the petitioners are holding valid trade licence issued by the Veraval Patan Joint Municipality - Respondent No. 2. It was further stated that the petitioners are registered and licensed with the said authority under the Food Safety and Standards Act, 2006 and the Rules framed thereunder. It was further submitted that the establishment of the petitioners are situated on the Veraval-Una State Highway, Prabhas Patan-Veraval-Una Road and the buildings are duly sanctioned and are having adequate parking arrangements. It was therefore submitted that the establishments of the petitioners in no manner are likely to cause any obstruction or inconvenience to any passerby or the road user.

5.1. Having pointed out the aforesaid facts related to the case of the petitioners, learned advocate had further stated that in the town of Prabhas Patan, is predominantly inhabited by Hindu and Muslim communities and good numbers of daily wage workers are employed and dependent upon this business of non-vegetarian hotels. In addition, the workers employed in the nearby GIDC area, local residents and

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tourists and pilgrims of various communities who regularly visit the town, also visit their restaurants for meals and also request for takeaway food services.

5.2. It was further submitted that the hotels run by the petitioners are situated at a distance of approximately 1.5 to 2 kilometers away from Shri Somnath Mahadev Temple and around 30 to 40 meters away from the main road. According to learned advocate, the road on which the hotels are run by the petitioners, are situated on the route which is usually not used by the pilgrims or devotees visiting Shri Somnath Mahadev Temple. In such circumstances, there is no likelihood of any religious sentiments of persons belonging to a particular community being affected. He has further submitted that the kitchens of the hotels run by the petitioners are located inside the premises of the hotels and are not visible from the public road. Even, no non-vegetarian food, meat or all allied items are displayed on the road which may cause any inconvenience or hurt to the sentiments of any passers-by, pilgrims or devotees visiting the temple.

5.3. Having stated so, learned advocate for the petitioner has submitted that the Notification issued by the learned Magistrate is arbitrary, unreasonable and violative of fundamental rights of the petitioner, inasmuch as it violates the right to equality recognized under Article 14 and right to livelihood as recognized under Article 19 of the Constitution of India. It was further submitted that there is no rational

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nexus between the classification made and the object sought to be achieved, the protection of religious sentiments of the pilgrims visiting the temple. Learned advocate had heavily relied upon Article 19(1)(g) of the Constitution to contend that the impugned notification imposes disproportionate restriction on the petitioner's fundamental right to carry on their trade and business. The action of the state authorities is violative of Article 19(1)(g) as the same is passed without satisfying the test of reasonableness as contemplated under Article 19(6) of the Constitution. He has further submitted that the State authorities, without considering any less restrictive alternative, such as confining the prohibition strictly to the radius of 500 meters as notified way back in the year 2006, the Notification is required to be quashed and set aside. Learned advocate had further submitted that in fact the impugned notification issued by the learned Magistrate is without any authority of law. In this regard, learned advocate had invited my attention to the impugned Notification wherein it is stated that the learned Magistrate has invoked provisions of Section 33 read with Section 36 of the Gujarat Police Act, 1951 while issuing the said notification. Referring to Section 33 sub-section (1)(w)(ii), learned advocate had emphasized that the said provision authorizes the Police Officers or at the most the District Magistrate to regulate establishments in the nature of public amusement or public entertainment or to the extent assembly. The attention of this Court was invited to the definition of the term public amusement and entertainment defined under the Act of 1951. Referring to the aforesaid provision, learned advocate had submitted that so far as the

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establishment in the facts of the case is concerned, is indisputably a restaurant, which would not fall in the category of public amusement or public entertainment or assembly as provided under the Act. He has further submitted that running a restaurant serving non-vegetarian food would in no manner relate to public order which otherwise is the core object of the Act of 1951. He has therefore submitted that there cannot be prohibition blanketly applied to the entire area. The provisions of Bombay Police Act are very specific in nature and shall be not applicable to the present establishment. He has therefore submitted that in fact District Magistrate has traveled far beyond the provisions of the Act. He has therefore submitted that the notification issued without any authority of law is null and void and is therefore required to be quashed and set aside. He has also emphasized on the fact that considering the nature of ban imposed thereby the petitioners like businessmen running restaurants have been permanently prohibited to operate in the notified area. This Court may test the validity of the notification in light of the doctrine of proportionality. He has fairly submitted that it is true that the right guaranteed under Article 19 of the Constitution is not an absolute right and is subjected to reasonable restrictions as provided under Article 19(6) of the Constitution and the State can impose reasonable restrictions on the exercise of right to trade through a law in the interest of general public. He has therefore, submitted that the respondent authorities by issuing impugned Notification has violated fundamental rights guaranteed under Chapter III of the Constitution of India. The reasonable restriction has to be

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of great prudence before bypassing fundamental rights guaranteed under the Constitution. However, the Court can always examine such action of the State in instrumentalities by applying the test of proportionality. He has re-emphasized on the fact that such restrictions on the right to trade should be through a proper mechanism as provided under law, whereas in the facts of the case the notification issued cannot be said to be as per the mechanism of the law.

5.4 In support of his submission, the learned advocate appearing for the petitioner has placed reliance upon the decision of Hon'ble Supreme Court in the case of **Chintaman Rao and another versus State of Madhya Pradesh** reported in **AIR 1951 SC 118.** Referring to the relevant observations recorded in para 6 and 7 of the aforesaid decision, learned advocate had submitted that the question which arises therefore for consideration is whether the statute under the guise of protecting public interest arbitrarily interferes with professional business and imposes unreasonable and unnecessary restrictive regulations upon lawful occupations, the burden lies on the respondent State authorities to establish that there is reasonable relation of the provisions of the Act to the purpose in view. Unless the aforesaid criteria is not satisfied, the respondent State authorities under the pretext of such notification cannot curtail the right of freedom of occupation and business. The reliance was also placed on the decision of Hon'ble Supreme Court in the case of **State of Madras versus V.G. Row**

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reported in **AIR 1952 SC 196.** Referring to the relevant observations recorded in para 15, learned advocate had submitted that the court should consider not only factors such as duration and extent of restrictions, but also the circumstances under which and the manner in which their imposition has been authorized in order to ascertain the test of reasonableness. Inviting my attention to the relevant factors as noted by the Hon'ble Supreme Court to be considered while examining the subjective satisfaction of the government or its officer, learned advocate had submitted that since by such action the governments seek to override a basic freedom guaranteed to the citizen, the Court should be cautious and may view it as reasonable only in very exceptional circumstances and within the narrowest limits. He has emphasized on the observations that such subjective satisfaction of the Government cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights. At this stage, learned advocate had submitted that the effect of the impugned notification is an absolute prohibition on the right to trade and business, though being guaranteed as a basic freedom under Chapter III of the Constitution. Considering its impact, this Court may kindly take note of the fact that not a single representation has been received from any local individual raising grievance against the petitioners. On the contrary, what has been placed for consideration of this Court on record are the bunch of representations received from the religious organizations operating in the surrounding areas of the concerned District. It was submitted that in fact on bare appreciation of the

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aforesaid representations, it can be noticed that the contents of the said representations are almost identical, word to word, and in fact their use of font is also almost similar. He has therefore, submitted that mechanically without arriving at any subjective satisfaction, the learned Magistrate has proceeded to invoke the powers conferred under Section 33 read with Section 36 of the Gujarat Police Act, 1951, which clearly demonstrates the arbitrariness of the respondent State authorities.

5.5 The reliance was also placed on the decision of Hon'ble Supreme Court in the case of **Mohammad Farooq versus State of Madhya Pradesh** reported in **AIR 1970 SC 93**. According to learned advocate, in a similar set of facts whereby the concerned municipality acting under the provisions of municipal law in light of the bylaws which relates to regulating slaughter of bulls and bullocks, notification was issued imposing restrictions on running slaughterhouses. The notification was challenged on the ground that though the administrative agency has been entrusted with the power to grant or withhold a permit or license in its uncontrolled discretion, imposing such restrictions amounts to infringing the fundamental rights guaranteed under Article 19(1)(g) of the Constitution. The question of permitting slaughter of cows, bulls and bullocks vis-à-vis the sentimental differences between two sections of the people in the country was also one of the criteria placed for consideration. The Court has taken into consideration the judgment 0of Hon'ble Supreme Court in the case of

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Mohammad Hanif Quareshi versus State of Bihar reported in **AIR 1958 SC 731**.

Submissions on behalf of Respondent State Authorities:

6. Learned Government Pleader Mr. G. H. Virk appearing for the respondent State Authorities has invited my attention to the affidavit in reply filed by the Collector and District Magistrate, Gir Somnath.

6.1 At the outset, learned Government Pleader has vehemently objected to the maintainability of the writ petition on the ground that the petitioner nos.3, 4, and 6 have earlier preferred writ petition along with M/s.. Moonstar Restaurant questioning the Veraval Patan Joint Municipality's resolution dated 13th April 2018, in which, this Court vide oral order dated 16th January 2019 has issued notice. The attention of this Court was invited to the memo of the aforesaid petition produced on record at Annexure R-3 and the order passed therein. He has further submitted that except for the order of notice being issued, the aforesaid petitioners have not pursued the matter nor have they pressed for any interim relief. In such circumstances, the Resolution passed by the Veraval Municipality in 2018 still continues to operate. It was further submitted that no rejoinder affidavit has been filed to respond to the affidavit filed by the State.

6.2 He has further submitted that the impugned notification

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has been issued by the learned Magistrate after following due process of law in as much as preliminary notification dated 10th July 2026 was issued by the learned Magistrate seeking response from the public at large in regard to the proposed ban. It was further submitted that no objections have been raised by the petitioners herein, despite the fact that the resolution issued by the Municipality in 2018 was opposed. It was further submitted that, in fact, the State was constrained to act in view of the various representations received from the local religious and social organizations raising concerns about the preparation and sale of non-vegetarian food on or adjoining public approaches used by the pilgrims including the complaints regarding exposed preparation, order, food waste, and the experience devotees faced while reaching to the religious sites. It was further submitted that by virtue of impugned notification, the three routes forming part of earlier notification dated 26th January 2019 i.e. from (I) Sun Circle to Safari Circle; (II) from Hamirji Circle to Gita Mandir; (earlier known as Main Temple to main road to Triveni Sangam road to Gita Mandir: and (III) from Hamirji Circle to Sun Circle, (earlier known as Hamirji Circle to Gauri Kund Checkpost to Vaneshwar Check post to Goodluck / Sun Circle). In order to justify the aforesaid action of the respondent State Authority, learned Government Pleader had highlighted the religious and historical significance attached to the Somnath Temple and its surrounding holy places. He has further submitted that in fact as per the record available, approximately Rs.1.16 crore footfalls have been noted, which clearly suggest the sustained scale of activity within the Temple town whose economy is

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dependent on the mass inflow of pilgrims. He has further invited my attention to the coloured Google map to highlight the comparative routes which has been gradually modified by the State right from imposing first Notification way back in the year 2006, which according to him still operates confining initially to radius of 500 meters from Somnath Temple, followed by the notification of 2018, 2019 and the last Notification of 2026. He has therefore submitted that the impugned action of the respondent State Authorities is very much in sync with the test of reasonableness and proportionality and does not violate Article 19(1)(g) of the Constitution of India. It does not violate fundamental rights of the petitioners guaranteed under Article 19(1)(g) of the Constitution of India.

6.3 In support of his submissions, learned Government Pleader had invited my attention to the decision of Hon'ble Supreme Court in the case of **Om Prakash and others versus the State of UP and others** reported in **(2004) 3 SSC 402**. It was pointed out that the by-laws of Rishikesh Municipality contained a provision prohibiting the sale of meat and fish. By amendment, the Municipal Board added "eggs" in that bylaw along with meat and fish. The appellants approached earlier before the High Court to challenge the said amendment on the ground that total prohibition of sale of eggs imposed an unreasonable restriction on their rights under Article 19(1)(g). On the other hand, the respondent State Authorities invited attention of the High Court to the

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general powers conferred on the municipality under section 298(1) of the Uttar Pradesh Municipality Act. The respondent had argued that words “animals”, “meat”, or “fish” occurring in Section 241 were not followed by the word “only” which meant that for other articles also this might be a requirement for license. The Hon’ble Supreme Court confirming the view taken by the High Court, held that the appellant had failed to point out the amended by-laws in question being inconsistent with the provisions of the Act or the Rules. The attention of this Court was further invited to the concurring view expressed by the learned Judge of the Supreme Court on the issue as to whether a particular restriction on trade to the extent of its complete prohibition can be held to be reasonable within the meaning of Article 19(6). It was further submitted that in fact the Constitutional Bench decision in the case of **Chintaman Rao** (**Supra**) was considered and criticized by the learned Judge by expressing that each case has to be judged on the basis of facts and circumstances brought to the notice of the Court. The attention of the Court was also invited to the judgment in the case of **V. G. Row (Supra)** being also taken into consideration in the aforesaid case. It was therefore submitted that the term reasonable restrictions as used in Article 19(6) is a highly flexible and relative term which has to be drawn from the context in which it is to be applied. Learned Government Pleader had further pointed out that in fact the decisions relied upon by the learned advocate for the petitioners were in the regime prior to the insertion of Article 51A of the Constitution which, in fact, lays down fundamental duties enjoyed on the citizens. Reliance was also

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placed on the decision of Punjab and Haryana High Court in the case of **Rajinder Kumar and others versus State of Punjab and others** reported in **2026 SSC Online Punjab and Haryana 9990**, wherein the writ petitioner had approached High Court seeking direction against Estate Officer of Municipal Corporation to unsealed the business premises of the petitioner which was sealed in pursuance of a notification issued by the State Authorities. The petitioner therein was a registered shop owner carrying on business of wholesale supply of fish which was situated near the fish market in Amritsar. On the other hand, the Punjab Government had issued notification imposing restrictions on the sale and use of liquor and other related products, cigarettes and tobacco and other intoxicants and meat, etc., within the city. A similar arguments were advanced by the petitioner therein. The Court, while examining the issue as to whether such restrictions imposed constitute a reasonable restriction within meaning of Article 19(6) of the Constitution, took into consideration the religious significance attached to the place, the five takhts or seat of temporal authority of Sikhism being located in the near vicinity and being treated as the holiest site and most visited Gurudwara not only by Sikhs, / Hindus, but by people of other religious faiths, held that the restrictions imposed were not in respect of the whole city of Amritsar but only to the specified area which was the walled city of Amritsar. which posts Sri Darbar Saheb. The Hon’ble High Court therefore opined that a limited or area-specific restriction is less intrusive than a complete prohibition which is sustainable in law. The Notification

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issuing prohibitory order may cause inconvenience or some dislocation to the petitioners. However, the restriction imposed does not cease to be in the interest of the general public.The restriction imposed does not cease to be in the interest of the general public. The Court has therefore upheld the action of the respondent state authority issuing such notification. The attention of this Court was invited to the seven Bench Judges' judgment in the case of **State of Gujarat versus Mirjapur Moti Kureshi Kasab Jamath and others** reported in (**2005) 8 SCC 534**. Referring to the facts of the case, learned Government Pleader had pointed out that in the State of Gujarat, the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 intended to put the restriction with regard to bulls and bullocks below the age of 16 years not to be slaughtered. The aforesaid amendment was subject matter of challenge before this Court, thereby after dealing with all similar issues in detail had held the amendment ultra virus and hence the appeal was preferred by the State before the Hon’ble Supreme Court. The attention of this Court was invited that as per the majority view, the Court opined that slaughtering of cows on Bakrid was neither essential to nor necessarily required as part of religious ceremony and therefore was to be treated as an optional religious practice not covered under the shield of Article 25(1) of the Constitution. The majority view, after considering the ratio laid down in **Qureshi 1** (**Supra**), held that considering the material available as regards ban, the Court was satisfied that such ban was in the interest of the general public, merely because it may cause inconvenience or dislocation to the

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butchers the restriction imposed was found the restriction imposed does not cease to be in the interest of the general public. The attention of this Court was invited to the relevant observations made by the Larger Bench in as recorded in para 47 onwards. It was submitted that in fact the law laid down in Qureshi I stands diluted in view of this judgment of strength of seven judges though one being dissenting in as much as the larger bench has considered the significantly distinct factors of “restrictions” as against “total prohibition“ while appreciating the Article 9(1)(g).

6.4 Learned Government pleader had therefore submitted that the State has no objection if the restaurant or eateries operates on the notified route serving vegetarian food and therefore the petitioners cannot assailed the action of State by submitting it to be unreasonable and disproportionate. He has therefore urged to dismiss the present petition as being not maintainable and even otherwise there being no merits in the matter.

7. In Rejoinder, learned advocate for the petitioner has argued that the restrictions imposed from legal infirmities and therefore the subsequent challenged by this petition related to a different notification would not take away their right to approach this court in writ jurisdiction. He concluded by submitting that nothing can be above the law.

ANALYSIS :

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8. I have carefully considered the arguments advanced by learned, advocate, appearing for the respective parties and have appreciated the same in light of the legal principles pressed into service by referring to the various authorities relied upon during the course of hearing.

7.1 The pure question of law which arises for consideration of this court is as to whether a District Magistrate under section 33 (w)(ii) read with section 36 of the Gujarat Police Act, 1951 is competent to issue notifications putting restrictions on running of the restaurants serving non-vegetarian food situated on the ground of religious sentiments of people following a faith?

7.2 Before examining the aforesaid core issue, it would be appropriate to take note of relevant facts of the case. There cannot be any dispute about religious and cultural history of Shree Somnath Mahadev temple, revered as pratham jyotirling of twelve jyotirlings. The sacred and resilient Somnath Temple stands as an eternal symbol of unwavering devotion. For people following Hindu dharma, visiting the majestic shrine offers a transcendent spiritual experience that connects the soul to the divine. There are other holy places situated near the Somnath temple which include Bhalka tirth situated at a distance of 4.5 to 5kms from Somnath temple. As per hindu mythology, it is believed to be the sacred place as Lord Krishna's last abode before leaving this world. At a nearby distance of one kms from Somnath temple is Triveni

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sangam where three rivers Hiran, Kapila and Saraswati meet and people take holy dip during kartik purnima festival. Thus, Somnath remains an imperishable beacon of faith, drawing lakhs of devotees to its sanctified grounds. However, the present dispute surrounds the routes falling beyond 500 meters radius of Somnath temple and connecting the holy places especially from Triveni sangam connecting Bhalka Tirth.

7.3 Admittedly, the petitioners are carrying business / engaged in the occupation of running hotels serving vegetarian and non-vegetarian food at Prabhas Patan , Taluka: Veraval, District Gir Somnath. It is also not in dispute that they are holding a license to operate such eateries as required under different laws. The restaurants are operating on a patch of this road connecting Triveni sangam and Bhalka tirth. Thus, there is no dispute to the fact that the petitioners are engaged in lawful trade.

8. Having noted the undisputed facts, before entering into legal issues and merits of the case, it would be appropriate to look into the preliminary objection raised by learned Government Pleader as regards maintainability of present petition at instance of the petitioners. As rightly pointed out by respondent State, the petitioners no.3,4 and 6 along with M/s Moon Restaurant have approached this Court by preferring writ petition being SCA No. 14356 of 2018 challenging notification of 2018 issued by respondent Veraval

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Municipality. Effectively, by virtue of said resolution of 2018 the restaurants falling on route gets covered under prohibition and challenge to the same is pending consideration in the said petition, however, it cannot be ignored that now the prohibition issued by the respondent no.6 Magistrate though reasserts such ban on said route additionally also extends the route to Bhalka Tirth where restaurant of one of the Petitioner of present petition namely Taj restaurant situated. In my view, by virtue of notification 10.08.2026, the imposition of ban is reasserted by Magistrate exercising power conferred under section 33 of the Gujarat Police Act, 1961 whereas the prohibition imposed in 2018 was by way of resolution issued by the Executive Committee of Veraval Municipality exercising powers conferred under Gujarat Provincial Municipal Corporation Act. In my view, the petition is therefore maintainable in the eyes of law.

9. Coming back to merits of the case, having noted the undisputed facts, another important issue of law which arises for consideration is as to whether the action of the state authority restricting the fundamental right to trade business or occupation under article 19(1)(g) of the Constitution of India is justified in the facts of the case?

9.1 There is no dispute to the fact that the effect of the notification is that it imposes a permanent ban on the running of any restaurant/ hotels serving non vegetarian food on the route specified. In such circumstances, the burden heavily lies

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on the State to establish that the action of the District Magistrate restricting the fundamental right to trade, business or occupation as guaranteed under Article 19 (1)(g) withstand the test of reasonableness and the doctrine of proportionality as provided under article 19(6). Learned advocate appearing for the petitioner has placed heavy reliance upon the decision of Supreme Court in the case of **Chintaman**r**ao** (supra). Before the Constitutional Bench the question for consideration posed was as to whether the statute under the guise of protecting public interest, can arbitrarily interfere with Private business and imposed unreasonable and unnecessarily restrictive regulations upon lawful occupation. The court observed that the phrase “reasonable restrictions” connotes limitations imposed on a person in enjoyment of right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. The word ‘reasonable’ implies intelligent care and deliberation, that is the choice of course, which reason dictates. Legislation which arbitrarily or excessively invades, the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between freedom guaranteed in Article 19(1) (g) and social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality.

10. On careful consideration of the impugned notification issued by the learned Magistrate, the restrictions have been imposed in regard to sale, distribution, or storage of non-

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vegetarian foods on the route specified. The only reason which appears from the reading of notification for imposing such restrictions is the religious sentiments of the pilgrims visiting the temple. Once the restrictions under law is established, the burden shifts on the State to prove that the restrictions imposed is “reasonable” and in the “interest of the general public”. In religions, like Hinduism, the concept of nonviolence and ritual purity, inherently conflict with the slaughter, storage, and consumption of non-vegetarian food. In religious places, the traditions of maintaining the environment in sacred space is considered vital for respecting the deities, pilgrims and core theological tenets. However, one cannot lose sight of the fact that by impugned notification, the learned Magistrate has imposed permanent restrictions on business of the petitioners and others similarly situated. In such circumstances, it would be more imperative on the authority to demonstrate and satisfy that a complete prohibition was absolutely necessary which is proportionate and no other remedial measure was available than taking such stringent action. It is equally important to note that the right to freedom of conscience, profession, practice and propagation of religion as provided under Article 25 is subject to public order, morality, health and other provisions of Part III of the Constitution including other fundamental rights guaranteed. Thus, the right to practice religion is to be harmonised with other fundamental rights rather than overriding them.

11. The test of reasonableness is also required to be

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scrutinised from the view point that such business which was permissible when prohibition was confined to 500 meters radius of temple a decade ago , what factors have led to extend such prohibition beyond radius of 500 meters. The representations made by various organizations are produced collectively on record by respondent State at Annexure R4 to justify the emphasis for ban of sale of non vegetarian food on road connecting from Triveni sangam leading to Bhalka tirth. Such representations have been moved in the month of May-August, 2026. Though the representations are from various organizations of different castes following Hindu religion, on close inspection of contents of said representations, it voiced the religious sensitivity towards the open preparation and exhibition of non-vegetarian food on public streets. However, the moot question still requires to be answered is whether the religious belief of one section of society can override the fundamental right of another section of society.

12. At this stage, it would also be appropriate to consider the landmark decision of the constitution bench in the case of **Mohed. Hanif Quareshi vs. State of Bihar,** reported in **AIR 1958 SC 731**, wherein the Supreme Court first detailed how the test of "reasonable restriction" under Article 19(6) responds to claims made under Article 25. Before considering the aforesaid judgement, it would be appropriate to mention that the Seven Judges Bench of the Supreme Court in the case of **Mirzapur Moti Kureshi Kassab Jamat** (supra) has *partly overruled* the said decision however, in para 120 clarifies that

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in case of Qureshi I, the challenge to the constitutional validity of the legislation impugned therein was turned down on several grounds, though forcefully urged , excepting one ground “reasonableness”, which the Court recorded was no longer the position in the case before them as in altered factual situation and circumstances. It is required to be noted further that referring to Qureshi I, the Court observed that the reasonableness of the restrictions pitted against the fundamental right to carry on any occupation, trade or business determine the final decision, having been influenced mainly by considerations of weighing the comparative inconvenience to the butchers and advancement of public interest. Hence, the court held that the detailed discussion contained in the judgment revealed this determination not purely of law rather it is a mixed question of facts and law. In **Mohed.Hanif** (**supra**), the facts of the case suggest that petitioners belonging to Butcher communities challenged total state bans on cattle slaughter, claiming it to have violated their right to carry on a trade/occupation under Article 19(1)(g). The State defended the bans partly based on Directive Principles (Article 48) and the religious sentiments of the majority community. The Court held that a restriction under Article 19(6) is not reasonable if it is based solely on the religious susceptibilities or sentiments of a section of the people. To test whether a restriction is reasonable, the Court looked into whether the religious practice in question was an "essential religious practice" under Article 25. In fact, the Court noticed that because sacrificing a cow was not deemed an essential religious mandate in Islam, the ban on cow

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slaughter was considered a reasonable restriction in the general public's interest. However, a blanket ban on all old, useless cattle was struck down as an unreasonable restriction on the butchers' trade. In Mirzapur Moti, the challenge to the total ban on the slaughter of bulls and bullocks was confined almost exclusively to Article 19(1)(g) read with Article 19(6). It is required to be noted that the seven judges bench decision in case of **Mirzapur Moti (**supra) focus of the larger bench was mainly on evaluating whether a total ban constituted a "reasonable restriction" in the interest of the general public. In the process it harmonized Article 19(1)(g) with Articles 48, 48A, and 51A(g) (Directive Principles and Fundamental Duties), using secular arguments concerning agricultural economics, organic manure, and biogas to declare the restriction valid. However, if the opening headnote of the decision in the case **Mirzapur Moti (supra**) is noted the Court has expressly clarified that the issue as regards Article 25 viz. Essential religious practice of slaughtering of cow and cow progeny on even of Bakri Eid, as held to be neither essential to nor necessarily required as part of religious ceremony; since neither of the parties have touched on Article 25 in the facts of said case of **Mirzapur Moti** (**supra**), has not been gone into and therefore the ruling of Qureshi I as regards Article 25 vis a vis Article 19(1)(g) still holds good and therefore it has been *partly over ruled.*

13. Bearing in mind the aforesaid guiding principles, it is apparent that the limitation imposed on a person's right must

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not go beyond what is truly necessary in the interest of the general public. At the same time, there must be a fair balance between the social control or the public interest sought to be achieved and the freedom of the individual. The test is, therefore, whether a reasonable person would necessarily view it as an excessive or arbitrary invasion of the right otherwise guaranteed under the constitution. The sole reason assigned by the Learned Magistrate to impose ban is the religious sentiments of sections of society who are against the visual display of non vegetarian food on street however, such display of non vegetarian food on street cannot be read as "essential religious practise" under Article 25. It is required to be stated that Chapter 17 (Shraddhatraya-Vibhaga Yoga) of Bhagavad Gita classify food into three gunas (qualities): Sattvic (pure/vegetarian), Rajasic (stimulating), and Tamasic (heavy/non-vegetarian), encouraging Sattvic diets for spiritual advancement but not strictly outlawing others. Also, Hinduism is not monolithic but the choice or ritual of consuming food varies region wise. Thus, consumption of nonvegetarian food cannot be recognised as an essential feature of religious practice but rather a personal choice. The impugned notification thus does not withstand the test of reasonableness and such imposition is thus held to be arbitrary and *ultra vires* the fundamental rights guaranteed under Article 19(1)(g) of the Constitution.

As regards reliance placed by learned Government pleader on various judicial pronouncements; in the case of **Mirzapur Moti Kureshi** (supra), the challenge was made to amendment brought in the Bombay Animal Preservation

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(Gujarat Amendment) Act, 1994 by Act no. 4 of 1994 whereby restrictions were imposed on slaughtering of bulls and bullocks below the age of 16 years was extended to slaughtering of progeny of cows. The Seven Judges Bench while dissecting Qureshi I has recorded finding in para 124 onwards, on reading of the same, what can be curled out is that the Court has revisited the ratio in light of changing circumstances, more particularly India in the phase of a developing country. While dealing with Finding-2, the Court has dealt with the issue of “restrictions” as against “total prohibition” as a fallacy while considering the effect of the ban described as causing total prohibition. However, in my view, merely because the State has agreed to let the petitioners continue with restaurant business by serving vegetarian food not amounting to total prohibition would be an answer to the inherent defect of lacking authority to impose such ban by impugned notification.

14. Secondly, the test of proportionality as reaffirmed by the constitutional bench in **K. S. Puttaswamy (Aadhar-5J) vs. Union of India**, reported in **(2019) 1 SCC 1,** as observed in para 147 to 158, reasserting the view taken in the earlier decision in case of **Modern Dental College & Research Centre vs. State of M.P., (2016) 7 SCC 353** has held that the four sub components of proportionality as recognised in the case of **Modern Dental** (supra), needs to be satisfied. Thus, while examining the validity of state action on the test of proportionality, what is required to be appreciated as per

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recognised sub-components is that : (a) A measure restricting right must have a legitimate goal (legitimate goalstage) (b) It must be a suitable means of furthering this goal (suitability or rational connection stage) (c) There must not be any less restrictive but equally effective alternate (necessity stage). (d) The measure must not have a disproportionate impact on the right -holder(balancing stage). In view of the above four sub-components, the test of proportionality is also required to be applied to test the validity of the impugned action of state authorities. The legal proposition as settled through authoritative judicial pronouncements on the doctrine of proportionality is that the restrictions imposed by state authorities must not be arbitrary or excessive. It is settled law that any permanent restriction on a citizen’s right to practice any profession, or to carry on any occupation, trade or business, violates Article 19(1)(g) of the Constitution. While reasonable restrictions can be placed under Article 19(6) in the interest of the general public, the Courts have consistently opined and ruled that a total and permanent ban on legitimate trade cannot be imposed by an executive or judicial magistrate under the guise of police regulations or local law and order.

15. At this stage, it would be appropriate to consider the regulations notified under the central legislation: the Food Standard and Safety Act whereby under Chapter 2, Regulation 2.1.2 (1)(5) read with Schedule 4, part IV of Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011 lays down guidelines with regard

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to location of meat shop. The said regulation provides a minimum distance between the licensed shop and any place of worship not less than 50 meters. It further provides for a minimum of 100 meters if meat shop premises are situated directly opposite to the entry gate of a religious place belonging to a community. In view of aforesaid guiding rules, the appropriate authority under the Central legislation being empowered to regulate the licensing of such activities in premises can impose suitable prohibition. However, the documents on record more particularly the license issued under the Food Safety and Standard Act, no such condition has been imposed in case of petitioners. Alternatively, the respondent authority could have offered some solution to balance between protection of fundamental rights under Article 19(1)(g) and right to religious preferences under Article 25 by taking least restrictive measures. The petitioners have shown their willingness to abide by the regulations strictly and have ensured to not display the food on the street or road. In such circumstances, the permanent ban imposed by the respondent state authority is not only disproportionate, excessive and violative of fundamental rights of the petitioners but is without any authority of law.

16. Having observed so, the core issue which arises for consideration as recorded earlier is the scope of power of the learned magistrate to issue such notification en-route through section 33 read with section 36 of the Gujarat Police Act, 1961. Section 33(1)(ii) (w) empowers the licensing Authority or Police to issue rules and regulate the licensing and control

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of places of *public amusement* or *entertainment*, primarily to maintain public order, safety, and health. It does not grant the power to legislate dietary restrictions or dictate food preferences. Chapter 4 of the Gujarat Police Act, 1951 deals with the provisions under the heading 'Police Regulations'. Under section 33 of the Gujarat Police Act, distinct authorities have been empowered to make rules for regulation of traffic and for preservation of order in public places, etc. Reading of subsection (1) of section 33 provides the Commissioner of Police to make rules for licensing or controlling places of public amusement or entertainment, prohibiting the keeping of places or controlling places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, or danger, or damage to the establishment. In view of the aforesaid provisions, if the definition of the term "*place of public amusement*" as defined under section 2(9) is considered, it includes any place where music, singing, dancing, or any diversion or game, or the means of carrying on the same, is provided and to which the public are admitted either on payment of money, or with the intention, that money may be collected from those admitted and includes a race course, circus, theater, music hall, billiard room, bagatelle room, gymnasium, fencing School, swimming pool, or dancing hall. At the same time, the definition of the term "*place of public entertainment*", if examined as defined under section 2 (10), it means a board house, lodging house or residential Hotel in which any kind of liquor or intoxicating drug is supplied into (such as a Tavern, a wine shop, a beer shop or a spirit, Eric Todi, Ganja, Bhang aur OPM shop

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bracket over to the public for consumption in or near such place). Having noted the aforesaid definitions provided under the Act, it is clearly evident that the term " *any eating house*" has been deleted from the definition of the term place of public entertainment in view of Gujarat Act no.8 of 2018 notified on 5th April 2018. Again, clause (xa) appearing under section 33 has also been deleted by Gujarat Act no.8 of 2018 dated 05. 04. 2018. It is required to be noted that prior to deletion the clause (xa) read as "*registration of eating houses, including granting a certificate for registration in case each, which shall be deemed to be written permission, required and obtained under these act for keeping the eating house for 10 years and decennial of such registration, within a prescribed period "*. On con-joint reading of the aforesaid provisions of the Act of 1951, the regulatory powers are granted to the magistrate or the police authorities under section 33, which mainly deals with traffic regulation and preservation of order or under section 37 which prohibits certain acts for prevention of disorder that are strictly temporary and preventive in nature. By virtue of Guj Act no.8 of 2018, the eating house establishments have been deleted from the regulations covered under section 33. In fact, on inspection of the entire scheme of the Act, there is no provision under the act that allows a magistrate to issue a permanent prohibition or permanent closure of a trade or business.

17. Interestingly, the source of legislative power conferred on the State lies in Article 246 of the Constitution read with seventh schedule list II, entries one and two. Entry one in list

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II relates to subject matter; 'public order' and Entry two covers 'police (including railway and village police). At the same time, if the object of the Act is considered, it provides to consolidate and amend the law for regulation of the police force in the state and the exercise of powers and performance of functions by the state government and by the members of the state force for the maintenance of the public order. The learned Magistrate has committed grave error in exercising such powers conferred under Act by treating the religious sentiments of one section of society under 'public order' for regulating establishments like 'hotels'. On the other hand, if the provisions of the Gujarat Provincial Municipal Corporations Act, 1949 are examined, section 2(18) defines the term " *eating house"* and section 377 and 381 empowers Municipal Commissioners to issue and regulate licenses for running an "*eating house*". Even under the aforesaid provision, it empowers the Commissioner to inspect premises only for the purpose to verify as to whether hygiene, fire safety norms , structural permission adhere and public sanitation is maintained. In light of the aforesaid discussions, this Court is of the view that the learned Magistrate has acted dehors the provision of law as the scope of section 33 read with section 36 is in the nature of regulate operations like licensing, to regulate health, safety and traffic but cannot impose an absolute ban on a lawful trade or even dictate the food to be served within the premises like eating house. A complete ban on running business under a statute that only grants power to regulate generally violates the fundamental right to carry on trade or business. The Courts have time and again

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distinguished the power to regulate does not mean to completely extinguished. On the contrary, power to regulate implies the continued existence of the activity being regulated. It allows the State to impose conditions, rules and boundaries to ensure business is run safely and fairly. It is settled law that an administrative body or local body derives their power explicitly given by the statute. Thus, if the statute confers power to regulate in defined field and if the authority imposes absolute ban beyond the subject, it amounts to exceeding the power conferred under the statute and therefore such action is *ultra vires* the Act.

18. For the foregoing discussions and reasons, the petition is allowed. The notification dated 10.08.2026 issued by the District Magistrate, Gir Somnath as challenged in the present petition, is quashed and set aside as being ultravires the provisions of the Gujarat Police Act, 1961 and Article 19(1)(g) of the Constitution of India.

19. Before parting with the judgment, in view of the assurance given by the learned advocate for the petitioners, the petitioners are directed to the assurance given before this Court. Hence, the petitioners are directed to maintain the doors of the premises self-closed and covered with dark glass top and be kept closed and no carcasses of animals should be kept in a manner which is visible to the public or passersby on street or road. They shall maintain a high standard of hygiene conditions not only in kitchen but also inside premises, shall

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not throw waste in open space exposing towards streets or roads, shall not operate in open space and shall not display the hanging carcasses exposing on road. The premises should be ventilated sufficiently, the waste bin should be regularly cleared as may be provided by the corporation. The transportation of the carcasses should be done in an insulated refrigerated van. Needless to record, the petitioners being citizens of this Country owes duty as provided under Article 51A of the Constitution to uphold and protect the sovereignty , unity and integrity of India; to promote harmony and the spirit of brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities. With these observations, the petition is disposed of as allowed.

20. After the pronouncement of the order, learned Government Pleader Mr. Virk appearing for the respondent State Authority has prayed for stay of the order pronounced today in this petition. However, considering the fact that the livelihood of the petitioners has suffered because of erroneous exercise of power by the Magistrate, the request for stay is refused.

sd/-

(NISHA M. THAKORE,J)

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