

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17087 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SANDEEP N. BHATT Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

KUL HIND JAMIAT-AL QURESH ACTION COMMITTEE GUJARAT
 REPRESENTED BY DANISH QURESHI

AND

MR RAZAIWALA MOHAMMED HAMMAD HUSSAIN

Versus

AHMEDABAD MUNICIPAL CORPORATION

AND

STATE OF GUJARAT

Appearance:

MR RAZAIWALA MOHAMMED HAMMAD HUSSAIN, PARTY IN PERSON
 for the Petitioners

for the Respondent(s) No. 1

MR MEET THAKKAR, AGP for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 02/09/2022

ORAL JUDGMENT

1. The petitioners are challenging the Agenda/Minute No.2 (Item No.2) of the Resolution passed by the Standing Committee of the Ahmedabad Municipal Corporation, Ahmedabad in its Meeting dated 18.08.2022, which is for closure of slaughter houses situated in the Municipal Areas on 05.09.2022 and 09.09.2022 due to the festival of Jain Religion i.e. Paryushan and Samvatsari, respectively.

2. Heard Party-in-Person Mr.Razaiwala Mohammed Hammad Hussain, Petitioner No.2 herein, on behalf of the both the petitioners, at length.

3. It is noted that this matter was taken up for hearing on 30.08.2022 by this Court. After arguing the matter for some time, Mr. Razaiwala has requested for time on that day to place more material on record and at his request, the matter is kept today for further hearing.

4.1 Today, Mr. Razaiwala has reiterated that he

has challenged the Resolution, qua Agenda No.2 (Item No.2) only, passed by the Standing Committee of the Ahmedabad Municipal Corporation, Ahmedabad in its Meeting dated 18.08.2022. He has submitted that the Director General of Police (P. & M.) Gujarat State, Gandhinagar has granted permission for supply of meat/ mutton during the CORONA Virus Outbreak, as essential food. He has placed on record the copy of the communication dated 01.04.2020 issued by the D.G.P. to all the Police Commissioners regarding the same.

4.2 At this stage, he has relied upon Article 47 of the Constitution of India in support of his submissions, which is as under :

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.— The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

4.3 He has submitted that similar issue had arisen before the Punjab & Haryana High Court, whereins

interim relief has been granted. He has placed on record the copies of the order passed in CWP-18666-2022 dated 24.08.2022 and 29.08.2022 in support of his submissions.

4.4 He has submitted that he has taken all the averments in the petition and has relied upon the documents annexed with the petition as well as the documents placed on record today. He has submitted that except the same, he does not want to canvass any further submissions. He has submitted that this petition may be allowed.

5.1 I have heard Party-in-Person - Mr. Razaiwala Mohammed Hammad Hussain for the petitioners at length. I have considered the averments made in this petition. I have also gone through the material on record including the material placed on record today by the petitioner.

5.2 The present petition is preferred by the petitioners being aggrieved by and dissatisfied with Agenda No.2 (Item No.2) of the Resolution dated 18.08.2022, passed by the Standing Committee of the Ahmedabad Municipal Corporation, Ahmedabad. The

translation of the said Agenda/minutes is as under :

“Urgent Agenda No.2

The proposal of Shri Darshan Jashvantlal Shah with the support of Shri Jayesh Mahendrabhai Trivedi

In anticipation of the approval by the Municipal Corporation, it is resolved that due to the Maha Paryushan Parv of the Jain religion during the current year for the period from 24.08.2022 to 31.08.2022, the Slaughter Houses of the Municipality Area be remained closed on 05.09.2022 – Dhoop Dasham and on 09.09.2022 – Samvatsari due to the Paryushan Parv of the Digambar Jain Samaj.”

It is made clear that except the above Agenda i.e. Agenda No.2 (Item No.2) of the Resolution dated 18.08.2022, the petitioners have not challenged the other Agendas/minutes of the said Resolution.

5.3 To deal with the contentions raised by the petitioners, it is required to refer to Articles 19(1)(g), 21, 25, 26 and 51(A)(e) of the Constitution of India, which are as under :

“19. Protection of certain rights regarding freedom

of speech, etc.—

(1) All citizens shall have the right—

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) xxx

(f) xxx

(g) to practise any profession, or to carry on any occupation, trade or business.

xxx”

“21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.”

“25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

“26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right —

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.”

“51A. Fundamental duties.—It shall be the duty of every citizen of India—

- (a) xxx
- (b) xxx
- (c) xxx
- (d) xxx
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

5.4 Further, keeping in mind the challenge, it is

also required to refer to the provisions of Section 466(1) (D)(b) of the Gujarat Provincial Municipal Corporations Act, 1949, which is as under :

“466(1)(D)(b) – fixing the days and the hours on and during which any market, slaughter-house or stock-yard may be held or kept open for use and prohibiting the owner of any private market from keeping it closed without lawful excuse on such days or during such hours.”

5.5 Considering the submissions made by the Party-in-Person and also considering the above provisions of law, it will be fruitful to refer to the decision of the Hon'ble Supreme Court of India on the identical facts like the present petition, in the case of *Hinsa Virodhak Sangh versus Mirzapur Moti Kureshi Jamat & Ors.*, reported in (2008) 5 SCC 33, more particularly Paras 34 to 38, 71 and 72 thereof.

5.6 It is relevant to note here that, in the above-mentioned judgment, the very Municipal Corporation i.e. Ahmedabad Municipal Corporation has passed the Resolution for closure of the slaughter houses for **nine** days at that time and the Hon'ble Supreme Court of

India has approved that action by observing as under :

“34. In this connection, we may now refer to the well known Constitution Bench decision of this Court in State of Madras vs. V.G. Row, 1952 SCR 597, where this Court observed that while determining the reasonable restriction, the Court should consider not only the factors of the restriction such as the duration and the extent but also the circumstances and the manner in which the imposition has been authorized. The Court further observed :

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an Important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all,

and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

The aforesaid observations have become locus classicus. In the present case we have noticed that the closure of the slaughter house is only for 9 days and not for a considerable period of time. This decision indicates that the restriction is reasonable. A period of 9 days is a very short time and surely the non-vegetarians can become vegetarians during those 9 days out of respect for the feeling of the Jain community. Also, the dealers in meat can do their business for 356 days in a year, and they have to abstain from it for only 9 days in a year. Surely this is not an excessive restriction, particularly since such closure has been observed for many years.

35. In the above observation in State of Madras vs. V.G. Row (supra) mention has been made therein of the things to be seen in judging whether the restriction is reasonable or not, and one important consideration is whether the restriction is disproportionate. In our opinion, there is no disproportionate restriction because the restriction is only for a short period of 9 days. Moreover, in the above observation in V.G. Rows case (supra), it is also mentioned that Courts must act with a sense of responsibility and self-restraint with the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and the majority of the elected representatives of the people have in authorizing the imposition of the restrictions considered them to be reasonable.

36. Judging from that angle mentioned above in V. G.

Row's case (supra), which has been consistently followed thereafter, in our opinion the closure of slaughter house cannot be said to be an unreasonable restriction on the writ petitioners' right to do their trade and business of slaughtering animals.

37. In this connection, reference may be made to Om Prakash and others vs. State of U.P. and others, 2004 (3) SCC 402, where, this Court held that a municipal bye-law prohibiting sale of meat, fish and egg in Rishikesh is valid considering the fact that most people in Rishikesh come for religious purposes and members of several communities are strictly vegetarian, and it is such people who come in large numbers to visit Haridwar, MuniKi-Reti are vegetarians.

38. It may be mentioned that the impugned resolutions which have been made under Section 466(1)(D)(b) of the Bombay Provincial Municipal Corporations Act, 1949 amount to a piece of delegated legislation. A piece of delegated legislation is also statutory in character and the only limitation on it is that it should not violate the provisions of the parent statute or of the Constitution. In our opinion, the impugned resolutions of the Corporation do not violate the parent statute or any constitutional provisions.

71. In the present case we have seen that for a long period slaughter houses have been closed in Gujarat for a few days out of respect for the sentiments of the Jain community, which has a sizable population in Gujarat and Rajasthan. We see nothing unreasonable in this restriction.

72. As already stated above, it is a short restriction for a few days and surely the non-vegetarians

can remain vegetarian for this short period. Also, the traders in meat of Ahmedabad will not suffer much merely because their business has been closed down for 9 days in a year. There is no prohibition to their business for the remaining 356 days in a year. In a multi cultural country like ours with such diversity, one should not be over sensitive and over touchy about a short restriction when it is being done out of respect for the sentiments of a particular section of society. It has been stated above that the great Emperor Akbar himself used to remain a vegetarian for a few days every week out of respect for the vegetarian section of the Indian society and out of respect for his Hindu wife. We too should have similar respect for the sentiments for others, even if they are a minority sect.”

5.7 It is noted that in the above referred judgment, the Hon’ble Apex Court has relied upon the judgment of the Seven-Judge Constitution Bench in the case of ***State of Gujarat versus Mirzapur Moti Kureshi Kassad Jamat and Others*** reported in ***(2005) 8 SCC 534***, wherein the Hon’ble Apex Court has decided several issues relating to the issue involved in the present petition, more particularly in Paras : 41 to 44, 48 to 58, 75, 76, 78, 79, which are required to be reproduced hereunder :

“41. The message of Kesavananda Bharati is clear. The interest of a citizen or section of a community, howsoever important, is secondary to the interest of the

country or community as a whole. For judging the reasonability of restrictions imposed on Fundamental Rights the relevant considerations are not only those as stated in Article 19 itself or in Part-III of the Constitution; the Directive Principles stated in Part-IV are also relevant. Changing factual conditions and State policy, including the one reflected in the impugned enactment, have to be considered and given weightage to by the courts while deciding the constitutional validity of legislative enactments. A restriction placed on any Fundamental Right, aimed at securing Directive Principles will be held as reasonable and hence *intra vires* subject to two limitations: first, that it does not run in clear conflict with the fundamental right, and secondly, that it has been enacted within the legislative competence of the enacting legislature under Part XI Chapter I of the Constitution.

42. In *Municipal Corporation of the City of Ahmedabad and Ors. v. Jan Mohammed Usmanbhai and Anr.*, (1986) 3 SCC 20, what was impugned before the High Court was a standing order issued by the Municipal Commissioner of the State of Ahmedabad, increasing the number of days on which slaughter houses should be kept closed to seven, in supersession of the earlier standing order which directed the closure for only four days. The writ petitioner, a beef dealer, challenged the constitutional validity of the impugned standing orders (both, the earlier and the subsequent one) as violative of Articles 14 and 19(1)(g) of the Constitution. The challenge based on Articles 14 of the Constitution was turned down both by the High Court and the Supreme Court. However, the High Court had struck down the seven days closure as not "in the interests of the general public" and hence not protected

by Clause (6) of Article 19 of the Constitution. In appeal preferred by the Municipal Corporation, the Constitution Bench reversed the Judgment of the High Court and held that the objects sought to be achieved by the impugned standing orders were the preservation, protection and improvement of live-stock, which is one of the Directive Principles. Cows, bulls, bullocks and calves of cows are no doubt the most important cattle for our agricultural economy. They form a separate class and are entitled to be treated differently from other animals such as goats and sheep, which are slaughtered. The Constitution Bench ruled that the expression "in the interests of general public" is of a wide import covering public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.

43. In *Workmen of Meenakshi Mills Ltd. and Others. v. Meenakshi Mills Ltd. and Anr.*, (1992) 3 SCC 336, the Constitution Bench clearly ruled (vide para 27) - "Ordinarily any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest." Similar view is taken in *Papnasam Labour Union v. Madura Coats Ltd. and Anr.*, (1995) 1 SCC 501.

Directive Principles

44. Long back in *The State of Bombay and Anr. v. F.N. Balsara*, 1951 SCR 682, a Constitution Bench had ruled that in judging the reasonableness of the restrictions imposed on the Fundamental Rights, one has to bear in mind the Directive Principles of State Policy set-forth in Part IV of the Constitution, while examining the challenge to the constitutional validity of law by

reference to Article 19(1)(g) of the Constitution.

Question - 2 Fundamental Rights and Articles 48, 48-A and 51-A (g) of Constitution

48. Articles 48, 48-A and 51-A(g) (relevant clause) of the Constitution read as under :-

"48. Organisation of agriculture and animal husbandry.- The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

48-A. Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51-A. Fundamental duties. It shall be the duty of every citizen of India -

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

Articles 48-A and 51-A have been introduced into the body of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3-1-1977. These Articles were not a part of the Constitution when Quareshi-I, Quraishi-II and Mohd. Faruk's cases were decided by this Court. Further, Article 48 of the Constitution has also been assigned a higher weightage and wider expanse by the Supreme Court post Quareshi-I. Article 48 consists of two parts. The first part enjoins the State to "endeavour to organize agricultural and

animal husbandry" and that too "on modern and scientific lines". The emphasis is not only on 'organization' but also on 'modern and scientific lines'. The subject is 'agricultural and animal husbandry'. India is an agriculture based economy. According to 2001 census, 72.2% of the population still lives in villages (See- India Vision 2020, p.99) and survives for its livelihood on agriculture, animal husbandry and related occupations. The second part of Article 48 enjoins the State, dehors the generality of the mandate contained in its first part, to take steps, in particular, "for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle".

49. Article 48-A deals with "environment, forests and wild life". These three subjects have been dealt with in one Article for the simple reason that the three are inter-related. Protection and improvement of environment is necessary for safeguarding forests and wild life, which in turn protects and improves the environment. Forests and wild life are clearly inter-related and inter-dependent. They protect each other.

50. Cow progeny excreta is scientifically recognized as a source of rich organic manure. It enables the farmers avoiding the use of chemicals and inorganic manure. This helps in improving the quality of earth and the environment. The impugned enactment enables the State in its endeavour to protect and improve the environment within the meaning of Article 48-A of the Constitution.

55. By enacting clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48-

A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48.

52. In *AIIMS Students' Union v. AIIMS and Ors.*, (2002) 1 SCC 428, a three- Judge Bench of this Court made it clear that fundamental duties, though not enforceable by writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51-A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The Court further held that the State is, in a sense, 'all the citizens placed together' and, therefore, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is, collectively speaking, the duty of the State.

53. In *Mohan Kumar Singhania and Ors. v. Union of India and Ors.*, 1992 Supp (1) SCC 594, a governmental decision to give utmost importance to the training programme of the Indian Administrative Service

selectees was upheld by deriving support from Article 51-A(j) of the Constitution, holding that the governmental decision was in consonance with one of the fundamental duties.

54. In *State of U.P. v. Yamuna Shanker Misra and Ors.*, (1997) 4 SCC 7, this Court interpreted the object of writing the confidential reports and making entries in the character rolls by deriving support from Article 51-A(j) which enjoins upon every citizen the primary duty to constantly endeavour to strive towards excellence, individually and collectively.

55. In *Rural Litigation and Entitlement Kendra and Ors. v. State of Uttar Pradesh and Ors.*, 1986 (Supp) SCC 517, a complete ban and closing of mining operations carried on in the Mussoorie hills was held to be sustainable by deriving support from the fundamental duty as enshrined in Article 51-A(g) of the Constitution. The Court held that preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation of the State as well as of the individuals.

56. In *T.N. Godavarman Thirumalpad v. Union of India and Ors.*, (2002) 10 SCC 606, a three- Judge Bench of this Court read Article 48-A and Article 51-A together as laying down the foundation for a jurisprudence of environmental protection and held that "Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures".

57. In *State of W.B. and Ors. v. Sujit Kumar*

Rana, (2004) 4 SCC 129, Articles 48 and 51-A(g) of the Constitution were read together and this Court expressed that these provisions have to be kept in mind while interpreting statutory provisions.

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

75. Three propositions are well settled:- (i) 'restriction' includes cases of 'prohibition'; (ii) the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate; and (iii) whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right. Reference may be made to *Madhya Bharat Cotton Association Ltd. v. Union of India (UOI) and Anr.*, AIR 1954 SC 634, *Krishna Kumar v. Municipal Committee of Bhatapara*, (Petition No.660 of 1954 decided on 21st February 1957

by Constitution Bench) (See - Compilation of Supreme Court Judgments, 1957 Jan- May page 33, available in Supreme Court Judges Library), Narendra Kumar and Ors. v. Union of India (UOI) and Ors., (1960) 2 SCR 375, The State of Maharashtra v. Himmatbhai Narbheram Rao and Ors., (1969) 2 SCR 392, Sushila Saw Mill v. State of Orissa and Ors., (1995) 5 SCC 615, Pratap Pharma (Pvt.) Ltd. and Anr. v. Union of India and Ors., (1997) 5 SCC 87 and Dharam Dutt v. Union of India, (2004) 1 SCC 712.

76. In Madhya Bharat Cotton Association Ltd. (supra) a large section of traders were completely prohibited from carrying on their normal trade in forward contracts. The restriction was held to be reasonable as cotton, being a commodity essential to the life of the community, and therefore such a total prohibition was held to be permissible. In Himmatbhai Narbheram Rao and Ors. (supra) trade in hides was completely prohibited and the owners of dead animals were required to compulsorily deposit carcasses in an appointed place without selling it. The constitutionality of such prohibition, though depriving the owner of his property, was upheld. The court also held that while striking a balance between rights of individuals and rights of citizenry as a whole the financial loss caused to individuals becomes insignificant if it serves the larger public interest. In Sushila Saw Mill (supra), the impugned enactment imposed a total ban on saw mill business or sawing operations within reserved or protected forests. The ban was held to be justified as it was in public interest to which the individual interest must yield. Similar view is taken in the other cases referred to hereinabove.

78. In the present case, we find the issue relates

to a total prohibition imposed on the slaughter of cow and her progeny. The ban is total with regard to the slaughter of one particular class of cattle. The ban imposed by S. 5 is not on the total activity of butchers (kasais); they are left free to slaughter cattle other than those specified in the Act. It is not that the writ petitioner-respondents survive only by slaughtering cow progeny. They can slaughter animals other than cow progeny and carry on their business activity. In so far as trade in hides, skins and other allied things (which are derived from the body of dead animal) are concerned, it is not necessary that the animal must be slaughtered to avail these things. The animal, whose slaughter has been prohibited, would die a natural death even otherwise and in that case their hides, skins and other parts of body would be available for trade and industrial activity based thereon.

79. We hold that though it is permissible to place a total ban amounting to prohibition on any profession, occupation, trade or business subject to satisfying the test of being reasonable in the interest of the general public, yet, in the present case banning slaughter of cow progeny is not a prohibition but only a restriction.”

5.8 It is also fruitful to refer to the following observations made by the Hon'ble Supreme Court of India for the consideration of the facts of the present case, which are as under :

“116. Stare decisis is not an inexorable command of the Constitution or jurisprudence. A

careful study of our legal system will discern that any deviation from the straight path of stare decisis in our past history has occurred for articulable reasons, and only when the Supreme Court has felt obliged to bring its opinions in line with new ascertained fact, circumstances and experiences. (Precedent in Indian Law, A. Laxminath, Second Edition 2005, p. 8).

117. *Given the progressive orientation of the Supreme Court, its creative role under Article 141 and the creative elements implicit in the very process of determining ratio decidendi, it is not surprising that judicial process has not been crippled in the discharge of its duty to keep the law abreast of the times, by the traditionalist theory of stare decisis (ibid, p. 32). Times and conditions change with changing society, and, "every age should be mistress of its own law" - and era should not be hampered by outdated law. "It is revolting", wrote Mr. Justice Holmes in characteristically forthright language, "to have no better reason for a rule of law than it was so laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past". It is the readiness of the Judges to discard that which does not serve the public, which has contributed to the growth and development of law. (ibid, p. 68)*

118. *The doctrine of stare decisis is generally to be adhered to, because well settled principles of law founded on a series of authoritative pronouncements ought to be followed. Yet, the demands of the changed facts and circumstances dictated by forceful factors supported by logic, amply justify the need for*

a fresh look.

119. *Sir John Salmond, while dealing with precedents and illustrating instances of departure by the House of Lords from its own previous decisions, states it to be desirable as 'it would permit the House (of Lords) to abrogate previous decisions which were arrived at in different social conditions and which are no longer adequate in present circumstances. (See Salmond, ibid, at p.165). This view has been succinctly advocated by Dr. Goodhart who said: "There is an obvious antithesis between rigidity and growth, and if all the emphasis is placed on absolutely binding cases then the law loses the capacity to adapt itself to the changing spirit of the times which has been described as the life of the law". (ibid, p.161) This very principle has been well stated by William O' Douglas in the context of constitutional jurisprudence. He says: "So far as constitutional law is concerned, stare decisis must give way before the dynamic component of history. Once it does, the cycle starts again". (See - Essays on Jurisprudence from the Columbia Law Review, 1964, at p. 20)*

140. *Having subjected the restrictions imposed by the impugned Gujarat enactment to the test laid down in the case of N.M. Thomas (supra) we are unhesitatingly of the opinion that there is no apparent inconsistency between the Directive Principles which persuaded the State to pass the law and the Fundamental Rights canvassed before the High Court by the writ petitioners."*

6. In view of above-mentioned judgments and

more particularly, the Resolution, qua Agenda No.2 (Item No.2) noted hereinabove, passed by the Standing Committee of the Ahmedabad Municipal Corporation, Ahmedabad, which can be considered as reasonable restriction, which is permissible for limited period and it cannot be said that it is violative of Articles 14, 19(1)(g) and 21 of the Constitution of India. Therefore, I do not find any illegality in the impugned Resolution dated 18.08.2022, qua Agenda No.2 (Item No.2), which is for **two days** only. I do not think fit to exercise the powers under Article 226 of the Constitution of India in favour of the present petitioners. The present petition is meritless and therefore needs to be dismissed at the admission stage.

7. It is noted that this Court has not issued notice in this matter, however, the learned AGP Mr. Meet Thakkar appearing for the State Authority, on advance copy, submits that time and again such grievances are raised whenever such resolution is passed and therefore, appropriate cost may be imposed upon the petitioners.

8. Considering the fact that the Party-in-Person is appearing in this matter, I do not find it proper to impose the cost upon the petitioners.

9. For the reasons recorded above, the present petition is **dismissed**, with no order as to costs.

M.H. DAVE/7

Sd-
(SANDEEP N. BHATT,J)

