

ITEM NO.8

COURT NO.8

SECTION PIL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s) (Civil) No(s).349/2006

VOLUNTARY HEALTH ASS. OF PUNJAB

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(with appln. (s) for clarification and exemption from filing O.T.
and further direction and permission and office report)
(For Final Disposal)

WITH

SLP(Crl) No. 5800/2013

(With Office Report)

W.P. (C) No. 575/2014

(With Office Report)

Date : 16/09/2014 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Abhiti Gupta, Adv.
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Mr. Sanjeev Parikh, Adv.
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Ms. Mamta Saxena, Adv.
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Ms. Ruchi Kohli, Adv.

Mr. Kapil Joshi, Adv.
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For Respondent(s) Mr. Neeraj Kishan Kaul, ASG
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Mr. Abhishth Kumar, Adv.

Mr. Anil Kumar Jha, Adv.

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Mr. R. Shase, Adv.

Mr. B. S. Banthia, Adv.
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Mr. Gaurav Kejriwal, Adv.

Mr. Gopal Singh, Adv.
Mr. Chandan Kuamr, Adv.
Mr. Rituraj Biswas, Adv.

Mr. Mukesh Verma, Adv.
Mr. Jatinder Kumar Bhatia, Adv.

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Mr. Jay Kishor Singh, Adv.
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Mr. P. V. Dinesh, Adv.

Mr. Pragyan Sharma, Adv.
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Mr. Heshu Kayina, Adv.

Mr. Rajesh Srivastava, Adv.
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Mr. Prabu Ramasubramanian, Adv.

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Ms. Niharika, Adv.

Mr. G.M. Kawoosa, Adv.
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Mr. Manjit Singh, AAG
Mrs. Nupur Choudhary, Adv.
Mrs. Vivekta Singh, Adv.
Mr. Kamal Mohan Gupta, Adv.

Mr. Ajay Bansal, AAG
Mr. Kuldip Singh, Adv.
Mr. Gaurav Yadava, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This Court on 4th March, 2013 had delivered the judgment in Voluntary Health Association of Punjab vs. Union of India & Ors. [(2013) 4 SCC 1], expressing its concern about female foeticide and the reduction of sex ratio and further how the persons who are required to involve in such awareness for stopping of female foeticide should equip themselves, and in that context had issued number of directions. After enumerating the directions, the Court directed all the State Governments to file a status report within a period of three months.

In paragraphs 33 and 34, in a concurring opinion, it had been observed thus :

"It is difficult to precisely state how an awareness camp is to be conducted. It will depend upon what kind and strata of people are

being addressed to. The persons involved in such awareness campaign are required to equip themselves with constitutional concepts, culture, philosophy, religion, scriptural commands and injunctions, the mandate of the law as engrafted under the Act and above all the development of modern science. It needs no special emphasis to state that in awareness camps while the deterrent facets of law are required to be accentuated upon, simultaneously the desirability of law to be followed with spiritual obeisance, regard being had to the purpose of the Act, has to be stressed upon. The seemly synchronization shall bring the required effect. That apart, documentary films can be shown to highlight the need; and instil the idea in the mind of the public at large, for when the mind becomes strong, mountains do melt.

34. The people involved in the awareness campaigns should have boldness and courage. There should not be any iota of confusion or perplexity in their thought or action. They should treat it as a problem and think that a problem has to be understood in a proper manner to afford a solution. They should bear in mind that they are required to change the mindset of the people, the grammar of the society and unacceptable beliefs inherent in the populace."

When the matter was listed today, Mr. Parikh, learned counsel appearing for Dr. Sabu Mathew George in IA No.11 of 2013 In Writ Petition (Civil) No.349 of 2006 has submitted that certain directions in paragraph 99.1 may require clarification. It is also contended by him that the Union of India has to animate itself in an appropriate manner to see that the sex ratio is maintained and does not reduce further. It is his submission that the Central Supervision Committee which is required to meet to take stock of the situation has not met for the last 14 months. It is also urged that the National Monitoring Committee who is required to monitor has failed in its duty. That apart, learned counsel would submit pointing out from the affidavit filed by applicant in IA No.11 of 2013 that the State of Kerala has adopted a method as a consequence of which the female foeticide has

decreased and sex ratio has increased/improved. He has drawn our attention to paragraphs 8 and 9 which read as follows :

"8. The Sevana website, accessed at www.cr.lsgkerala.gov.in maintained by the Kerala Government (Local self government Department) provides details of all births and other vital statistics which are electronically registered by the Local Governments in the registration units. Kerala was the first State in India to have a centralized database of civil registration records from all registration units. This initiative of the Kerala Government has received wide acclaim. Thereby from the website we get information regarding the number of boys and girls being born.

Public display of birth data sex-wise provides transparency about the performance of each State, District and sub-District in respect to the actual births and therefore, helps to highlight any potential mal-practice of sex determination. This public knowledge may dissuade both the unethical medical professionals and the general public in the long run from committing crimes of sex determination and sex selective abortion. As no community would like to be stigmatized in the public domain year after year for crimes of sex determination or sex selection committed secretly.

9. That below are details of some of the information displayed on the website:

- i) The birth information is summarised for the State. And for each unit, District, Municipality, Corporation or Gram Panchayat level data can be obtained by clicking the map.
- ii) Graphs provide a visual comparison of boys and girls born over the past three years.
- iii) This is available at the State, District and other local body levels."

Mr. Parikh has also drawn out attention to the proviso to Section 4(3) of the Act which reads as follows :

"4. Regulation of pre-natal diagnostic techniques.-- On and from the commencement of this Act,--

(1) ...

(2) ...

(3) ...

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of section 5 and section 6 unless contrary is proved by the person conducting such ultrasonography."

It is propounded by him that the concerned authorities have not acted on the basis of the aforesaid provision in all seriousness as a result of which the nation is facing the disaster of female foeticide.

Mr. Gonsalves, learned senior counsel appearing for the writ petitioner has drawn out attention to the affidavit filed by the petitioner contending, inter alia, that the sex ratio in most of the States has decreased and in certain States, there has been a minor increase, but the same is not likely to subserve the aims and objects of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (the Act). After referring to the history of this litigation which has been continuing in this Court since long, he has submitted that certain directions are required to be issued. We think it apt to reproduce certain suggestions that have been made in the affidavit:

"a) For an order directing the Central Supervisory Board to review the functioning of the State/UT Supervisory Boards and submit a report to this Court within one month.

b) For an order directing the immediate

reconstitution of the State and Union Territory Supervisory Boards in accordance with sections 7 and 16-A, including therein those who are knowledgeable, concerned, experienced and in a position to spend a substantial amount of time to fully implement the provisions of this Act.

c) For a direction to all the state governments and union territories and all the states/UT supervisory boards to file in this Court the minutes of their meetings over the past 5 years.

d) For a direction to the Boards to meet regularly at least once in every six/four months, as the case may be, in accordance with the provisions of this Act.

e) For an order directing the state / union territories to ensure that the Advisory Committees are constituted and are functioning under section 17 of the Act in all districts within three months from today and for a direction to the District Advisory Committees to conduct their meetings at least once in every two months in accordance with the provisions of the Act.

f) For an order directing the central and state supervisory boards to submit reports in this Court regarding the status and the functioning the advisory committees throughout the country.

g) For an order directing all states and union territories, as well as the state supervisory boards to file status reports in this Court regarding the status and functioning of the appropriate authorities giving full details of the seizing of records, the sealing of machines, the instituting of legal proceedings and the results thereof, the cancellation of registration and other details as are required.

h) For an order directing the Respondents to constitute Sub District Appropriate Authorities (AA) within six months from today and to ensure that all the appropriate authorities in the state have inducted reputed individuals/NGOs who are passionately interested in the enforcement of the Act and are willing to spend adequate time for enforcement measures.

i) For an order directing the AAs throughout the country to act immediately on information received relating to breach of the provisions of the Act and Rules by, inter alia, forthwith seizing records, sealing machines and instituting legal proceedings in accordance with law in a time bound manner.

j) For an order directing all AA's throughout the country to monitor on a monthly basis the progress of prosecution under this Act and to make a report of the progress of cases with special emphasis on delay and the acquittal of accused persons including the reasons for the same.

k) For an order directing the AA's to make a report to the State Medical Councils in respect of charges framed and the conviction of doctors under the Act, for necessary action including suspension of the registration of the doctor and for removal of the name of the doctor from the register of the Council in accordance with section 23(2) of the Act.

l) For an order directing the AAs to forthwith investigate whether the operators of the clinics are qualified and if not to cancel the registration of such clinics.

m) For an order directing the State/Union of India to give a compliance report to the order of the court in the case of Committee for Legal Aid and Protection vs. Union of India & Ors.

n) For an order directing all AAs throughout the country to forthwith investigate and seize all machines where the registration of the centres have expired or where the centres have not been validly registered and take legal action in accordance with law.

o) For an order directing all AAs to complete the renewal of registration process in time and on default by the AAs for an order directing the State to prosecute the AAs under Section 25 of the Act.

p) For an order directing the AAs to cancel the registration of all centres not sending reports completed in all respects to the AAs by the fifth

day of the month.

q) For an order directing the AAs to cancel the registration of all centres not properly maintaining the registers and records as required under the Act, particularly from 'H' and Form 'F' and particularly when registers and records are not fully filled up and not duly signed.

r) for an order directing all AAs to ensure that all Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics Infertility Clinics and Scan Centres using pre conception and pre natal diagnostic techniques and procedures maintain duplicate copies of all records and all forms required to be maintained under the Act and send the duplicate copies to the concerned district AAs on a monthly basis along with the monthly report, in accordance with the provisions of the Rule 9(8).

s) For an order directing the AAs to ensure that all manufacturers and sellers of ultrasound machines etc. not sell any machines to unregistered centres as provided under rule 3-A and disclose on a quarterly basis to the concerned state/UT and the Central Government the lists of persons to whom the machines have been sold in accordance with Rule 3-A(2) of the Act.

t) For an order directing the AAs to ensure the registration and monitoring of all infertility Centres and to deregister all such centres and prosecute if it is found that the records are not being maintained fully and accurately and the reports are not being sent on time in accordance with the provisions of this act. In particular to monitor the information received in forms D, E and G.

u) For an order directing the Respondents to take disciplinary proceedings against the members of the AAs, CSB, SSBs and NIMC for failing to do their duty under the Act and to prosecute such officers under Section 25 of the Act in a time bound manner.

v) For an order directing the Respondents to take disciplinary proceedings against the members of the AAs, CSB, SSBs and NIMC as the case may be, whenever a Complaint Case is

Quashed/Dismissed on account of technical faults or improper paperwork.

w) For an order directing the Respondents to frame a witness/victim protection protocol forthwith this will provide, inter alia, for police protection and compensation.

x) For an order directing the Union of India to lay down the norms for the qualification for the trainers, the place of training and the training content and the period of training for the trainers who provide experience certificates to qualified doctors who operate the machines.

y) For an order directing Union of India to prepare and submit to the Honourable Court a comprehensive status report state wise of the total number of cases instituted from the inception of this Act and the outcome of such cases. Such report shall be prepared annually and put on the website.

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aa) For an order directing the Respondents to set up an extensive website displaying thereon complete data regarding the functioning of the authorities including the activities of the AAs district wise, the State Appropriate Authorities, State Supervisory Boards, Central Supervisory Board and National Inspection and Monitoring Committee and the State Inspection and Monitoring Committees.

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xxx

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ee) For an order directing the Respondents to constitute the National Inspection and Monitoring Committee and the State Inspection and Monitoring Committees, if not so constituted.

xxx

xxx

xxx

hh) For an order directing MCI/Union of India to develop a curriculum for medical courses regarding this Act including gender concerns and ethics.

ii) For an order directing all courts where proceedings under this Act are instituted to fast

track the proceedings to be completed within 6 months from today."

We have not referred to all the suggestions as the same are not to be responded by the Union of India but has to be argued before this Court as they are in the realm of pure questions of law.

Mr Neeraj Kishan Kaul, learned Additional Solicitor General, shall file an affidavit of the Additional Secretary of Health and/or any other concerned Additional Secretary which shall reflect the response in the proper perspective. The affidavit shall clearly indicate what steps have been taken and on the basis of the steps taken, what results have been achieved.

Similarly, learned counsel for all the States shall file their responses through the concerned Health Secretaries. The affidavits shall be filed, as directed hereinabove, within four weeks barring the State of Jammu Kashmir. The competent authority of the State of Jammu and Kashmir shall file its affidavit within six weeks.

We may hasten to add that the affidavits shall be comprehensive and must reflect sincerity and responsibility. It should not be an affidavit in formality.

Let the matters be listed on 25.11.2014.

(Gulshan Kumar Arora)
Court Master

(Renuka Sadana)
Court Master