

Supreme Court of India

Centre For Enquiry Into Health And ... vs Union Of India & Others on 10 September, 2003

Author: Shah

Bench: M.B. Shah, Ashok Bhan.

CASE NO.:

Writ Petition (civil) 301 of 2000

PETITIONER:

Centre for Enquiry Into Health And Allied Themes (CEHAT) & Others

RESPONDENT:

Union of India & Others

DATE OF JUDGMENT: 10/09/2003

BENCH:

M.B. SHAH & ASHOK BHAN.

JUDGMENT:

J U D G M E N T Shah, J.

It is an admitted fact that in Indian Society, discrimination against girl child still prevails, may be because of prevailing uncontrolled dowry system despite the Dowry Prohibition Act, as there is no change in the mind-set or also because of insufficient education and/or tradition of women being confined to household activities. Sex selection/sex determination further adds to this adversity. It is also known that number of persons condemn discrimination against women in all its forms, and agree to pursue, by appropriate means, a policy of eliminating discrimination against women, still however, we are not in a position to change mental set-up which favours a male child against a female. Advance technology is increasingly used for removal of foetus (may or may not be seen as commission of murder) but it certainly affects the sex ratio. The misuse of modern science and technology by preventing the birth of girl child by sex determination before birth and thereafter abortion is evident from the 2001 Census figures which reveal greater decline in sex ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra and Gujarat, which are economically better off.

Despite this, it is unfortunate that law which aims at preventing such practice is not implemented and, therefore, Non-Governmental Organisations are required to approach this Court for implementation of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 renamed after amendment as "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act" (hereinafter referred to as 'the PNDT Act') which is the normal function of the Executive.

In this petition, it was inter alia prayed that as the Pre-natal Diagnostic Techniques contravene the provisions of the PNDT Act, the Central Government and the State Governments be directed to implement the provisions of the PNDT Act (a) by appointing appropriate authorities at State and District levels and the Advisory Committees; (b) the Central Government be directed to ensure that

Central Supervisory Board meets every 6 months as provided under the PNDT Act; and (c) for banning of all advertisements of pre-natal sex selection including all other sex determination techniques which can be abused to selectively produce only boys either before or during pregnancy.

After filing of this petition, notices were issued and thereafter various orders from time to time were passed to see that the Act is effectively implemented.

A] On 4th May 2001, following order was passed: "It is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of female infanticide whereby female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence, foetus of a girl child is aborted by qualified and unqualified doctors or compounders. This has affected overall sex ratio in various States where female infanticide is prevailing without any hindrance.

For controlling the situation, the Parliament in its wisdom enacted the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as "the PNDT Act"). The Preamble, inter alia, provides that the object of the Act is to prevent the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide and for matters connected therewith or incidental thereto. The Act came into force from 1st January, 1996.

It is apparent that to a large extent, the PNDT Act is not implemented by the Central Government or by the State Governments. Hence, the petitioners are required to approach this Court under Article 32 of the Constitution of India. One of the petitioners is the Centre for Enquiry Into Health and Allied Themes (CEHAT) which is a research center of Anusandhan Trust based in Pune and Mumbai. Second petitioner is Mahila Sarvangeen Utkarsh Mandal (MASUM) based in Pune and Maharashtra and the third petitioner is Dr. Sabu M. Georges who is having experience and technical knowledge in the field. After filing of this petition, this Court issued notices to the concerned parties on 9.5.2000. It took nearly one year for the various States to file their affidavits in reply/written submissions. Prima facie it appears that despite the PNDT Act being enacted by the Parliament five years back, neither the State Governments nor the Central Government has taken appropriate actions for its implementation. Hence, after considering the respective submissions made at the time of hearing of this matter, as suggested by the learned Attorney General for India, Mr. Soli J. Sorabjee following directions are issued on the basis of various provisions for the proper implementation of the PNDT Act: -

I. Directions to the Central Government

1. The Central Government is directed to create public awareness against the practice of pre-natal determination of sex and female foeticide through appropriate releases / programmes in the

electronic media. This shall also be done by Central Supervisory Board ("CSB" for short) as provided under Section 16(iii) of the PNDT Act.

2. The Central Government is directed to implement with all vigor and zeal the PNDT Act and the Rules framed in 1996. Rule 15 provides that the intervening period between two meetings of the Advisory Committees constituted under sub-section (5) of Section 17 of the PNDT Act to advise the appropriate authority shall not exceed 60 days. It would be seen that this Rule is strictly adhered to.

II. Directions to the Central Supervisory Board (CSB)

1. Meetings of the CSB will be held at least once in six months. [Re. Proviso to Section 9(1)] The constitution of the CSB is provided under Section 7. It empowers the Central Government to appoint ten members under Section 7(2)(e) which includes eminent medical practitioners including eminent social scientists and representatives of women welfare organizations. We hope that this power will be exercised so as to include those persons who can genuinely spare some time for implementation of the Act.

2. The CSB shall review and monitor the implementation of the Act. [Re. Section 16(ii)].

3. The CSB shall issue directions to all State/UT. Appropriate Authorities to furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about: -

(i) Survey of bodies specified in section 3 of the Act.

(ii) Registration of bodies specified in section 3 of the Act.

(iii) Action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.

(iv) Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.

(v) Number and nature of awareness campaigns conducted and results flowing therefrom.

4. The CSB shall examine the necessity to amend the Act keeping in mind emerging technologies and difficulties encountered in implementation of the Act and to make recommendations to the Central Government. [Re. Section 16]

5. The CSB shall lay down a code of conduct under section 16(iv) of the Act to be observed by persons working in bodies specified therein and to ensure its publication so that public at large can know about it.

6. The CSB will require medical professional bodies/associations to create awareness against the practice of pre-natal determination of sex and female foeticide and to ensure implementation of the Act.

III. Directions to State Governments/UT Administrations

1. All State Governments/UT Administrations are directed to appoint by notification, fully empowered Appropriate Authorities at district and sub-district levels and also Advisory Committees to aid and advise the Appropriate Authority in discharge of its functions [Re. Section 17(5)]. For the Advisory Committee also, it is hoped that members of the said Committee as provided under section 17(6)(d) should be such persons who can devote some time for the work assigned to them.

2. All State Governments/UT Administrations are directed to publish a list of the Appropriate Authorities in the print and electronic media in its respective State/UT.

3. All State Governments/UT Administrations are directed to create public awareness against the practice of pre-natal determination of sex and female foeticide through advertisement in the print and electronic media by hoarding and other appropriate means.

4. All State Governments/UT Administrations are directed to ensure that all State/UT appropriate Authorities furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about: -

(i) Survey of bodies specified in section 3 of the Act.

(ii) Registration of bodies specified in section 3 of the Act.

(iii) Action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.

(iv) Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.

(v) Number and nature of awareness campaigns conducted and results flowing therefrom.

IV. Directions to Appropriate Authorities

1. Appropriate Authorities are directed to take prompt action against any person or body who issues or causes to be issued any advertisement in violation of section 22 of the Act.

2. Appropriate Authorities are directed to take prompt action against all bodies specified in section 3 of the Act as also against persons who are operating without a valid certificate of registration under the Act.

3. All State/UT Appropriate Authorities are directed to furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about: -

(i) Survey of bodies specified in section 3 of the Act.

(ii) Registration of bodies specified in section 3 of the Act including bodies using ultrasound machines.

(iii) Action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.

(iv) Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.

(v) Number and nature of awareness campaigns conducted and results flowing therefrom.

The CSB and the State Governments/Union Territories are directed to report to this Court on or before 30th July 2001. List the matter on 6.8.2001 for further directions at the bottom of the list."

B] In spite of the above order, certain States/UTs did not file their affidavits. Matter was adjourned from time to time and on 19th September, 2001, following order was passed: "Heard the learned counsel for the parties and considered the affidavits filed on behalf of various States. From the said affidavits, it appears that the directions issued by this Court are not complied with.

1. At the outset, we may state that there is total slackness by the Administration in implementing the Act. Some learned counsel pointed out that even though the Genetic Counselling Centre, Genetic Laboratories or Genetic Clinics are not registered, no action is taken as provided under Section 23 of the Act, but only a warning is issued. In our view, those Centres which are not registered are required to be prosecuted by the Authorities under the provisions of the Act and there is no question of issue of warning and to permit them to continue their illegal activities.

It is to be stated that the Appropriate Authorities or any officer of the Central or the State Government authorised in this behalf is required to file complaint under Section 28 of the Act for prosecuting the offenders.

Further wherever at District Level, appropriate authorities are appointed, they must carry out the necessary survey of Clinics and take appropriate action in case of non-registration or non-compliance of the statutory provisions including the Rules. Appropriate authorities are not only empowered to take criminal action, but to search and seize documents, records, objects etc. of unregistered bodies under Section 30 of the Act.

2. It has been pointed out that the States/Union Territories have not submitted quarterly returns to the Central Supervisory Board on implementation of the Pre- Natal Diagnostic Techniques

(Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as "the Act"). Hence it is directed that the quarterly returns to Central Supervisory Board should be submitted giving the following information:-

- (a) Survey of Centres, Laboratories/Clinics,
- (b) Registration of these bodies,
- (c) Action taken against unregistered bodies,
- (d) Search and Seizure,
- (e) Number of awareness campaigns, and
- (f) Results of campaigns"

C] On 7th November, 2001, learned counsel for the Union of India stated that the Central Government has decided to take concrete steps for the implementation of the Act and suggested to set up National Inspection and Monitoring Committee for the implementation of the Act. It was ordered accordingly.

D] On 11th December, 2001, it was pointed out that certain State Governments have not disclosed the names of the members of the Advisory Committee. Consequently, the State Governments were directed to publish the names of advisory committee in various districts so that if there is any complaint, any citizen can approach them. The Court further observed thus: "For implementation of the Act and the rules, it appears that it would be desirable if the Central Government frames appropriate rules with regard to sale of ultrasound machines to various clinics and issue directions not to sell machines to unregistered clinics. Learned counsel Mr. Mahajan appearing for Union of India submitted that appropriate action would be taken in this direction as early as possible." E] On March 31, 2003, it was pointed out that in conformity with the various directions issued by this Court, the Act has been amended and titled as "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act". It was submitted that people are not aware of the new amendment and, therefore, following reliefs were sought:

- a) direct the Union of India, State Governments / UTs and the authorities constituted under the PNMT Act to prohibit sex selection techniques and its advertisement throughout the country;
- b) direct that the appropriate authorities shall also include "vehicles" with ultra sound machines etc., in their quarterly reports hereinafter as defined under Section 2(d);
- c) any person or institution selling Ultra Sound machine should provide information to the appropriate State Authority in furtherance of Section 3-B of the Amended Act;

d) direct that State Supervisory Boards be constituted in accordance with the amended Section 16A in order to carry out the functions enumerated therein;

e) direct appropriate authorities to initiate suo moto legal action under the amended Section 17(iv)(e);

f) direct that the Central Supervisory Board shall publish half yearly consolidated reports based on the quarterly reports obtained from the State bodies. These reports should specifically contain information on:

- 1) Survey of bodies and the number of bodies registered.
- 2) Functioning of the regulatory bodies providing the number and dates of meetings held.
- 3) Action taken against non-registered bodies inclusive of search and seizure of records.
- 4) Complaints received and action taken pursuant thereto.
- 5) Nature and number of awareness programmes.

6) Direct that the Central Supervisory Board shall carry out all the additional functions as given under the amended Section 16 of the Act, in particular, to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation.

As against this, Mr. Mahjan learned counsel appearing for the Union of India submits that on the basis of the aforesaid amendment, appropriate action has already been taken by Union of India for implementation and almost all State Governments/UTs are informed to implement the said Act and the Rules and the State Governments/UTs are directed to submit their quarterly report to the Central Supervisory Board.

Considering the amendment in the Act, in our view, it is the duty of the Union Government as well as the State Governments/UTs to implement the same as early as possible."

F] At the time of hearing, learned counsel for the petitioners submitted that appropriate directions including the steps which are required to be taken on the basis of PNDT Act and the suggestion as given in the written submission be issued.

On this aspect, learned counsel for the parties were heard.

In view of the various directions issued by this Court, as quoted above, no further directions are required except that the directions issued by this Court on 4th May, 2001, 7th November, 2001, 11th December, 2001 and 31st March, 2003 should be complied with. The Central Government / State Governments / UTs are further directed that:

a) For effective implementation of the Act, information should be published by way of advertisements as well as on electronic media. This process should be continued till there is awareness in public that there should not be any discrimination between male and female child.

b) Quarterly reports by the appropriate authority, which are submitted to the Supervisory Board should be consolidated and published annually for information of the public at large.

c) Appropriate authorities shall maintain the records of all the meetings of the Advisory Committees.

d) The National Monitoring and Inspection Committee constituted by the Central Government for conducting periodic inspection shall continue to function till the Act is effectively implemented. The reports of this Committee be placed before the Central Supervisory Board and State Supervisory Board for any further action.

e) As provided under Rule 17(3), public would have access to the records maintained by different bodies constituted under the Act.

f) Central Supervisory Board would ensure that the following States appoint the State Supervisory Board as per the requirement of Section 16A.

- | | | |
|------------|---------------------|---------------|
| 1. Delhi | 2. Himachal Pradesh | 3. Tamil Nadu |
| 4. Tripura | 5. Uttar Pradesh. | |

g) As per requirement of Section 17(3)(a), the Central Supervisory Board would ensure that the following States appoint the multi-member appropriate authorities:

1. Jharkhand 2. Maharashtra 3. Tripura

4. Tamil Nadu 5. Uttar Pradesh It will be open to the parties to approach this Court in case of any difficulty in implementing the aforesaid directions.

The Writ Petition is disposed of accordingly.

In view of the aforesaid order, pending IAs have become infructuous and are disposed of accordingly.