

Voluntary Health Association of Punjab

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE K.S.P. RADHAKRISHNAN HON'BLE MR.
JUSTICE DIPAK MISRA

Writ Petition (Civil) No. 349 Of 2006 | 08-01-2013

1. The affidavit of the Union of India be taken on record. We have heard learned counsel on either side.

2. We are of the considered view that the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994) is not being properly implemented by the various States and Union Territories in its true letter and spirit to achieve the objects and reasons for which the Act has been enacted. The Act clearly provides for:

"1. prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;

2. prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex;

3. permission and regulation of the use of pre-natal diagnostic technique for the purpose of detection of specific genetic abnormalities or disorders;

4. permitting the use of such techniques only under certain conditions by the registered institutions; and

5. punishment for violation of the provisions of the Act."

3. Section 17(1) of the Act empowers the Central Government to appoint, by notification in the Official Gazette, one or more appropriate authorities for each of the Union Territories for the purpose of this Act and sub-section (2) of Section 17 empowers the State Government to appoint one or more appropriate authorities for the whole or part of the State for the purpose of implementation of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. Section 17, therefore, puts an obligation on the Central Government, the State Governments and Union Territories to appoint appropriate authorities for the proper implementation of the Act. We are not in a position to know whether all the States and Union Territories have constituted appropriate authorities under the Act and whether they are effectively functioning. For the time being we are inclined to examine the situations which exist in the States of Punjab, Haryana, NCT of Delhi, Rajasthan, Uttar Pradesh, Bihar and Maharashtra, where the statistics made available would show a drastic reduction in female child sex ratio.

4. We notice that though some of the States have taken some steps against the violators, not a single case of prosecution has been reported from any State, which shows that the authorities are very callous in implementing the provisions of the Act. This Court had earlier given various directions in its judgment pronounced in *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India* (2003) 8 SCC 398). Those directions also are yet to be implemented.

5. In such circumstances, we direct the Health Securities of all the abovementioned States to remain present in this Court on the next date of hearing so as to apprise the Court of the steps they have taken to implement the provisions of the Act. They will also make available the latest statistics of the number of cases booked for violation of the provisions of the Act, prosecution launched and how many ended in conviction.

6. The Registrar (Judicial) is directed to communicate this order to the Chief Secretaries of the respective States forthwith. List on 12-2-2013. In the meantime, it is open to the learned counsel appearing for the respective States to file affidavits explaining steps they have taken for the effective implementation of the provisions of the Act.

Office Report filed by Registry of Supreme Court

7. It is submitted for the kind information of the Hon'ble Court that certified copy of the record of proceedings dated 8-1-2013 was issued to all the parties concerned for their compliance and necessary action. It is further submitted that in pursuance of the aforesaid order, the following documents have been filed so far:

S.No.Documents On behalf of States/UTs Filed on Filed by Advocates.

1. Additional affidavit Union of India 9-1-2013 Ms. Sushma Suri

2. Additional Affidavit Andhra Pradesh 21-1-2013 Mr. D. Mahesh Babu

3. Affidavit Rajasthan 5-2-2013 Mr. Irshad Ahmad

4. Short Affidavit Uttar Pradesh 7-2-2013 Mr. Abhist Kumar

5. Compliance affidavit Haryana 7-2-2013 Mr. Kamal Mohan Gupta

6. Status report Govt. of NCT, Delhi 8-2-2013 Mr. D.S. Mahra

7. Affidavit Punjab 8-2-2013 Mr. Kuldip Singh

8. Counter-Affidavit (with the permission of the Hon'ble Court) Maharashtra 11-2-2013 Ms. Asha G. Nair

The documents of Sl.Nos.1, 2, 6 and 8 abovementioned are placed in a separate volume and Sl.Nos. 3, 4, 5 and 7 stand included in the paper books. It is submitted that no documents on behalf of State of Bihar has been filed so far.

The writ petition along with the application abovementioned is listed before the Hon'ble Court with this office report for orders.