

ITEM NO.4

COURT NO.5

SECTION PIL

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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

VOLUNTARY HEALTH ASS. OF PUNJAB

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

WITH

SLP(Crl) No. 5800/2013
(With Office Report)

W.P. (C) No. 575/2014
(With Office Report)

Date : 15/04/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

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

On 18.02.2015, the Court, after reproducing the order dated 25.11.2014 had directed for verification of the records filed in respect of four States, namely, Bihar, Himachal Pradesh, Rajasthan and Tamil Nadu. Certain time schedule was stipulated in the said order. Mr. Neeraj Kishan Kaul, learned Additional Solicitor General, has already filed a verification report in respect of the said four States. It is submitted by him that the Committee itself has found that the report submitted by two States, namely, Bihar and Himachal Pradesh are defective. Let the report be supplied to Mr. Manish Kumar, learned counsel for the State of Bihar and Ms. Pargati Neekhra, learned counsel for the State of Himachal Pradesh. They shall file their objections, if any, within two weeks hence.

Presently, we shall proceed to deal with the State of NCT of Delhi inasmuch as the Monitoring Committee had already verified the record of the State of NCT of Delhi and learned counsel for the petitioner had prayed for some time to file the status report in respect of the State of NCT of Delhi. Mr. Gonsalves, learned senior counsel has filed the status report.

Mr. Gonsalves, learned senior counsel, has drawn our attention to the sex ratio in Delhi which has been verified by the Monitoring Committee as per the population census. The said sex ratio relates to 2011 which reads as follows :

"Sex Ratio as per Population Census

The universal sex ratio of Delhi as per population census for all age groups taken together was 821 females per 1000 males in 2001 and it has become 866 females per 1000 males as per provisional data of census - 2011. Children sex ratio (0-6) of Delhi went down marginally from 868 (as per census 2001) to 866 (as per census 2011). As can be seen from statement 1.3, at both points of the figures of Delhi were below than All India level. The district-wise scenario for the children of 0-6 years varies in different districts.

**Statement 1.3: Sex ratio of Delhi/All
India as per population Census Data**

Sl.No.	Item	Census year	
A	District wise sex ratio (children of 0-6 years)	2001	2011
	South	888	878
	South West	846	836
	North West	857	863
	North	886	872
	Central	903	902
	New Delhi	898	884
	East	865	870
	North East	875	875
	West	859	867
	Delhi		
	Children of 0-6 years	868	866
	All ages	821	866
	All India		
	Children of 0-6 years	927	914
	All ages	933	940

Source: Population census - 2011"

Mr. Gonsalves has also drawn our attention to the document which is 'Monthly monitoring of the sex ratio of institutional birth'. It states thus :

"The data is collected on monthly basis from 50 major hospitals which accounts for 50.87% of total registered births in the year 2013 in Delhi. This helps to review the sex ratio at the highest level in the shortest possible time without waiting for the yearly indicators. The sex ratio of institutional births on the basis of these 50 hospitals was also 895 in the year 2013.

Efforts will be made to increase the coverage of health institutions under the monthly monitoring system to make this exercise meaningful and truly representative of the ground reality."

Mr. Qadri, learned counsel appearing for NCT of Delhi, on his turn, has drawn our attention to the affidavit filed by the Union of India and especially to Annexure 'E'. Annexure 'E' is only report on registration of births and deaths in Delhi in 2013. At page 114, the profile of birth Registration has been mentioned under the caption 'The birth registration in civil registration system'. It is as follows :

"During 2013, a total of 370000 birth events were registered by all the local bodies taken together. Out of them, 1.95 lakhs (52.76%) were male and 1.75 lakhs (47.24%) were female.

Statement 3.1: Total Number of Births registered under CRS sex-wise

Year	Total Births	Male	Female	Sex Ratio
2001	296287	163816 (55.29)	132471 (44.71)	809
2002	300659	164184 (54.61)	136475 (45.39)	831
2003	301165	165173 (54.84)	135992 (45.16)	823
2004	305974	167849 (54.86)	138125 (45.11)	823
2005	324336	178031 (54.89)	146305 (45.11)	822
2006	322750	176242 (54.69)	146508 (45.39)	831
2007	322044	174289 (54.12)	147755 (45.88)	848
2008	333908	166583 (49.89)	167325 (50.11)	1004
2009	354482	185131 (52.22)	169351 (47.78)	915
2010	359463	189122 52.61	170341 47.39)	901
2011	353759	186870 (52.82)	166889 (47.18)	893
2012	360473	191129 (53.02)	169344 (46.98)	886
2013	370000	195226 (52.76)	174774 (47.24)	895"

It is submitted by Mr. Gonsalves that the said profile of birth would not reflect the correct sex ratio as the data has been collected only from 50 major hospitals. In any case, as we find, there has been really no improvement in the sex ratio in Delhi. At this juncture, we must take note of the suggestions given by Mr. Gonsalves. The suggestions given by the learned senior counsel, are quite a number. We do not intend to advert to the same in detail and we would only proceed to direct as follows, as far as the State of NCT of Delhi is concerned, for today we are only concerned with the State of NCT of Delhi :

- (i) Section 2(q) of the Pre-Natal Diagnostic Techniques (Prohibition of sex-selection) Act, 1994 (for brevity, 'the 1994 Act') provides for 'State Board' which means a State Supervisory Board or Union Territory Supervisory Board constituted under Section 16A. Section 16A(2) which deals with State Board reads as follows :

“(2) The State Board shall consist of,-

a) The Minister in charge of Health and Family Welfare in the State, who shall be the Chairperson, ex officio;

b) The Secretary in charge of the Department of Health and Family Welfare who shall be the Vice-Chairperson, ex officio;

c) Secretaries or Commissioners in charge of Departments of Women and Child Development, Social Welfare, Law and Indian System of Medicines and Homoeopathy, ex officio, or their representatives;

d) Director of Health and Family Welfare or Indian System of Medicines and Homoeopathy of the State Government, ex officio;

e) Three women members of Legislative Assembly or Legislative Council;

f) Ten members to be appointed by the State Government out of which two each shall be from the following categories:

i) Eminent social scientists and legal experts;

ii) Eminent women activists from

non-governmental organizations or otherwise;

iii) Eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti tantra*;

iv) Eminent paediatricians or medical geneticists;

v) Eminent radiologists or sonologists;

g) An officer not below the rank of Joint Director in charge of Family Welfare, who shall be the Member Secretary, *ex officio*."

It is submitted by Mr. Gonsalves that the legislature has provided in Section 16(2)(f)(ii) and (iii) that there should be eminent women activists from non-governmental organizations and eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti tantra* to be the members. He has also drawn our attention to Section 16A(2)(f)(v) which provides for eminent radiologists or sonologists to be members. Learnd counsel would submit that the persons who have conflict of interest with the provisions of the Act should not be appointed by the State Governemnt. As advised at present, we will require the State Government to strictly verify the anticedants of the members who fall in these categories so that they do not have any conflict of interest. We are not stating that there is conflict of interest. Needless to emphasise, there can be eminent women activists from non-governmental organizations, eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti tantra* and eminent radiologists or sonologists but care has to be taken that they do not have conflict of interest.

(ii) As per Section 16A(3), the State Board shall meet at least once in four months. We have been apprised that the Board is meeting at least once in four months. Regard being had to the fall in the sex ratio which is really a burning problem for the nation, we would direct the State Board to meet at least once in two months for the present.

(iii) The meeting should be held by the State Board in an effective manner by conferring adequate time to the

members whose categories find place in Section 16A(f) so that there is proper participation.

- (iv) The agenda of the meeting shall be circulated by e-mail to all the members before a week along with reports of the Deputy Commissioners for each District so that there can be effective participation by all the members. We are compelled to say so as the meetings of this type have to be taken seriously and all the members are expected to understand the seriousness of the enactment and participate with sincerity.
- (v) The appropriate authorities, when they find there is violation of the provisions of the Act, must act with strictness keeping in view the language employed in Sections 20, 23 and 25 of the 1994 Act.
- (vi) The appropriate authority shall, as defined under Section 28 and is appointed under Section 17 of the 1994 Act, shall develop a system so that anyone, who comes to know of any illegality being committed under the 1994 Act by any person, can send the complaint/information to the said authority even anonymously so that it can take appropriate action. Needless to say that there has to be appropriate verification. This can really apprise the appropriate authority about certain things happening in a clandestine manner.
- (vii) Though the Act has come into force since 1994 and there has not been much rise in the sex ratio which may indicate the disrespect for the restriction on sex selection. We have apprised that only 44 cases have been instituted and certain cases are pending in various courts in Delhi since 2002 onwards. The cases under this Act have to be given priority, for litigations under the 1994 Act should be put to an end at the earliest, regard being had to the fact that the object and purpose of the Act is for the prohibition of the misuse of pre-natal diagnostic techniques for the determination of sex and leading to female foeticide and prohibition of advertisement of pre-natal diagnostic techniques for determination sex, etc. Needless to say, if the criminal cases are kept pending, it will give an impression that the provisions of the Act are not taken seriously. Keeping in view the same, all the trial Magistrates before whom the prosecution under the 1994 Act are pending shall finalize the same by 30th September 2015. A copy of this order be sent to learned Chief Justice of Delhi to issue a circular to all the District and Sessions Judges of Delhi so that they can, in their turn, circulate amongst the concerned Magistrates to proceed

accordingly. The prosecution shall fully cooperate in the early disposal of these cases. There should not be laxity on the part of the public prosecutors.

Though we are issuing these directions in respect of the State of NCT of Delhi, some of the directions shall also be applicable to other States and the said facet shall be adverted to on the next date of earring.

At this juncture, Mr. Gonsalves, learned senior counsel submitted that reduction in sex-ratio in this country is quite disturbing and agonizing. Learned senior counsel would submit that the honour killing is also reflective of the attitude of the society at large, for the proclivity to scuttle the female from being born and to see the mother earth and the sunlight. It is his submission that though this Court has been passing series of orders, yet there is no awareness and fear in the society. He has drawn our attention to an order passed on 29.10.2002 in People Unions for Civil Liberties vs. Union of India & Ors., Writ Petition Civil No.196 of 2001, wherein this Court had directed the Chief Secretaries of the States to translate the order and display the same on the Gram Panchayats, school buildings and fair price shops and giving wide publicity on the All India Radio and Doordarshan. Learned senior counsel would submit that there need be no display on the Gram Panchayats, school buildings or fair price shops but it should be given wide publicity in Newspapers, All India Radio and Doordarshan. Regard being had to the said submission, we direct that the order passed today should be translated and be given wide publicity in Newspapers, All India Radio and Doordarshan so that the people at large know the sacrosanctity of the 1994 Act, the issues raised before this Court and the manner in which the same being addressed to and how there should be real concern not to go for sex selection, or destruction of female foetus subject to law, that is, the provisions of Medical Termination of Pragnancy Act.

Let the matter be listed on 06.05.2015 to consider the objections of State of Bihar and Himachal Pradesh and also to issue directions in respect of other States whose reports have not been verified.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master