

(2008) 02 OHC CK 0034
In the Orissa High Court

Hemanta Rath

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Citation : AIR 2008 Ori 71 : (2008) 1 OLR 916

Hon'ble Judges : A.K. Ganguly, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

A.K. Ganguly, C.J.—This writ petition has been filed in public interest by one Hemanta Rath, who describes himself to be a Social Activist and also claims to function as the President of Deaf and Dumb Society in the district of Khurda.

2. In this petition a complaint is made that the State of Orissa is not implementing the provisions of Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter called "PNDT Act") even though the said Act was brought into existence in 1996 and was amended in order to make its provisions more effective by the Amendment Act 14 of 2003. The said amendment has come into existence with effect from 14-2-2003.

3. The said Public Interest Litigation was filed noticing series of news items in the newspapers and in the electronic media to the effect that there have been recovery of hundreds of skeletons, skulls, body parts of children from different parts of the State. The petitioner asserts that recovery of such huge body parts has shocked the common man and from the news item, it also transpires that these things were found from an area which is close to various Nursing Homes and Clinics. It is also alleged that in India, there is notorious practices of female foeticide and infanticide.

4. This has been made possible in view of the development of scientific techniques for determination of sex. Since it is determined that it is a female foetus, there is a tendency of terminating such pregnancy. Normally such

medical technology has been developed in order to guard against the genetic and other disorder of the child in the mother's womb and for detecting diseases, such as, HIV and VD. But such techniques are misused by Medical Practitioners as a device for determination of the sex of the foetus and if it is a female one, the same is aborted to prevent the birth of a female child.

5. In order to prevent such malpractices, the said Act was enacted and u/s 7 of the said Act, the Central Government has to constitute a Board to be known as The Central Supervisory Board.

6. The State Government has also the statutory obligation to constitute such a Board u/s 16A of the said Act. Section 17 of the said Act casts an obligation both on the Central Government and the State Government to appoint one or more Appropriate Authorities for the whole or part of the State for the purposes of implementation of the said Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. u/s 17(5) of the said Act, the Central Government or the State Government shall constitute an Advisory Committee for each Appropriate Authority for advising the Appropriate Authority in the discharge of its functions and shall appoint one of the members of the Advisory Committee to be its Chairman. u/s 28 of the said Act, a Court can take cognizance of the offence under the said Act only on a complaint made by the Appropriate Authority.

7. It has been complained in the petition that without constitution of appropriate Authority, the provisions of Section 28 become nugatory. Therefore, the complaint in the petition is that there is total inaction both on the part of State Government and the Central Government in the matter of implementing the provisions of the said Act which was enacted for preventing infanticide and foeticide. The said Act has come into existence in order to protect the appropriate male and female ratio in the society so that there will be no social imbalance. Apart from that this Court feels that the said Act has a broader human right perspective inasmuch as it has been enacted to prevent the killing of a foetus on a gender bias. This is against the essence of our Constitutional principles.

8. In this matter, affidavits have been filed by both the State Government and Central Government. On behalf of the State Government affidavit has been filed by the Principal Secretary to Government, Health and Family Welfare Department, Bhubaneswar in which it has been stated that in view of the report in the newspapers, immediate steps were taken by lodging cases and the cases have been handed over to the State Crime Branch as a result of which there has been arrest of doctors and some of the members of the staff of Nursing Homes and Ultrasound Clinics. In support of the statement, Annexure A/1 has been enclosed. It is also stated that the human body parts recovered from Forest Park area of Bhubaneswar were sent to Forensic Medicine and Toxicology (FM & T) Department, SCB Medical College and Hospital, Cuttack for necessary examination. On such examination it appeared that the specimens recovered are

formalin preserved specimens of surgically removed human body parts. They were not cases of foeticide. In support of the same, report of Professor and Head of the Department of F.M. & T which was received from Chief Medical Officer, Bhubaneswar has been disclosed. It is also stated that the Government have formed a State Task Force Committee under the Chairmanship of Chief Secretary, Orissa with Principal Secretary, Home, Principal Secretary, Family & F. W., Secretary, Women & Child Development Department as members to monitor the implementation of Ultrasound Clinics and Nursing Homes. The said Committee has been formed to see that the rules on Preconception & Pre-natal Diagnostic Technique (PNDT) Act, 1994 and Medical Termination of Pregnancy (MTP) Act, 1971 are scrupulously followed. It has been stated that Task Force has been formed at the district level with the Collector, Superintendent of Police and C.D. M.O. to inspect all such centers. It is also averred that the State Level Advisory Committee was held on 18-8-2007 and newly constituted State Level Supervisory Board chaired by Minister of Health & Family Welfare was held on 29-9-2007 in order to review and monitor the progress and implementation of the said Act. The District Advisory Committee have also met in different districts to take stock of the situation.

9. However, it has not been stated in the said affidavit whether the bodies have been created by the State Government u/s 17 of the said Act nor it has been stated whether any steps have been taken u/s 28 of the said Act for filing of complaint. Such complaint can only be filed by the Appropriate Authority. So the petitioner's grievance is that if appropriate authority has not been created, no complaint can be filed u/s 28 of the said Act appears to be well founded. It has been stated that in Orissa, the male-female ratio is better than in other parts of the State. But this Court is of the view that this cannot be the reason why the provisions of the said Act shall not be implemented.

10. In the counter affidavit which has been filed on behalf of the Central Government by the Director in the Ministry of Health and Family Welfare, Government of India, it has been stated that it is for the State of Orissa to take steps as per Sections 17 and 17A of the said Act. It has been stated in the affidavit filed by the Central Government that the said Act was created to prevent the Preconception and Pre-Natal Diagnostic Tests for determination of sex. The object of the said Act is as follows:

An act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

11. It has been stated that sensitization steps have been taken under the said Act and awareness generation programme has also been held against sex selection. It has been stated that Government of India has launched "Save the

Girl Child Campaign" and the said Campaign was part of the Republic Day Parade, 2004-2005. So far as the State of Orissa is concerned, the following steps appeared to have been taken as has been stated in the said affidavit. "State Supervisory Board reconstituted under the Chairmanship of Hon"ble Minister, Health & Family Welfare. Meeting was held on 29-9-2007.

State Advisory Committee has also been reconstituted and meeting has been held on 18-8-2007.

Multi Member State Appropriate Authority has been formed.

District Level Advisory Committee reconstituted.

State Task Force formed under Chairmanship of Chief Secretary to monitor the checking of Nursing Homes and other diagnostic centers where sex determination can be done and the MTP Centres.

District Task Force has been formed under the Chairmanship of Collector and includes S.P., C.D.M.O., District Social Welfare Officer as members.

A1. the clinical establishments of the district irrespective of their involvement with the Ultra Sound activity/MTP have been inspected. Total No. of Nursing Homes inspected 495, out of which 345 are registered, 150 are unregistered, 127 were sealed. Total No. of Ultra Sound Clinics inspected 388, out of which 368 are registered, 20 are unregistered, 65. Ultra Sound Clinics were sealed. Out of which FIR lodged against 5 at Nayagarh and 1 at Ganjam District. Total No. of MTP Centres inspected 167, out of which 159 are registered, 8 are unregistered, 27 sealed. FIR lodged against 1 MTP Center in Ganjam District. Instructions have been issued to the district authorities implementing the PCPNDT Act to be more vigilant in monitoring and inspection of the clinical establishment cum ultra sound clinics regularly. Again instructions have been issued to call for the meeting of District Advisory Committee bi-monthly to monitor the clinical activities individually in the district. It is also instructed to initiate legal action against the clinical establishment of ultra sound clinic and MTP Centers violating the Act.

Awareness campaigns for the public, service taker and service provider on legal issues relating to the PCPNDT Act, at District level.

ASHA and AWW will be involved for creating awareness among the rural people and in this context they will be oriented during their induction training about PCPNDT Act and its punishment for its violation. Again SHGs

functioning at village level will be involved in the said Programme.

Legal services provider to create legal awareness of the service for propagation of the message against the pre-natal sex determination.

1. Display of hoardings in different public places, hospitals, Private Institutions regarding PCPNDT Act and punishment prescribed under different sections for

both service provider and service taker. Wide publication of the Act by which the non-government organizations or any public person can file complaint against the law violator.

2. Every month in the District level monthly meeting PCPNDT will be discussed as the pivot point.

3. Awareness will be created by WCD Department at district level about the rights of the female child as equal with the male child by which son preference can be eliminated.

12. On perusal of the said affidavit, it appears that the State Advisory Committee if at all has been reconstituted in the month of August, 2007 and the meeting of such Committee was held on 29-9-2007, the Government Notification showing constitution of such a Committee, however has not been disclosed.

13. This Court therefore, directs that if Appropriate Authorities as contemplated u/s 17 of the said Act and as defined u/s 2(a) of the said Act has been constituted, such Authority must act strictly in terms of the provisions of the said Act. If, however, such Committee has not been constituted, such Committee must be constituted within a period of six weeks from the date of service of the order upon the Chief Secretary of the State. After constitution of the said Committee, it must take strict measures to implement the provisions of the said Act. The said Act has been enacted to serve public purpose and the Constitutional end as is clear from the object of the Act quoted hereinabove. Therefore, the State is under both a statutory and Constitutional obligation to implement the provisions of the said Act.

14. This writ petition is therefore disposed of with the direction upon the State Government to strictly implement the provisions of the said Act. which has been enacted in 1994. It appears that the response of the State Government is very delayed and it appears that only in 2007, some kind of Committees have been formed. Whether such Committees are in accordance with the provisions of the said Act cannot be examined by the Court, since the Gazette Notification constituting such Committee has not been disclosed.

15. However, this Court reiterates that if such Committee in compliance with the said Act has not been constituted, such Committee must be constituted within the period mentioned hereinabove and after constitution of such Committee, the said Committee must act for strict implementation of the provisions of the said Act. No costs.

B.N. Mahapatra, J.

16. I agree.