

(2017) 02 SC CK 0027

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 341 of 2008

Sabu Mathew George

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 22

Citation : (2017) 1 Crimes 323 : (2017) 66 OrissaCriR 981 : (2017) 2 RCRCivil 19 : (2017) 2 RCRCriminal 102 : (2017) 1 RecentApexJudgments(RAJ) 648 : (2017) 3 Scale 86 : (2017) 7 SCC 657

Hon'ble Judges : Dipak Misra, J;R. Banumathi, J

Bench : Division Bench

Advocate : Ranjit Kumar, SG, K.V. Vishwanathan, Dr. Abhishek Manu Singhvi, Sr. Advs., Ms. Binu Tamta, R.R. Rajesh, Ajay Sharma, Ms. Madhavi Divan, D.S. Mahra, Mrs. Gunwant Dara, Ms. Ruby Ahuja, Priyadarshi Banerjee, Saransh Jain, Vikrant Pachnanda, Vishal Gehrana, Ms. Tahira Karanjawala, Arvind Chari, Ms. Suman Yadav, Mrs. Manik Karanjawala, Shashank Manish, E.C. Agrawala, Anupam Lal Das, Anirudh Singh, Sahil Monga, Ms. Saanjh N. Purohit, Tanuj Bhushan, Mr. S.S. Shroff, Gurmeet Singh Makker, Advocates, for the Respondents; Sanjay Parikh, Ms. Ninni Susan Thomas, Ms. Manjula Gupta, Advocates, for the Petitioners

Final Decision : Disposed Of

Judgement

1. Heard Mr. Sanjay Parikh, learned counsel along with Ms. Ninni Susan Thomas, learned counsel for the petitioner, Mr. Ranjit Kumar, learned Solicitor General of India along with Ms. Binu Tamta, learned counsel for the Union of India, Dr. Abhishek Manu Singhvi, learned senior counsel along with Ms. Ruby Ahuja, learned counsel for the respondent No.3, Mr. Anupam Lal Das, learned counsel for the respondent No.4 and Mr. K.V. Vishwanathan, learned senior counsel for the respondent No.5.

2. The present litigation projects, as the respondent Nos. 3 to 5 would

comprehend, a dilemma for them, although we are unable to perceive any such dilemma. Since 2001, this Court has expressed its concern with regard to reduction of sex ratio in this country. It has gone to the extent of stating that when there is decrease in sex ratio, it is a disaster signal to the mankind. In the last decision, that is, *Voluntary Health Association of Punjab v. Union of India and Others*, (2016) 10 SCC 265, the Court had issued number of guidelines. In the said case, it has been observed thus:-

"Before parting with the case, let it be stated with certitude and without allowing any room for any kind of equivocation or ambiguity, the perception of any individual or group or organization or system treating a woman with inequity, indignity, inequality or any kind of discrimination is constitutionally impermissible. The historical perception has to be given a prompt burial. Female foeticide is conceived by the society that definitely includes the parents because of unethical perception of life and nonchalant attitude towards law. The society that treats man and woman with equal dignity shows the reflections of a progressive and civilized society. To think that a woman should think what a man or a society wants her to think is tantamounts to slaughtering her choice, and definitely a humiliating act. When freedom of free choice is allowed within constitutional and statutory parameters, others cannot determine the norms as that would amount to acting in derogation of law. Decrease in the sex ratio is a sign of colossal calamity and it cannot be allowed to happen. Concrete steps have to be taken to increase the same so that invited social disasters do not befall on the society. The present generation is expected to be responsible to the posterity and not to take such steps to sterilize the birth rate in violation of law. The societal perception has to be metamorphosed having respect to legal postulates."

3. The present writ petition was filed in 2008 by the petitioner, a doctor in the field of Public Health and Nutrition, expressing his concern about the modus operandi adopted by the respondent Nos.3 to 5 to act in detriment to the fundamental conception of balancing of sex ratio by entertaining advertisements, either directly or indirectly or as alleged, in engaging themselves in violation of Section 22 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for brevity, "the 1994 Act"). Times without number, this Court has dwelt upon how to curb the said malady. In pursuance of our orders dated 5th July, 2016 and 25th July, 2016, an affidavit was filed by the competent authority of the Ministry of Electronics and Information Technology (MeitY), Government of India.

4. Be it noted, when the matter was taken up on 19th September, 2016, it was submitted by Mr. Ranjit Kumar, learned Solicitor General that a meeting was held with the three software companies, namely, Google India Private Limited, Yahoo ! India and Microsoft Corporation (I) Pvt. Ltd. and the companies were asked to respond to certain questions. For the sake of completeness, it is necessary to reproduce the said questions:-

"(a) Whether respondents feel obligated to comply with the provisions of PC-PNDT Act, especially section 22 of the Act as directed by this Hon"ble Court vide its order dated 28.01.2015?

(b) Whether Respondents are ready to publish a "Warning Message" on top of search result, as and when any user in India submits any "key word searches" in search engines, which relates to pre conception and pre natal deermination of sex or sex selection?

(c) Whether Respondents are ready to block "auto-complete" failure for "key word" searches which relates to pre-conception and/or pre-natal determination of sex or sex selection?

(d) Whether the words/phrases relating to pre-conception and pre natal determination of sex or sex selection to be provided and regularly updated by the Government for the "key word search" or shall it be the onus of the Respondents providing search engine facilities?

(e) Whether it is feasible for the Respondents to place this Hon"ble Court order dated 28.01.2015 on their respective Home Page(s), instead of placing them on Terms of Service (TOS) pages?

(f) What is the suggested timeline to incorporate "Warning Message", blocking of the "auto-complete" feature for key word search & related terms etc. relating to pre-conception and pre-natal determination of sex or sex selection?

(g) Any other information as Respondents would like to share?"

5. The responses to those questions were given by the respondent Nos.3 to 5 and, thereafter, delving into the submissions which were assiduously canvassed by the learned counsel for the respondents, the following order was passed:-

"Explaining the same, it is submitted by the learned Solicitor General that all the three Companies are bound to develop a technique so that, the moment any advertisement or search is introduced into the system, that will not be projected or seen by adopting the method of "auto block". To clarify, if any person tries to avail the corridors of these companies, this devise shall be adopted so that no one can enter/see the said advertisement or message or anything that is prohibited under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, "the Act"), specifically under Section 22 of the said Act.

Mr. Sanjay Parikh, learned counsel for the petitioner would contend that the Union of India should have taken further steps to see that the law of the country is totally obeyed by these three Companies, inasmuch as the commitment given by them or the steps taken by the Union of India are not adequate. He has pointed out from the affidavit filed by the petitioner that there are agencies which are still publishing advertisements from which it can be deciphered about the gender of the foetus. Learned counsel would submit that Section 22 of the

Act has to be read along with the other provisions of the Act and it should be conferred an expansive meaning and should not be narrowly construed as has been done by the respondents.

Mr. Ranjit Kumar, learned Solicitor General at this juncture would submit that he has been apprised today only about the "proposed list of words" in respect of which when commands are given, there will be "auto block" with a warning and nothing would be reflected in the internet, as it is prohibited in India. We think it appropriate to reproduce the said "proposed list of words". It reads as under:-

"Proposed List of Words

Gender selection

Gender selection Kits

Gender selection service

Gender selection clinics

Gender selection technique

Prenatal sex selection

Prenatal sex selection kits

Prenatal sex selection service

Prenatal sex selection clinics

Prenatal sex selection technique

Prenatal sex determination

Prenatal sex determination kits

Prenatal sex determination service

Prenatal sex determination clinics

Prenatal sex determination technique

Baby gender selection

Baby gender selection kits

Baby gender selection service

Baby gender selection clinics

Baby gender selection technique

Prenatal diagnostic tests for selection of sex

before or after conception

Prenatal conception test

Prenatal diagnostic
Prenatal foetoscopy for sex selection
Prenatal ultrasonography for sex selection
Sex selection procedure
Sex selection technique
Sex selection test
Sex selection administration
Sex selection prescription
Sex selection services
Sex selection management
Sex selection process
Sex selection conduct
Prenatal image scanning for sex selection
Prenatal diagnostic procedure for sex selection
Sex determination using scanner
Sex determination using machines
Sex determination using equipment
Scientific sex determination and sex selection
Gender test
Early Gender Test"

6. At this juncture, Mr. C.A. Sundaram, Mr. K.V. Vishwanathan, learned senior counsel, Mr. Anupam Lal Das, learned counsel appearing for Google India, Microsoft Corporation (I) Pvt. Ltd. and Yahoo India, respectively, have submitted that apart from the aforesaid words, if anyone, taking recourse to any kind of ingenuity, feed certain words and something that is prohibited under the Act comes into existence, the "principle of auto block" shall be immediately applied and it shall not be shown. The learned counsel appearing for the search engines/intermediaries have submitted that they can only do this when it is brought to their notice. In our considered opinion, they are under obligation to see that the "doctrine of auto block" is applied within a reasonable period of time. It is difficult to accept the submission that once it is brought to their notice, they will do the needful. It need not be over emphasized that it has to be an in-house procedure/method to be introduced by the Companies, and we do direct.

The matter stood adjourned to 16th November, 2016, and on that day, the Court

had gone through the affidavit filed by the Union of India and its understanding of Section 22 of the 1994 Act. The said understanding is to the following effect:-

"The section 22 and the explanation appended to it is very wide and does not confine only to commercial advertisements. The intention of law is to prevent any message/communication which results in determination/selection of sex by any means what so ever scientific or otherwise. The different ways in which the communication/messages are given by the internet/search engine which promote or tend to promote sex selection are prohibited under Section 22. The search engines should devise their own methods to stop the offending messages/advertisements/communication and if the compliance in accordance with law is not done Ministry of Electronics and Information Technology (MeitY), shall take action as they have already said in their affidavits dated 15.10.2015 & 08.08.2016. The Ministry of Health and Family Welfare is concerned about the falling Child Sex Ratio and is taking all possible actions to ensure that the provisions of PC & PNDT Act are strictly implemented."

7. The matter was heard at some length and pending the debate, the Court directed as follows:-

"At this stage, pending that debate, in addition to the earlier directions passed by this Court, we direct that the Union of India shall constitute a "Nodal Agency" and give due advertisement in television, newspapers and radio by stating that it has been created in pursuance of the order of this Court and anyone who comes across anything that has the nature of an advertisement or any impact in identifying a boy or a girl in any method, manner or mode by any search engine shall be brought to its notice. Once it is brought to the notice of the Nodal Agency, it shall intimate the concerned search engine or the corridor provider immediately and after receipt of the same, the search engines are obliged to delete it within thirty-six hours and intimate the Nodal Agency. Needless to say, this is an interim arrangement pending the discussion which we have noted herein-before. The Nodal Agency shall put the ultimate action taken by the search engine on its website."

8. In pursuance of the said order, the Union of India has filed an affidavit of the Joint Secretary, Ministry of Health and Family Welfare, Government of India. Paragraphs 3 and 4 of the said affidavit read as follows:-

"3. In compliance of the Court's directive, this Ministry has set-up a single point contact for the Nodal Agency to receive the complaints on violation of Section 22 of PC & PNDT Act, 1994. Details of the Nodal Agency are as under:-

(i) Contact e-mail address for nodal agency: pcpndtcomplaints@nihfw.org

(ii) Nodal Officer: Dr. Chetan Chouhan, Senior Medical Officer

(iii) E-mail id and Mobile number of Nodal Officer: chetanchouhan@nihfw.org, 9818305703

(iv) Alternative Nodal Officer and contact details:

Dr. Geetanjaly Singh, Senior Medical Officer E-mail: geetanjaly@nihfw.org Mobile No.9968545794

4. That, further in compliance of directions, for advertising in television, newspaper and radio appropriate steps are being undertaken and same shall be complied with at the earliest."

9. In view of the aforesaid affidavit, we direct the Union of India to comply with the paragraph 4 within a week hence. It shall be clearly mentioned that it is being done in pursuance of the order passed by this Court.

10. At this juncture, Mr. Sanjay Parikh, learned counsel appearing for the petitioner has drawn our attention to the additional affidavit filed on behalf of the respondent No.3, especially to paragraph 6(b) and (c). They read as follows:-

"6(b) There are innumerable activities banned by law, e.g. using a bomb to kill people, murder, rape, prostitution, pornography etc., nevertheless, there is no dearth of information available under each of these heads in both the offline and online world. Just because a particular activity is morally repugnant, illegal or prohibited under the provisions of the Indian Penal Code and other applicable laws, does not mean that everyone in the world is dis entitled from having any form of information about the subject.

(c) This would be in complete violation of Article 19(1)(a) of the Constitution of India, which firstly includes the right to know, secondly, right to receive and thirdly, right to access the information or any content etc."

11. Refuting the paragraph 6(b), learned Solicitor General has submitted that he will file a response to the same. His instant reaction was that the said paragraph contravenes the letter and spirit of Section 22 of the 1994 Act. Additionally, it is contended by him that paragraph 6(b) is not saved by Article 19(1)(a) of the Constitution of India as asserted in paragraph (c). At this juncture, Ms. Ruby Ahuja, learned counsel appearing for the respondent No.3 has submitted that the said respondent has no intention to disrespect or disobey or even remotely think of contravening any law(s) of this country and she undertakes to file a clarificatory affidavit within three weeks.

12. It is necessary to take note of another submission advanced by Mr. Parikh, learned counsel with the assistance of Ms. Ninni Susan Thomas, learned counsel for the petitioner. It is urged by him that despite the order passed on 19th September, 2016, that the respondent Nos.3 to 5 shall undertake the exercise of principle of "auto block", the literature and write-ups that would tempt the people to go for male child which ultimately lead to reduction of sex ratio, is still being shown in certain websites. The said websites were shown to Mr. K.V. Viswanathan, Mr. Anupam Lal Das and Ms. Ruby Ahuja. The learned counsel appearing for the respondents have submitted that they will verify the same and the context. Additionally, it is canvassed by Mr. Vishwanathan with immense

vehemence that it does not come within the proposed list of words that find mention in the order dated 19th September, 2016, and, therefore, it cannot be construed as a violation. Be that as it may.

13. We reiterate our direction dated 19th September, 2016, and further add that the respondent Nos.3 to 5 shall appoint their "In-House Expert Body" which shall take steps to see that if any words or any key words that can be shown in the internet which has the potentiality to go counter to Section 22 of the 1994 Act, should be deleted forthwith.

14. Presently, we shall advert to the paragraphs 3 and 4 of the affidavit of the Union of India which we have reproduced herein-above. As the Nodal Agency has already been constituted, it will be open to the petitioner or any person that the Nodal Agency shall take it up and intimate the respondent Nos.3 to 5 so that they will do the needful. That apart, the "In-House Expert Body" that is directed to be constituted, if not already constituted, shall on its own understanding delete anything that violates the letter and spirit of language of Section 22 of the 1994 Act and, in case there is any doubt, they can enter into a communication with the Nodal Agency appointed by the Union of India and, thereafter, they will be guided by the suggestion of the Nodal Agency of the Union of India. Be it clarified, the present order is passed so that the respondent Nos.3 to 5 become responsive to the Indian law.

Let the matter be listed on 11th April, 2017, for further hearing.