

(2017) 04 SC CK 0083

In the Supreme Court Of India

Case No : Writ Petitions (Civil) Nos. 341 of 2008

Sabu Mathew George

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

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

Citation : (2017) 3 RCRCivil 205 : (2017) 2 RCRCriminal 644 : (2017) 3 RecentApexJudgments(RAJ) 51 : (2017) 4 Scale 556 : (2017) 7 SCC 657

Hon'ble Judges : Dipak Misra, J;A.M. Khanwilkar, J;Mohan M. Shantanagoudar, J

Bench : Full Bench

Advocate : Sanjay Parikh, Ms. N. Susan Thomas, Ms. Manjula Gupta, Advocates, for the Petitioners; Anupam Lal Das, Anirudh Singh, Dr. Abhishek Manu Singhvi, Sr. Adv., Pryadarshi Banerjee, Ms. Ruby Singh Ahuja, Saransh Kumar, Vishal Gehrana, Ms. Suman Yadav, Ms. Tahira Karanjawala, Arvind Chari, Vikrant Pachnanda, Saransh Jain, Sashank Manish, E.C. Agrawala, Harish N. Salve, Sr. Adv., Ms. Saanjh Purohit, Tanuj Bhushan, Aishwary Vikram, S.S. Shroff, Ranjit Kumar, SG, Ms. Binu Tamta, Ms. Gunwant Dara, R.R. Rajesh, Gurmeet Singh Makker, Advocates, for the Respondents

Final Decision : Disposed Of

Judgement

1. Heard Mr. Sanjay Parekh, learned counsel for the petitioner, Mr. Ranjit Kumar, learned Solicitor General for the Union of India, Mr. Harish Salve, learned senior counsel, Dr. A.M. Singhvi, learned senior counsel and Mr. Anupam Lal Das, learned counsel for the Microsoft Corporation (I) Pvt. Ltd., Google India and Yahoo ! India respectively.

2. In course of hearing, Mr. Sanjay Parekh, learned counsel has submitted that the respondents, namely, Microsoft Corporation (I) Pvt. Ltd., Google India and Yahoo ! India are bound to follow scrupulously what is being stated in Section 22 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for brevity, "the Act"). Section 22 of the Act reads as

follows :-

"22. Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention.-1. No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre, laboratory, clinic or at any other place.

2. No person or organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or preconception selection of sex by any means whatsoever, scientific or otherwise.

3. Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Explanation.-For the purposes of this section, "advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas."

3. Mr. Parekh has drawn our attention to certain search results. One such result is "Medical Tourism In India". It is pointed out by Mr. Parekh that it deals with "gender determination" in India which is prohibited by the aforesaid provision.

4. At this juncture, Mr. Salve, Dr. Singhvi and Mr. Das, learned counsel for the respondents submitted that the key words are "Medical Tourism In India" which do not offend the provision. It is the "Originator" of the blog who has used the offensive words in the contents of the website and in such a situation the Nodal Officer of the Union of India can block the website as per the Act.

5. Be it noted, in pursuance of the order passed by this Court, the respondents have appointed their own "In-house" experts. It is accepted by the learned counsel for the respondents that they have never indulged in any kind of advertisement as contemplated under Section 22 of the Act and nor do they have any kind of intention to cause any violation of the said mandate. It is further accepted by them that they will not sponsor any advertisement as provided under Section 22 of the Act. Learned counsel for the respondents would contend, and rightly, that they do not intend to take an adversarial position with the petitioner but on the contrary to play a participative and co-operative role so that the law made by the Parliament of India to control sex selection and to enhance

the sex ratio is respected. It is further accepted by them that if the Nodal Officer of the Union of India communicates to any of the respondents with regard to any offensive material that contravenes Section 22, they will block it.

6. Needless to say, the intimation has to be given to the respondents. The Nodal Officers appointed in the States under the Act are also entitled to enter into communication with the respondents for which they have no objection. The action taken report, as further acceded to, shall be sent to the Nodal Officer. Be it stated, the names of the Nodal Officers have been mentioned in the affidavit filed by the Union of India dated 11.11.2016.

7. At this juncture, it is necessary to state that volumes of literature under various heads come within the zone of the internet and in this virtual world the idea what is extremely significant is "only connect". Therefore, this Court has recorded the concession of the respondents so that the sanctity of the Act is maintained and there is no grievance on any score or any count by anyone that his curiosity for his search for anything is not met with and scuttled. To elaborate, if somebody intends to search for "Medical Tourism In India" is entitled to search as long as the content does not frustrate or defeat the restriction postulated under Section 22 of the Act. It is made clear that there is no need on the part of anyone to infer that it creates any kind of curtailment in his right to access information, knowledge and wisdom and his freedom of expression. What is stayed is only with regard to violation of Section 22 of the Act. We may further add that freedom of expression included right to be informed and right to know and feeling of protection of expansive connectivity.

8. As agreed to by learned counsel for the parties, the let the matter be listed on 5.9.2017 so that the outcome of this acceptance will be plain as day.