

(1994) 05 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2447 of 1994

Smt. Sushila Gothala

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-05-1994

Acts Referred:

Child Marriage Restraint Act, 1929 — Section 13
Constitution of India, 1950 — Article 226

Citation : AIR 1995 Raj 90 : (1995) 1 DMC 198 : (1994) 1 RLW 418 : (1994) 2 WLC 502 : (1994) 2 WLN 245

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : H.C. Ganeshila and Vidyadhar Gothala, for the Appellant; Gyanwati Dhakar, Additional Government Advocate, for the Respondent

Judgement

Anshuman Singh, J.—This petition is a public interest litigation. Petitioner Smt. Sushila Gothala, resident of C-3, Lal Kothi, Jaipur has approached this Court under Article 226 of the Constitution of India for issuance of direction to the respondents to stop immediately the menace of child marriage in Rajasthan in effective manner; writ, order or direction to the respondents to enforce the provisions of the Child Marriages Prohibition Act 1929 (hereinafter to be referred to as "the Act") as amended by Act No. 2 of 1978, and further for a direction to punish the officer who is responsible for not prohibiting the child marriages.

2. The facts as unfolded in the writ petition are hair raising and shocking, inasmuch as it has been alleged that on the occasion of "AKHA TEEJ" every year, child marriages, are performed in contravention of the Act. It has been also averred in the Petition that even after enforcement of the said Act, the State of Rajasthan has practically failed in preventing the solemnisation of child marriages in contravention of the said Act. It has been stated that child marriages are mainly prevalent in the communities like Lohar, Kumhar, Rawat, Bairwa, Regar, Balai, Khateek, Jat, Gujar Bishnoi etc. Even some lower caste Muslims recently converted to Islam also observe this age-old custom of child

marriage. The festival of "AKHA TEEJ" is considered as an auspicious day for performing child marriages. It is alleged that even babies in arms are married by their parents on this occasion. On the basis of Census reports of 1971 and 1981 it has been alleged that largest number of child marriages have been performed in the State of Rajasthan. In para 7 of the Writ Petition, it has been stated that the petitioner has written so many letters to the respondents regarding stoppage of child marriages in the State of Rajasthan, but no proper and satisfactory reply has been given to the petitioner regarding steps being taken to prevent this custom. The petitioner is also alleged to have served some notices on the respondents Nos. 2 and 3 by hand on 9-5-1994. The festival of "AKHA TEEJ" is observed every year in the State of Rajasthan, which sometime falls in the month of April and sometimes in May.

3. This writ petition came up for admission on 12th May, 1994, whereas, according to the petitioner the child marriages in contravention of the Act were to be performed on the next day i.e. 13th May, 1994, which was the day of "AKHA TEEJ" this year. The petitioner's counsel stated that the petition may be heard and necessary orders may be passed directing the respondents to stop the child marriages.

4. It is strange that there is practice in this Court that the Government Advocates cannot accept notices on behalf of the Chief Secretary and Director General of Police in the Court, unless specifically directed to do so. It was stated by the Government Advocate that notices are sent to the respondents from the Court and after the Government directs the Government Advocate to put in appearance, they put in their appearance. Faced with this situation and in view of the urgency of the matter, oral direction was given to the Government Advocate to direct the Director General of Police of Rajasthan to be available in Court for furnishing any information, if required, as he was arrayed as respondent No. 3. The time was so short that the Government Advocate also expressed inability to file any counter affidavit to the writ petition.

5. The child marriage, which were to be solemnized on the day of "AKHA TEEJ" i.e. 13th May, 1994 were not being performed for the first time in Rajasthan but such marriages have been performed every year and as stated by the counsel for the petitioner during the course of arguments that such marriages are performed in thousands. If the petitioner was really interested in seeking any direction from the court, she should have approached the Court earlier.

6. I have heard Shri H.C. Ganeshia and Shri Vidhyadhar Gothala, learned counsel appearing for the petitioner and Mrs. Gyanwati Dhakar, learned Government Advocate, who argued the case on the basis of the instructions received from the State Government.

7. Learned counsel for the petitioner contended that though the Act prohibiting the child marriages was enforced by the State Government, but no action has been taken by the respondents after enforcement of the aforesaid Act to prevent

child marriages. This argument advanced on behalf of the petitioner is wholly fallacious, inasmuch as no act prohibiting the child marriages has been enacted by the State of Rajasthan. On the contrary, the Central Government passed an Act No. 19 of 1929 known as Child Marriages Restraint Act, 1929, which was made applicable to the whole of the country except the State of Jammu and Kashmir and by Amending Act No. 2 of 1978, the Code of Criminal Procedure, 1974 (Act No. 2 of 1974) was made applicable to the offences under this Act as the offences committed under the Act of 1929 were cognizable offences. Thus, it is evidently clear that the Central Government has already enacted a Legislation as back as in the year 1929, but this custom of performing child marriages, specially in the State of Rajasthan has assumed alarming proportion and this social evil which has become a cancer has not been eradicated so far. In my opinion, no amount of legislation can stop the solemnisation of child marriages in contravention of the Act, unless it is discarded by the society at large and this age-old custom is scrapped. The most disturbing feature is that instead of discouraging this custom which is a social evil, it has received sanction from the society. There can also be no doubt that performing of child marriages has far reaching consequences. The children who do not even understand the meaning of marriage are married at an early age. Many of the female married during their child-hood are abandoned and deserted by their husbands when they become major, on account of illiteracy or other considerations. This social evil requires more condemnation than the evil of dowry in the Indian society. But it is unfortunate that no social organisation has come forward so far to educate masses about the demerits of the child marriages. As far the allegation of the petitioner relates to the non-action on the part of the Government of Rajasthan is concerned, I find that the Government of Rajasthan is very much concerned and the Police machinery is also very much alive about the situation i.e. conducting child marriages on the day of "AKHA TEEJ" every year in contravention of Act, in the State of Rajasthan. During the course of arguments, learned Government Advocate has invited my attention to an appeal issued by the Chief Minister of Rajasthan which has been published in a Newspaper (Rajasthan Patrika) dated 13th May, 1994, in which he has made an appeal to the residents of Rajasthan not to commit offence under the Act and to marry only those girls who have attained the age of 18 years and the male who have attained the age of 21 years. In order to ascertain the bona fides on the part of the Government of Rajasthan, I think it proper to incorporate the message issued by the Chief Minister on this occasion in extenso, which runs as under :--

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8. Apart from the message/appeal issued by the Chief Minister of Rajasthan calling upon the people not to perform the marriages in contravention of the Act, the law enforcing machinery i.e. the police of Rajasthan also appears to have taken sufficient precautions for prevention of such marriages. In support of the said fact, the Government Advocate has also produced a copy of Radiogram issued by the Deputy Inspector General of Police, C.I.D. (Crimes) Rajasthan, Jaipur issued as back as on 2-4-1994 even much before the auspicious day of "AKHA TEEJ" for prevention of child marriages. The said Radiogram issued by the D.I.G. runs as under:

MOST IMMEDIATE RADIOGRAM

TO DISPOLS RAJASTHAN INCLUDING RAILPOL, AJMER

INF: ALL DIGPOLS RANGE, RAJASTHAN FROM : RAJPOL CRIME (PRC) JAIPUR.

NO. CID/CB/PRC(70)94, 667-668 Dated 2-4-1994

ENSURE ALL PRECAUTIONS TO PREVENT CHILD MARRIAGES ON "AKHA TEEJ" FALLING ON 13TH MAY 1994 (.) THIS IS A COGNIZABLE OFFENCE UNDER PREVENTION OF CHILD MARRIAGES ACT 1978 (.) ADVANCE INFORMATION SHOULD BE FURNISHED AS FAR AS POSSIBLE ABOUT THE CONSEQUENCES OF ILLEGAL MARRIAGES (.) UGLY LAW AND ORDER SITUATION BE AVOIDED AND IMMEDIATE CONFRONTATIONS BE AVERTED (.) LEGAL ACTION THAT IS TIMELY LODGING OF FIR, COLLECTION OF EVIDENCE, RECORDING OF STATEMENTS CAN BE TAKEN AND GUILTY CAN BE CHALLANED IMMEDIATELY OR SOON AFTER DEPEND- ING ON SITUATION OF EACH CASE (.) DEVELOPMENT AND REVENUE AGENCY SHOULD ALSO BE INVOLVED FOR PUBLICITY AND INTELLIGENCE PURPOSES THROUGH COMMISSIONERS AND COLLECTORS (.)

Dy. Inspector General of Police C.I.D. (Crimes) Raj., Jaipur."

9. From a perusal of the above Radiogram there can be no manner of doubt that the law enforcing machinery i.e. the Police of Rajasthan has also not been sleeping over the matter and has tried to prevent this social evil. During the course of arguments, the fact which has emerged is that the child marriages are being performed every year in contravention of the Act in almost 80% villages of Rajasthan. As have been stated before this Court that there are about 40,000

villages in the State of Rajasthan and as such even if the entire police personnels of Rajasthan are deployed for the purpose of preventing child marriages in contravention of Act, they would not be able to do so, inasmuch as it is neither feasible nor practical. The contents of the radiogram also indicate that sometimes the people who gather to perform the child marriages in contravention of the Act are in rebellion mood and even retaliate if the police tries to intervene. Therefore, the only irresistible conclusion to which I arrive is that this custom is most shameful "social evil" and can be prevented by the society at large and no Government worth-the-name or its machinery can prevent recurrence of such marriages and such marriages should be condemned by all and sundry.

10. For the reasons and the facts stated above. I am of the definite view that the petitioner has failed to make out any case for issuance of any direction to the respondents to enforce the provisions of the Act, inasmuch as I am convinced that so far as the Government is concerned, it is very much concerned about this "social evil and has not failed on its part in preventing such marriages. In fact this social evil can be eradicated only if the people of Rajasthan themselves revolt against this age-old custom, which is primitive in nature and cannot be justified by any civilized society. However, before parting with this case, I would like to mention that the Government should consider the feasibility of constituting District/Block/Village level committees comprising of social workers, officers of the Revenue/Development Department, who should hold regular seminars at village levels to educate the people about the demerits and consequences of child marriages. The Government should also utilise its media i.e. T.V., Radio, News-papers, Magazines etc. for condemning this "social evil" but this condemnation should not be confined only on the occasion of "AKHA TEEJ" but planned and sustained campaign should be launched throughout the year in whole of Rajasthan for discouraging the people from performing such child marriages."

11. By Section 13 of the Act, the State Governments have been authorised to appoint Child Marriages Prevention Officers for whole State or for such part of may be specified in that notification and such officer shall be known as Child Marriage Prevention Officer. His duties have also been specified in the aforesaid Act. The Government Advocate has not been able to furnish correct information as to whether Child Marriage Prevention Officers have been appointed in the State of Rajasthan or not as provided u/s 13 of the Act. I feel that if no such officers have been appointed, the State Government should consider the feasibility of appointing such officer. The Central Government as well as the State Government should also consider the feasibility of making the provisions of the Act more stringent, deterrent and punishment for contravention of the Act should be severe.

12. The Writ petition stands disposed of with the observations made above. A copy of this judgment be sent to the Chief Secretary, Government of Rajasthan for information.

13. No order as to costs.