

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
JAIPUR BENCH, JAIPUR

DB Public Interest Litigation Petition No.3270/12  
S.K. Gupta Vs. Union of India & Ors.

Date: 23/05/2012

**HON'BLE THE CHIEF JUSTICE MR. ARUN MISHRA**  
**HON'BLE Mr. JUSTICE NARENDRA KUMAR JAIN-I**

Mr. S.K. Gupta, petitioner present in person.  
Mr. Tanveer Ahmad, for petitioner.  
Mr. R.P. Singh, Sr. Adv. & AAG with Mr. Shashikant Saini,  
Mr. S.S. Raghav, for respondents.

Considered I.A. No.20504/12.

Petitioner who is an Advocate of this court has filed the petition by way of Public Interest Litigation. Relief has been prayed in the writ petition to direct the respondents to take appropriate steps to ensure that child sex ratio in the State should not decline further on account of prevalent dowry system or the practice of female foeticide/infanticide by sex selection/sex determination or otherwise selecting abortion or it may be termed as discriminated abortion. Prayer has also been made that the State Government should provide financial assistance and scheme for improvement of condition of female children whether it concerns their birth, nutrition, education, property right, maintenance and other related matters. Other appropriate direction with respect to marriage ceremonies has also been prayed.

I.A. No.20504/12 has been filed with prayer to direct the State Government to have a separate

cadre under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the Act of 1994) to prevent female foeticide and to use hi-tech software like silent observer, active tracker etc. so that sonography centers may be forced to have a complete record of each sonography test for inspection of the appropriate authorities and sonography centers may also be required to transmit online, duly and completely filled in "F-Form" to the appropriate authorities within 24 hours of the sonography.

Reliance has been placed by the petitioner on the decision of the High Court of Bombay in **Radiological & Imaging Association Vs. Union of India & Ors., Writ Petition No.797 of 2011** vide judgment dated **26.8.2011** in which the High Court of Bombay has upheld the decision of the Collector & District Magistrate, Kolhapur requiring the ultra sound clinics to submit information in 'F' form on-line within 24 hours and to install the silent observer on the ultrasound machine. Duly considering the question of privacy right etc. vis-a-vis right of female to survive, it has been observed that contours of the right to privacy must be circumscribed by the compelling public interest flowing through each and every provision of the PC & PNDT Act.

There has to be balancing of right of female child to survive with that of privacy. Female infants have also right to live. There is right of still born child to be looked after properly during pregnancy. Once a child is conceived has to be treated with dignity. Such

right cannot be denied and practice of female foeticide/infanticide is prevailing at large which is illegal and unconstitutional. We are happy to note that the State Government has responded to maintain sex ratio and prevent illegal prevailing practices which are in violation of Article 21 of the Constitution of India.

Shri R.P. Singh, learned Additional Advocate General, has earlier taken time to persuade the State Government to issue appropriate direction and after due consideration of the matter at highest level, appropriate direction has been issued on 22.5.2012 as contained in the Order No.State PCPNDT Cell/2012/648. In the order bearing No.State PCPNDT Cell/2012/648 dated 22.5.2012, the concerned cell of the State Government on due consideration of falling ratio of females in the State has reached to the satisfaction that blatant violation is being done of the Act of 1994. At the stage of pregnancy before birth of child, there is misuse of ultrasound technique so as to determine sex of the child and illegal female foeticide and after birth infanticide is taking place. Thus, the State Government has considered it appropriate to issue regulatory measure so as to control the ultrasound centers which are running in the State.

In exercise of powers conferred under Section 17(4) of the Act of 1994, the State Government has decided that all the sonography machines shall be connected to active tracker and entire record, chart, forms, reports, etc. shall be maintained as per provisions of Section 29 of the Act of 1994 read with Rule 9 of the Pre-conception and Pre-

natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as the Rules of 1996), so that it can be examined by the concerned authorised officer so as to ensure compliance of provisions of the Act of 1994.

It has also been ordered by the State Government that all the registered sonography centers in the State should connect active tracker with the sonography machines and compliance be reported to the appropriate sub-divisional authority. The compliance has to be reported within six months, failing which, appropriate action has to be initiated in accordance with law.

Yet another order bearing No.State PCPNDT Cell/2012/649 dated 22.5.2012 has been issued by the State Government recording requisite satisfaction in exercise of powers conferred under Section 17(4) of the Act of 1994 that all the registered sonography centers have to transmit Form "F" on-line on the website of the Government, i.e. "hamaribeti.nic.in" forthwith. As soon as form is filled in, it has to be transmitted at once and compliance of the order has to be reported to the appropriate sub-divisional authority within three months, failing which, appropriate action has to be initiated in accordance with law under the Act of 1994 and the Rules of 1996 framed thereunder, for violation thereof.

Period of six months for fitting of active tracker to the sonography machine by the sonography centers is too much. There may be laxity on the part of the centers in acquiring it and furnishing required

information. Thus, we consider it appropriate at this stage to fix four months' time to make compliance of the aforesaid order of the State Government. Let the order No.State PCPNDT Cell/2012/ 648 dated 22.5.2012 with respect to active trackers be complied with within a period of four months by all the registered sonography centers, failing which, appropriate steps shall be taken for cancellation of their registration in accordance with the Act of 1994 and the Rules of 1996 framed thereunder.

For on-line transmission of "F" Forms, the time of 3 months fixed by the State Government is found to be reasonably appropriate. Let the order No. State PCPNDT Cell/2012/649 dated 22.5.2012 issued by the State Government in this regard be complied with by the sonography centers accordingly. Besides incurring liability under the Act of 1994 and the Rules of 1996 framed thereunder, in case any registered sonography center fails to comply with the aforesaid directions issued by the State Government as same are made part of this order, they shall be liable for violation of order under Article 215 of the Constitution as well as under Contempt of Courts Act, 1971.

I.A. No.20504/12 is disposed of with the aforesaid directions.

List on 28.05.2012. In the meantime, reply to I.A. Nos.22294/12 and 23571/12 be filed.

**(NARENDRA KUMAR JAIN-I)J.**

**(ARUN MISHRA)CJ.**

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GS

All corrections made in the order have been incorporated in the order being emailed.

Govind Sharma, PA