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ITEM NO.11

COURT NO.2

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Writ Petition (Civil) No.341/2008

SABU MATHEW GEORGE

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln.(s) for permission to file additional documents)

(For final disposal)

Date : 16/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Sanjay Parikh, Adv.

Ms. Ninni Susan Thomas, Adv.

Ms. Manjula Gupta, AOR

For Respondent(s) Mr. Ranjit Kumar, SG

Ms. Binu Tamta, Adv.

Mr. R.R. Rajesh, Adv.

Mr. Ajay Sharma, Adv.

Ms. Madhavi Divan, Adv.

Mr. D. S. Mahra, AOR

Mrs. Gunwant Dara, Adv.

Dr. Abhishek Manu Singhvi, Sr. Adv.

Ms. Ruby Ahuja, Adv.

Mr. Priyadarshi Banerjee, Adv.

Mr. Saransh Jain, Adv.

Mr. Vikrant Pachnanda, Adv.

Mr. Vishal Gehrana, Adv.

Ms. Tahira Karanjawala, Adv.

Mr. Arvind Chari, Adv.

Ms. Suman Yadav, Adv.

Mrs. Manik Karanjawala, Adv.

Mr. Shashank Manish, Adv.

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Mr. E. C. Agrawala, AOR

Mr. Anupam Lal Das, AOR

Mr. Anirudh Singh, Adv.

Mr. Sahil Monga, Adv.

Mr. K.V. Vishwanathan, Sr. Adv.

Ms. Saanjh N. Purohit, Adv.

Mr. Tanuj Bhushan, Adv.

Mr. S. S. Shroff, AOR

Mr. Gurmeet Singh Makker, AOR

UPON hearing the counsel the Court made the following

O R D E R

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.

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 vs. 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:-

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â- S 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.â- \235

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

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dated 5 th July, 2016 and 25 th July, 2016, an affidavit was filed by the competent authority of the Ministry of Electronics and Information Technology (MeitY), Government of India. Be it noted, when the matter was taken up on 19 th 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:-

â- S (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
â Warning Messageâ \235 on top of search result,
as and when any user in India submits any
â Skey word searchesâ \235 in search engines, which
relates to pre conception and pre natal
determination of sex or sex selection?

(c) Whether Respondents are ready to block
â Sauto-completeâ \235 failure for â Skey wordâ \235
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?

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(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 â Warning Messageâ \235, blocking of
the â Sauto-completeâ \235 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?â \235

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:-

â 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 â Sauto
blockâ \235. To clarify, if any person tries to avail
the corridors of these companies, this device
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

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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 "Sproposed list of words" in respect of which when commands are given, there will be "Sauto 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 "Sproposed list of words". It reads as under:-

"S 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

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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

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

"Sprinciple 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 16 th 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:-

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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.

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.

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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:-

â- S 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 & PNDDT 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.â- \235

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.

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:-

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â- S 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 disintitiled 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.â- \235

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.

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 19 th

September, 2016, that the respondent Nos.3 to 5 shall undertake the exercise of principle of "Sauto block" \235, the literature and write-ups that would tempt the people to go

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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 19 th

September, 2016, and, therefore, it cannot be construed as a violation. Be that as it may.

We reiterate our direction dated 19 th

September,

2016, and further add that the respondent Nos.3 to 5 shall appoint their "SIn-House Expert Body" \235 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.

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 "SIn-House Expert Body" \235 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

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become responsive to the Indian law.

Let the matter be listed on 11 th

April, 2017, for

further hearing.

(Chetan Kumar)

Court Master (H.S. Parasher)

Court Master