

Amended Cause Title

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

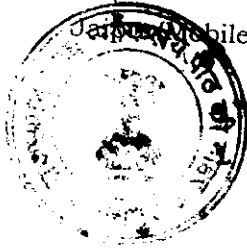
JAIPUR BENCH, JAIPUR

D. B. Public Interest Litigation No.3270/2012

S. K. Gupta s/o Shri Purshottam Lal Gupta aged 56 years,
r/c C-79, Hari Marg,, MALviya Nagar, Jaipur, by Profession
Advocate in Rajasthan High Court, Jaipur Bench,
(Mobile NO. 98290-67879)

-Petitioner

Versus



1. Union of India through it's Secretary, Ministry of
Union and Health and Family Welfare, Govt. of India,
Nirman Bhawan, New Delhi.

2. The secretary, Ministry of Women and Child
Development, Shastri Bhawan, New Delhi.

3. The Chairman, Central Supervisory Board (PNDT),
Ministry of Union Health and Family Welfare , Govt. of
India , Nirman Bhawan, New Delhi.

4. State of Rajasthan through it's Chief Secretary. Govt.
Secretariat, Jaipur.

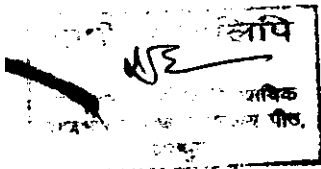
5. The Principal Secretary, Medical and Health, Govt.
Secretariat, Jaipur.

OATH COMMISSIONER
HIGH COURT BENCH JAIPUR

Urgent
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Dr. put up.
29/7/15

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6. The Principal Secretary, Department of Home, Govt. Secretariat, Jaipur.
7. The Principal Secretary, Social Justice and Empowerment Govt. Secretariat, Jaipur.
8. The Law Secretary, State of Rajasthan, Govt. Secretariat, Jaipur.
9. The Director, Child and Women Development, Gandhi Nagar, Jaipur.
10. Registrar, High Court of Judicature for Rajasthan at Jodhpur, Jodhpur
11. Indian Radiological Imaging Association (Rajasthan Chapter) through it's Secretary, it's office being situated at B 105 Jawahar Enclave, Sector 2, Jawahar Nagar , Jaipur 302004



-Respondents

OATH COMMISSIONER
JODHPUR

D.B.Civil Writ Petition (PIL) No.3270/2012

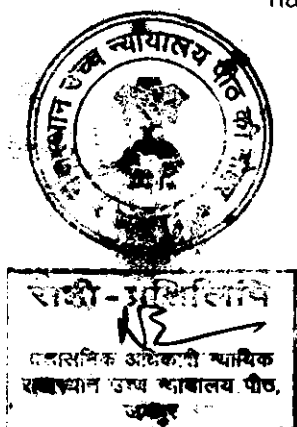
27.7.2015

HON'BLE CHIEF JUSTICE MR.SUNIL AMBWA'II
HON'BLE MR.JUSTICE VEERENDR SINGH SIRADHANA

Mr.Tanveer Ahmed)
Mr.Rajneesh Gupta)-for the petitioner.

Mr.G.S.Gill, Addl.Advocate General)
with Mr.Harish Kandpal)
Mr.Sunil Samdaria)-for the respondents.

1. Heard learned counsel appearing for the parties and perused the compliance report filed by the State-respondents affirmed by Shri Kishna Ram, Deputy Director, Medical and Health Department, Government of Rajasthan, Jaipur.
2. In the order dated 15th April, 2015, after considering the slow pace of implementation of the PCPNDT Act and the progress of the prosecutions pending in various Courts of the State of Rajasthan, we had given detailed directions as follows:-



“(1) The Law Enforcement Agencies are directed to increase their vigilance over the unregistered PCPNDT clinics. Whenever any unregistered PCPNDT clinic is found, the ultrasound sonography machine should be immediately seized and the seizure be reported to the State Appropriate Authority and the Magistrate to initiate proceedings for its confiscation. The ultrasound sonography machine shall not be released by the Courts until the conclusion of the proceedings under the PCPNDT Act.

(2) All the registered Medical Practitioners, authorized by amendment in Rule 3(3) of the PCPNDT Rules of 1996 made in the year 2012, to carry out the sonography test, shall sign the sonography reports. The digital signatures will not be allowed.

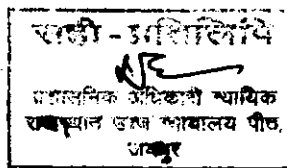
Each and every report will be accompanied with the photo copy or printed copy of the registration certificate of the PCPNDT clinic.

(3) Every sale of the ultrasound sonography machine whether static or portable under section 3(B) of the PCPNDT Act will be reported by the manufacturers to the State Appropriate Authority. The manufacturing companies and dealers will obtain sufficient proof of the registration or application for registration before sale of the machine. The reporting will also include the sale of the second hand ultrasound sonography machine with the proof of sale to be registered as PCPNDT clinic. Every sale of machine in violation of these directions will be treated as unauthorized sale, on which the machine will be liable to be seized.

(4) A GPS will be required to be attached to check the location of the ultrasound sonography machine. Every manufacturer will instal a GPS system at the time of sale of machine for tracing the location of the ultrasound sonography machine. The State Appropriate Authority will develop the technical know how of attaching a GPS on every machine within a period of three months. After three months, the sale of ultrasound sonography machine without attaching GPS system will not be permitted.

(5) The active trackers installed on sonography machines are of no use until the control rooms are established. The State Government will ensure that sufficient number of control rooms are established and a nodal officer is appointed for continuous monitoring of control room servers.

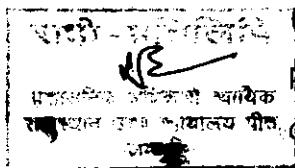
(6) Until the Rules are amended, providing for a procedure for an appeal against the order under the PCPNDT Act, it is provided that the appeal may be filed within a period of 30 days beyond which the appellant will have to give sufficient reasons for filing the appeal to the satisfaction of the Appellate Authority, and that a copy of the order will be



annexed with the grounds of memorandum of appeal. The appeal must be decided expeditiously and as far as possible within a period of six months.

(7) The order under Rule 11(2) of the PCPNDT Rules of 1996 for release of machines on payment of penalty equal to five times of the registration fee on reporting any violation of PCPNDT Act or Rules will not be passed until the Appropriate Authority is fully satisfied with the undertaking of compliance of the PCPNDT Act and Rules. It will be within the authority of the Appropriate Authority to take any security including bank guarantee for releasing the ultrasound sonography machine and where the offence has been reported to the Magistrate, the State Appropriate Authority will not have any power to release the machine. These powers will be exercised by the Magistrate, where the criminal case is pending consideration, subject to the same conditions as are prescribed in Rule 11(2) of the PCPNDT Rules of 1996.

(8) The State Government is directed to establish Special PCPNDT Courts in the Districts of Sri-Ganganagar, Hanumangarh, Churu, Jhunjhunu, Sikar and Alwar, where the situation of female feticide has worsened, as evidenced by the fall in the girl child sex ratio in these Districts. The State Government will establish the Special PCPNDT Courts in these Districts in addition to the seven PCPNDT Courts in the State of Rajasthan, within a period of three months.



(9) The Courts where the cases under the PCPNDT Act are pending or the Courts in which the revisions are pending, are directed to expedite the proceedings and conclude the trial within a period of six months. These directions are in addition to the directions issued earlier by this Court to conclude the trials. Any pendency of trial under the PCPNDT Act beyond six months, will be taken adversely by the High Court on its administrative side.

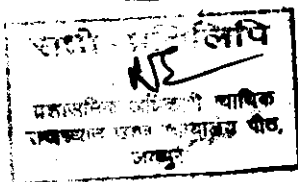
(10) The Society at large has to be vigilant about the

pernicious practice of female feticide, which is conceived in secrecy and executed in deceit in connivance with the medical practitioners. The members of the Society are given freedom to report these crimes to the State Appropriate Authority and the District Appropriate Authority. The complaints addressed to the District Magistrate or any other Appropriate Authority will be immediately reported to the State Appropriate Authority for taking steps. Wherever the complaints are found to be genuine, on making inspections, the complainant will be rewarded and for which the State Government will issue appropriate scheme within three months. The decoy operations will be encouraged and for which the State Government will issue guidelines for both carrying out the decoy operations and for rewarding the participants in the successful decoy operations.

(11) All the Judicial Magistrates/Metropolitan Magistrates will be issued directions by the Registrar General of the Rajasthan High Court that wherever the Special PCPNDT Courts are not established, they can take cognizance, conduct enquiry & trial for all offences of violation of PCPNDT Act and the Rules.

(12) The State Government is requested to continue its efforts to encourage and expand the scope of the schemes for welfare of girl child. The State Government has taken sufficient measures for public awakening, such as 'Badhai Sandesh' on the birth of girl child, involvement of various NGOs and Government Organizations in 'Beti Bachao Beti Padhao' and in developing the 'Asha Software' for timely and seamless online payment under the various schemes to the beneficiary. The fall in the ratio of girl child in the State of Rajasthan, however, requires the State Government to increase and expand the scope of the existing schemes and to initiate more schemes, for public awareness for protection of girl child.

(13) The State Government will also consider to make education of the girl child in the State completely free; to increase the percentage of reservation for women in public

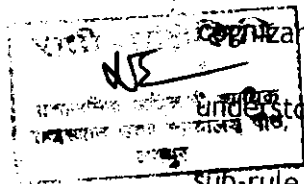


employment from 30% to 50%; and to provide measures to limit the expenditure in weddings at all levels.

(14) The State Government, NGOs, Charitable Societies and the Schools both Government and Private must be encouraged and given special grants to organize programmes for development of the girl child and awareness against female feticide and female infanticide.”

3. The compliance report on the directions given to the State Government, not only lacks the will to implement the PCPNDT Act, but also appears to be in wilful and deliberate defiance of the orders of the Court. The State Government has except for convening meetings, in which our directions were reiterated for compliance by various Departments, not made any efforts to implement any of the directions.

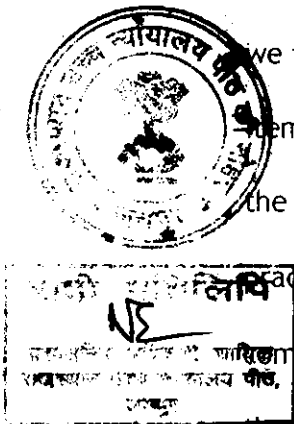
4. As regards the direction no.1; there is no report forthcoming from the State Government about the number of seizures made of the ultra-sound machines running without obtaining the license.



we also find that our directions for seizure and confiscation and that the restrictions to release the ultra-sound machines by the Appropriate Authority, when the matter has been reported and cognizance has been taken by the Magistrate, has not been properly understood. The power of releasing the ultra-sound machines under sub-rule (2) of Rule 11 of the Rules with the Appropriate Authority has been rampantly misused with all the unlicensed ultra-sound machines coming back in the market. In the circumstances, we had given directions that where the Magistrate had taken cognizance, the

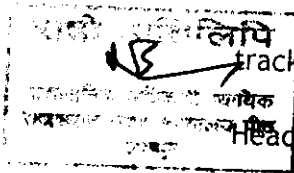
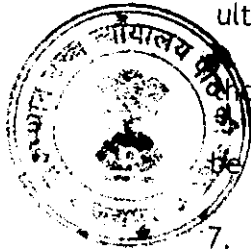
Court alone will be authorized to pass order in respect of release of the ultra-sound machines and that the release will have to wait until the conclusion of the proceedings under the PCPNDT Act. No data has been provided to us as to how many ultra-sound machines were seized and confiscated and in how many cases, the ultra-sound machines were released by the Appropriate Authority after the cognizance was taken by the Magistrate. Let the data be produced by the next date of hearing. These observations will take care of the directions no.1 and 7.

5. We are informed that with regard to direction no.2, the State Government has issued necessary directions for signing of all the sonography reports by the registered medical practitioners/doctors and restraining them from making the digital signatures. Though the direction has been accepted and forwarded, there is no report as to whether the direction is being complied with. In the circumstances, we issue further direction that with regard to direction no.2, a news item will be carried out and published in the newspaper, in which the insistence on signatures of registered medical practitioners/doctors on the sonography reports will be made compulsory giving all the patients a right to obtain the report with the signatures and full name of the registered medical practitioners/doctors.



6. With regard to directions no.3 and 4, we are distressed to find that the compliance report does not even mention the name of the manufacturers and the dealers, nor any material has been annexed

to show that the directions issued on 15th April, 2015 have been communicated to the manufacturers of the ultra-sound machines and the dealers. In the absence of any such report, we are unable to accept the statement that every manufacturer has been required to instal a Global Positioning System (GPS) on the ultrasound machines and that the ultrasound machines sold after 15th April, 2015 have been installed with Global Positioning System. In the next compliance report, the Court will expect the name of the manufacturers and the dealers and the number of the written communications to them, failing which the sale of ultrasound machines shall be declared illegal and no license will be given for the ultrasound machines which do not bear Global Positioning System and those which have been sold after 15th April, 2015, their licenses will be suspended.

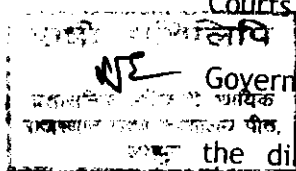


7. As regards the direction no.5, on the installation of active trackers, we are informed that a control room has been set up at the Headquarter of Health Department at Jaipur. The minutes of the meeting would show that for operating the control room, the amount was proposed in the PIP for Financial Year 2015-16 and that as soon as the approval was to be received, the amount will be disbursed. This note in the proceeding of the meeting dated 1.7.2015 clearly suggests that even if a control room has been set up, it is non-functional for want of budget and thus, we find that the direction no.5 has not been complied with at all.

8. As regards the direction no.6, we are informed that the

procedure has been provided for filing appeal under Rule 19 of the Rules. We make it clear that we had not issued any direction providing procedure for appeals under Rule 19, but for appeals under Section 21 of the PCPNDT Act, for which there are no machinery provisions either under the PCPNDT Act or under the Rules for appeals against the orders of the Appropriate Authority to the Central Government or the State Government, as the case may be. We thus clarify that the direction no.6 is applicable to the appeals under section 21 of the PCPNDT Act and not in respect of the appeals under Rule 19 of the Rules.

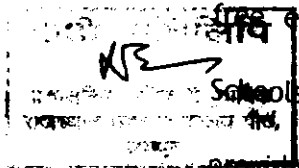
9. As regards the direction no.8, we had not given direction for consideration, but to establish the Special PCPNDT Courts in the Districts of Sri Ganganagar, Hanumangarh, Churu, Jhunjhunu, Sikar and Alwar, which are bordering the State of Punjab and have the lowest girl child sex ratio in the State. The direction was given after a long deliberation and considering the need of the Special PCPNDT Courts on the basis of the number of pending cases. The State Government has, in our opinion, wilfully and deliberately disobeyed the direction no.8 and for that, we direct that the Principal Secretary, Medical and Health Department, Government of Rajasthan, Jaipur and the Principal Secretary, Law, Government of Rajasthan, Jaipur to remain present in Court on the next date, for framing charges against them, unless these Courts are established by the next date and appropriate Notification is produced before the Court alongwith the sanction of the budget both for the Courts as



well as for staff.

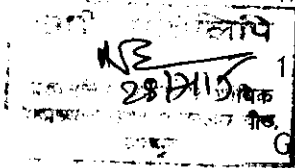
10. The direction no.9 required the Presiding Officers of the Courts where the cases for offences under PCPNDT Act are pending, to expedite the proceedings and conclude the trial within six months. In this regard, we have perused the progress report submitted by the Registrar General, Rajasthan High Court and find that in 7 Special PCPNDT Courts from 1.6.2015 to 30.6.2015, only 7 cases were disposed of leaving the pendency at the end of 30th June, 2015 at 369 in the Special PCPNDT Courts at Ajmer, Bharatpur, Bikaner, Jaipur Metropolitan, Jodhpur Metropolitan, Kota and Udaipur.

11. As regards the directions no.12, 13 and 14 are concerned, there is no report of compliance except stating that the State Government is contemplating on the same lines and making the policies and schemes for saving the girl child as well as for encouraging the education for girl child. We are informed that in the State of Gujarat, a decision has been taken for providing the free education for girls in the Government as well as Private Schools. We do not find any reason as to why the State of Rajasthan providing free education to the girls in the Government Schools, also cannot provide free education to the girls in the Private Schools as well and consider to increasing the reservation for women and putting a limit on the expenditure in wedding ceremonies. We expect that the State Government to consider and make a report on these issues in its next compliance report. We make it clear that we do not want making of people aware about the policies and schemes



of the State Government by way of publications, Seminars and Camps. We want a positive effort in the direction of curbing the fall of girl child sex ratio in the State of Rajasthan, which has far reaching implication, by strict and meaningful implementation of PCPNDT Act.

12. The next compliance report will be filed on or before 4th September, 2015. The matter will be listed on 7th September, 2015 for necessary directions. On that date, the Principal Secretary, Medical and Health Department, Government of Rajasthan, Jaipur and the Principal Secretary, Law, Government of Rajasthan, Jaipur will remain present in Court.



13. A copy of this order be issued to learned Additional Advocate General by tomorrow.

(Handwritten signature)

(VEERENDR SINGH SIRADHANA)J.

(Handwritten signature)
(SUNIL AMBWANI)CJ.

Parmar

No - ~~12264~~
28.07.2015

A Certified copy of order 28/7/15 forwarded to learned additional Advocate General, RHCJ Jaipur for information & Necessary Compliance.

(Handwritten signature)
28/7/15
आशासिक अधिकारी न्यायिक
अधिवेशन उच्च न्यायालय, जयपुर
जयपुर