

Punjab-Haryana High Court

Help Welfare Group Society vs The State Of Haryana And Others on 18 September, 2013

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No. 21565 of 2011

Date of Decision : 18.9.2013

Help Welfare Group Society

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH Present:- Mr. Sartej Singh Narula, Advocate, for the petitioner.

Mr. Ajay Gupta, Additional Advocate General, Haryana. SANJAY KISHAN KAUL, CHIEF JUSTICE (ORAL) The Public Interest Litigation has been filed seeking directions to the respondents to implement the provisions of the Pre-conception and Pre- natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short 'the Act') in their true letter and spirit. Infact, considerable water has flowed since the filing of the petition and thus, learned counsel for the petitioner submits that he confines the relief to the proper implementation of Section 17 (3)(b) and Section 17(5) of the said Act.

The said Act was brought into force for prohibition of sex selection before or after conception and thus, consequently for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders as also for the prevention of their misuse for sex determination leading to female foeticide as set out in the objects and reasons. Unfortunately, there is vast malpractice prevalent in the Sharma Sanjiv Kumar 2013.09.24 11:35 I attest to the accuracy and integrity of this document Chandigarh State of Haryana of using this technique for finding out the sex of the unborn child resulting in female foeticide and disturbing the very balance of male-female ratio.

In order to enforce the provisions of the said Act, Chapter-V enlists the Appropriate Authority and the Advisory Committee. Section 17(1) to (3) and (5), which are relevant for our purposes read as under :-

"17. Appropriate Authority and Advisory Committee.-

(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act. (2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. (3) The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,-

(a) when appointed for the whole of the State or the Union territory, consisting of the following three members

(i) an officer of or above the rank of the Joint Director of Health and Family Welfare- Chairperson;

(ii) an eminent woman representing women's organization; and

(iii) an officer of Law Department of the State or the Union territory concerned:

(b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

Sharma Sanjiv Kumar 2013.09.24 11:35 I attest to the accuracy and integrity of this document Chandigarh (4) xxxxx xxxxx xxxxx (5) The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman."

Insofar as the State Government is concerned, Sub-section (2) of Section 17 envisages the appointment of Appropriate Authorities for the whole or part of the State by notification in the official gazette. Sub-section (3) prescribes as to who would be appropriate authorities whether they are appointed by the Central Government under Sub-section (1) or by the State Government under Sub-section (2). Clauses (a) and (b) of Sub-section (3) make a distinction between the appointment of appropriate authorities for the whole of the State or the Union Territory and for any part of the State or Union Territory. Under clause (a) of Sub-section (3) when it is for the whole of the State or the Union Territory, it has to be three member body consisting of the officer of or above the rank of Joint Director of Health and Family Welfare as Chairperson with an eminent woman representing women's organization as a Member as also officer of the Law department of the State or the Union Territory concerned. Clause (b) has not repeated what clause (a) states, but qualifies effectively

sub-para (i) of clause (a) of Sub-section (3) by stating that the officer need not be, who has to act as Chairperson, rank of Joint Director of Health and Family Welfare, but of such rank as the State Government may deem fit. Infact, the expression used is for both State Government and Central Government.

Sharma Sanjiv Kumar 2013.09.24 11:35 I attest to the accuracy and integrity of this document Chandigarh The question which arises for consideration is whether even where the appointment is for a part of the State or the Union Territory, it should be multi-member three member body or only single member body consisting of officer of such rank as the State Government may deem fit.

In our view, the purposive construction must be given to the said provisions and the intent to have a multi member body is not eschewed in Sub-section (b) when the appointment is for a part of the State or the Union Territory. We find it difficult to accept that if the appointment is for the whole of the State, it will be three member committee, while it is for part of State, it will be single member committee. The only change is that the Chairperson need not be of the rank of Joint Director of the Health and Family Welfare, but of such other rank as the State Government may deem fit. It will still continue to be a multi-member committee having an eminent woman representing women's organization and officer of the Law department of the State as a member.

We may add that initially this is how the State Government also understood the provisions as per notification dated 20.5.2003 where the Civil Surgeon was designated as the Chairperson with Programme Officer, ICDS as Member as also District Attorney as Member. However, this notification is stated to have been subsequently rescinded by another notification dated 25.8.2003 when only the Civil Surgeon was designated as a sole member appropriate authority.

We may examine the matter from another perspective i.e. the very objective for which these authorities are to be appointed under the said Act. In that context also when examined, such a multi-member body of three Sharma Sanjiv Kumar 2013.09.24 11:35 I attest to the accuracy and integrity of this document Chandigarh members would far better serve the ends rather than the Civil Surgeon alone being the appropriate authority.

The other aspect raised before us is arising from Sub-section (5) where the State Government has to constitute an Advisory Committee for each appropriate authority to aid and advise the Appropriate Authority. We are informed that the Advisory Committees are functioning, but they in turn have been appointed only by the Appropriate Authority and not by the State Government. However, this position is contested by learned Additional Advocate General who submits that it is the State Government who has appointed the district level Advisory Committees by designation and in pursuance thereto, the Appropriate Authority has issued letters to the persons occupying the posts of those designated authorities who will constitute the Advisory Committee.

We are of the view that once we have come to the conclusion that the Appropriate Authority has to be a three member body, to ensure compliance of Section 17(5) of the said Act, it is the State Government which would have to constitute the Advisory Committee to aid and advise each Appropriate Authority and in turn if only names have to be filled in by the Appropriate Authority of

the designated persons who have to act as Members of the Advisory Committee, the same can be done.

At request of the learned Additional Advocate General, so as to ensure that the necessary action is taken by the respondents to cure the defect, we grant one month's time.

The petition stands disposed of in the aforesaid terms.

Sharma Sanjiv Kumar 2013.09.24 11:35 I attest to the accuracy and integrity of this document Chandigarh List for compliance on 3.12.2013 and the compliance report be filed at least three days prior to the next date so fixed.

Dasti under signatures of the Bench Secretary of this Court.

(SANJAY KISHAN KAUL) CHIEF JUSTICE (AUGUSTINE GEORGE MASIH) JUDGE 18.9.2013  
sjks Sharma Sanjiv Kumar 2013.09.24 11:35 I attest to the accuracy and integrity of this document  
Chandigarh