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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.52 OF 2013**

Priscilla Samuel ... Petitioner
Versus
Union of India and Ors. ... Respondents

Mr. Priscilla Samuel Petitioner in person.
Mr. D.P. Singh for the Respondent No.1 – U.O.I.
Mr. J.S. Saluja, AGP for the Respondent No.2 – State.
Ms. Nikita Jacob i/by S.K. Legal Associates for the Respondent Nos.8
and 9.
Ms. M.A. Adenwala for Tata Institute of Social Science.

**CORAM : A.S. OKA &
P. D. NAIK, JJ.**

DATE : 23rd MARCH, 2016

PC.

1 The Petitioner appearing in person has raised very important issues. Hence, the Petition will need final hearing. Accordingly, we issue Rule. The concerned counsel representing the Respondents waive service.

2 The question is what should be the interim directions issued. There are several important issues raised in the Petition. But by the present order, we are dealing with only some of the issues. The first issue is regarding the implementation of the provisions of the Dowry

Prohibition Act, 1961 (for short “the said Act of 1961”). The object of the Act is to prohibit giving or taking of dowry. Our attention is invited to various provisions including Section 4-A, Section 8-B and Section 10 of the said Act of 1961. Section 4-A reads thus :-

“4-A. Ban on advertisement. - If any person, -

(a) offers, through any advertisement in any newspaper periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative;

(b) prints or publishes or circulates any advertisement referred to clause (a),

he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.”

3 The Petitioner invites attention of the Court to the fact that very rarely that the State Government has prosecuted any person under Section 4-A of the said Act of 1961. Instances of violation of Section 4-A are pointed out in the Petition. Clause (a) of Section 4-A is very wide. It includes an advertisement by any person in media by which he offers any share in his property or of any money or both as a share in any business or other interest as consideration for marriage of the marriage of his son or daughter or any other relative. Even printing, publishing

and circulating such advertisements is made an offence. The minimum sentence of imprisonment of six months is prescribed by the Section. The State will have to deal with the allegation that very rarely that recourse has been taken to the stringent provision under Section 4-A though there are number of cases of its violation.

4 The other issue is regarding appointing Dowry Prohibition Officers. The stand of the State as reflected from the orders passed by this Court earlier shows that certain police officers have been appointed as Dowry Prohibition Officers. To the affidavit of Shri Manoj Shantaram Patankar, District Women and Child Development Officer, tendered today, a copy of the Government Resolution dated 13th May, 1998 has been annexed. The material part of the said resolution reads thus :-

“Dowry Prohibition Act, 1961

As per Number – Sankirna – 1097/Pra.Kra.64/Ka-2 & using rights u/sec.8-B of the Dowry Prohibition Act, 1961, the Government of Maharashtra has appointed/designated following Police Officers as “Dowry Prohibition Officers”. The officers shall be competent to discharge rights and duties under the Dowry Prohibition Act, 1961.

Deputy Inspector of General (Women Violence Prevention Cell)	Dowry Prohibition Officer at State Level
District Police Superintendent/ Police Commissioner (Member of District Vigilance Committee)	Dowry Prohibition Officer at District Level
Police Inspector/ Police Sub Inspector (Working on Women Vigilance Committee)	Dowry Prohibition Officer at Police Station Level”

5 In the earlier order, this Court has already expressed serious reservations about appointing police officers as Dowry Prohibition Officers.

6 Section 8-B reads thus :-

“8-B. Dowry Prohibition Officers.- (1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely :-

(a) to see that the provisions of this Act are complied with;

(b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;

(c) to collect such evidence as may be necessary for the prosecution of persons committing offences under this Act; and

(d) to perform such additional functions as may be specified in the rules made under this Act.

(3) The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an Advisory Board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub-section (1).”

7 Sub-Section (3) of Section 8-B indicates that Dowry Prohibition Officers can be the persons other than Police Officers and therefore, there is a power conferred on the State Government to confer certain powers of the Police Officers on the Dowry Prohibition Officers. Section 10 of the said Act of 1961 confers rule making power on the State Government. Clauses (a) and (b) of Sub-Section (2) of Section 10 deal with Dowry Prohibition Officers. Apart from the fact that this Court has already expressed reservations about appointing Police Officers as Dowry Prohibition Officers, we find that the Police Officers have been appointed as Dowry Prohibition Officers by designation. This shows non-application of mind. As of today, Rule making power under the said Act of 1961 is not exercised. There is no criteria laid down for appointment of Dowry Prohibition Officers. Before any officer or person is appointed as a Dowry Prohibition Officer, surely some application of mind is required on the question whether he is capable of discharging duties as a Dowry Prohibition Officer considering his educational qualifications, his experience, his status in the society, etc. If without any application of mind Dowry Prohibition Officers are appointed with reference to their designation in police service, they may not be able to effectively discharge their duties and functions.

8 Sub-Section (4) of Section 8-B provides for establishing

Advisory Board for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions. The State Government is empowered to appoint Advisory Board consisting of five social welfare workers out of whom at least two shall be women from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction. However, none of the affidavits on record show that the State Government has appointed such Advisory Boards. Sub-Section (2) of Section 8-B will show that Dowry Prohibition Officer discharges important functions. One of the functions is to collect such evidence as may be necessary for the prosecution of persons committing offences under the said Act of 1961. On occasions, the State Government has criticized large number of acquittals in cases involving offences against women. If Dowry Prohibition Officers discharge their duties properly, they will be of great deal of assistance to the investigating officers while dealing with the investigation of offences under the said Act of 1961. It is for this reason that it is all the more important for the State Government to properly exercise the powers under Sub-Section (4) of Section 8-B and appoint Advisory Board in various jurisdiction so that the members of the Advisory Board can guide the Dowry Prohibition Officers. The State Government will have to issue directions to the Police Officers directing them to take assistance of the Dowry Prohibition Officers for collection of evidence.

9. Dowry Prohibition Officers are entrusted with the duty of ensuring that the provisions of the said Act of 1961 are complied with. There is an important function entrusted to them of preventing the taking or abetting the taking of, or demanding of, dowry. Unless members of public are made aware that Dowry Prohibition Officers are appointed by the Government for a particular area or wards, citizens will not be in a position to approach the Dowry Prohibition Officers. To enable the Dowry Prohibition Officers to take preventive action as contemplated by Clause (b) of Sub-section (2) of Section 8-B, the State Government will have to take steps to give wide publicity to the names of the Dowry Prohibition Officers especially the Dowry Prohibition Officers appointed at District and Police Station level. Publicity should be given to their respective office addresses, telephone numbers, etc. The State Government will have to take appropriate steps for making available a grievance redressal mechanism so that members of the public can give information to the Dowry Prohibition Officer in advance about any likely violation of the provisions of the said Act of 1961. If such mechanism is provided, the Dowry Prohibition Officers can step in and ensure that the provisions of the said Act of 1961 are complied with and more importantly taking or abetting the taking of, or the demanding of dowry is prevented. It is only the members of the public that can point out to the Dowry Prohibition Officers the cases where

there is a possibility of committing breach of the provisions of the said Act of 1961. Apart from reconsidering the issue of appointing only the police officers as Dowry Prohibition Officers, the State Government will have to take immediate steps for giving wide publicity to the appointment of Dowry Prohibition Officers as directed above and to inform the members of the public in what manner they can seek assistance of the Dowry Prohibition Officers. A grievance redressal mechanism shall be established so that all complaints of breaches of the said Act of 1961 can be reported to the Dowry Prohibition Officers. This step shall be taken immediately. As stated earlier, the State Government shall take immediate steps for constituting Advisory Boards in terms of Sub-Section (4) of Section 8-B of the said Act of 1961.

10 The State Government will have to also state on oath before this Court the outer limit within which the State Government will exercise the Rule making power under Section 10 of the said Act of 1961.

11 The State Government may consider of inviting attention of all the leading registered newspapers to the provisions of Section 4-A of the said Act of 1961 which makes printing, publication and circulation of objectionable advertisements as an offence. If this step is taken, hopefully large number of newspapers will desist from publishing

advertisements which are prohibited. Even this step shall be taken immediately.

12 Apart from other issues, one more important issue raised by the Petitioner appearing in person of the implementation of the provisions of the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998 (for short “the said Act of 1998”). In the Petition it is pointed out that some of the marriage bureaus are indulging in all sorts of illegal activities. One of the earlier orders passed by this Court records the stand of the State Government that under the circular dated 27th February, 2008, Ward Officers of the Municipal Corporations, Chief Officers of the Municipal Councils/ Nagar Panchayats and Chief Executive Officers of the Cantonments have been nominated to be the Registrars of the Marriage Bureaus and Marriages for the area within their respective jurisdiction. Under the provisions of the said Act of 1998, the Registrars play important role as regards the registration of marriage bureaus and various connected activities. The Registrars are required to maintain registers. The State Government has exercised the Rule making power by framing Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Rule, 1999. The Registrars performing important role have been given power to cancel the registration of marriage bureaus. The

ward officers of the Municipal Corporations are now performing the duties as designated officers under the provisions of the Municipal laws and they are responsible for discharging several duties including the issue of dealing with prevention and demolition of illegal structures. Same is the position with Chief Officers of Municipal Councils and the Chief Executive Officers of the Cantonment as they discharge very important functions. Therefore, the State will have to seriously reconsider whether the said officers can be entrusted with the additional duties of the Registrars. Considering the fact that under the respective jurisdictions they have to perform large number of other important duties, they may not be able to devote sufficient time to discharge their duties as Registrars. The order dated 24th February, 2016 records helplessness on the part of the State to produce statistical data of existing marriage bureaus in Mumbai and other leading cities of the State. We do not accept that the State is helpless in such matters. The State Government cannot be silent spectator when it is pointed out that number of illegalities are being committed by registered marriage bureaus. Therefore, the State will have to collect the data of existing marriage bureaus at least in municipal areas of the State. The State will have to reconsider all the aforesaid aspects.

13 The other issue to which the attention of the Court is invited is to the various matrimonial websites and alleged illegalities

associated with the same. The State will have to consider whether any re-look at the legislative provisions is necessary for dealing with the issue.

14 We may make it very clear that in this order we have dealt with only some of the issues raised by the Petitioner appearing in person.

15 The State Government shall respond by filing necessary affidavits within a period of one month from today considering the issue.

16 We must note here that the State should not treat this litigation as an adversarial litigation considering the fact that there are large number of cases on dowry death reported in the State. Considering the importance of the issue, we request the learned Associate Advocate General to represent the State. Place the Petition under the caption of 'Fresh Admissions' on 28th April, 2016.

(P. D. NAIK, J)

(A.S. OKA, J)