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against the vacancy, caused due to resignation tendered by Shri Khageswar Pradhan on 28-2-1990.

a Shri Jena shall be entitled to draw 1/3rd grant with effect from 1-3-1990 to 31-5-1990 and 2/3rd grant with effect from 1-6-1990 in the scale of ₹780-1160. The post LDC has been admitted to 1/3rd grant-in-aid from 1-6-1988.” (emphasis added)

b 10. It is evident from the aforesaid letter of approval dated 6-11-1990 that the respondent had not been appointed on a non-existing/non-sanctioned post. The post became vacant due to the resignation tendered by Shri Khageswar Pradhan on 28-2-1990. Therefore, the post was available and the provisions of the Circular dated 27-5-1978 could not be made applicable to the case at hand.

c 11. In view of the above we do not find force in the appeal. The appeal is accordingly dismissed. No costs. However, in the facts and circumstances of the case, in case the pay scale of the respondent has not been fixed as directed by the High Court, all the formalities shall be completed in compliance with the High Court’s judgment within a period of three months from today. Arrears, if any, should be paid to him within a period of three months thereafter.

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(2011) 2 Supreme Court Cases 797

(Record of Proceedings)

(BEFORE S.H. KAPADIA, C.J. AND K.S.P. RADHAKRISHNAN AND
SWATANTER KUMAR, JJ.)

e COMMITTEE FOR LEGAL AID TO POOR . . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petition (C) No. 37 of 2009, decided on September 20, 2010

f **Constitution of India — Arts. 32 and 226 — Implementation of statute — Directions for — Registration of Births and Deaths — Statutory requirement — Measures for proper implementation of Registration of Births and Deaths Act, 1969 sought for — Direction given in terms of Consent Minutes of Order — States/Union Territories directed to simplify procedure, bring uniformity in format with national emblem and diversify birth certificate issuance to minimise problems faced on the ground in birth registration — Also directed that Chief Registrar in a State and District Registrars as far as possible should hold exclusive charge to do justice to the post — Registration of Births and Deaths Act, 1969 — Generally**
(Paras 5, 17, 18, 20 and 23 to 25)

PK-D/47241/C

Advocates who appeared in this case :

h Colin Gonsalves, Senior Advocate (Ms Ritu Kumar and Ms Jyoti Mendiratta, Advocates) for the Petitioner;

P.P. Malhotra, Additional Solicitor General, Dr. Manish Singhvi, Additional Advocate General, A. Mariarputham, Advocate General, Sikkim, and Jayant K. Sud [Anand Vardhan Sharma, Aarohi Bhalla, Ms Anil Katiyar, Avijit Bhattacharjee, Ms Ananya Kar, Ms Sarbani Kar, Bidyabrata Acharya, Ms C.K. Sucharita, Ms Nirada Das, Gopal Singh, Manish Kumar, Rituraj Biswas, Ms Hemantika Wahi, Nupur Kanungo, Shreekanth N. Terdal, Ms Padmalakshmi Nigam, Ms Sadhana Sandhu, S.S. Rawat, D.S. Mahra, V.G. Pragasam, S.J. Aristotle, Prabhu Ramasubramanian, L.A.J. Selvam, Anil Kr. Jha, Santosh Kumar, Saurabh Mishra, B.S. Banthia, Kh. Nobin Singh, Sapam Biswajit Meitei, Ms Asha Gopalan Nair, Sanjay V. Kharde, Ms Navneet Kaur (for M/s Corporate Law Group), Jatinder Kr. Bhatia, P.V. Dinesh, T. Harish Kumar, Ambar Qamaruddin, Ajay Pal, Abhinav Ram Krishna, Prashant Shukla, Abhishek Atrey, Vishal Yadav, Devanshu Kr. Devesh, Milind Kumar, Sahil S. Chauhan, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Edward Belho, Ms K. Enatoli Sema, Rituraj Biswas, Ms Aruna Mathur, Amarjeet Singh Girda, Manish Singhvi, P.V. Yogeswaran, Ms Jayshree Anand, K.K. Mahalik, Ajay Pal, Manjit Singh, Kamal Mohan Gupta, Anil Shrivastav, A. Ramesh, D. Mahesh Babu, Ms A. Subhashini, Ms Satya Siddiqui, Shailendra Kr. Mishra, K.N. Madhusoodhan, R. Sathish, Aman Rai Gandhi and Balaji Srinivasan, Advocates] for the Respondents.

ORDER

1. This writ petition has been filed by an NGO making a grievance that registration of births in India is at a low level and that very few children are provided with birth certificates and that the provisions of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as “the 1969 Act”) are not being implemented.

2. Under Section 3 of the 1969 Act, the Central Government is required to appoint a Registrar General and such other officers to coordinate and unify the activities of the Chief Registrars of the States and submit an annual report to the Central Government on the working of the 1969 Act.

3. The main grievance of the writ petitioner is that relevant provisions of the 1969 Act are not being implemented.

4. Today, when the matter came up for hearing, the learned counsel, appearing on both sides, submitted before us by consent Minutes of the Order. The said Minutes are taken on record and marked ‘x’.

5. In terms of the said Minutes we direct the States/Union Territories to appoint full-time Chief Registrars. That the States/Union Territories will submit their reports annually, as required under the provisions of the 1969 Act. That the States/Union Territories are directed to notify all panchayats and institutional delivery centres such as hospitals, nursing homes, CHCs, PHCs and others as local registration centres under Section 7(1) of the Act. That all the States/Union Territories are directed to notify ASHAs, aanganwadi workers, dai’s and headmasters of government schools under Section 10 of the 1969 Act. That the States/Union Territories are directed to switch over to the uniform format for birth certificates, as suggested by the Registrar General with national emblem on the said certificates.

6. The above directions have been given in terms of the consent Minutes of the Order.

7. Accordingly, the writ petition stands disposed of in terms of the consent Minutes of the Order.

MINUTES OF THE ORDER

Background

a **8.** This petition has been filed by an NGO making a grievance that the registration of births in India is at a low level and that very few children are provided with birth certificates and this is due to the poor implementation of the Registration of Births and Deaths Act, 1969. Notice was issued on 6-2-2009. Thereafter the Registrar General of India and the petitioners had a productive meeting in which the critical issues were discussed at length.

b **9.** India is signatory to the UN Convention on the Rights of the Child, 1989 which states in Article 7 that “the child shall be registered immediately after birth”. Similarly, the National Population Policy, 2000 has set a goal of achieving 100% registration of births by 2010.

The Registration of Births and Deaths Act, 1969

c **10.** The statute was enacted and came into force on 31-5-1969. Under Section 3 the Central Government is required to appoint the Registrar General, India and such other officers under his superintendence. The Registrar General is also required to coordinate and unify the activities of the Chief Registrars of the States and submit an annual report to the Central Government on the working of the Act. The relevant sections for the purpose of this petition are set out hereafter.

d **11.** Under Section 4, the State Governments are required to appoint Chief Registrars for the State and other officers who will work under the superintendence of the Chief Registrar. Under Sections 6 and 7, the State Government may appoint a District Registrar and Registrars for local areas respectively such as a municipality, panchayat or other local authority.

e Sections 8 to 10 describe the persons who are duty-bound to provide information to the Registrar regarding births and deaths.

f **12.** Section 11 requires a register to be maintained in which entries are made. Section 12 provides for an extract of prescribed particulars from the register relating to birth or death (commonly referred to as the birth certificate) to be given free of charge to the informant if the information is given within 21 days of the birth or death.

g **13.** Section 13 deals with delayed registration of births and deaths on payment of a late fee where the information is given to the Registrar after 21 days but within 30 days of birth and deaths. If the information is given after 30 days but within one year, a late fee is to be paid along with an affidavit.

h After one year, the birth as well as the death is registered only on an order made by the First Class Magistrate/Executive Magistrate. In all such delayed registration cases, the extract of prescribed particulars from the register relating to birth or death is to be given in format. The Model Registration of Births and Deaths Rules, 1999 made under Section 30 of the Act have been provided to all the States/UTs and based on which the States have framed the State Rules.

Status of birth registration

14. The office of the Registrar General, India has published Special Report, 2002-2005 in which the level of registration of births in the country is shown at about 68%. This is way behind the target of 100% which was to be achieved this year. Perusing the data State-wise, it is observed that a few States with a large population are performing very poorly. These are Bihar (16.9%), Jharkhand (37%). The reporting efficiency also varies from State to State and the picture in respect of some of the poor performing States is quite disturbing. Even the quality of data emanating from some of the States suffers from infirmities. The States are submitting their reports after a delay of 2-3 years and U.P. apparently has not submitted reports since 1996. Some of the States are not furnishing complete reports. a

15. Although there is some dispute over the National Family Health Survey (NFHS III) data for 2005-2006, it is important to set out the figures hereinafter: b

| <i>State</i> | <i>Birth registration rate</i> | <i>Birth certification rate</i> |
|-------------------|--------------------------------|---------------------------------|
| Andhra Pradesh | 38.6% | 21.0% |
| Arunachal Pradesh | 30.8% | 25.6% |
| Bihar | 6.2% | 3.0% |
| Chhattisgarh | 73.9% | 14.2% |
| Goa | 93.0% | 76.0% |
| Haryana | 72.3% | 46.0% |
| Himachal Pradesh | 87.4% | 44.4% |
| Karnataka | 58.3% | 48.7% |
| Maharashtra | 79.9% | 44.3% |
| Manipur | 30.5% | 12.0% |
| Orissa | 58.3% | 17.5% |
| Sikkim | 82.4% | 65.0% |
| Tamil Nadu | 85.3% | 67.0% |
| Uttarakhand | 39.0% | 17.0% |
| Uttar Pradesh | 6.8% | |
| West Bengal | 72.8% | 55.3% |

16. According to NFHS III at the all-India level the birth registration rate is 41% among children below 2 years. Only 15% of the registered children were provided with birth certificates. Birth registration among children under 5 years stood at 7.1% in U.P., 16.4% in Rajasthan, 5.8% in Bihar, 9.1% in Jharkhand, 29.7% in Madhya Pradesh and 40.3% in Andhra Pradesh. Turning to the number of registration centres population-wise it appears that the States of Assam, Bihar, Chhattisgarh, Haryana, Jammu and Kashmir, Jharkhand, Kerala, Manipur, Meghalaya, Orissa, Rajasthan, Sikkim, West Bengal, Delhi have less registration units than the national average of one c

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- registration centre per 2944 population (rural) and one registration centre per 65,548 population (urban). Low performance in some of these States may be attributed to lack of *easy access* to the registration centres. Directions are, therefore, sought to the low performing and stagnating States like Assam, Bihar, Chhattisgarh, Jammu and Kashmir, Jharkhand, Manipur, Meghalaya, Orissa and West Bengal to review the existing number of registration centres and increase their numbers.
- a* 17. A perusal of the centres that have been notified as registration centres under the Act indicates that the trend is towards notifying such centres as are easily accessible to the people particularly those who are poor and marginalised and in the remote and rural areas. Hence PHCs, CHCs, village panchayats, institutions such as hospitals and nursing homes, government schools and the like have been notified.
- b* 18. Similarly, the notifying authorities under Section 10 of the Act are in the process of being diversifying in the many States to include the aanganwadi workers, the auxiliary nurse-midwives (ANMs), the ASHAs under NRHM and even the dais. The States/UTs have been requested to direct these classes of persons in not only getting the reporting forms filled in respect of the domiciliary births/deaths occurring in their area, pass the same on to the Registrar but also deliver the certificate to the household.
- c* 19. The States/UTs have also been directed that wherever the facility of delivery of the birth certificate to the mother of the new born child before her discharge from the medical institution or delivery of the death certificate to the family of the deceased is not available in the medical institution, the medical institution may obtain a self-addressed stamped envelope from the informant and have the same forwarded along with the filled-in reporting form for registering the event and dispatch of the certificate utilising the self-addressed stamped envelope.
- d* 20. The lack of uniformity in the birth certificate format has resulted in much confusion in that each State has its own format with emblems. The Registrar General has taken proactive steps in this regard by circulating a common format for all the 13 forms including birth certificate format and all the States except Madhya Pradesh, Chhattisgarh, Orissa and Lakshadweep have switched over to the recommended common formats. Madhya Pradesh and Chhattisgarh would switch over to the standardised format from 1-1-2011. As regards Orissa, the issue is pending with the State Government. It has also been suggested that this format of the certificate should have the national emblem.
- e* 21. Due to concerted efforts taken by the Registrar General, India and the Chief Registrars in certain States it is reported that several States such as Rajasthan and Madhya Pradesh that were lagging far behind have now considerably improved together with other States and are responding positively. Hence the situation today may not be as bleak as reports made on the basis of NFHS III. With the important changes being contemplated regarding the mode and manner of the filling up of birth registration forms
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and the handing over of delivery certificates to the parents of the child as discussed in above paragraphs, the situation is likely to improve further. Besides, steps are also being taken by the Registrar General to ensure the registration of birth of street children. a

Late registration procedures cumbersome

22. Some of the problems faced by the parents of children and other informants are that the late registration procedure currently in place (requiring payment through treasury challans and the making of affidavits and the obtaining of Magistrate's order) slowed down the process of registration. b

23. It is learnt by the petitioner, though this information could not be confirmed, that the Government proposes to amend the Act to substantially relax the late registration procedures and to bring about other changes to, inter alia, push up the level of registration of births and the prompt issuance of birth certificates. If such an amendment is done it would go a long way towards the full implementation of the statute. c

Registrars holding additional charge

24. Another problem faced of the serious nature relates to the Registrars appointed at the State, district and local areas. They are invariably civil servants who are already holding charge of onerous posts and are given additional charge of the post of Chief Registrars, District Registrars, Registrars/Sub-Registrars, etc. under the Act. They were already fully burdened with their existing responsibilities when they were given additional charge as Registrars under this Act. It is therefore imperative that the Chief Registrar in the State holds exclusive charge to do justice to the responsibilities of the post. Similarly, the District Registrars as far as possible be given exclusive charge if the objective of 100% registration of births is to be achieved. e

Posts lying vacant

25. Another difficulty faced relates to large number of posts lying vacant in the office of the Chief Registrar and also at District Registrars/Local Registrars. In Uttar Pradesh, for example, the entire work is being managed by one official. It is therefore important that the posts sanctioned for the purpose and lying vacant be filled immediately. f

26. The Registrar General and the Union of India have informed this Court that *amendments are proposed* to be carried out in the Act and the same will be tabled in the coming session of Parliament and that these will go a long way towards improving the enforcement of this Act. g

Directions sought

(a) For an order directing the States/UTs, to appoint full-time Chief Registrars exclusively to perform their statutory duties under this Act.

(b) For an order directing the States/UTs to submit their reports under Sections 4(4) and 19(2) of the Act every year and on time to the Registrar General, India. h

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a (c) For an order directing all States/UTs to notify all panchayats and institutional delivery centres such as hospitals, nursing homes, CHCs, PHCs and if required government schools also as local registration centres under Section 7(1) of the Act.

b (d) For an order directing all States/UTs to notify classes of persons such as ASHAs, aanganwadi workers, dais, headmasters of government schools and others as notifiers under Section 10 of the Act and to authorise them to deliver birth certificates under Section 12 of the Act.

(e) For an order directing all States/UTs to forthwith switch over to the uniform format for the birth certificate as issued by the Registrar General with the national emblem on the said certificates.

c (f) For an order directing all States/UTs to disclose to the Registrar General the posts lying vacant under the Act and to fill the said posts within 3 months from today.

d (g) For an order directing the low performing and stagnating States like Assam, Bihar, Chhattisgarh, Jammu and Kashmir, Jharkhand, Manipur, Meghalaya, Orissa and West Bengal to review the existing number of registration centres and increase their numbers. The other States/UTs may also be directed to review the number of registration centres and, if required, increase the number of registration centres.

Court Masters

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END OF THE VOLUME

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