

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPIL No. 27 of 2017**

1. Ranichand Baiga W/o Sudhar Singh Baiga Aged About 30 Years R/o Village Chaparva Block Lormi P. S. Lormi District Mungeli Chhattisgarh
2. Krishna Bai Baiga W/o Vinod Baiga Aged About 30 Years R/o Village Chaparva Block Lormi P. S. Lormi District Mungeli Chhattisgarh
3. Sita Bai Baiga W/o Pardesi Baiga Aged About 24 Years R/o Village Chaparva Block Lormi P. S. Lormi District Mungeli Chhattisgarh
4. Krishna Kumar Baiga S/o Pilaram Baiga Aged About 30 Years R/o Village Sarasdol Gram Panchayat Achankmar P. S. Lormi Block Lormi District Mungeli Chhattisgarh
5. Ramkunwar Baiga W/o Asaram Baiga Aged About 30 Years R/o Village Mangalpur Gram Panchayat Karka Tehsil Kota P. S. Kota District Bilaspur Chhattisgarh
6. Anita Baiga W/o Milaoram Baiga Aged About 26 Years R/o Village Mangalpur Gram Panchayat Karka Tehsil Kota P. S. Kota District Bilaspur Chhattisgarh
7. Amrika Bai Baiga W/o Chaitram Baiga Aged About 30 Years R/o Village Nevsa Tehsil Kota P. S. Kota District Bilaspur Chhattisgarh
8. Samaruram Baiga S/o Late Net Ram Baiga Aged About 60 Years R/o Village Nevsa Tehsil Kota P. S. Kota District Bilaspur Chhattisgarh
9. Rekha Bai W/o Budhram Aged About 26 Years R/o Village Aurapani Gram Panchayat Mazgaon P. O. Semaria P. S. Kota District Bilaspur Chhattisgarh
10. Shivkumari W/o Milap Aged About 24 Years R/o Village Umaria Gram Panchayat Umaria P. O. Belgahana P. S. Kota District Bilaspur Chhattisgarh
11. Harendra Singh Sijwali S/o Bahadur Singh Sijwali Aged About 32 Years R/o Jan Swasthya Sahyog I-4 Parijat Colony Nehru Nagar, P. S. Civil Lines Bilaspur 495001 Chhattisgarh
12. Jan Swasthya Abhiyan Chhattisgarh Through Its Joint National Convener Sulakshana Nandi W/o Samir Garg Age 42 C-503, Avenue 144 Amlidih P. S. Rajendra Nagar Raipur Chhattisgarh

**---- Petitioners****Versus**

1. State Of Chhattisgarh Through Its Chief Secretary Mantralaya Naya Raipur Chhattisgarh
2. Secretary Department Of Health And Family Welfare Government Of Chhattisgarh Mantralaya Naya Raipur Chhattisgarh
3. Commissioner, Department Of Tribal Welfare Government Of Chhattisgarh Mantralaya, Naya Raipur, Chhattisgarh
4. Secretary, Ministry Of Health And Family Welfare Government Of India Nirman Bhawan, New Delhi

5. Sub Divisional Officer Lormi S D M Office Block Lormi District Mungeli Chhattisgarh
6. Sub Divisional Officer, Kota S D M Office Block Kota District Bilaspur Chhattisgarh

**---- Respondents**

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For Petitioners	: Ms Rajni Soren, Advocate
For Respondents/State	: Shri AS Kachhawaha, Additional Advocate General

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**Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**

**Hon'ble Shri Justice Parth Prateem Sahu**

**Order on Board**

**Per Ajay Kumar Tripathi, Chief Justice**

**12.12.2018**

1. The present Public Interest Litigation has been brought about by the petitioners who are supposed to belong to primitive tribal groups and are officially labelled as Particularly Vulnerable Tribal Groups (PVTG). They have a grievance that based on an archaic Office Order dated 13.12.1979 issued by the erstwhile state of Madhya Pradesh, specially the department of Public Health and Family Welfare, the tribes or sub-tribes whose names have been indicated and who inhabit the geographical areas indicated therein are barred from availing the facility of undergoing family planning procedure by Tubectomy or vasectomy etc.

2. According to the petitioners, such an embargo by an administrative order in the name of protection of the group violates their constitutional right under Article 21 of the Constitution of India.

3. While the matter was under consideration, the State of Chhattisgarh has now issued yet another notification dated 26.05.2017, a copy of which is Annexure- R/1. This Circular permits sterilization but for which prior permission of the Sub-Divisional Magistrate is required to be taken. Even the said circular or guideline dated 26.05.2017 is being assailed because the modified circular also in no manner takes away the vulnerability of such decision on the touch-stone of the Article 21 of the Constitution of India.

4. Submission of counsel representing the petitioners is that there is no scientific reason or basis for issuing such an administrative direction. Its implementation and enforcement thereof against the PVTG group does not take into consideration the strides which have been made in the Indian Constitution specially with regard to the right of privacy as it stands and the interpretation which has been given by the Hon'ble Supreme Court under Article 21 of the Constitution.

5. The following facts as well as the law on the subject has been pleaded on behalf of the petitioners are noticed herein below:

"5.1 Tribal groups have been classified as PVTGs based on certain features. According to the Scheme of Development of PVTGs, Ministry of Tribal Affairs, Government of India, "There are tribal communities who have declining or stagnant population, low level of literacy, pre-agricultural level of technology and are economically backward. 75 such groups of tribals in 18 States and 1 Union Territory have been identified and categorized as Particularly Vulnerable Tribal Groups (PVTGs)".

5.2 In the state of Chhattisgarh there are 5 PVTGs- Abhujmaria, Kamar, Pahadi Korwa, Birhor and Baiga. According to the Department of Tribal Welfare, Government of Chhattisgarh the

total population of these 5 PVTGs is 1,55,057, the community wise break-up is as follows:

Tribe	Districts	Population
Kamar	Gariyaband, Dhamtari, Mahasamund, Kanker	23,288
Baiga	Kabirdham, Bilaspur, Koriya, Rajnandgaon, Mungeli	71,862
Pahadi Korwa	Surguja, Jashpur, Korba, Balrampur	37,472
Birhor	Raigarh, Jashpur, Bilaspur, Korba	3,034
Abhujmaria	Narayanpur, Dantewada, Bijapur	19,401
		1,55,057

**Health & Nutritional Status of PVTGs**

5.3 That a recent study was conducted on "Exploring health inequities amongst Particularly Vulnerable Tribal Groups: Case study of Baiga in Chhattisgarh" in Kabirdham District. The study was conducted by Public Health Resource Network, in collaboration with State Health Resource Centre Raipur, Achutha Menon Centre for Health Science Studies, Sree Chitra Tirunal Institute for Medical Sciences and Technology, Trivandrum and Astha Samity Kabirdham. The study showed very high levels of malnutrition among Baiga children under five years of age. Underweight and stunting among these children was 1.5 times more than the state average. The proportion of undernourished Baiga women and men was double that of Chhattisgarh state average while illness was nearly six times more than that of rural Chhattisgarh average with more women than men reported ill health. According to study, malaria and diarrhoea were major diseases affecting the community. The death rate among Baigas was much higher and the community had to rely mostly on unqualified private practitioners and they also took treatment from Mitans and ANMs. There were some hamlets who were completely devoid of Anganwadi services due to distances and

there were no mini anganwadis. Safe drinking water was a huge problem that led to many health issues. The status of maternal and reproductive health was very dire and the restriction on sterilisation had very negative impact on health of women and children and economic status of family. Large number of pregnancies and child deaths were reported. Both Baiga women and men said they did not want large families and demanded contraceptive services like sterilisation. Women were forced to go to Madhya Pradesh to get sterilisation. The ANM reported shortage of other contraceptives like Mala-D and condoms.

5.4 That Jan Swasthaya Sahyog, the organization, petitioner no.11 works with, and the organization that the petitioners approached wanting to avail sterilisation service conducted a study in 2017 on access to sterilisation and contraceptive services to PVTGs. The study was conducted in two villages, Sarasdol and Chapparwa of Mungeli district, which are situated deep inside the Achanakmar Tiger Reserve. One of the key findings was that 56.4% of the Baiga women reported that they wanted to undergo sterilisation out of which 48.2% got the operation done and 51.7% could not get the procedure done primarily because of their PVTG status. The study further found that unavailability of sterilisation and contraception services made women often opt for induced abortion. Among those who had induced abortions, most were practised using unsafe methods which include self-medication to terminate pregnancy, massaging the stomach or consuming jadi-buti to induce the abortion.

#### **Reproductive Rights as Part of Right to Life & Liberty**

5.5 It is submitted that the Hon'ble Supreme Court in *Suchita Srivastava & Anr V. Chandigarh Administration* (2009)9 SCC1 held the right to make reproductive choices to be a dimension of 'personal liberty' under Article 21 of the Constitution of India:

*"There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to*

*procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilization procedures."*

5.6 That the Hon'ble Supreme Court in *Meera Santosh Pal & Ors V Union of India & Ors* (2017 3 SCC 462 reiterated the principles laid down by the Hon'ble Supreme Court in *Suchita Srivastava* and upheld the right of a woman to terminate her pregnancy of over twenty week limit prescribed under the Medical Termination of Pregnancy Act, 1971.

5.7 That the Hon'ble Supreme Court in *Devika Biswas v. Union of India*, (2016) 10 SCC 726 stressed on the need to revisit laws denying reproductive choices to the most vulnerable section of the society :

*"It is necessary to reconsider the impact that policies such as the setting of informal targets and provision of incentives by the Government can have on the reproductive freedoms of the most vulnerable groups of society whose economic and social conditions leave them with no meaningful choice in the matter and also render them the easiest targets of coercion."*

5.8 That the Hon'ble Supreme Court in *Z v. State of Bihar* (2018) 11 SCC 572 reiterated the State's obligation for providing women with reproductive choices in light of India's International obligations:

*"60. Before parting with the case, we must note that India has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (Cedaw) in 1993 and is under an international obligation to ensure that the right of woman in her reproductive choices is protected. Article 11 of the said Convention provides that all State parties shall ensure the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. Article 12 of the Convention stipulates that State parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on the basis of equality of men and women,*



*accesses to health care services, including those related to family planning."*

**Reproductive Rights as part Right to Privacy guaranteed under Right to Life and Personal Liberty**

5.9 It is submitted that Circular dated 26.05.2017 which requires a PVTG person to obtain certificate from the Sub Divisional Magistrate in order to undergo sterilization amounts to government intrusion and violation of the right to privacy.

5.10 It is submitted that a nine judges bench of the Hon'ble Supreme Court in *K.S.Puttaswamy V. Union of India*, (2017) 10 SCC 1, while recognising right to privacy as a fundamental right under Article 21 of the Constitution recognised a woman's right to make reasoned reproductive choices as an important facet of right to life and personal liberty under Article 21. The Statutory recognition of a women's right to make reproductive choices flows from this inviolable guarantee under Article 21.

5.11 It is submitted that the US Supreme Court in *Jane Roe v. Henry Wade* 410 US 113 (1973) upheld the right of a pregnant woman to terminate her pregnancy as part of the right of personal privacy.

5.12 It is submitted that the US Supreme Court in *Carey v. Population Services International*, 431 US 678 (1977) while deciding the constitutional validity of a New York law criminalising the sale of contraceptives to minors held :

*" The decision whether or not to beget or bear a child is at the very heart of this cluster of constitutionally protected choices. That decision holds a particularly important place in the history of the right of privacy ....."*

5.13 It is submitted that the Hon'ble Supreme Court of the United States in *Elsenstadt v. R Baird*, 405 US 438 (1972) has tersely described the right to privacy in making reproductive choices as:

*"If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so*

fundamentally affecting a person as the decision whether to bear or beget a child."

### **Reproductive Rights in International Law**

5.14 Article 2 of the ICPR and the ICESCR compels governments to provide basic human rights without discrimination, with Article 12 and 14 of CEDAW explicitly prohibiting discrimination in access to reproductive health care:

"(i) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care including those related to family planning.

(ii) States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation.

(iii) State must ensure that women have access to family planning services, availability of information and education related to family planning."

5.15 India has ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. Article 16 of the Convention states :

#### **"Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women :

- (a) The same right to enter into marriage ;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access



to the information, education and means to enable them to exercise these rights;

- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

**Universal Declaration on Rights of Indigenous People (UNDRIP)**

5.16 The Universal Declaration on Rights of Indigenous People (UNDRIP) categorically states that Indigenous People must not be discriminated against.

**Scenario post the new circular dated 26.05.2017 issued by the Department of Health & Family Welfare**

5.17 It is submitted that to the knowledge of the petitioners no PVTG has been granted permission despite the new circular, which states that the Sub Divisional Magistrate has the power to grant permission for sterilisation. Piyariya Bai Baiga, a PVGT resident of Village Nevsa submitted an application and appeared before the SDM, Kota on 9.5.2018. However till date she has not been granted permission."

6. In the above factual and legal background, we seem to be in agreement with the submissions of the counsel for the petitioners that both the circulars dated 13.12.1979 contained in Annexure P/1 issued by the

erstwhile state of Madhya Pradesh and is applicable to the State of Chhattisgarh now and the modified circular dated 26.05.2017 Annexure R/1 to the return filed on behalf of the State of Chhattisgarh are hereby quashed to be violative of Article 21 of the Constitution of India.

7. Writ application is allowed.

Sd/-  
**(Ajay Kumar Tripathi)**  
Chief Justice

Sd/-  
**(Parth Prateem Sahu)**  
Judge

