

Chief Justice's Court

Case :- MISC. BENCH No. - 2993 of 2015

Petitioner :- Ashish Kumar Misra (Advocate) [P.I.L.]

Respondent :- Bharat Sarkar Thru. Sachiv Khadhy & Prasanskarn Mantralya

Counsel for Petitioner :- Satish Kumar Misra,Prabuddh Tripathi,Prashant Tripathi,Vineet Kumar Chaurasia

Counsel for Respondent :- C.S.C.,A.S.G., Anand Dwivedi

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice

Hon'ble Shri Narayan Shukla,J.

The petition has been filed in the public interest by a practising Advocate in order to raise two concerns relating to the issuance of ration cards under the National Food Security Act, 2013¹. The first issue relates to the validity of the provisions of Section 13 of the Act on the ground that the statutory provision while recognizing the eldest woman member as the head of the household does not contemplate a situation where there may be no woman in the family.

In order to appreciate this grievance, we extract hereinbelow the provisions of Section 13 of the Act:

"13. Women of eighteen years of age or above to be head of household for purpose of issue of ration cards.- (1) The eldest woman who is not less than eighteen years of age, in every eligible household, shall be head of the household for the purpose of issue of ration cards.

(2) Where a household at any time does not have a woman or a woman of eighteen years of age or above, but has a female member below the age of eighteen years, then, the eldest male

¹ the Act

member of the household shall be the head of the household for the purpose of issue of ration card and the female member, on attaining the age of eighteen years, shall become the head of the household for such ration cards in place of such male member."

Section 13 forms part of Chapter VI of the Act which has a provision for the empowerment of women. Stipulating that the eldest woman of every eligible household, above the age of eighteen, shall be the head of the household for the purpose of the issue of ration cards is intended to recognize and strengthen the dignity, role and status of women. Parliament gave legal recognition to the significant responsibilities which women as decision makers have in a family. This includes those having a bearing on food security. In enacting Section 13, Parliament recognized the roles and responsibilities which are discharged by women. That role has been conferred with a statutory status and recognition by providing that the eldest woman, above the age of eighteen in a household, shall be regarded as the head of the household. For too long in our history and even today, women have been burdened with the obligation of maintaining home and family without a corresponding recognition or acceptance of their role as decision makers. Subjected to discrimination and domestic violence, a woman is left with no social security. Something as primary as the equal distribution of food within the family for male and female members of the family is a casualty. Recognizing the central role of the woman in issues of food security is an integral part of the constitutional right to gender equality. Some of the worst forms of discrimination against women originate in the

home and the kitchen. It was time that the law made an effort to remedy it. The submission that the statute does not account for a situation where there may be no woman in a family, is incorrect. Sub-section (2) of Section 13 of the Act contemplates a situation where a household either does not have a woman at all or where a woman member of an eligible household is yet to attain the age of eighteen. In such a situation, sub-section (2) of Section 13 of the Act provides that the eldest male member of the household shall be the head of the household for the issuance of ration cards. Where a female member of the household is below the age of eighteen, her status as the head of the household, shall upon attaining the age of eighteen, be recognized in terms of sub-section (2) of Section 13 of the Act. In view of these statutory requirements, we find no merit in the first submission.

The second submission raises an important issue pertaining to the availability of food security for transgenders. In **National Legal Services Authority Vs. Union of India²**, the Supreme Court recognized the fundamental right of the transgender population as citizens of the country to possess an equal right to realise their full potential as human beings. Incidental to the fundamental right to live in dignity under Article 21 of the Constitution, is a right of access to all facilities for development of the personality including education, social accumulation, access to public places and employment opportunities. The Supreme Court observed that since transgenders are neither male nor female, treating them as belonging to either of these categories, will be a denial of their constitutional rights. The

recognition of transgenders as the third gender in law has thus become an intrinsic part of the right to life protected by Article 21 of the Constitution. It is a part of and incidental to the fundamental expression of the human personality. The full expression of gender is what the Constitution embodies. Among the directions which have been issued by the Supreme Court are the following:

"135.1. Hijras, eunuchs, apart from binary genders, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.

135.2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

135.3. We direct the Centre and the State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

135.7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

135.8. The Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

135.9. The Centre and the State Governments should also take

measures to regain their respect and place in the society which once they enjoyed in our cultural and social life."

A ration card is an important document issued by public authorities to enable the holder and her family to gain access to subsidized foodgrain. That is why the objective and transparent administration of schemes for the issuance of ration cards are a critical element in enhancing access to food security. Food security means no less to a transgender than to other segments of society. Impoverishment and marginalization have been endemic to the transgender population. Preventing discrimination in all walks of life is one facet of the right of transgenders to live in dignity, with the confidence that they can lead their lives on their own terms in realisation of gender identity. But the law needs to travel beyond non discrimination, by recognising an affirmative obligation of the State to provide access to social security. Food security lies at the foundation of it. Transgenders must have both.

The form which has been prescribed by the State Government for submitting applications under the Act contains an enumeration of several items on which a disclosure of information has been sought from the applicant. One of them requires a disclosure of the name of the woman who is the head of the household. That however cannot be read as an exclusion of a transgender to apply for the issuance of a ration card and must be read in the context of serial number twelve of the application form. Serial number twelve refers to the gender of the applicant. In parathesis, the reference to gender is construed to mean 'female/male/other'. The expression 'other'

would necessarily include a transgender. Section 13 of the Act, may not have specifically incorporated a provision that would be inclusive of a head of a household as a transgender to apply for the issuance of a ration card. The object and purpose of Section 13 of the Act was to bring about a sense of empowerment for women. The purpose of enacting Section 13 of the Act was to recognize the status of a woman in every household and it was in that context that the statute has enacted that the head of the household would be deemed to be eldest woman member who is above the age of eighteen. The recognition of the eldest woman as the head of the household is in contradistinction to a male member since as we have already noted above, sub-section (2) of Section 13 of the Act enables a male member of the household to be recognized as the head of the household only in the absence of a woman or if the sole woman is below the age of eighteen, until she attains the age of majority. The object and purpose of Section 13 of the Act in other words was not to exclude transgenders though in view of the judgment of the Supreme Court in **National Legal Services Authority** (supra) Parliament may, if we may respectfully so say, consider the appropriateness of a suitable provision to meet the situation. This is entirely within the purview of the legislating body and a matter which lies in the province of the enacting authority. The salutary public purpose, underlying the enactment of Section 13 of the Act can be furthered by incorporating a situation where a transgender can be recognized as a head of an eligible household.

For the purposes of these proceedings, we are of the view that the form which has been prescribed by the State Government, duly takes into account the concerns of the transgender population by recognizing their entitlement to seek access to food security and to avail of the status of the head of a household.

We are of the view that the clarification, which we have issued above, would sufficiently subserve the important public purpose, which is served by the institution of the writ petition by a member of the Bar. The effort which has been made by the learned counsel must be duly appreciated by the Court.

The petition is, accordingly, disposed of. There shall be no order as to costs.

Order Date :- 15.4.2015
VMA

(Dr. D.Y. Chandrachud, C.J.)

(S.N. Shukla, J.)