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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7475/2023

[REDACTED]

..... Petitioners

Through: Mr. Pawan Prakash Pathak, Advocate
along with Petitioner in person (M:
8600545332).

versus

GOVT OF NCT OF DELHI AND ORS.

..... Respondents

Through: Ms. Mehak Nakra, ASC (civil)
GNCTD with Mr. Abhishek Khari,
Advocate for R-1 (M: 9871144582).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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26.05.2023

1. This hearing has been done through hybrid mode.
2. The Petitioner-[REDACTED] and her two children i.e. Petitioner Nos. 2& 3 have filed the present writ petition seeking an unusual prayer. It is prayed that the Respondent No. 3-[REDACTED] (father-in-law), has cast doubt on the identity of the Petitioners, by claiming that they are not [REDACTED] ut [REDACTED]
3. The Petitioner No. 1 is the wife of Respondent No. 2 i.e. [REDACTED]
[REDACTED]
4. Admittedly, there are no matrimonial disputes between the Petitioner No. 1 and Respondent No. 2. The prayer in the petition are as under:-

“1. That the Hon'ble Court may issue writ or mandamus or any other appropriate writ to declare that the right to identity is an integral part of the fundamental right under Article 21 of the Constitution of India when it comes to government.

2. That the respondent no. 2 & 3 may be directed to submit there DNA Sample before the DNA Profiling

agency Rohini.

3. That the petitioner may be awarded compensation and also cost may be awarded in favour of the petitioner along with the cost of mental pain, agony and trauma that petitioner and his family went through.

4. Any other appropriate writ, order or interim relief to immediately join classes & stay on impugned order, or any other order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

5. A perusal of the above prayers would show that the prayers sought are extremely vague, and DNA testing is sought. The settled legal position that DNA testing is to be ordered very sparingly and cannot be directed on the basis of allegations such as those that are made in this writ petition.

6. The Supreme Court in ***Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women [(2010) 9 SCR 457]*** considered the question of when it is appropriate for a court to mandate a paternity test using DNA testing. The Court held that with regard to DNA testing, the Court should use its discretion only after balancing the interests of the parties, and after considering the 'eminent need' and weighing the pros and cons of ordering a DNA test, especially when there is a conflict between the right to privacy of a person, who is being compelled to take the test and duty of the court to reach the truth. The Supreme Court held as follows:

"13. In a matter where paternity of a child is in issue before the court, the use of DNA is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in

*use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception. **In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed. DNA in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the court to reach the truth without use of such test.***

14. There is no conflict in the two decisions of this Court, namely, *Goutam Kundu*¹ and *Sharda*². In *Goutam Kundu*¹, it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong prima facie case and court must carefully examine as to what would be the consequence of ordering the blood test. In the case of *Sharda*² while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. **Obviously, therefore, any order for DNA can be given by the court only if a strong prima facie case is made out for**

such a course. Insofar as the present case is concerned, we have already held that the State Commission has no authority, competence or power to order DNA. Looking to the nature of proceedings with which the High Court was concerned, it has to be held that High Court exceeded its jurisdiction in passing the impugned order. Strangely, the High Court over-looked a very material aspect that the matrimonial dispute between the parties is already pending in the court of competent jurisdiction and all aspects concerning matrimonial dispute raised by the parties in that case shall be adjudicated and determined by that Court. Should an issue arise before the matrimonial court concerning the paternity of the child, obviously that court will be competent to pass an appropriate order at the relevant time in accordance with law. In any view of the matter, it is not possible to sustain the order passed by the High Court.

7. Therefore, in view of the judgment of the Supreme Court in ***Bhabani Prasad Jena (supra)***, this Court does not find any need to grant the prayer for grant of DNA testing as sought. This is also considering the fact there are no pending matrimonial disputes between the Petitioner No. 1 and Respondent No. 2, that necessitates such a prayed to be granted. Moreover, when the husband of the petitioner is not challenging the identity of the Petitioner and the children, such a prayer is completely unwarranted. Determining the question whether the Petitioners and Respondent No. 2 are related to the Respondent No. 3, and the Petitioner No. 1-daughter in law and the Petitioner Nos. 2 and 3 are grand children or not, would involve a factual analysis and appreciation of facts which cannot be undertaken in writ jurisdiction.

8. The Petitioners or Respondent No. 2 are free to approach the Civil Court in accordance with law and seek and seek appropriate relief, if the need exists, in respect of any allegations that the other family members may be raising. If any such proceeding is filed, the same shall proceed in accordance with law.

9. Accordingly, the present petition is disposed of leaving the liberty to the Petitioners.

PRATHIBA M. SINGH, J.

MAY 26, 2023

mr/dn