

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 12th October, 2017

+ W.P.(C) 1021/2017

M/S MGS SUPER SPECIALITY HOSPITAL Petitioner

versus

DISTRICT APPROPRIATE AUTHORITY-PNDT / DISTRICT
MAGISTRATE (WEST DISTRICT) Respondent

+ W.P.(C) 3895/2017

M/S MGS SUPER SPECIALITY HOSPITAL Petitioner

versus

DISTRICT APPROPRIATE AUTHORITY / DISTRICT
MAGISTRATE (WEST DISTRICT) Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sandeep P. Agarwal, Sr. Adv. with Mr. Rajesh Pathak, Adv.

For the Respondent : Mr. Raman Duggal, Standing Counsel with Ms. Aayushi Gupta,
Mr. Arun Kr. Panwar, Mr. Akshay Choudhary, Adv. and Dr.
Souharda Nath, Nodal Officer for GNCTD, Mr. Naushad Ahmed
Khan, ASC for GNCTD in W.P.(C) 1021/2017

Mr. Naushad Ahmed Khan, ASC for GNCTD in W.P.(C)
3895/2017

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

W.P.(C) 1021/2017& CM No.4672/2017 (for direction), CM No.7722/2017 (for modification of order dated 13.02.2017) & CM No.18116/2017 (for early hearing)

1. This petition has been filed by MGS (Super) Speciality Hospital impugning the order dated 25.01.2017, passed by the State Appropriate Authority under the Pre-conception and Pre-natal Diagnostic Technique (PNDT) Act, 1994 (hereinafter referred to as 'the Act'). The Hospital also seeks quashing of the show cause notice dated 10.02.2016, suspension order dated 10.02.2016 and cancellation order dated 06.05.2016, passed by the Respondents.
2. By order dated 10.02.2016, the District Appropriate Authority under the Act in exercise of powers under Section 20(3) suspended the registration of the Petitioner Hospital (hereinafter referred to as 'the Hospital').
3. By the impugned order dated 06.05.2016, the Respondents accepted the recommendations of the District Advisory Committee for cancellation of the registration of the Hospital. By the impugned order dated 25.01.2017, the appeal filed by the Hospital under Section 21 of the Act impugning the show cause notice dated 10.02.2016, suspension order dated 10.02.2016 and order dated 06.05.2016 of the appropriate authority cancelling the registration, has been rejected.

W.P.(C) 3895/2017 & CM No.17157/2017 (for direction)

4. This petition has also been filed by the Hospital seeking setting aside of Minutes of meeting dated 24.04.2017 of the respondent, wherein, the Hospital has been declined 'no objection' for purchasing new ultrasound machines and for permission to the Hospital to use the same under the Certificate of Registration, issued under the Act, dated 09.10.2012.

5. The Hospital which was established in the year 1996, is a 100 bedded Multi Super-Speciality Hospital and claims to be providing high quality services and has been accredited by the National Accreditation Board for Hospitals and Healthcare Providers and National Accreditation Board for testing and calibration laboratories. The Hospital is empanelled with the Central Government, Delhi Government and Public Sector Undertakings.

6. The Hospital runs, *inter alia*, the following Departments:-

- (i) *Anesthesia*
- (ii) *Burns & Plastic Surgery*
- (iii) *Cardiology*
- (iv) *CTVS*
- (v) *Dental*
- (vi) *Dermatology*
- (vii) *Diabetes*
- (viii) *Dietetics*
- (ix) *ENT*
- (x) *Gastroenterology*
- (xi) *General Laparoscopic Surgery*
- (xii) *Gynecology & Obstetrics*

- (xiii) *Internal Medicine*
- (xiv) *Joint Replacement & Arthroscopy*
- (xv) *Nephrology*
- (xvi) *Neuro Surgery*
- (xvii) *Neurology*
- (xviii) *Ophthalmology*
- (xix) *Orthopedics*
- (xx) *Pathologist*
- (xxi) *Pediatrics*
- (xxii) *Physiotherapy*
- (xxiii) *Psychiatry*
- (xxiv) *Radiology*
- (xxv) *Respiratory Medicine*
- (xxvi) *Spine Surgery*
- (xxvii) *Urology*

7. As ultrasound facilities are required for the functioning of the above-referred departments, the Hospital also has a Radiology Department for diagnostic purposes like X-Ray, Ultrasound, Echo, etc. It is stated to be both a necessity and a requirement for a Super-Speciality Hospital.

8. The Hospital was granted registration on 09.10.2012 under the Act for the following ultrasound machines:

- (i) *Acuson Alpha 300, Main Frame 1056614 (S No.350484) (fixed)*
- (ii) *RT 3200 (S. NO.219WG7) (fixed)*
- (iii) *Logiq 100 (S. No.2910WG8) (Portable)*
- (iv) *Logiq 400 MD, (S No.2234236) (Fixed)*
- (v) *Vivid II Pro (P7863) (Fixed)*
- (vi) *Logiq C-5, (S No.178733WX2) (Fixed)*

9. It is contended that the Hospital requires ultrasound machines for various Departments to diagnose ailments of the patients. In Trauma Department, the ultrasound machines is required to diagnose the free fluid and solid organ injury, heart attack, breathlessness, acute pain in abdomen, sudden obstruction in urine, blood vomiting. Similarly, the patients of the pediatric, surgical, cardiac, respiratory, urology, orthopedics departments are also dependent upon the Department of Radiology. One ultrasound machine is exclusively required in the department of cardiology for diagnosis of patients suffering from heart attack / cardiac arrest. Likewise, a separate ultrasound machine is also required for therapeutic i.e. plural fusion tapping from the lungs.

10. As per the Hospital, it appoints qualified doctors in the Department of Radiology for using the ultrasound and echo machines.

11. On 16.06.2014, the Hospital appointed one Dr. Arun Singh Chauhan as the Head of the Department of the Radiology. Dr. Arun Singh Chauhan had claimed to possess an experience of 25 years in the field of Radiology. Pursuant to appointment of Dr. Arun Singh Chauhan, the Hospital intimated the Respondents , by its letter dated 17.06.2014, regarding appointment of Dr. Arun Singh Chauhan.

12. It is contended that despite intimation to the Respondents with regard to appointment of Dr. Arun Singh Chauhan as Radiologist with the Hospital, the Respondents , at no point to time, either objected to

or intimated the Hospital regarding pendency of criminal proceedings against Dr. Arun Singh Chauhan for violation of the Act in the past.

13. It is contended that several inspections were carried out by the Respondents but no irregularities were ever point out to the Hospital in the functioning of the Radiology Department. On 15.01.2016, an inspection of the Radiology Department was carried out, no irregularity was pointed out, and even, at that point of time, it was not pointed out to the Hospital about pendency of criminal proceedings against Dr. Arun Singh Chauhan under the Act.

14. It is contended that on 08.02.2016, one lady claiming to be Ms. Deepa came to the Department of the Radiology of the Hospital with some prescription advising ultrasound of whole abdomen. It was not disclosed to the receptionist while depositing the fee for the ultrasound that she was pregnant. At the time when Ms. Deepa was being examined by Dr. Arun Singh Chauhan, a raid was carried out by the Officers of the respondent. Dr. Arun Singh Chauhan was arrested and an FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi, was registered.

15. It is contended that it is later that the Hospital learnt that the said Ms. Deepa was a decoy patient and had come with two members of the inspecting team for inspecting a complaint made against Dr. Arun Singh Chauhan for his indulgence in sex determination.

16. It is contended that though there was no involvement of the Hospital in the alleged sex determination, the officers of the Respondents, ignoring the fact that the Hospital is a Super-Speciality Hospital and provides emergency medical services/treatment to its patients, sealed all the six ultrasound machines of the Radiology Department.

17. The Hospital, immediately, on 09.02.2016, terminated the service of Dr. Arun Singh Chauhan.

18. By the impugned order dated 10.02.2016, the Respondent suspended the registration of the six ultrasound machines of the Hospital.

19. Show cause notice dated 10.02.2016 was issued to the Hospital contending that the following deficiencies were noticed during inspection on 08.02.2016:

- (i) *USG report missing with Form F scrutinized*
- (ii) *No ID Proofs of patients attached*
- (iii) *No USG thermal films attached with Form F*
- (iv) *Findings of report are written on the back of thermal film Some of Form F was unsigned*

20. It is contended that since the decoy patient was claiming stomachache, requested the ultrasound of whole abdomen, and had not disclosed that she was pregnant, in terms of the requirements of

the Act, the patient was not required to fulfill any mandatory formalities as are required in the case of a pregnant lady. The request of the ultrasound of the whole abdomen was made without disclosing the fact that she was pregnant or wanted sex determination of the fetus. It is submitted that the Hospital cannot be fastened with any liability on the said count.

21. By the impugned order dated 06.05.2016, the registration of the Hospital has been cancelled and by the impugned order dated 25.01.2017, the appeal filed by the Hospital, has been rejected.

22. On 21.10.2016, final report was filed in FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi. It is contended that the said FIR has been registered showing only Dr. Arun Singh Chauhan and one Aakash as the accused. Attention is further drawn to the final report, filed under Section 173 Cr.P.C. and FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi, to contend that only Dr. Arun Singh Chauhan, one Aakash and Dr. Sapna have been arrayed as the accused. It is pointed out that the Hospital has neither been arrayed as an accused nor sought to be examined as a witness as per the final report.

23. It is contended that the entire case has been registered against Dr. Arun Singh Chauhan and the above-referred accused and no case is made out against the Hospital.

24. It is further contended that the impugned orders have been passed on the basis of an assumption that the Hospital was in connivance with Dr. Arun Singh Chauhan, whereas, neither in the FIR nor in the final report filed, has the Hospital been arrayed as an accused and further no culpability of the Hospital has been found.

25. It is further contended that the officers of the Respondents have been regularly inspecting the working of the Hospital as also its Radiology Department and no infirmity or infraction had ever been found or pointed out. Further, the Respondents, being informed of the appointment of Dr. Arun Singh Chauhan as Head of the Radiology Department, neither objected to his appointment nor intimated to the Hospital about the pendency of criminal cases against Dr. Arun Singh Chauhan for having violated the provisions of the Act.

26. It is contended that the Hospital is a Super-Speciality Hospital and performs public function and in the absence of the ultrasound machines, the entire functioning of the Hospital, is likely to come to a standstill and is being hampered.

27. Reliance is placed on the decision in the case of **ABHILASHA GARG VS. APPROPRIATE AUTHORITY**; 2010 (171) DLT 775 to contend that sting operations and complaints do not attract the Act.

28. The Hospital also impugns the action of the Respondent in not permitting the Hospital to purchase new ultrasound machines to facilitate the functioning of the Hospital.

29. Per contra, the Respondents have contended that the object of the Act is to ban pre-conception sex selection technique and misuse of pre-natal diagnostic techniques for sex selective abortion and to provide for regulation of such abortion.

30. It is contended that the data stored in the said six sealed ultrasound machines are case property in pending criminal proceedings and are of immense evidentiary value and, in case, the said machines are de-sealed then it would cause grave prejudice and irreparable damage to the pending criminal proceedings against the petitioner.

31. It is contended that since the act is committed by use of sonography machines and the machines are the most important component in the crime, which could be repetitive in nature, prevention is best achieved by sealing the machines and if the seals were to be opened, it may facilitate the accused in repeating the crime.

32. Reliance is placed on judgment dated 23.01.2013 of the High Court of Judicature at Bombay in WP (C) No.4399/2012 in the case of **DR. VANDANA RAMCHANDRA PATIL VS. STATE OF MAHARASHTRA** to contend that opening of the seal and release of the machines could not

be made mechanically and the Court must consider the effect and impact of such an order.

33. It is contended that the Hospital had not denied that Dr. Arun Singh Chauhan had conducted the gender test by using the registered ultrasound machines of the Hospital. Dr. Arun Singh Chauhan, being head of the Radiology Department, was in-charge of the Radiology Department and, therefore, was responsible for conduct of the business of the Hospital and all the concerned Departments of Radiology.

34. It is contended that the Hospital has violated the provisions of Section 26 of the Act read with Rule 18 framed thereunder, and, accordingly, the Hospital is liable for the illegal act committed by Dr. Arun Singh Chauhan and cannot escape from its liability.

35. It is further contended that in terms of Section 23(2) of the Act, the Respondent initiates action against any registered medical practitioner only when the charges are framed by the Court against the medical practitioner and since, in the FIR lodged against Dr. Arun Singh Chauhan in the year 2014, no charges had been framed, the Respondent was not under an obligation to inform the Hospital about the pendency of the case against Dr. Arun Singh Chauhan.

36. It is, in these circumstances, that the impugned orders dated 10.02.2016, 06.05.2016 and 25.01.2017 are sought to be defended.

37. It is contended that the decision, in the impugned Minutes of the meeting dated 24.04.2017 (impugned in WP (C) 3895/2017), has been taken because the Hospital has already violated the provisions the Act and the Rules framed thereunder, hence, NOC for purchasing new ultrasound machines is not liable to be granted.

38. By an interim order dated 13.02.2017, this Court had stayed the operation of order dated 10.02.2016 (suspending the registration) and order dated 06.05.2016 (cancelling the registration) and the Respondents were directed to forthwith de-seal the ultrasound machines of the Hospital.

39. After the order dated 13.02.2017 was passed, an application was filed by the Respondents being CM No.7722/2017 on the ground that the data in the machines might be required for the purposes of investigation and trial in FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi.

40. It is noticed that the FIR was registered on 08.02.2016 and the final report was filed on 21.10.2016, no efforts were made by the Investigating Officer to extract the data contained in the Hard Disks of the ultrasound machines. When this was pointed out to learned counsel for the Respondent, an application was filed by the Respondents contending that the data in the machines might be required for the purposes of investigation and trial in the said FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi.

41. No steps were taken by the Investigating Officer to extract the data contained in the ultrasound machines or to even rely upon the said data at the time of investigation and filing of the final report. The Investigating Officer was put to notice by order dated 27.02.2017. It is only on 21.03.2017 that the Investigating Officer removed the Hard Disks from the ultrasound machines. It is still not clear as to whether the data extracted from the ultrasound machines has been forensically examined or relied upon as evidence in Case FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi.

42. For the purposes of deciding the controversy at hand, it would be expedient to examine some of the relevant provisions of the Act and the Rules.

43. Sections 4 to 6 of the Act read as under:

“4. Regulation of pre-natal diagnostic techniques.- On and from the commencement of this Act,—

1. no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

2. no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:— (i) chromosomal abnormalities; (ii) genetic metabolic diseases; (iii) haemoglobinopathies; (iv) sex-linked genetic diseases;

(v) congenital anomalies; (vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

3. no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:—

(i) age of the pregnant woman is above thirty-five years;

(ii) the pregnant woman has undergone of two or more spontaneous abortions or foetal loss;

(iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;

(iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;

(v) any other condition as may be specified by the Central Supervisory Board;

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

4. no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2).

5. *no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both.*

5. *Written consent of pregnant woman and prohibition of communicating the sex of foetus.*

1. *No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless— (a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;*

(b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and

(c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

2. *No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.*

6. *Determination of sex prohibited.- On and from the commencement of this Act,—*

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

(b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including

ultrasonography for the purpose of determining the sex of a foetus;

(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.

44. The scheme of the Act as apparent from Sections 4 to 6 of the Act, is to prohibit the conduct of pre-natal diagnostics except for the detection of specified abnormalities. The diagnostics for detection of the specified abnormalities is also subject to the qualified person being satisfied that the prescribed conditions are fulfilled and records reasons. It is further subject to completion of the formalities of filling up of the prescribed forms and obtaining requisite consent.

45. The case against the Hospital as per the show cause notice dated 10.02.2016 is *that during sting operation a decoy patient named Deepa alias Jyoti with team members of Haryana .lead by Dr Rakesh Mehra Nodal Officer/Dy C.S. Jhajjar came to MGS Hospital where as per her statement she was pregnant and her sex determination was done by Dr A.S. Chauhan radiologist of the MGS Hospital, Rohtak Road, West Punjabi Bagh, New Delhi-110026, cash receipt was found. Form F was not filled, entry in ANC register found, No Id proof found. No referral slip. The patient advised to contact for her report at 5 PM along with sweets as her ultrasound report was favorable i.e. having a male baby, as per statement recorded by*

the decoy patient Deepa alias Jyoti.

46. The allegation of having conducted the sex determination test as per the Show cause notice, the FIR and the Final report filed is against Dr. Arun Singh Chauhan in connivance with the other accused. There is no allegation against the hospital. Neither the hospital nor any staff/officer of the Hospital, other than Dr Arun Singh Chauhan has been arrayed as an accused. The officers of the Hospital have not even been cited as witnesses.

47. The case of the prosecution is that the decoy patient was advised by one Dr. Sapna to get a slip for whole abdomen ultrasound prepared from the OPD of the Hospital. Some identification mark was put on the hands of the decoy patient, which were to be shown to Dr Arun Singh Chauhan, who would then conduct the test.

48. There is no allegation that the staff of the Hospital other than Dr Arun Singh Chauhan was aware of the sex determination test proposed to be conducted. It is not even the case of the Respondent that the decoy customer disclosed to the staff of the Hospital that she was pregnant. The case is that she had hidden the fact that she was pregnant from the staff of the hospital and complaining of a stomach pain got an examination slip prepared for getting a whole abdomen test done.

49. Insofar as Dr. Arun Singh Chauhan is concerned, the case of the Hospital is that at the time of appointment of Dr Arun Singh Chauhan as the Head of the Department of Radiology, intimation was sent to the Respondents . Even though an FIR had been lodged against Dr. Arun Singh Chauhan for having earlier violated the provisions of the Act, the Hospital was not intimated about the same.

50. Section 20 of the Act, under which the impugned action has been taken reads as under:

“20. Cancellation or suspension of registration.-

1. The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

2. If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

3. Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is, of the opinion that it is necessary or expedient so to do in

the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

51. In terms of Section 20 of the Act, after complying with the principles of natural justice, the appropriate authority is empowered to suspend the registration of the Centre, Laboratory or Clinic for such period as it may think fit or cancel the registration.

52. In the present case, initially the registration of the Hospital was suspended and subsequently has been cancelled.

53. Section 20 of the Act does not mandate that in all circumstances, the registration has to be cancelled. Said section contemplates that if the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be. The expression used is “*may*”. This implies that it is not mandatory that in all cases of violation, the registration is to be cancelled. In appropriate cases, the competent authority may need to resort to the punishment of only suspension and may not need to impose the punishment of permanent cancellation.

54. This power of suspension and cancellation is without prejudice to the criminal action that the competent authority may take against the Centre, Laboratory or Clinic. In the present case, as noticed above, no criminal action has been taken or sought to be taken against the Hospital.

55. Section 23 of the Act which lays down the offences and penalties for contravention of the Act reads as under:

23. Offences and penalties.- (1) *Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with Act, 1994 & Amendments imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.*

2. *The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.*

3. Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre- natal diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

4. For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.

56. Reading of Section 23 of the Act shows that in case of contravention by a registered practitioner, on conviction, his name is to be removed from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence. This shows that the even in cases of medical practitioners, the punishment is not a permanent removal on the first offence.

57. The scheme of the Act is not to impose the punishment of permanent removal of the medical practitioner from the register of council and cancellation of registration of the Centre, Laboratory or

Clinic, in all cases. Discretion is granted to the competent authority to exercise such power in appropriate cases.

58. The action of cancellation of registration of the Hospital, which is a 100 bedded Multi Super-Speciality Hospital and claims to be providing high quality services where ultrasound facilities are required for the functioning of the various departments of the Hospital, appears in the facts and circumstances of the case to be very harsh.

59. It is not denied by the Respondents that the Hospital requires ultrasound machines for the functioning of its various Departments to diagnose ailments of the patients. The contention of the Hospital, that in the Trauma Department, the ultrasound machines is required to diagnose the free fluid and solid organ injury, heart attack, breathlessness, acute pain in abdomen, sudden obstruction in urine, blood vomiting, has not been denied. Similarly, the patients of the pediatric, surgical, cardiac, respiratory, urology, orthopedics departments are also dependent upon the Department of Radiology, has not been controverted by the Respondents. Further, it is not denied that one ultrasound machine is exclusively required in the department of cardiology for diagnosis of patients suffering from heart attack / cardiac arrest and likewise, a separate ultrasound machine is also required for therapeutic i.e. plural fusion tapping from the lungs.

60. The action of cancellation of the Registration, is very harsh and virtually amounts to the entire functioning of the Hospital coming to a stand still. This is more so, in view of the fact that there is no allegation that in the past, the Hospital or its staff was involved in any such violation and further no criminal proceedings have been initiated or sought to be initiated against the Hospital and/or its officers and staff. It may also be noted that when the Hospital informed the Respondents that they had employed Dr. Arun Singh Chauhan as the head of Radiology Department, the Respondents did not inform the hospital about the case already pending against the said doctor.

61. In view of the facts as noticed hereinabove, the order of cancellation of Registration is accordingly liable to be set aside.

62. The question then arises is as to whether the ultrasound machines that have been sealed are liable to be de-sealed and released to the Hospital.

63. Section 451 and 457 of the Code of Criminal Procedure, 1973 read as under:

“451. Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it

thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, “property” includes –

- (a) property of any kind or document which is produced before the Court or which is in its custody,*
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.*

457. Procedure by police upon seizure of property.

- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.*
- (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who*

may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

64. In terms of section 451 CrPC, the Criminal Court is empowered to make such orders as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. In terms of section 457 of the CrPC whenever the seizure of property by any police officer is reported to a Magistrate and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

65. As noticed above, apart from sealing of the six ultrasound machines by the Respondents, no action was taken by the Investigating Officer, of the FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi with regard to the said ultrasound machines. It was only after this court directed that the Hard Disks were extracted from the said machines. By the time the Hard Disks were removed, the charge sheet had already been filed. It is still not clear as to whether the said Hard Disks or the data comprised therein or the ultrasound machines have been relied upon in the said case. It may also be noticed that the Hospital and/or its officers and staff are neither named as accused nor cited as witnesses in the said FIR.

66. The Supreme Court of India in SUNDERBHAI AMBALAL DESAI V. STATE OF GUJARAT, (2002) 10 SCC 283 held as under:

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

- 1. owner of the article would not suffer because of its remaining unused or by its misappropriation;*
- 2. court or the police would not be required to keep the article in safe custody;*
- 3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*
- 4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.*

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

(emphasis supplied) ”

67. A coordinate bench of this court in MANJIT SINGH VERSUS STATE 2014 (214) DLT 646 relying upon the decision of the Supreme Court in SUNDERBHAI AMBALAL DESAI (supra) and other decisions summarised the principles of law as under:

“Summary of principles of law

The following principles emerge from the above judgments:

54. *The properties seized by the police during investigation or trial have to be produced before the competent Court within one week of the seizure and the Court has to expeditiously pass an order for its custody in terms of the directions of the Supreme Court in Basavva Kom Dyamangouda Patil v. State of Mysore ((1977) 4 SCC 358), Sunderbhai Ambalal Desai v. State of Gujarat((2002) 10 SCC 283), Sunderbhai Ambalal Desai v. State of Gujarat ((2002) 10 SCC 290) and General Insurance Council v. State of A.P. ((2010) 6 SCC 768).*

55. *The Court has to ensure that the property seized by the police should not be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary and in any case, for not more than one month.*

56. *If the property is subject to speedy and natural decay or if it is otherwise expedient to do so, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.*

57. *The expeditious and judicious disposal of a case property would ensure that the owner of the article would*

not suffer because of its remaining unused or by its misappropriation; Court or the police would not be required to keep the article in safe custody; and onerous cost to the public exchequer towards the cost of storage and custody of the property would be saved.

Time limit for release

58. Whenever a property is seized by the police, it is the duty of the seizing officer/SHO to produce it before the concerned Magistrate within one week of the seizure and the Court, after due notice to the concerned parties, is required to pass an appropriate order for its disposal within a period of one month.”

68. This court in MANJIT SINGH (supra) has laid down that the properties seized by the police during investigation or trial have to be produced before the competent Court within one week of the seizure and the Court has to expeditiously pass an order for its custody in terms of the directions of the Supreme Court in BASAVVA KOM DYAMANGOUDA PATIL V. STATE OF MYSORE (supra), SUNDERBHAI AMBALAL DESAI V. STATE OF GUJARAT (supra 1), SUNDERBHAI AMBALAL DESAI V. STATE OF GUJARAT (supra 2) and GENERAL INSURANCE COUNCIL V. STATE OF A.P. (supra).

69. The Court has to ensure that the property seized by the police should not be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary and in any case, for not more than one month. It has further been directed that whenever a

property is seized by the police, it is the duty of the seizing officer/SHO to produce it before the concerned Magistrate within one week of the seizure and the Court, after due notice to the concerned parties, is required to pass an appropriate order for its disposal within a period of one month.

70. Further, the impugned Minutes of meeting dated 24.04.2017 of the Respondent (impugned in W.P.(C) 3895/2017), wherein, the Hospital has been declined 'no objection' for purchasing new ultrasound machines and for permission to the Hospital to use the same under the Certificate of Registration dated 09.10.2012 record as under:

“The file placed before the District Advisory Committee to permission for purchase of New Ultrasound Machine in the Hospital. District Advisory Committee has unanimously recommended that since the applicant has already violated the provisions and rules under PC & PNDT Act 1994 hence NOC for purchasing a new Ultrasound machine may not be allowed.”

71. The District Advisory Committee (DAC) has not taken into account the fact that no case has been filed against the Hospital for having conducted the alleged examination. The DAC has also not considered that the Hospital and/or its officers and staff are neither named as accused nor cited as witnesses in the FIR registered. No charge sheet has also been filed against the Hospital and/or its officers/staff for having breached any provision of the Act.

72. The DAC has also not noticed, that the provisions of section 20 of the Act do not mandate that in all cases, the registration has to be cancelled. If it is not mandatory to cancel the registration in all cases, then where is the question of denial of NOC for purchasing a new ultrasound machine merely on the ground that the Hospital has violated the provisions of the Act and the Rules.

73. The DAC has completely lost sight of the fact that the Hospital is a 100 bedded Multi Super-Speciality Hospital and it is not possible for a hospital to function without having the facilities of ultrasound. Today ultrasound examination has become the very basic and mandatory diagnostic technique for examination and treatment of nearly all ailments.

74. Further in today's day and time, in the absence of availability of adequate government medical facilities, private hospitals provide requisite medical facilities to the public. The Hospitals in that sense render public service.

75. Orders of the nature passed by the Respondent have the effect of depriving the general public of medical facilities that a 100 bedded Multi Super-Speciality Hospital has to offer. This becomes more egregious in view of the fact that no case has been filed against the Hospital and/or its officers/staff for having violated the provisions of the Act and further the Respondents themselves failed to inform the

Hospital about the pending case against Dr. Arun Singh Chauhan for having, in the past, violated the provisions of the act.

76. The judgment in the case of **DR. VANDANA RAMCHANDRA PATIL** (Supra), relied upon by learned counsel for the Respondents is not applicable in the facts of the present case. In the present case, as noticed above, there is no allegation against the Hospital or against any of the officers of the petitioner. No criminal proceedings have been have been filed against them. FIR has been filed only against Dr. Arun Singh Chauhan and other persons, not connected with the Hospital.

77. In view of the above, the Writ Petitions are disposed of as under:

77.1 the orders (i) dated 10.02.2016 suspending the registration of the Petitioner Hospital, (ii) dated 06.05.2016, whereby the recommendations of the District Advisory Committee for cancellation of the registration of the Hospital were accepted (iii) dated 25.01.2017 dismissing the appeal filed by the Hospital under Section 21 of the Act and (iv) the decision recorded in the Minutes of Meeting dated 24.04.2017, are hereby set aside; and

77.2 the registration of the Hospital under the Act dated 09.10.2012 is hereby restored; and

77.3 the period between 10.02.2016 till date is treated to be the period of suspension under section 20(2) of the Act; and

77.4 the concerned magistrate before whom the proceedings in respect of FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi are pending, is directed to comply with the directions of the Supreme Court in SUNDERBHAI AMBALAL DESAI (supra) and of this court in MANJIT SINGH (Supra) and pass an appropriate order with regard to the six ultrasound machines that have been sealed by the Respondents ; and

77.5 in the event the concerned magistrate does not direct the de-sealing of the ultrasound machines and/or does not direct handing over of custody of the said ultrasound machines to the petitioner, within a period of one month, the Hospital shall be deemed to have been granted the permission for procuring new ultrasound machines under the existing registration certificate dated 09.10.2012, subject to the Hospital complying with the requisite formalities;

78. It is clarified that this judgment is without prejudice to the right of the Respondents to initiate criminal proceedings, under the Act,

against the Hospital and/or its officers/staff, if permissible in law and the defence of the Hospital and its officers/staff to such proceedings.

79. The direction of treating the period from 10.02.2016 until date as the period of suspension under section 20(2) of the Act is not to be taken as any finding of culpability on the part of the Hospital or its officers.

80. This judgment is also without prejudice to the criminal proceedings already initiated, pursuant to FIR No.115/2016, Police Station Punjabi Bagh (West), Delhi and the defence of Dr Arun Singh Chauhan and other accused in the said proceedings.

81. There shall be no orders as to costs.

SANJEEV SACHDEVA, J

OCTOBER 12, 2017
St/HJ