

Neutral Citation No. - 2023:AHC:222287

Court No. - 6

Case :- WRIT - C No. - 27030 of 2023

Petitioner :- M/S Doctor Scan Centre

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Arvind Srivastava, Bhupesh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. V.K. Singh, learned Senior Counsel assisted by Mr. Bhupesh Kumar Singh, learned counsel for the petitioner and Mr. Ravindra Kumar Tripathi, learned Standing Counsel.
2. The writ petition has been filed with a prayer to quash the order dated 19.07.2023 passed by respondent no.2 as well as order dated 18.03.2023 passed by respondent no.3.
3. Brief facts of the case are; that the petitioner runs a Diagnostic Centre where various diagnostic tests using MRI, CT Scan, Ultrasound and Pathology instruments are being conducted. For the aforesaid purpose, a registration certificate has also been issued in favour of the petitioner on 10.11.2003, which has been renewed from time to time for every five years and, lastly, it has been renewed on 03.09.2019, which is valid up to 02.09.2024. The petitioner has been running this Diagnostic Centre for the last 20 years and there has not been a single complaint against the petitioner by any of its customers/ patients/authorities with respect to any malpractices. The petitioner has engaged the services of Dr. Pratap Narayan Singh, who is a fully qualified doctor working as Ultrasonologist, some trained para-medical staff have also been engaged for assistance of the doctor and for operating equipments for running the aforesaid Diagnostic Centre. It appears that on account of rival competitors, an inspection was conducted on 05.07.2022 at 4:40 PM and a report was prepared in a format mentioning therein that the register was not available and Form-F was not filled. It was also mentioned that the warning

message was not displayed and the doctor was not present at the time of inspection. On the basis of aforesaid inspection, a show cause notice dated 22.07.2022 was issued to the petitioner by respondent no.3, to which, a detailed reply was submitted by Dr. P.N. Singh.

4. Surprisingly, the respondent no.5, without following proper procedure as prescribed under law, in an arbitrary and irrational manner, passed an order dated 17.09.2022 sealing the premises of the petitioner. The District Advisory Committee consisting of District Magistrate and few other members sent its recommendation for consent of termination of registration of the petitioner and the District Magistrate gave his consent for terminating the registration of the petitioner without assigning any reason. Thus, by order dated 19.09.2022, the registration of petitioner's Ultrasound Centre was cancelled. No reasons have been given by the District Advisory Committee for recommending the termination of the registration of the petitioner and no reasons have been given by the District Magistrate while consenting the recommendations given by the District Magistrate.

5. Challenging the aforesaid orders dated 19.09.2022 and 17.09.2022, an appeal was filed, which was dismissed by judgement and order dated 10.01.2023. The aforesaid judgement dated 10.01.2023 has been challenged by means of Writ Petition No.4453 of 2023, which has been allowed by Co-ordinate Bench of this Court vide order dated 20.02.2023 and the matter has been remanded to the Prescribed Authority after setting aside the impugned orders to pass fresh orders in terms of procedure prescribed under Section 20(2) of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 along with Rules of 1996 (in short "PC&PNDT Act, 1994 and Rules of 1996").

6. After the aforesaid order, a detailed supplementary reply dated

27.02.2023 annexing the Form-F, which was not seen by the inspecting authority at the time of the alleged inspection and other documents showing that there are no illegality and shortcomings in running of the Centre, has been submitted along with copy of the aforesaid order dated 20.02.2023 passed by the Hon'ble Court.

7. On the aforesaid reply, the Prescribed Authority i.e. respondent no.3 passed an order dated 18.03.2023 cancelling the registration of the petitioner nearly on the same grounds as had been done by the earlier order, against which an appeal was filed, which has been dismissed by order dated 19.07.2023, hence, the present petition has been filed.

8. Learned counsel for the petitioner submits that the alleged inspection on 05.07.2022 was carried out in collusion with the Chief Medical Officer, Deoria, Assistant Chief Medical Officer and Sub Divisional Magistrate at the instance of rival competitors. Despite having full knowledge of the working hours of the doctors at the Ultrasound Centre as was displayed at prominent places of the Centre including entrance door being from 11 AM to 3 PM, the alleged inspection was carried out at 4:40 PM.

9. Though all the formalities as required for running the Ultrasound Centre were completed but the inspection report wrongly mentioned certain facts, which have been detailed in the reply as submitted on 26.07.2022 along with all particulars in Form-F.

10. Despite the order dated 20.02.2023 passed by this Court, impugned orders have been passed on previous findings ignoring the material documents placed on record, which are vitiated in the eyes of law.

11. A show cause notice dated 22.07.2022 mentions about the shortcomings at the time of alleged inspection, which is in absence of Dr. Pratap Narayan Singh, which is violation of Section 3(2) of

PC&PNDT Act, 1994 and Rule 3 of Rules of 1996; the register and Form-F was not maintained and provided, which amended to Rule 9(1) and 9(4) of Rules of 1996; the warning board was also not displayed, which was violation of Rule 17 of Rules of 1996; the photograph of the doctor conducting the Ultrasound and registration certificate was also not displayed, which was again violation of Rule 6(2) of Rules of 1996.

12. To the aforesaid, a detailed reply was submitted mentioning that the alleged inspection was conducted at 4:40 PM, whereas the timings of the concerned doctors was from 11 AM to 3 PM as displayed on the notice board. It was also mentioned that public information giving warning was also placed at prominent places including the entrance of the Centre. All particulars in Form-F were already filled and record was there at the Centre but as the staff had no authority to touch the record, therefore, the same could not be shown to the inspection team. It has also been specifically mentioned that the inspection, so conducted, does not mention about any patient being present at the Centre, who had made complaint. There is no complaint regarding any test being conducted by any unqualified persons, thus, while cancelling the registration of the petitioner's Centre, the proper procedure as prescribed under law has not been adopted and no satisfaction by the prescribed authority has been recorded.

13. The impugned orders have been passed on conjectures and surmises that too on the basis of alleged inspection report, upon which, show cause notice mentioning certain details have been given, to which, a detailed reply has been submitted, but without considering the same, the impugned orders have been passed.

14. Despite the direction given by the Co-ordinate Bench of this Court dated 20.02.2023, relying upon the earlier report of Advisory Committee, without recording any satisfaction, the Prescribed

Authority has reiterated the earlier order of cancelling the registration and the appellate authority has affirmed the aforesaid order in an arbitrary and irrational manner and without application of judicial mind, thus, the Centre of the petitioner has been sealed on the basis of conjectures and surmises without following the proper procedure prescribed under law, hence, the impugned orders are liable to be set aside.

15. Learned Standing Counsel on the other hand submits that the Prescribed Authority, after considering the reply of the petitioner wherein nothing regarding shortcomings and irregularities has been explained, has passed the impugned order, therefore, there is no illegality in the orders impugned.

16. Heard learned counsel for the parties and perused the material available on record.

17. Before dealing with the merits of the case, it would be appropriate to reproduce the provisions of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 along with Rules of 1996, which are as follows:-

“Rule 3(2) of PC&PNDT Act, 1994

no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess the qualifications as may be prescribed;

Rule 20(2) of PC&PNDT Act, 1994

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.

Rule 3 of PC&PNDT, Rules, 1996

The qualification of the employees, the requirement of equipment etc., for a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall be as under:

(1) Any person being or employing-

(i) a gynaecologist or a paediatrician having six months experience or four weeks training in genetic counselling, or

(ii) a medical geneticists, having adequate space and educational charts/models/equipments for carrying out genetic counselling may set up a genetic counselling centre and get it registered as a genetic counselling centre.

Rule 6(2) of PC&PNDT, Rules, 1996

Having regard to the advice of the Advisory Committee the Appropriate Authority shall grant a certificate of registration, in duplicate, in Form B to the applicant. One copy of the certificate of registration shall be displayed by the registered [Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre] at a conspicuous place at its place of business.

Provided that the Appropriate Authority may grant a certificate of a registration to a Genetic Laboratory or a Genetic Clinic to conduct one or more specified pre-natal diagnostic tests or procedures, depending on the availability of place, equipment and qualified employees, and standards maintained by such laboratory or clinic.

Rule 9(1) of PC&PNDT, Rules, 1996

Maintenance and preservation of records- 1. Every Genetic Counselling Centre, Genetic Laboratory, [Genetic Clinic including a mobile Genetic Clinic], Ultrasound Clinic and Imaging Centre shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test.

4. The record to be maintained by every [Genetic Clinic including a mobile Genetic Clinic], in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form-F.

Rule 17 of PC&PNDT, Rules, 1996

Public Information - Every [Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre] shall prominently display on its premises a notice in English and in the local language or languages for the information of the public, to the effect that disclosure of the sex of the foetus is prohibited under

law.

At least one copy each of the Act and these rule shall be available on the premises of every [Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre], and shall be made available to the clientele on demand for perusal.

The Appropriate Authority, the Central Government, the State Government, and the Government/Administration of the Union Territory may publish periodically lists of registered [Genetic Counselling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics and Imaging Centres] and findings from the reports and other information in their possession, for the information of the public and for use by the experts in the field.”

18. This Court finds that as per the relevant provisions as quoted above, the non absence of the doctor at the time of inspection has been very well explained by the petitioner in its detailed reply which has not been considered. The reasons for absence of doctors at the time of inspection was shown to be the timings as displayed on the notice board and at the front gate of the Centre that the doctor will be available from 11 AM to 3 PM, however, when at the time of inspection the doctor was called, he was present before the inspection team and informed about the aforesaid to the team.

19. The register and Form-F were available at the time of inspection but the staff was not authorized to place the same before the inspection team, which has not been noticed while passing the orders impugned. It has been mentioned in the reply that the public information as required under Section 17 of Rules of 1996 were displayed on premises at every place and even at the front gate of the Centre, therefore, the finding as regards the aforesaid is based on the alleged forged inspection report.

20. All related records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters were maintained and preserved by the [Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre] for a period of two years from the date of completion of

counselling, pre-natal diagnostic procedure or pre-natal diagnostic test, as required under Rule 9(6) of Rules of 1996 but the same has been ignored while passing the impugned orders.

21. In the detailed reply as submitted by the petitioner, it has been clearly mentioned that the copy of certificate of registration was displayed by the registered Centre as required under Rule 6(2) of Rules of 1996 but the same has been ignored.

22. Be that as it may, the impugned orders have been passed without considering the detailed reply of the petitioner wherein all the allegations as levelled against them have already been replied to the authorities.

23. This Court also feels that there is no evidence as regards any test being conducted by any unqualified doctors as no patient or complainant has come forward to give any statement in this regard, thus the impugned orders have been passed without considering the reply of the petitioner, without any basis or evidence to prove the allegations as mentioned in the show cause notice that too on the basis of earlier Advisory Committee report, hence, the same is liable to be quashed as the impugned orders have been passed on the basis of conjectures and surmises without considering the reply of the petitioner.

24. In view of the submissions made by learned counsel for the petitioner, perusal the material available on record, the impugned orders dated 19.07.2023 as well as 18.03.023 are **set aside**. The authorities concerned are directed to do the needful for proper functioning of the Centre at the earliest.

25. With the aforesaid direction, the writ petition stands **allowed**.

Order Date :- 23.11.2023

Rahul.