



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

16 WRIT PETITION NO. 1123 OF 2024

DR. SAVITA W/O PRAMOD PADATURE @ SAVITA VINAYAK INDRALE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

...
Advocate for the Petitioner : Mr. Patil Vinod Prakash a/w. Bora Satyajit S.
AGP for Respondents/State: Mr. S.B. Narwade
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 6th February, 2024

PC. :-

1. The Petitioner has put-forth prayer clause-B, C and D as under:

“B) By issuing writ of Mandamus or any other appropriate writ, order or directions, it be hold and declared that, the impugned action dated 28/12/2023 taken by respondent No. 2 and 3 thereby sealing the sonography machine of petitioner be quashed and set aside. Consequently the respondent No. 2 and 3 be directed to de-seal the sonography machine of petitioner forthwith and for that purpose necessary directions be issued.

C) Pending hearing and final disposal of this writ petition, the effect, operation and execution of the impugned action dated 28/12/2023 taken by respondent No. 2 and 3 thereby sealing the sonography machine of petitioner be stayed and kept in abeyance. Consequently, the respondent No. 2 and 3 be directed to de-seal the sonography machine of petitioner forthwith and for that purpose necessary directions be issued.

D) Pending hearing and final disposal of the Writ Petition respondents be directed to allow the petitioner to operate the sonography centre of petitioner as earlier as per law and for that purpose necessary directions be issued.”

2. The undisputed facts in this case are as under:

- a) The Petitioner is a Medical Practitioner by profession and she conducts a Maternity Hospital in Udgir from the year 2002.
- b) She applied in 2002 to the Respondent No.2-Competent Authority for permission to register and operate a Sonography Centre under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the PCPNDT Act) and the rules of 1996 framed thereunder (the 1996 rules).
- c) She was granted such a registration and permission. Every 5 years, she was issued with the renewal of her registration.
- d) Her permission and licence to operate the Sonography Centre was to expire on 06.02.2022. Rule 8 (1) mandates the Petitioner to file an application in Form-A for seeking renewal of the certificate of registration, prior to 30 days of the expiry of the certificate of registration. The department is obliged to issue an acknowledgment of receipt in the manner specified under Sub-rule 2 of Rule 4.
- e) The Appropriate Authority is obliged to hold an inquiry and after it is satisfied that the applicant has complied with all the requirements of the Act and the Rules and having regard to the advice of the advisory committee in this

behalf, the renewal certificate of registration is to be issued in Form-B for a further period of five years from the date of the expiry of the certificate of registration.

f) Clause-6 below Rule 8 mandates that in the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate the rejection of the application for seeking renewal of registration, within a period of 90 days from the date of receipt of the application for renewal, the certificate of registration shall be deemed to have been renewed.

g) No rejection was communicated to the Petitioner within a period of 90 days.

h) As on 19.04.2022, the Petitioner's application seeking renewal of registration was deemed to be accepted. Needless to state, a certificate had to be necessarily issued by the Authority.

i) On 26.04.2022, the District Civil Surgeon conveyed to the Petitioner that in view of the change in the 2014 Rules under Clause-7 thereof, the Petitioner has to undergo a specific training for handling the sonography machine under the State Commission for Medical Education Department with the approved Government Medical Institution for a period of six months. In the last

paragraph of the communication, it is mentioned that, on the condition of clearing the competency exam and undergoing six months training certificate to be produced, the renewal of the certificate of registration would be issued, and if such competency exam and six months training certificates were not produced within six months from the date of issuance of the renewal certificate, the registration of the Sonography Centre would be permanently refused.

j) Despite the above communication, no certificate for conditional renewal of registration was issued by the department.

k) The Petitioner tendered the competency certificate on 17.07.2023 and because she passed the competency exam in the first attempt, Rule 6 (2) of the 2014 Rules, exempts her from undergoing the six months training exercise.

l) Yet, the Department did not issue a renewal certificate which is for a period of five years.

m) A surprise check was performed on 28.12.2023 on the Petitioner's Sonography Centre and the authorities come to a conclusion that because she does not have the renewal certificate, she has been conducting the Sonography Centre, illegally. Her sonography machine was, therefore, sealed and a

panchanama was drawn on 28.12.2023. The same continuous to be sealed even today.

3. For the sake of brevity, we are re-producing Rule 8 of the 1996 Rules and Rule 6 of the 2014 Rules hereunder:

“8. Renewal of registration. -(1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. Acknowledgment of receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub-rule (2) of rule 4.

(2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the advisory Committee in this behalf, renew the certificate of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of registration earlier granted.

(3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and these rules, it shall, for reasons to be recorded in writing, reject the application for renewal of certificate of registration and communicate such rejection to the applicant as specified in Form C.

(4) The fees payable for renewal of certificate registration shall be one half of the fees provided in sub-rule (1) of rule 3.

(5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication or rejection of application for renewal, both copies of the earlier certificate or registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, Ultra Sound Clinic or Imaging Centre.

(6) In the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed.”

“6. Eligibility for training. *-(1) Any registered medical practitioner shall be eligible for undertaking the said six months training.*

^[(2) The existing registered medical practitioners, who are conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training are exempted from undertaking the said training provided they are able to qualify the competency based assessment as specified in Schedule II.

(3) If a medical practitioner fails to clear the said competency based examination after three attempts, he shall undertake the complete six months training, as provided under these rules, for the purpose of renewal of registration.]”

4. In **Janaki Ultra Sound Center V/s. Appropriate Authority & Ors.;** 2015 6 Mh.L.J. 886, the Single Bench Judge came to a conclusion that a sonography machine can be seized or sealed by following a specific procedure laid down in law. It is undisputed before us that the Petitioner’s sonography machine has been sealed solely for the reason that she did not have a renewed certificate of registration.

5. We find glaring irregularities on the part of the Respondent Nos.2 and 3 Authorities. Considering Rule 8 (6), the Authorities were duty bound to initiate the procedure as is prescribed under Rule 8 and arrive at a decision

within 90 days. It was within the domain of the authorities to pass an order either granting or refusing to grant the renewal certificate. A solemn statement is made on instructions from the Petitioner that no procedure was embarked upon by the authorities as is required to be done under Sub-rules 2 and 3. Consequentially, there was no decision arrived at by the authorities within a period of 90 days owing to which Sub-rule 6 came into play. As a natural consequence, the Petitioner stood to gain the deemed renewal permission on 19.04.2022. In this backdrop, the authorities could not take a stand that the Petitioner did not have a renewed certificate.

6. Within seven days of the deeming provision under Rule 8 (6) coming into play, the District Civil Surgeon, Latur had issued a letter dated 26.04.2022 to the Petitioner in which it has been set out as under:

“ उपरोक्त विषय व संदर्भान्वये आपणास सुचित करण्यात येते की, सन 2014 मध्ये गर्भधारणापुर्व व प्रसुतीपुर्व निदानतंत्रे (लिंग निवडीस प्रतिबंध) या कायद्यामध्ये सुधारणा करण्यात आली आहे. सदर कायद्यातील सन 2014 च्या निमांच्या कलम 7 नुसार एम.बी.बी.एस वैद्यकीय व्यावसायिकांनी सोनोग्राफी मशिन हाताळण्यासाठी राज्य आयोग वैद्यकीय शिक्षण विभागाने मान्यता प्रदान केलेल्या भासकीय संस्थांमध्ये सहा महिन्यांचे प्रशिक्षण पुर्ण करणे बंधनकारक आहे.

संदर्भ क.3, 4 व 5 नुसार राज्य भासनाकडून प्राप्त झालेल्या निर्देशानुसार राज्यामध्ये अनुभवाच्या आधारे सोनोग्राफी करीत असलेल्या डॉक्टरांना कॉम्पीटन्सी परिक्षा व 6 महिन्यांचे प्रशिक्षण पुर्ण झाल्यानंतर नुतनीकरण देण्यात यावे असे या कार्यालयास कळविलेले आहे.

तरी आपणास सुचित करण्यात येते की, कॉम्पीटन्सी परिक्षा व 6 महिन्यांचे प्रशिक्षण प्रकिया पुर्ण केल्याचे प्रमाणपत्र सादर करण्याच्या अटी व भारतीच्या अधिन राहून आपल्या सोनोग्राफी केंद्राचे नोंदणी / नुतनीकरण देण्यात येईल अन्यथा कॉम्पीटन्सी परिक्षा व 6 महिन्यांचे प्रशिक्षण पुर्ण केल्याचे

प्रमाणपत्र सादर न केल्यास पुढील नोंदणी / नुतनीकरण हे कायमस्वरूपी बंद करण्यात येईल याची नोंद घ्यावी.”

7. The last paragraph would clearly indicate that the Petitioner was put to a condition that she would have to pass the competency exam and undergo the six months training program. Based on such condition to be fulfilled by the Petitioner within a period of six months, the renewal certificate should have been issued. It was further stated that if such certificate is not produced within six months, the renewal certificate would be re-called and the registration would be permanently cancelled. It is apparent that despite the above communication, the District Civil Surgeon did not issue the renewal certificate.

8. In view of the above, on the one hand, Rule 8 (6) leads to the deeming permission being granted to the Petitioner. The said deeming renewal certificate would not be automatically cancelled unless the authorities initiate appropriate action in accordance with the procedure laid down in law for cancellation of such certificate. On the other hand, the letter dated 26.04.2022 is practically rendered inconsequential since, though the Civil Surgeon indicated that the renewal certificate would be conditionally issued, he himself did not act on the the said communication. As such, the effect of the deeming permission remained intact.

9. The Petitioner passed the competency examination in the first attempt and in the light of the Rule 6 of the 2014 Rules, she was exempted from the six months training program. She tendered her competency certificate on 17.07.2023, which is an admitted position. Yet, the authorities did not issue her a renewal certificate. In this backdrop, it is a travesty of Justice that the authorities carried out a surprise check of the Sonography Centre of the Petitioner on 28.12.2023 and sealed the sonography machine on the ground that the Petitioner did not have a renewal certificate. The entire exercise of carrying out a surprise check and sealing the machine is farcical, to say the least. As it is, the Petitioner was deemed to have been granted the renewal certificate. She also stood entitled to the certificate after having tendered the competency certificate.

10. We, therefore, draw a conclusion in the light of these glaring facts that the Respondents have acted highhandedly and the Petitioner's sonography machine has been sealed since 28.12.2023, in utter disregard of the Rules applicable, until today.

11. The learned advocate for the Petitioner submits that though the Petitioner has not claimed any damages, costs deserve to be imposed on the Respondents considering the conduct of the authorities and the loss caused to the Petitioner. The Petitioner never indulged in sex determination while

conducting the sonography tests and there is no such allegations against the Petitioner that she has indulged in any such illegal and impermissible act. She was using the Sonography Centre in the routine manner, since she is a Gynecologist with due certification to operate the Sonography Centre. On account of the machine having been sealed, vital sonography tests could not be conducted on several patients.

12. The learned GP submits that costs may not be imposed as the authorities have not acted revengefully against the Petitioner. He further states that the Petitioner was at Aurangabad when her competency test/exam was scheduled and yet, 2 tests were performed by using the said machine, in her clinic. We are of the view that these issues are a subject matter of the proceedings initiated by the authorities under the provisions of the concerned Act. We need not deal with them in this Writ Petition.

13. The learned advocate for the Petitioner submits that it is not a matter of the authorities being vindictive. It is a matter of acting highhandedly and the authorities themselves are not following the rules applicable. He prays that the cost, if imposed, would be donated by the Petitioner to the Advocate's Association of the Bombay High Court, Bench at Aurangabad.

14. In view of the above, **this petition is allowed.** We direct Respondent Nos.2 and 3 to de-seal the sonography machine within 48 hours from today, without waiting for this order to be uploaded on the official website of the Bombay High Court. So also, the renewal certificate of registration shall be formally issued from the day it fell due, within 30 days from today. Needless to state, the authorities are within their rights in dealing with the Petitioner's machine, as they would uniformly deal with all the Sonography Centres, in tune with the provisions of the PCPNDT Act and the 1996 and the 2014 Rules, in the event of any violation.

15. The learned Govt. Pleader and the learned AGP jointly submit that costs may not be imposed and the two authorities would themselves donate Rs.5,000/- each as a donation to the Advocate's Association of the Bombay High Court, Bench at Aurangabad. The learned advocate for the Petitioner submits that the Petitioner would not insist on the order of costs. As such, the statement on behalf of Respondent Nos.2 and 3 is accepted.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]