

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4170 of 2015

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1. Bagish Kumar Dwivedy, son of Sri Suresh Dwivedy, permanently residence of village-Ratanpadauli, P.S.- Bhagwanpur, District-Siwan; presently resides at Mohalla- Navratha Hatha, P.S.- K. Hat, District- Purnea.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Kishanganj.
2. The District Magistrate, Kishanganj.
3. The Civil Surgeon-cum-Chief Medical Officer, Kishanganj.

.... Respondents

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Appearance :

For the Petitioner : Mr. Udit Narain Singh Advocate.
For the Respondents : Mr. Anshuman Singh- Gp24

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL ORDER

3 28-07-2015 Heard Mr. Udit Narain Singh the counsel for the
petitioner and Mr. Anshuman Singh , GP-24 for the State.

A counter affidavit has been filed on behalf of the
respondent No.3.

The petitioner runs a sonography Centre in the name
and style of Radhika Ultrasound Centre, Mahavir Marg,
Kishanganj. He was granted registration valid up to 18.10.2017.
Indisputably, Dr. Satish Kumar was the sonologist attached to the
sonography centre of the petitioner when the registration was
granted. Finding some blatant irregularities/ illegalities in the
running of the sonography centre respondent -Chief Medical
Officer visited the business premises of the petitioner on

27.5.2014 and finding these irregularities the centre of the petitioner was sealed. It further appears that subsequently a prosecution report was submitted before the learned CJM, Kishanganj against the petitioner. In the aforesaid background the present writ petition has been filed seeking the following relief(s):-

“1. That this writ application is being filed for issuance of appropriate writ/writs, order/orders direction/directions to the Respondents No.2 and 3 to open the seal of Ultra Sound clinic of the petitioner because without any notice or show cause and without lodging any F.I.R. on the date of seal or clinic and further direct the Respondents No.2 to consider the representation filed by the petitioner and after examining the fact dispose of the representation filed by the petitioner on 03.06.2014 and further for any other relief or reliefs for the terms and circumstances of this case.”

The counsel for the petitioner submitted that the petitioner was not given the show cause notice about any irregularity/illegality being committed in the sonography centre of the petitioner affording him an opportunity to place his case and the sonography centre was seized and sealed arbitrarily by the respondent. It has also been contended that no order cancelling or suspending the license of the petitioner has been passed and communicated to the petitioner till today.

In the counter affidavit filed by the respondent No.3



diverse statements have been made to demonstrate the illegalities/irregularities which were being committed in the sonography centre of the petitioner . It is stated that the sonologist who was retained by the petitioner was changed without notice and approval of the appropriate authority. The sinologist retained by the petitioner was unqualified.

On going through the rival pleadings, it appears that no order which is required to be passed by the appropriate authority in terms of Section 20 of the Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short 'the Act') has been passed and served on the petitioner. This Court finds it advantageous to set out hereinbelow Section 20 of the Act:-

20. Cancellation or suspension of registration-

(1)the Appropriate Authority may suo motu, 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, and 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).”

Seen thus, the appropriate/competent authority under the Act has the requisite jurisdiction to either suspend or cancel the license or registration of the petitioner's centre, if some violations of the provisions of the Act and the Rules made thereunder are found. Even suo motu the authority can take action. However, in both the cases, a reasoned order has to be passed by the competent/appropriate authority. The petitioner has contended that no show cause notice was ever issued and served to him before taking the penal action of seizure and sealing of the sonography centre and that too without any written order.

On going through the counter affidavit, this Court finds that the respondents have not disputed the aforesaid contention of the petitioner that any show cause notice was issued and served on him before such sealing of the centre. The

respondents have only tried to explain diverse reasons therefor. In the opinion of the court the respondent(s) have not acted as per the mandate of law in taking the impugned action.

Section 21 of the Act provides for filing of an appeal against the order which the appropriate/competent authority passes in terms of Section 20 of the Act. But filing of such appeal presupposes passing of an order in accord with the Act and the Rules.

Having taken into consideration the aforesaid facts evidencing from the record, in my view, the application can be disposed of by permitting the petitioner to treat the complaint which the respondents have filed in the Court as notice and file reply thereto within 10 days before the appropriate /competent authority for consideration and disposal in accordance with law. No sooner the representation treating as the reply to the show cause is filed the respondent appropriate/competent authority under the Act shall examine the same and pass appropriate but reasoned order within 10 days thereof. In case the respondent defaults in doing so, the petitioner shall be entitled to unlock/unseal his sonography centre and operate the same until an order is passed by the appropriate/competent authority on the show cause/reply submitted by the petitioner in the light of the

present order.

The writ application is disposed of in the aforesaid

terms.

(Kishore Kumar Mandal, J)

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