

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19758 of 2013

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1. Advance Scan Centre Through Md. Aslam Ansari S/O Md. Habibullah Ansari Dakbanglaw Compound, P.S- Raxaul, District- East Champaran.
 2. Kawita Ultrasound Through Krishna Prasad Yadav S/O Sri Dhrub Prasad Yadav Kaurihar Chowk, Nahar Road, P.S- Raxaul, District- East Champaran.

.... Petitioners

Versus

1. The State Of Bihar through the Principal Secretary, Health Department, Bihar, Patna.
2. The Collector, East Champaran at Motihari.
3. The Chief Medical Officer- Cum- Civil Surgeon, East Champaran At Motihari.

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Dilip Kumar Tondon
For the State : AC to GA-1

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 10-09-2015

Heard Mr. Dilip Kumar Tondon for the petitioner and
AC to GA-1 for the State.

In spite of indulgence no counter affidavit has been filed.

The two petitioners herein run ultra sonography centre in the name and style of Advance Scan Centre through Md. Aslam Ansari and Kawita ultrasound through Krishna Prasad Yadav. The Civil Surgeon-cum-Chief Medical Officer (respondent no.3) made surprise inspection of different Sonography centres including these of the petitioners. Having found lots of irregularities being committed in the said Centre contrary to the provisions of the Act and the conditions of the license/registration, the same have been cancelled

and the prosecution has been ordered to be launched. The order passed by the Chief Medical Officer enclosed as Annexure-2 is under challenge. Such action has been taken by the appropriate/competent authority under the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Protection of Sex Selection) Act, 1994.

It has been submitted on behalf of the petitioners that the order has been passed without any show cause notice to the petitioners and thereby affording him/them an opportunity to explain the positions and rebut the charges/allegations. There is specific assertion to this effect in para 5 and 6 of the writ petition. There is no denial of these statements.

Learned counsel for the State has pointed out that any order passed by the competent authority is appealable. However, he is unable to dispute the contention of the petitioners that such order was passed without affording an opportunity to rebut and/or to explain the allegations/charges.

Mr. Tondon has produced copy of the order dated 11.7.2014 passed in CWJC 23728 of 2013 (Dr. Chandrabhanu Singh vs. The State of Bihar & Anr.) in order to contend that the case of the petitioners is squarely covered by the said order of this Court. A web copy of the order has been handed in by him which is taken on record and marked 'Y' for identification.

Looking to the said order and the facts of the case, the counsel for the State has not disputed the aforesaid contention of the petitioners. Consequently, the application is allowed. The impugned order, in so far as it relates to the petitioners is set aside. This order, however, would not preclude the respondent authority from proceeding against the petitioners afresh in accordance with law. The application is allowed with the aforesaid observations/directions.

(Kishore Kumar Mandal, J)

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