

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15455 of 2014

Indian Medical Association, Darbhanga Branch, VIP Road, Alalpatti, Darbhanga
through Dr. Amod Kumar Jha, Son of Sri Ram Lal Jha, Resident of Mohalla- Dighi
West, Prof. Colony, Lal Bagh, P.S. Nagar Thana, District- Darbhanga

.... Petitioner

Versus

1. The Union of India, through Secretary, Department of Health and Family Welfare, New Delhi
2. The Union of India through Joint Secretary, Department of Health and Family Welfare, New Delhi
3. The State of Bihar through Principal Secretary, Department of Health and Family Welfare, Bihar, Patna
4. The Regional Deputy Director (Health), Darbhanga
5. The District Magistrate, Darbhanga
6. The Civil Surgeon-cum-Chief Medical Officer, Darbhanga

.... Respondentss

Appearance :

For the Petitioner : Mr. Rajendra Prasad Singh, Sr. Advocate

Mr. Rajeev Kumar Singh, Advocate

For Respondent Nos.1 & 2: Mrs. Nivedita Nirvikar, Sr. Standing Counsel

For Respondent Nos.3 to 6 : Mr. Sunil Kumar, A.C. to S.C.-2

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-01-2015

The petitioner is the Darbhanga Branch of the Indian Medical Association. It has filed a writ petition with a prayer to quash sub-rule (ii) of Rule 4 of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Amendment Rules, 2014 (hereinafter referred to as 'the Rules')

contained in notification dated 24.02.2012, as being illegal, arbitrary and unconstitutional.

2. The Parliament enacted the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (hereinafter referred to as 'the Act') in the year 1994 with an objective of preventing the use of the facilities of determination of sex of the embryo or child, before delivery.

3. One of the scientific developments in the field of medical is the invention of technology, to know the details of an embryo, even to the extent of determination of sex. Though the facility was intended for the purpose of extending better medical facilities, it was being misused to know the sex of the child while in womb. The practice was being resorted to terminate the pregnancy if the child is found to be female.

4. The Parliament woke up to the malady and enacted the Act in the year 1994. Stringent punitive measures are imposed prohibiting

determination of sex of an embryo or child in womb. Rules were also framed in this behalf.

5. One of the restrictions is that a person or an agency operating the facilities must obtain a licence and the licence is required to be renewed from time to time. For grant or renewal, the rule making authority intended to impose restrictions on the applicant against whom the cases are pending.

6. The grievance of the petitioner is that by citing the provision, which prohibits renewal of licence on account of the pendency of the cases, the licensing authorities are refusing to renew the licence even when the case is unrelated to the provisions of the Act and the Rules.

7. Heard Shri Rajendra Prasad Singh, learned Senior Counsel for the petitioner, and Smt. Nivedita Nirvikar, learned Senior Standing Counsel for the Central Government. Also heard Mr. Sunil Kumar, Assistant Counsel to Standing Counsel No.2 for the State.

8. The Act has been brought into existence

with an intention to prevent a serious social malady. To enforce the Act, Rules have also been framed. Rule (4) of the Rules, which is relevant for this case, reads hereunder :

“(4) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following conduct for registration and renewal of applications under the Act, namely :--

- (i) dispose of the application for renewal and new registration within a period of seventy days from the date of receipt of application;
- (ii) ensure that no application for fresh registration or renewal is accepted if any case is pending in any court against the applicant.”

9. The petitioner does not have any grievance with respect to sub-rule (i) of Rule 4 of the Rules. Its grievance is only against sub-rule (ii) of Rule 4 of the Rules. A plain reading of sub-rule (ii) discloses that no application for fresh registration or renewal can be accepted if any case is pending in any court against the applicant. The object is to ensure that if any person is facing allegation of violation of any provisions of the Act and the Rules, his licence

cannot be issued or his existing licence cannot be renewed.

10. The provision does not apply to the cases, which are unrelated to the provisions of the Act and the Rules. For example, if a criminal case relating to some property dispute is pending between an applicant and another person, it cannot constitute the basis to deny registration or renewal of licence if he is otherwise entitled thereto. No exception can be taken to the Rule as such, much less, it needs to be struck down. It can be construed in such a way that its operation is confined to the cases that arise under the Act and the Rules. Such facility viz. reading down, is very much available in the process of interpretation of statutes. It saves the provisions from being struck off on the ground of being vague and capable of being misused.

11. We, therefore, partly allow this writ petition reading down sub-rule (ii) of Rule 4 of the Rules to the effect that the expression "any case" employed therein shall be with reference to the

cases, if any, that are instituted against an applicant for grant of licence or renewal thereof; for violation of the provisions of the Act and the Rules, and not to the cases which do not relate thereto.

12. The interlocutory application, if any, shall also stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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