

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2992 OF 2015

Dr. Makkiudddin S/o Shujauddin Munshi,
Age: 42, Occu: Medical Practitioner,
R/o Munshi Nidan Dignostic Centre,
Opp. To Bus stand, Vaijapur,
District Aurangabad

...PETITIONER

versus

1. The State of Maharashtra,
Through its Secretary, Department
of Public Health and Family
Welfare, Mantralaya, Mumbai.
2. The Deputy Director of Health,
Family Palnning and child Welfare,
Pune (The State Appellate
Authority under P.C.P.N.D.T. Act)
3. District Health Officer and District
Appropriate Authority under
the P.C.P.N.D. T. Act
4. the Taluka Appropriate Authority
Medical Superintendent, under the
Pre-conception and Pre-natal
Diagnostic Techniques
(Prohibition of Sex Selection)
Act, Sub-District Hospital, Vaijapur. ...RESPONDENT

.....
Mr. P.F. Patni, Advocate for Petitioner
Mr. S.K. Tambe, A.G.P for respondents
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 18th JUNE, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel
for parties finally with consent.

2. Petition has been moved, aggrieved by action and order dated 16-06-2014 taking place simultaneously, whereunder petitioner's registration under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred as to the "PCPNDT Act" for the sake of brevity) had been suspended and his sonography machine had been sealed.

3. It would be worthwhile to succinctly refer to a few facts-

Petitioner is a radiologist having educational qualifications M.B.B.S., DMRE (Mumbai). Pursuant to provisions of PCPNDT Act he had applied for registration. He had been accordingly issued registration certificate valid upto 17-09-2014. Accordingly, petitioner had been running the diagnostic centre referred to as "*Nidan Diagnostic centre*" at Vaijapur. Petitioner's said centre was being regularly inspected by concerned authorities and had not found any discrepancy and deficiency during inspections. However, after visit on 09-04-2014 by respondent No. 4 certain discrepancies were noticed in maintenance of record and, as such, explanation was sought from the petitioner.

4. The petitioner had tendered explanation and had further submitted that discrepancies in respect of maintenance of some record were either by due to inadvertence or due to non appreciation of proper procedure. It appears that respondent No.4 had not accepted the explanation and purportedly suspended the registration of the petitioner since 16-06-2014 and sealed the sonography machine.

5. Initially, the petitioner had approached appellate authority, within prescribed period at State level. However, he was given to understand that appeal may lie before the district level appropriate authority. Accordingly, petitioner had been before appropriate authority i.e. district level appropriate authority.

6. Petitioner refers to proceedings before district level appropriate authority, and particularly, that said authority had found that neither medical superintendent nor sub-district level appropriate authority, sub-district hospital, at Vaijpaur had informed that there is any allegation or complaint about sex determination or found any such complaint or allegation of such nature against diagnostic centre of petitioner.

7. It is further noted by the district level appropriate authority that action has been taken against petitioner pursuant to directions of the Civil Surgeon dated 22-04-2014. However, while dismissing the matter district level appropriate authority found that action as has been taken was pursuant to provisions of PCPNDT Act and directed the petitioner to prefer appeal within 30 days and thus dismissed the appeal and also directed prosecution of the petitioner as per earlier order dated 13-06-2014. This order of dismissal of appeal was passed by the district level appropriate authority on 23-09-2014. In the meanwhile, the petitioner appears to have applied for renewal of registration.

8. Learned counsel for the petitioner submits that impugned order is unsustainable not being preceded with any reason to believe that

offence under this Act is being committed by diagnostic centre leading to suspension of licence and sealing of machinery. The authorities had no power to pass such order of sealing of machinery, for, action is not at all preceded by reasons to believe that offence under the PCPNDT Act has been committed. For reaching to the conclusion of commission of offence there has to be sufficient reason for appropriate authority to believe the same, in which case he personally or through authorized officer can examine the record and seize the machinery. If there is no "reasonable belief" that it may furnish evidence of commission of offence punishable under the Act, then appropriate authority or officer authorized may not enter and search the premises and seal and seize the record. According to learned counsel, there is no material depicting the same, on the contrary district level appropriate authority clearly found that registration has not been misused at all.

9. Learned counsel for petitioner vehemently submits that whatever discrepancies, which were noticed while maintaining the record, those have been honestly and properly explained. The discrepancies have their occurrence due to inadvertence and on some occasions in exigent situations and improper appreciation of procedure. Learned counsel submits that it had been explained that non-maintenance of requisite record in proper format was due to lack of proper information and improper appreciation. He further refers to that the contents of appeal memo do indicate that registers have been maintained, however, it were not in the format required. Further, it has been referred to that petitioner is running the *Diagnostic* centre for more than four years,

during which period tri-monthly periodical inspections had taken place and no discrepancies had been noticed by the authorities. There is no allegation or complaint of, sex determination and/or commission of prohibited acts under PCPNDT Act, against the diagnostic centre or its personnel. The discrepancies occurred are clerical and are venial in nature and proper explanation in respect of the same has been tendered in the reply to the show cause notice.

10. Learned counsel further placed reliance on instructions issued on 12-06-2012 directing that no action be taken against diagnostic centre for minor mistake or error. Learned counsel, therefore, submits that actions of sealing of machine as well suspending licence are harsh and are disproportionate to the nature of discrepancies and further that it cannot be said that any offence ever had been committed at the diagnostic centre. He, thus, assails action of sealing of machine and order of suspending licence being bad in law, unsustainable and being a result of perfunctory approach.

11. Learned counsel further submits that there is no imputation of any allegation save the authorities have noticed some minor discrepancies in respect of maintenance of record. According to learned counsel, such irregularities are not major and muchless would tantamount to an offence. This is not contemplated under PCPNDT Act. On the face of it, the discrepancies as have been noticed are venial in nature for which sealing of machine and suspending of license are grossly disproportionate to the nature of discrepancies. There is no deliberate breach of conditions in running the diagnostic centre.

12. Learned counsel for petitioner bases his aforesaid submissions and propositions on the decision rendered by learned single judge (Coram: S.V. Gangapurwala, J.) of this Court in writ petition No. 6557 of 2012. According to learned counsel, learned single judge had dealt with this aspect comprehensively and delivered the judgment. He, particularly, refers to paragraphs No. 13, 14, 15, 16, 17 and 18 of said judgment.

13. I have perused said judgment, and I deem it appropriate to reproduce said paragraphs relied on by learned counsel for petitioner from said judgment. Paragraphs No. 13,14,15, 16, 17 and 18 read as under :

13. It is explicitly clear, the show cause notice was issued by the Appropriate Authority. The explanation was tendered to the Appropriate Authority. The Appropriate Authority vide order dated 04.07.2012 directed the petitioner to submit upto 07.07.2012 an undertaking on bond of Rs. 100/- with regard to the clarification given by the petitioner and abruptly on 05.07.2012 the impugned orders are passed by the Medical Officers. It is a salutary principle that the person who conducts the hearing should decide. In the present case, the hearing has taken place before Health Officer i. e. an Appropriate Authority and the order is passed by the Medical Officers, who are not Appropriate Authorities under the statute. It would show that the hearing was only farcical. In the present matter, I need not go into those aspects, as the order is passed by the Medical Officer who is not an Appropriate Authority. Therefore, the said order deserves to be quashed on that count itself.

14. *It has been submitted that, these Medical Officers are authorized under Sec. 30 of the said Act and Rule 11 and 12 of the Rules 1996 by the Appropriate Authority i. e. the Commissioner for the purpose of search, inspection and sealing. They are authorized for the purpose of sealing as contemplated U/Sec. 30 of the Said Act and Rules 11 and 12 of the Rules of 1996. It would appear that the order of suspension and sealing is issued by these Medical Officers on the premise that they are Assistant Appropriate Authorities. In the affidavit in reply it is suggested that they are Appropriate Authorities. In fact, by none of the notification as discussed above, they are designated or notified as Appropriate Authorities. It has been suggested that in the meeting dated 05.07.2012, the Commissioner has authorized them to be the authorized officers. The said office order dated 05.07.2012 states that in the meeting held on 05.07.2012 the Commissioner has appointed the squad under the Medical Officers to seal the sonography machines of the persons/medical practitioners named in the said order.*

15. *The said order is said to have been issued on 05.07.2012. The order suspending the registration and sealing is passed by the Medical Officer on the same day i. e. on 05.07.2012. It is contended that the Commissioner is also an Appropriate Authority and on his directions the said Medical Officers have sealed the sonography machines. The order passed by the Medical Officer sealing the machines does not depict that they have suspended the registration and sealed the machines on the orders of the Appropriate Authority. On the contrary the order of suspension of registration and sealing is issued by the Medical Officers in the capacity of the Assistant Appropriate Authority.*

16. *Even Sec. 30 of the said Act lays down that, if the Appropriate Authority has reason to believe that an offence under this Act has been or is been committed, then he may personally or authorize any officer in that behalf to examine the record, register, documents and seize and seal the same. Rule 12 of the Rules of 1996 also authorizes an Appropriate Authority or the Officer authorized in this behalf to enter and search at all reasonable time the said genetic counselling centre, ultra sound clinic, etc. and may seal and seize the record, register and evidence or any other material therein, if there is "reasonable belief" that it may furnish evidence of commission of offence punishable under the Act.*

17. *"Reason to believe" or "reasonable belief" means coming to factual conclusion on the basis of information that a thing, condition, statement or a fact exists. Reason to believe contemplates an objective determination based on intelligent care and deliberation as distinguished from purely subjective consideration. The said expression is not synonymous to subjective satisfaction of the authority. It postulates belief and existence of reason for that belief. The belief has to be held in good faith. It cannot be a mere pretence. The reason for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant for the purpose of the section.*

18. *In the present case, no such reasons are given. It does not transpire that sonography machines have been sealed upon the Appropriate Authority satisfying itself or having reason to believe that the said object i. e.*

sonography machines would furnish evidence of commission of offence punishable under the Act.”

14. On the other hand, learned Assistant Government Pleader is at pains and strenuously submits that order passed by the district level appropriate authority shows that the petitioner has committed certain lapses and thus he purports to support the order.

15. Learned Assistant Government Pleader, however, submits that the vigilance squad visited petitioner's diagnostic centre and had found certain discrepancies with regard to maintenance of record pursuant to rule 9(1) of PCPNDT Rules, 1996. He further refers to that there is absence of name of one of the patient on certain forms and absence of signatures on certain forms. Learned Assistant Government Pleader further refers to that in the meeting called for considering the reply to show cause notice, appropriate authority had considered that there are discrepancies and thereafter action has been taken. In support of this, copies of some consent and declaration forms and the papers with regard to prosecution in respect of the same are annexed to the reply.

16. The object underlying the PCPNDT Act is to prohibit sex selection, before or after conception, regulation of pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide.

17. While it has come on record that petitioner has been running the diagnostic centre for more than four and half years and that his diagnostic centre was being regularly inspected. No discrepancy till June, 2014 was noticed. Discrepancies with regard to maintenance of certain register has been explained that it had occurred due to lack of proper information and improper appreciation. It is submitted that the the record required although is there, albeit, it is not in the required format. It is pointed out that only three forms were found deficient in certain respects. Said discrepancies occurred in three forms have been explained. Authorities have not alleged that the diagnostic centre or for that matter used for sex selection or sex determination leading to female foeticide. The petitioners' machine appears to have been sealed for the discrepancies as noticed in maintenance of the records and absence of signatures of the patients/doctor on three documents. It is not the case that machine was sealed with reference to section 30 of PCPNDT Act and particularly that authority had reason to believe that an offence under the Act has been or is being committed at the centre or that object the machine had been sealed or seized if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

18. The facts which have been narrated herein above, about which there is much not dispute indicate that observations appearing in extract of judgment reproduced (supra) would to a considerably large extent hold the present case and the scenario.

19. Under the circumstances, in the facts of the case and background of the decisions by the authorities, with such lapse of time, it would not be appropriate to relegate the petitioner to the authorities particularly, after finding that there is no allegation of misuse or otherwise or for that matter any discrepancies being noticed or that the discrepancies, if any, are sufficient to authorize the officer to suspend the licence.

20. In view of aforesaid, impugned order dated 16-06-2014 passed by respondent No. 4 suspending petitioner's registration and action of sealing machine stands quashed and set aside.

21. Writ petition is allowed. Rule is made absolute accordingly. No order as to costs.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
