

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

WRIT PETITION NO. 2871 OF 2012

Dr. Percy s/o Savakshaw Jilla,
age 49 years, occ. Medical Practitioner,
c/o Jilla Hospital, Aurangabad
r/o 84, Motiwala Nagar,
Central Naka Road, Aurangabad
Taluka and District Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra
through the Principal Secretary,
Department of Public Health
and Family Welfare, M.S.
Mantralaya, Mumbai 32.
2. The Director of Health Services
Mumbai.
3. The Additional Director of
Health Services (FW,MCH & SH)
M.S. Pune.
4. The State Appropriate Authority,
Arogya Bhavan, Mumbai.
5. The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad.
6. The Appropriate Authority and
Medical Officer,
Aurangabad Municipal Corporation,
Aurangabad.

.. RESPONDENTS

Mr. R.S. Deshmukh, advocate for petitioner.

Mr. P.S. Patil, AGP for the State.

Mr. M.P. Tripathi, advocate holding for Mr.N.B. Khandare, advocate for respondents 5 and 6.

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CORAM : R.M. BORDE &

A.I.S. CHEEMA, JJ.

DATE : 30th NOVEMBER, 2015.

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. Petitioner has approached this Court objecting the order passed by the Appropriate Authority on 02.02.2012 directing him not to carry the portable Echo Colour Doppler outside the hospital premises and to use the same for investigation purposes at any hospital. It has been further directed that he should use the same only at the center at which the same is registered.
4. It is not a matter of dispute that petitioner is an Echo-Cardiologist and operates private clinic. The restriction appears to have been imposed noticing the fact that wife of the petitioner is a gynecologist. The law does not permit imposing prohibition on a medical practitioner practising in a different stream merely because one of his family members can be subjected to restrictions under the provisions of Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Petitioner has given undertaking that the sonography machines which are registered with the authority would not be used outside the hospital premises. Sonography machines are infact used by his wife who is a gynecologist whereas 2D Echo Colour Doppler which is mainly used for investigating cardiological disorder is used by the petitioner. By virtue of interim order

passed by this Court on 29.03.2012, restriction in respect of use of sonography machine outside the hospital premises is maintained whereas petitioner has been permitted to use the 2D portable Colour Doppler outside the premises.

5. An affidavit-in-reply has been presented on behalf of respondents wherein it has been stated that 2D Echo Cardiography machine can be used for sex determination if the concerned medical practitioner changes the probe and attaches Convex Sector to 2D Echo Cardiography machine. It is stated in the affidavit-in-reply that the Professor and Head of Department, Radiology, Government Medical College, Aurangabad, has opined accordingly. However, on perusal of the opinion given in writing by the Professor and Head of Department, Radiology, Government Medical College, Aurangabad, the contentions recorded in affidavit-in-reply do not appear to be correct. The Head of Department, Radiology, Government Medical College, Aurangabad, has communicated that unless it is revealed as to what type of probe is being used, no definite opinion can be given.

6. Merely because the machine being used for different investigation purpose capable of being put to use for sex determination, the medical practitioner practising in a different stream, like petitioner, who is an Echo Cardiologist, cannot be subjected to unnecessary restrictions, and such course would be outside the scope of intendment and provisions of Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Apart from this, petitioner in his rejoinder affidavit

has tendered an undertaking that he does not and will not use Convex Sector probe since the said prob is used by Sonologist / Gynecologist for scanning the abdomen and not by Echo Cardiologist for diagnostic purpose. Apart from this, it has been stated that a silent observer has been installed on the 2D Echo Colour Doppler machine and the said measure adopted by the authority appears to be the sufficient safe-guard. It is not alleged by respondents that petitioner who is an Echo Cardiologist is in any manner pursuing gynecology practice. The restriction imposed by the Appropriate Authority, therefore, appears to be unreasonable one and beyond the scope of the Act of 1994. Writ petition, therefore, deserves to be allowed in terms of the interim order passed by this Court. Rule made absolute in terms of prayer clause 'F'. In the facts and circumstances of the case, there shall be no order as to costs.

(A.I.S. CHEEMA)
JUDGE

(R. M. BORDE)
JUDGE

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