

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4216 OF 2015

Ramkrishna Shankar Gaul
Age: 52 years, occu: Medical Practitioner
R/o Ankur Mother Care Clinic
Chaman, In front of Post Office
Jalna, Tq & Dist. Jalna

Petitioner

Versus

- 1 The State of Maharashtra
Through Its Secretary,
Department of Public Health & Family Welfare
Mantralaya, Mumbai – 32
- 2 Appropriate Authority / Civil Surgeon
Jalna, District : Jalna
- 3 Appropriate Authority / Medical Superintendent
Rural Hospital, Badnapur,
District: Jalna

Respondents

Mr.S.G. Chapalgaonkar advocate for the petitioner
Mr. D.R. Kale, GP for Respondent State

CORAM : R.M. BORDE &
P.R. BORA, JJ

Dated : 17th JUNE, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard. Rule. With the consent of the parties, Rule is made returnable forthwith and the petition is taken up for final decision, at admission stage.

2 The petitioner is a Medical Practitioner and is operating a Sonography Centre since 2009. It is the case of the petitioner that, on 23.11.2014, the appropriate authority, along with Dr. Yeotikar and two Panchas visited the Sonography Centre operated by the petitioner. During the conduct of inspection on 10.12.2014, the inspection squad noticed three deficiencies. It was observed by the inspection squad that, the Register, as required under Rule 9(1), is not maintained properly and there are interpolations in the Register. The second objection was in respect of maintenance of declaration form, concerning patients Renuka Borude, Radha Borude, Sharada Nikalje. It is observed that, the declarations in respect of above referred patients did not bear the signature of the doctor. The third objection is in respect of absence of signature of doctor on the examination report of patient Meena Lakhanauwale. The appropriate authority and Dr. Yeotikar caused a Panchanama recorded and on the later date i.e. 23.12.2014 seized the documentary record referable to above noted three objections. The appropriate authority, under the Panchanama dated 23.12.2014, also proceeded to seize the Sonography Machine. A notice, was thereafter issued calling upon the petitioner to submit his explanation, in respect of the action of sealing of Machine, under the Panchanama dated 23.12.2014.

Show cause notice came to be issued by the appropriate authority after conduct of Panchanama on 29.12.2014. The petitioner tendered his reply to the notice on 9.1.2015. An another notice came to be issued by the appropriate authority on 3.1.2015, calling upon the petitioner to explain, as to why the registration certificate issued for operating the Sonography Centre, shall not be suspended. The petitioner tendered reply to the show cause notice. According to the petitioner, the appropriate authority proceeded to direct the suspension of the registration of the Sonography Centre, operated by the petitioner, by order dated 20.3.2015, without extending opportunity of personal hearing.

3 The petitioner contends that, the action of sealing of Machine as well as the order of suspension of registration, issued by the appropriate authority, is in breach of provisions of The Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (herein after referred to as 'the Act').

4 Section 20 of the Act provides for cancellation or suspension of registration. Sub-section 1 of Section 20 provides that, the appropriate authority may *suo motu*, or on receipt of 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. Sub-section 2 provides that, if, after giving a reasonable opportunity of being heard to the Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory committee, the 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.

5 In the instant matter, according to the petitioner, he has not been extended an opportunity of being heard, before taking action of suspension of registration certificate. It has not been controverted on behalf of the respondents that, such an opportunity was not extended to the petitioner.

6 The petitioner placed reliance on the Judgment delivered by this Court in the matter of **Dr. Dashrath Shamrao Shinde V/s State of Maharashtra and others** reported in 2012 (O) BCI 86 to substantiate his contentions.

7 Sub-section 3 of Section 20 empowers the appropriate authority to suspend the registration of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, without issuing any

notice referred to in sub-section (1). However, in such eventuality, duty is cast upon the appropriate authority to record reasons. In the instant matter, neither the petitioner has been extended opportunity of hearing before directing suspension of registration, nor the authority has recorded reasons for its satisfaction for issuing directions to suspend the registration. The order issued by the appropriate authority, directing suspension of registration of the Sonography Centre, operated by the petitioner, is illegal and as such liable to be set aside.

8 The petitioner is objecting to the action of sealing of Sonography Machine under the Panchanama dated 23.12.2014.

Section 30 of the Act of 1994 empowers the authority, if it has reason to believe that an offence under the Act has been or is being committed, subject to Rules, as may be provided, enter and search, at all the reasonable times, with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same, if such authority or officer has reason to believe that, it may furnish evidence of the commission of any offence punishable under this Act.

9 In the instant matter, the allegations against the petitioner are in respect of improper maintenance of Register under Rule 9 and his failure to sign the declaration and examination report. In all probabilities, the Sonography machine is not likely to furnish evidence of commission of offence, as alleged. Apart from this, the appropriate authority is supposed to take action, if it has reason to believe that, Sonography Machine may furnish evidence of commission of offence. In order to ensure compliance of Section 30, the appropriate authority is expected to record reasons for his belief.

10 In Writ Petition No.6557 of 2012 decided on 11.9.2012, by the learned single Judge of this Court, it is observed in paragraph No.17 of the Judgment thus:-

“ 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. "

11 We agree with the proposition set out in the Judgment referred to above. In the instant matter, neither the appropriate authority has recorded reasons, nor demonstrated that it has reason to believe that, the Sonography Machine is likely to furnish evidence in respect of commission of offence, in the instant matter, nor the allegations leveled against the petitioner are of such nature, nor looking to the allegations against the petitioner, the Sonography Machine is likely to render any evidence in respect of alleged violation. Apart from this, the appropriate authority has first visited the Sonography Centre and thereafter proceeded to record Panchanama which was followed by Notice of Show Cause. The impugned action is taken prior in time and thereafter Notice of Show Cause has been issued by the appropriate authority. The decision is rendered void as a result of breach of procedural requirement.

12 In view of above, the action of sealing of the Sonography Machine shall have to be branded as illegal and violative of provisions of Section 30 of the Act and shall have to be quashed and set aside.

13 In the result, the Writ Petition is allowed. The order of suspension of registration issued by the appropriate authority, on 20.3.2015 is quashed and set aside. It would be open for the appropriate authority to issue fresh order in observance of procedural requirements under the Act of 1994 and Rules framed thereunder. The action of sealing of Sonography Machine, in pursuance of recording of Panchanama dated 23.12.2014, is also quashed and respondents are directed to remove the seal and hand over the Sonography Machine and the probe to the petitioner, forth with.

14 Rule is made absolute, accordingly. There shall be no order as to costs.

(P.R. BORA, J)

(R.M.BORDE, J)