

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

WRIT PETITION NO.5227 OF 2015

Janaki Ultra Sound Center,
Jalna Road Bhokardan, Dist. Jalna,
Through authorized Handler
Dr.Deelip s/o Madhukarrao Patil
Age 45 years, Occ. Medical Practitioner,
r/o Janaki Hospital, Bhagyanagar,
Bhokardan, Dist. Jalna.

...PETITIONER

VERSUS

1. The Appropriate authority
Under P.C.P.N.D.T.Act
And Civil Surgeon, Jalna.
2. The State of Maharashtra
Through The Secretary,
Health Department, Mantralaya,
Mumbai 32

...RESPONDENTS

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Mr. B.R.Warmaa, Advocate for the petitioner.
Mrs. A.V.Gondhalekar, AGP, for respondent State.

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CORAM: R.M.BORDE

AND

P.R.BORA, JJ.

DATE : July 14th, 2015

ORAL JUDGMENT: (Per R.M.Borde, J.)

1. Heard. Rule. Rule made returnable and heard
forthwith with the consent of learned Counsel for the parties.
2. The petitioner is raising exception to the order

passed by the Appropriate Authority, directing suspension of registration certificate for Ultra Sound Clinic/Sonography unit operated by the petitioner.

3. It is not a matter of dispute that before directing suspension of registration, no opportunity of hearing was extended to the petitioner and, as such, there is a breach of observance of principles of natural justice.

4. Section 20 of the Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as '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. The order impugned in this petition was preceded by the notice and the petitioner has also presented his reply to the Appropriate Authority. However, the mandate of sub-

section (2) of Section 20 has been observed in breach. There is no denial that the petitioner has not been extended an opportunity of being heard before issuance of the order impugned in this petition. Apart from this, the Appropriate Authority is expected to pass an order having regard to the advice of the Advisory Committee. In the instant matter, the minutes of the meeting of the Advisory Committee are placed on record. The Advisory Committee took up cases of 12 Doctors in the meeting conducted on 16.1.2015. In almost all the cases, the Advisory Committee has resolved to recommend adoption of appropriate legal action in accordance with the provisions of the Act.

6. On going through the minutes of the meeting, it is noticed that in every case, the Committee has failed to make any recommendation, however, has recommended to take appropriate decision in conformity with law. Thus, there is absolutely no advice from the Advisory Committee. In our view, the Advisory Committee has failed to perform its function as laid down under sub-section (8) of Section 17 of the Act. It is provided under sub-section (8) that the Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon.

In the instant matter, it is noticed that the Advisory Committee has failed to perform its legal obligation mandated under sub-section (8) of Section 17 of the Act. It would be appropriate, henceforth, if the Advisory Committee functions in accordance with the provisions of the Act and fulfills its legal obligations.

The third deficiency which is noticed in the order is that the Appropriate Authority has not prescribed the period of suspension of registration as is required under sub-section (2) of Section 20 of the Act. The Appropriate Authority is expected to exercise caution in passing orders, which lead to serious consequences.

7. It is noticed that although the order has been issued by the Appropriate Authority on 22.1.2015, surprisingly enough, it was not posted to the petitioner until 25th March, 2015, i.e. for a period of almost two months. An explanation has been tendered in the affidavit in reply and the blame is shifted on the subordinate staff. We are not satisfied with the explanation tendered by the Appropriate Authority. It would be advisable to direct the Appropriate Authority to exercise caution and ensure that the provisions of the Act, and the Rules framed thereunder, are strictly complied with hereinafter.

8. For the reasons recorded above, the writ petition deserves to be allowed and the same is accordingly allowed. The impugned order passed by the Appropriate Authority on 22.1.2015 is quashed and set aside. It would be open for the Appropriate Authority to take up appropriate proceedings and issue necessary orders, if deemed necessary in the facts and circumstances of the case, in observance of the procedure prescribed under the Act and the Rules framed thereunder.

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

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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