

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6979 OF 2015

Dr. Sudhir s/o Mahadeorao Nimakar,
age: 42 years, Occ: Medical Practitioner,
R/o Ghamodia Factory Area,
Near Doctors lane,
Nanded,
Tq. & District Nanded.

Petitioner

Versus

01 The State of Maharashtra,
through its Secretary,
Department of Public Health
and Family Welfare,
Mantralaya, Mumbai-32.

02 Medical Health Officer /
Appropriate Authority,
Municipal Corporation, Nanded,
Tq. & District Nanded.

Respondents

Mr.S.G.Chapalgaonkar, advocate for the petitioner
Mrs.A.V.Gondhalekar, A.G.P. for Respondent No.1.
Mr.R.K.Ingole, advocate for Respondent No.2.

CORAM : R.M.BORDE &

P.R.BORA, JJ.

DATE : 13th August, 2015

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

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 The petitioner is a Radiologist and is operating
Sonography Centre by name Saket Diagnostic Centre at Nanded.

The petitioner was issued Registration Certificate for operating the Centre since 2005 and validity of the Registration expired on 28.06.2015. The petitioner, as such, tendered an application for renewal of Registration within contemplation of Rule 8 of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (herein after referred to as 'Rules of 1994'). The application tendered by the petitioner has been dealt with by the appropriate authority, who, by his order dated 04.07.2015, was pleased to reject the same.

3 It is not a matter of dispute that First Information Report has been lodged against the petitioner for alleged violation of the Rules of 1994 and failure to maintain record in proper form. In pursuance to lodging of First Information Report, criminal case is registered and same is pending consideration before the Judicial Magistrate, First Class, Nanded.

4 This Court, while dealing with **Writ Petition No.4478 of 2015**, presented by the Maharashtra State Branch of IRIA MSBIRIA, Mumbai against Union of India and others, has observed, on the basis of statement made by the Assistant Solicitor General for Union of India that, Rule 18-A (4)(ii) of the Rules of 1994, incorporated with effect from 28.01.2015, shall not be construed as total prohibition on the appropriate authority to receive an application for renewal or fresh registration. The relevant rule imposes restriction on the appropriate authority to receive application for renewal or fresh registration. In view of the clarification made by the Union of India, it is obligatory on the part of appropriate authority to receive applications for registration and

renewal of registration in spite of pendency of criminal case or lodging of First Information Report against the concerned doctor or Diagnostic Centre.

5 The application received for renewal of registration has to be dealt with in accordance with Rule 8 of the Rules. Rule 8 provides that the appropriate authority shall, after holding inquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and Rules and having regard to the advice of the Advisory Committee, renew the certificate of registration, as specified in Form B for a further period of five years from the date of expiry of certificate of registration earlier granted. Sub-rule (3) of Rule 8 provides that if, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and the rules, it shall, for reasons to be recorded in writing, reject the application for renewal of certificate of registration and communicate such rejection to the applicant as specified in Form C.

6 In the instant matter, it does not appear that the appropriate authority has taken decision having regard to the advice of the advisory committee nor has extended an opportunity of being heard to the petitioner as contemplated by sub-rule (3) of Rule 8 of the Rules of 1994. There are absolutely no reasons recorded by the appropriate authority while rejecting the application tendered by the petitioner for renewal of registration. The sole ground, disclosed from the statement recorded in the

order, that a criminal case is pending against the petitioner, may not be a only valid ground for refusal to grant renewal of certificate of registration and as such, this aspect shall have to be dealt with in consonance with the directions issued by this Court permitting the appropriate authority to entertain applications for renewal of registration or for fresh registration in spite of incorporating Rule 18-A (4) (ii) in the Rules of 1994. In our opinion, mere pendency of criminal case or lodging of First Information Report itself may not constitute a ground for refusal to grant renewal of registration.

7 In view of above, order passed by the appropriate authority refusing to grant renewal of registration by order dated 04.07.2015, is quashed and set aside and the matter stands remitted back to the appropriate authority for reconsideration in accordance with provisions of the Act and Rules framed thereunder. The appropriate authority, after extending an opportunity of hearing, decide the application presented by petitioner for renewal of registration, as expeditiously as possible, preferably within a period of four weeks from today. The petitioner shall cause appearance before the appropriate authority on 19th August, 2015, and as such, no separate notice, requiring his presence before the appropriate authority, shall be necessary.

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

P.R.BORA
JUDGE

adb/wp697915

R.M.BORDE
JUDGE