

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

WRIT PETITION NO.7015 OF 2015

Dr.Vijay s/o Raosaheb Shinde
Age: 38 Yrs., occp. Medical
Practitioner, R/o 18,
Bhagyodaya Nagar, Ambad Road,
Jalna.

- PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Department of Public Health
& Family Welfare, Mantralaya,
Mumbai-32.
- 2) District Appropriate Authority/
Civil Surgeon, Civil Hospital,
Jalna, District Jalna.

- RESPONDENTS

Mr. SG Chapalgaonkar, Advocate for Petitioner;
Mr. NB Patil, AGP for Respondent Nos. 1 & 2.

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

DATE : 1st September,2015.

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

- 1) Heard. Rule. Rule made returnable
forthwith. With the consent of learned Counsel for
the parties, the petition is taken up for final
disposal at admission stage.
- 2) The petitioner is a medical practitioner,
having acquired training in gynecology specialty. The

petitioner operates an ultrasound clinic under the name and style as "Aai Ultrasound Clinic", which has been duly registered, under the provisions of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "The PCPNDT Act").

3) The petitioner states that on 22.08.2014, while he was in the sonography centre, inspection squad paid visit and conducted inspection of the record maintained by the Centre. According to the petitioner, the inspection squad secured certain papers, including photostat copies of declaration forms in respect of the patients, who were present at the sonography centre and who were yet to undergo the sonography examination. The declaration forms and the F-forms before examination of the patients were naturally incomplete. However, the members of the inspection squad took away the photostat copies of the F-forms and the declarations during inspection. The inspection squad also proceeded to draw panchanama on 1.9.2014, i.e. about nine days after the earlier inspection and put the seal on the sonography machine and attached the probe.

4) The petitioner contends that during the

first visit of the Divisional Inspection squad at the centre, the Appropriate Authority prescribed under the PCPNDT Act, was not accompanying the squad; whereas at the time of drawing the panchanama on 1.9.2014, the Appropriate Authority, who is said to be an officer from the Medical Centre, Badnapur, was accompanying the squad.

5) The petitioner endorsed on the inspection report dated 22.8.2014 stating that the sonography examinations were going on and there were certain patients, who were waiting at the clinic for sonography examination. It was further endorsed that whatever deficiencies those would be pointed out by the inspection team/squad, would be complied with after carrying out the sonography examinations of patients. While conducting the spot panchanama after nine days of the inspection of the sonography centre, surprisingly, the inspecting team and the Appropriate Authority noted that there are manipulation and additions in the documents and the deficiencies which were pointed out on earlier occasion were complied with by making additions.

6) The Appropriate Authority, apart from taking the action of sealing the Sonography machines, also

proceeded to initiate criminal action against the petitioner. The Appropriate Authority, in exercise of powers conferred under Section 20(1) and (2) of the PCPNDT Act, by order dated 20.03.2015, directed suspension of registration of the Sonography centre operated by the petitioner on account of violation of Rule 9(1) of the PCPNDT Act. The appeal preferred by the petitioner to the Appellate Authority has also been dismissed by order dated 8th April, 2015.

7) Section 20 of The PCPNDT Act provides that the Appropriate Authority may *suo motu* or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause as to why its registration should not be suspended or cancelled for the reasons mentioned in the notice. Sub-section (2) of Section 20 of the Act authorizes the Appropriate Authority to take an action of suspension of registration of the centre for such period as it may think fit or cancel its registration, after extending an opportunity of hearing to the concerned Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having due regard to the advice of the Advisory Committee. Sub-section (3) of Section 20 of the Act confers powers

on the Appropriate Authority to take action in the emergent situation/cases of directing suspension of the registration in the public interest and for the reasons to be recorded in writing for its satisfaction without issuing any such notice referred to in sub-section (1).

8) In the instant matter, it cannot be said that the Appropriate Authority has invoked the powers conferred in sub-section (3) of Section 20 of the Act since the order issued on 20.3.2015 does not record the reasons for dispensing with the requirement of extending an opportunity of hearing nor the concerned Authority has recorded any reasons, justifying the action of suspension of the registration in larger public interest. Thus, it cannot be said that the action taken by the Appropriate Authority comes within the purview of sub-section (3) of Section 20 of the PCPNDT Act. It also does appear that the Appropriate Authority has not complied with the requirements prescribed under sub-sections (1) and (2) of Section 20 of the Act. Admittedly, no prior notice has been issued to the genetic clinic or genetic centre operated by the petitioner, calling upon him to show cause as to why its registration

shall not be suspended. Since no notice is issued within contemplation of sub-section (1) of Section 20 of the Act, there arises no question of fulfillment of requirement, prescribed under sub-section (3) of Section 20 of extending an opportunity of being heard to the petitioner before taking an adverse action. Since the impugned order has been issued by the Appropriate Authority in violation of the provisions contained in sub-sections (1) and (2) of Section 20 of The PCPNDT Act, the same deserves to be quashed and set aside.

9) The Appellate Authority has mis-construed the provisions of sub-sections (1) and (2) of Section 20 of the PCPNDT Act. The opinion expressed by the Appellate Authority that requirement of extending an opportunity of hearing is directory and not mandatory, is erroneous. The Appellate Authority has not properly considered and applied the provisions of law and has arrived at an erroneous conclusion.

10) Even on consideration of the merits of the matter, we are of the opinion that, prima facie, there appears to be no substance in the allegations of the Appropriate Authority that the petitioner has manipulated and fabricated the record. It is not a

matter of dispute that the Divisional Inspection squad paid visit on 22.08.2014 to the Sonography centre operated by the petitioner. As has been stated by the petitioner, there were patients waiting in the Sonography centre and the Photostat copies of F-forms and the declaration forms were collected by the inspection squad on 22.08.2014. The petitioner has endorsed on the inspection report dated 22.08.2014 itself stating that since the patients were yet to be examined, whatever deficiencies occurred in recording the particulars, the same would be complied with after examination of the patients. If the petitioner has complied with the deficiencies and filled in the forms, it cannot be said that he has manipulated the record subsequently. The findings recorded in the panchanama on 1.9.2014 by the Appropriate Authority and the members of the inspection squad; appear to be erroneous and far-fetched. Even otherwise, on consideration of the merits of the controversy, we do not find any reason to uphold the order of suspension of registration of the Sonography centre operated by the petitioner.

11) For the reasons recorded above, the impugned order dated 22.3.2014 passed by the Appropriate

Authority, directing suspension of registration of the Sonography centre operated by the petitioner as well as the order passed by the Appellate Authority on 8th April, 2015, are quashed and set aside. The Appropriate Authority is directed to de-seal the Sonography machines and return the probes to the petitioner, as expeditiously as possible and preferably within a week from today.

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

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/