

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Civil Application (CAW) No.409 of 2015

in

WRIT PETITION No.6225 of 2013

(Dr. Anil s/o. Uddhavrao Madurwar and anr. vs. State, Public Health Deptt, Mantralaya,
Mumbai and anr.)

with

Writ Petition No.2711 of 2014

(Anil .vs. State, through its Secretary, Public Health Deptt., Mumbai and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Writ Petition No.6225 of 2013

Mr.M.G.Bhangde, Sr.Cl. with Mr.M.P.Khajanchi, Adv.
for the petitioners.

Mr.T.R.Kankale, AGP for respondent no.1.

Mr.M.I.Dhatrak, Adv. for respondent no.2.

Writ Petition No.2711 of 2014

Mr.T.R.Kankale, AGP for respondent no.1.

Mr.M.I.Dhatrak, Adv. for respondent no.2.

**CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.**

DATE : 4.3.2015.

Heard.

It appears that the Sonography Centre of the
petitioner had two machines. Registration of one machine
was valid from 16.6.2009 to 16.6.2014. It's document i.e.
Certificate of Renewal is available as Annexure-C with the
Writ Petition No.2711 of 2014. The other machine was
registered for a period of five years from 2.1.2007 till
2.1.2012.

The petitioner was supposed to apply for renewal of registration within thirty days in advance i.e. thirty days prior to the date on which renewal was due. The petitioner applied belatedly.

The petitioner continued to run the Sonography centre and used both the machines till 5.10.2012 i.e. the date on which registration of second machine was cancelled. On 11.6.2012, the centre was inspected and as second machine was found being used without any registration (renewal), an offence has been registered.

Our attention has been drawn to orders passed by this Court in Writ Petition No.1288 of 2013 and 1215 of 2013 on 30.4.2013. There, this Court has found omission to apply in advance bona fide and has directed the Authorities to consider the application in accordance with law.

The Civil Application has been taken out to stay the criminal prosecution. Submission is - there is no other violation or breach noted by the inspecting squad and only on account of technical lapse, prosecution is going on. It is submitted that, if petition is allowed, prosecution may not survive. Strong reliance is being placed on order dt.30.4.2013 (mentioned supra).

Mr.M.I.Dhatrak, learned Counsel for respondent no.2 and Mr.T.R.Kankale, learned A.G.P. are strongly opposing for intervention at this stage. They submit that prosecution must be allowed to continue.

The facts noted by us show that sonography centre was not only authorised even on the date of inspection i.e. on 11.6.2012, but one of the machines was having Valid Certificate and renewal application for other

machines was then pending on that date. The observations of this Court show that omission to apply in advance was on account of bona fide error. This Court has also noticed that the competent Authority did not notice any violation or any breach of any rule or any irregularity or wrong conduct or wrong use of machines by the petitioner. The orders of learned Single Judge dt.30.4.2013 were assailed in S.L.P. No.17964 of 2013 before the Hon'ble Apex Court and it was withdrawn on 10.5.2013.

The review application was then filed vide Misc. Civil Application No.482 of 2013 and it was also rejected by this Court on 20.9.2013.

In this situation, it is apparent that - only for want of registration/renewal at the time of checking on 11.6.2012, the offence has been registered. It is not in dispute that the application for renewal was submitted belatedly and has been considered later on and registration to the second machine has been granted on 14.5.2013.

In this situation, we find that prosecution on account of said bona fide error may not be sustainable. In this situation, we grant prayer (a) in the Civil Application No.409 of 2015 and dispose of the same. No costs.

JUDGE

JUDGE