

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13888 of 2016

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1. Dr. Rajesh Kumar Sinha, Son of Late V.P. Sinha, Flat No. 404, Siyasan Palace, Ara Garden Road, Near Jagdeo Path, P.O.-Bihar Veterinary College, P.S.-Rupaspur, Dist. Patna- 800014
 2. Dr. Prabhash Chandra Pathak, son of Dr. P. Pathak, resident of Mahavir Colony, P.O. & P.S.- Beur, Anisabad, Patna- 800002
 3. Dr. Nidhi Krishna, C/o Dr. Ajay Krishna, resident of Shri Krishna Diagnostic Centre, Shiv Niketan, M.P. Sinha Road, P.O. & P.S.-Kadamkuan, Patna- 800003
 4. Dr. Ashir Husain, Son of Dr. Abid Husain, resident of Mona Nursing Home Babunia Road, Head P.O.- Siwan, P.S.- Town Thana, Siwan- 841226
 5. Dr. Anil Kumar, Son of Dr. Lakhi Chand Prasad, resident of Doctor's Ultrasound, Head P.O.-Siwan, P.S. Town Thana, Siwan-841226
 6. Dr. Jitendra Kumar Singh, son of Late Ramdeo Singh, resident of 304, Deo Nandan Enclave, Ashokpui, Khajpura, P.O.- B.V. College, P.S.- Rajiv Nagar, Patna-800014
 7. Dr. Ranjan Kalyan Singh, son of Dr. Babu Lal Singh, resident of Laxmi Nursing Home, Laxmi Nagar, P.O.- Head P.O., P.S.- Town Thana, Siwan- 841226
 8. Dr. Kumar Vikash, Son of Lalan Prasad, resident of A-202, Sree Apartment (Opposite SBI), Anandpuri, P.O.- Patna GPO, P.S.- S.K.Puri, Patna- 800001
 9. Dr. Abhilash Prasad Singh, son of Late Brahmdeo Pd. Singh, resident of Chanakya Nagar, Dak Bunglow Road, P.O. & P.S.- Begusarai, Dist. - Begusarai- 851129
 10. Dr. Sanjiv Kumar Sinha, son of Vijay Kumar Sinha, resident of C/o A.G. Colony, P.O.- Ashiyana Nagar, P.S.- Shastrinagar, Patna- 800025
 11. Dr. Navin Kumar Singh, son of Sri Raghuvansh Narayan Singh, resident of Mahavir Tola, Ara, P.O. & P.S.- Ara Nagar, Bhojpur- 802301
 12. Dr. Sanjiv Pandey, son of Dr. B.D. Pandey, Opp, Circuit House, Pakri, P.O. & P.S.- Nawada, Ara- 802301
 13. Dr. Kumari Renu, Wife of Sri Upendra Kumar, resident of Medi Bridge Diagnostic, Near Sadanand College, Manglasthan, P.O.Ramchandrapur, P.S.- Laheri, Biharsharif, Nalanda- 803101
 14. Dr. Umesh Kumar Sinha, son of Late Dr. Ram, resident of Advance Ultrasound



Centre, Kachhari Road, Bhaisasur P.O. & P.S.- Biharsharif, Dist, Nalanda-803101

15. Dr. Binod Kumar Gupta, son of Late Gauri Lal, resident of Khaviat Ahmad, Road, Minapur, P.O.- Head P.O., P.S.- Kotwali, Dist.-Gaya
16. Dr. Yashi Sharan Sinha, son of Late Gopal Sharma Sinha, resident of Rashmi Ultrasound Central, Sirhia Ghat, P.O.- Head P.O., P.S.- Kotwali, Gaya- 823001
17. Dr. Ranju Jha, wife of Dr. K.B. Jha, resident of Bungalow No. 5, Lichi Bagan Railway Colony, P.O.- Head P.O., P.S.- Mohammadpur, Muzaffarpur
18. Dr. Ajay Jaiswal, son of Dr. Anup Lal Jaiswal, resident of Juran Chapra Road No.1, P.O. + P.S.- Brahampura, Muzaffarpur
19. Dr. Vindeswar Sasi Prasad, Son of Late Mohan Sati Pd., Resident of Andigola Nagar, P.O.- Head P.O., P.S.-Muzaffarpur
20. Dr. Mukesh Kumar, son of Sri Shyam Chandra Prasad Kushwaha, resident of Choudhary Campus, Rambagh Road, P.O. + P.S.- Mithanpur, Muzaffarpur

.... Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Health & Family Welfare, Government of India
2. The State of Bihar through Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna
3. The Indian Medical Council of India, through its Law Officer, Pocket- 14 Sector- 8, Dwarka, Phase-1, New Delhi
4. Civil Surgeon cum Chief Medical Officer being the appropriate authority u/s 17 of the Pre-Conception and Pre- Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 11333 of 2016

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Dr. Om Prakash Lal, son of Late Shiv Prakash Lal, proprietor, Rohtas Nursing Home, Dalmia Nagar (Rohtas).



.... Petitioner/s

Versus

1. The Union of India, through the Secretary, Department of Family Welfare, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi- 110011.
2. The State of Bihar through the Principal Secretary, Department of Health, Bihar, Patna.
3. The Civil Surgeon-cum-Chief Medical Officer, Rohtas (Sasaram).

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Sr. Advocate. Mr. Ashish Giri, Advocate. Mr. Shavan Kumar Singh, Sr. Advocate. Mr. Nand Gopal Mishra, Advocate. Mr. Dharendra Singh, Advocate.
For the State	:	Mr. Lalit Kishore, P.A.A.G.-1 Mr. Dharendra Kumar, A.C. to A.A.G. 6
For Union of India	:	Mr. S.D. Sanjay, A.S.G. Mr. Abhay Shankar Jha, C.G.C. Mrs. Nivedita Nirvikar, C.G.C.
For the M.C.I.	:	Mr. Kumar Brijnandan, Advocate. Mr. Tarees Hameed, Advocate.

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN
C.A.V. JUDGMENT**

**(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 16-12-2016**

The petitioners have invoked the writ jurisdiction of this Court to strike down Rule 3(3)(1)(b) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as “1996 Rules”) and Rule 9 of the Pre-



conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 (hereinafter referred to as “2014 Rules”) as being *ultra vires* to the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as “Act”) and also in excess of the rule making power conferred under the Act.

2. The petitioners are Bachelors of Medicine and Bachelors of Surgery (MBBS) from the Universities recognized under the schedule of the Indian Medical Council Act, 1956 (hereinafter referred to as “IMC Act”). The petitioners are Registered Medical Practitioners in terms of Section 15 of the IMC Act. The Registered Medical Practitioner and Sonologist have been defined in Sections 2(m) and 2(p) of the Act. The petitioners are, qualified to practice Sonography in terms of Section 2(p) of the Act. The said provisions read as under:-

“2(m) “registered medical practitioner” means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in a State Medical Register;

2(p) “Sonologist or imaging specialist” means a person who possesses any one of the medical qualifications recognized under the Indian Medical Council Act, 1956 (102 of 1956) or who possesses a post-graduate qualification in ultrasonography or imaging techniques or radiology.

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32. Power to make rules-(1) The Central Government may make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

(i) the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (2) of section 3”

3. Rule 2(b) of the 1996 Rules defines the expression “employee” whereas Rule 3 of the 1996 Rules contemplates the qualifications of an employee for the purpose of Genetic Counselling Centre, Genetic Laboratory or a Genetic Clinic. Such Rules mean a person working in or employed by Genetic Counselling Centre, Genetic Laboratory or a Genetic Clinic and includes those working on part time, contractual, consultancy, honorary or any other basis. The relevant condition in the Rules *as originally notified* reads as under:-

“2 (b) “employee” means a person working in or employed by a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic, or an Ultrasound Clinic and Imaging Centre and includes those working on part-time, contractual, consultancy, honorary or on any other basis

3. The qualifications of the employees, the requirement of equipment etc. for a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall be as under:

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(3)(1) Any person having adequate space and being or employing-

(a) Gynaecologist having experience of performing at least 20 procedures in chorionic villi aspirations as



per vagina or per abdomen, chorionic villi biopsy, amniocentesis, cordocentesis foetoscopy, foetal skin or organ biopsy or foetal blood sampling etc., under supervision of an experienced gynaecologist in these fields, or

(b) a Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner having Post-Graduate degree or diploma or six months training or one year experience in sonography or image scanning, or

(c) A medical geneticist,
may set up a genetic clinic/ultrasound clinic/imaging centre.”

4. The 1996 Rules have been amended vide notification dated 9th of January, 2014. By virtue of amendment, Clause 3(3)(1)(b) has been substituted to read as under:-

“3(3)(1)(b) a Sonologist or Imaging Specialist or Radiologist or Registered Medical Practitioner having Post-Graduate degree or diploma or six months training duly imparted in the manner prescribed in the “the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014, or”

5. On the 9th of January, 2014, the 2014 Rules have been framed in exercise of powers conferred under Section 32 (2)(i) of the Act which contemplate six months training. The relevant conditions for the purposes of the present writ applications are Rules 6 and 9. Such Rules read as under:-

“6. Eligibility for training.- (1) Any registered medical practitioner shall be eligible for undertaking the said six months training.

(2) The existing registered medical practitioners, who



are conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six month training are exempted from undertaking the said training provided they are able to qualify the competency based assessment specified in Schedule II and in case of failure to clear the said competency based exam, they shall be required to undertake the complete six months training, as provided under these rules, for the purpose of renewal of registrations.

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9. Changed criteria to be made prospective.- These rules shall come into force with immediate effect in case of new registrations. However, all registered medical practitioners employed in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training and failed to qualify the competency based exam as specified in Schedule II shall have to apply and clear six months training on or before 1st January, 2017.”

6. It is in the light of the above said statutory provisions; the challenge is to the insertion of clause of training in Rule 3(3)(1)(b) of 1996 Rules and Rules 6 and 9 of the 2014 Rules.

7. Learned counsel for the petitioners has placed reliance on a Division Bench judgment of Delhi High Court in Writ Petition (C) No. 6968 of 2011 (Indian Radiological and Imaging Association (IRIA) Vs. Union of India and Anr.) decided on 17th of February, 2016 whereby, Section 2 (p) of the Act and Rule 3(3)(1)(b) of the 1994 Rules, as amended on 9th of January, 2014 were declared *ultra vires*. The said judgment has been followed by Himachal



Pradesh High Court in C.W.P. No. 4788 of 2015 (Dr. Duldeep Chand Maria Vs. Union of India and others) decided on 2nd of May, 2016.

8. Learned counsel for the petitioners vehemently argued that any person who is a Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner having obtained Graduate Degree or Diploma is qualified and eligible for running a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre prior to amendment in the Rules on 9th of January, 2014. It is thereafter, the Rule 3(3)(1)(b) contemplates six months training in terms of 2014 Rules. It is contended that such clause contravenes the definition of Sonologist, as defined under Section 2(p) of the Act. It is further contended that Section 32(2)(i) of the Act empowers the Central Government to make rules including aforesaid minimum qualifications for a person employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic but such minimum qualification does not include the training as provided in the 2014 Rules. Therefore, provision of training is not tenable for the reason that a Registered Medical Practitioner registered under Section 15 of the IMC Act, 1956 cannot be subjected to further training when he holds a degree and is competent to practice medicine including to act as Sonologist.

9. On the other hand, Mr. S.D. Sanjay, learned Senior



Counsel appearing for the Union of India relies upon an order passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 349 of 2006 (Voluntary Health Association of Punjab Vs. Union of India (UOI) and Ors.) on 8th of November, 2016 whereby, certain directions have been issued in respect of the Pre-natal Sex Diagnosis as it relate to the very core of existence of a civilized society, pertain to the progress of the human race, and expose the maladroitness to throttle the right of a life to feel the mother earth and smell its fragrance. After considering the provisions of the Act and its intent, one of the directions issued is that the State and Union territories shall implement the 2014 Rules. The relevant direction reads as under:-

“33. Keeping in view the deliberations made from time to time and regard being had to the purpose of the Act and the far reaching impact of the problem, we think it appropriate to issue the following directions in addition to the directions issued in the earlier order:-

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(o) The States and Union Territories shall implement the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 forthwith considering that the training provided therein is imperative for realizing the objects and purpose of this Act.”

10. It is, thus, contended that the training rules have been directed to be followed for realizing the object and purpose of the Act, therefore, the issue as to whether training could be provided



under the Rules or not should not be examined by this Court in the present writ applications. It is also contended that the 1996 Rules and 2014 Rules were framed to deal with growing menace of sex determination. The Rules are intended to achieve the object and purpose of the Act. Therefore, it cannot be said to be illegal in any manner.

11. We have heard learned counsel for the parties and find that the definition of Section 2(p) of the Act cannot be said to be bad when it includes persons possessing post-graduate qualification in ultrasonography or imaging techniques only because there is no such qualification recognized by Medical Council of India as is held by Delhi High Court, holding that the Act does not empower the Central Government to prescribe or coin new qualifications than contemplated by IMC Act. Section 2(p) of the Act being later Central Statute cannot be said to be invalid for the reason that a particular course does not find mention in the earlier IMC Act.

12. We also find that such finding is not warranted or required in the facts of the present case inasmuch as the petitioners are the medical practitioners possessing the degrees recognized by the Medical Council of India in terms Section 15 of the IMC Act. Therefore, the petitioners fall within the definition of sonologist as defined under Section 2(p) of the 1994 Act. As to whether a person



who possesses a Post Graduate qualification in ultrasonography or imaging techniques or radiology has a qualification contemplated under the IMC Act does not arise for consideration as it is not the case of the petitioners that they are possessing such qualification or that any other person who possesses such qualification has not been recognized as Sonologist. The legality of such definition is an academic exercise and not required to be gone into and in fact the petitioners have not disputed such definition as well.

13. The provisions of Rule 3(3)(1)(b) of 1996 Rules as amended on 9th of January, 2014, if paraphrased, reads as under:-

“3(3)(1)(b) a Sonologist *or*
imaging specialist *or*
radiologist *or*
registered medical practitioner having Post-Graduate degree or diploma *or*
six months training duly imparted in the manner prescribed in the “the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014, *or*”

14. The amended Rules, 2014 introduced a six months training as a separate qualification and such qualification cannot be read as mandatory for a Sonologist or a registered medical practitioner who is competent to run Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in terms of Section 2(p) of the 1994 Act. Rule 6 of the 2014 Rules does not contemplate training for Registered



Medical Practitioner defined in Section 2(m) of the 1994 Act or for Sonologist which are separate and distinct that a category of persons who are imparted training as per 2014 Rules. Each category falling in Rule 3(3)(1)(b) is separate and distinct, therefore the qualification of training cannot be read with any of the other practitioner.

15. The question is that the expression used of six months training duly imparted in the manner prescribed under the 2014 Rules has to be read with the earlier expression of Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner is a stand alone condition. If Rule 3(3)(1)(b) is read along with Section 2(p) of the 1994 Act, a Sonologist is the one who possesses one of the medical qualifications recognized under the IMC Act. Similarly, Registered Medical Practitioner as defined under Section 2(m) of the 1994 Act is also a Medical Practitioner who possesses a recognized medical qualification, as defined under Section 2(h) of the IMC Act. Therefore, the distinction between a Sonologist or a Registered Medical Practitioner in terms of Section 2(p) and 2(m) of the Act is that name of a Registered Medical Practitioner is required to be entered in the State Medical Register whereas, there is no such condition in respect of a Sonologist. Still further, each of the expressions in Rule 3(3)(1)(b) is separated by the word 'or'. Therefore, each of the qualifications is independent and separate and



cannot be read conjunctively. Therefore, the condition of six months training imparted in the manner prescribed under the 2014 Rules is an independent condition which cannot be read conjunctively either with the Sonologist or Imaging Specialist or a Registered Medical Practitioner.

16. Though the Delhi High Court has struck down the above qualification introduced in the 1996 Rules by virtue of amendment on 9th of January, 2014 but we find that as per the amended clause 3(3)(1)(b) of the 1996 Rules, the six months training as per 2014 Rules is not required for a Sonologist or Imaging Specialist, Radiologist or Registered Medical Practitioner having Post Graduate degree or diploma. The six months training in terms of 2014 Rules is a stand alone clause being disjunctive to the earlier qualifications. It does not make mandatory that a Sonologist or an Imaging Specialist or Radiologist or a Registered Medical Practitioner should have a six months training provided in terms of 2014 Rules. Such finding gets support from the definition of Section 2(p) of the 1994 Act which recognizes a Sonologist to mean a person who possesses one of the medical qualifications recognized under the IMC Act. We have reservations to hold that a training is a qualification for the purpose of registration of Genetic Counselling Centre or a Genetic Laboratory or Genetic Clinic falling within the sub-clause (i) of



Section 32(2) of the 1994 Act but such question is not required to be decided in view of our finding that training is not required either for a Sonologist or a Registered Medical Practitioner.

17. Therefore, we have no hesitation to hold that in terms of Rule 3(3)(1)(b), six months training under the 2014 Rules is not a necessary qualification either for a Sonologist or for a Registered Medical Practitioner for the purpose of Genetic Counselling Centre, Genetic Laboratory or a Genetic Clinic.

18. Since the requirement of six months training in terms of Rule 3(3)(1)(b) of the 1996 Rules is a separate and distinct qualification disjunctive to the other categories such as Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner, therefore, the training is not a qualifying condition for registration or continuation of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.

19. Still further, the judgment of the Hon'ble Supreme Court in Voluntary Health Association of Punjab's case (supra) does not deal with the issue raised in the present petition as the legality, validity or applicability of 1996 Rules or 2014 Rules was not an issue raised and decided by the Court. Therefore, the said judgment does not support the stand of the Government of India.

20. We find that though it appears the intention of the



rule making authority was to make mandatory for all Medical Practitioners, such as, the Registered Medical Practitioners or Sonologist to undergo six months training or qualify the competency based assessment but the language of the 1996 Rules and 2014 Rules does not support such objective. One can only say that it is a case of bad drafting of rules which does not appear to serve the objective of the rules.

21. Consequently, the writ applications are allowed holding that the six months training is not required to be undergone either by Registered Medical Practitioner or Sonologist as a qualification to set up Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.

(Hemant Gupta, ACJ)

Vikash Jain, J I agree.

(Vikash Jain, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	24.11.2016
Uploading Date	17.12.2016
Transmission Date	

