

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 759 OF 2016

- 1] Dr. Sandeep S/o. Pralahadrayaji Agrawal,
Age : 42 Years, Occ : Medical Practitioner,
R/o. Agrawal Hospital, Preeti Sudhaji Nagar,
Mantha Naka, Jalna.
 - 2] Dr. Vijaya W/o. Sandeep Agrawal,
Age : 40 Years, Occ : Medical Practitioner,
R/o. As above.
- ... PETITIONERS**

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**

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Mr. S. G. Chapalgaonkar : Advocate for Petitioners
Mrs. P. V. Diggikar : APP for Respondents
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**CORAM : A. V. NIRGUDE &
V. L. ACHLIYA, JJ.**

DATE : 2nd AUGUST, 2016.

ORAL JUDGMENT (PER A. V. NIRGUDE, J.) :

1. By consent rule is issued and taken up for hearing.
Perused the petition and reply etc. Heard submissions.

2. This petition challenges three actions taken against the petitioners who are medical practitioners having Sonography Center as well as registered MTP center. The facts leading to this litigation in short can be stated as under:

3. On 5th June, 2016, the Civil Surgeon learned that a woman's pregnancy would be terminated illegally at a house in Jalna. The Civil Surgeon and his staff visited the house and found the patient present there. It was learned that, the patient was three and half months pregnant and was administered a medicine tablet by one Kamalbai who is admittedly an employee of the petitioners. The medicine tablet was given for causing termination of pregnancy.

4. The Civil Surgeon took immediate action: shifted the patient to civil hospital and made a complaint to police against Kamalbai and others. On the other hand since Kamalbai was an employee of the petitioners their Sonography Center was ordered to be suspended by utilizing the powers under Section 20(3) of Prenatal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994 and Preconception & Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 (for short PCPNDT Act). The second action that was taken immediately was that registration of

the petitioners' center for Medical Termination of Pregnancy under the Medical Termination of Pregnancy Act (MTP Act for short) was also suspended.

5. Both these actions were taken admittedly without giving any notice to the petitioners. The provisions of MTP Act do not provide any mechanism as to how a registered MTP center would be penalise etc. However, in Section 20 of the PCPNDT Act there is procedure prescribed for cancellation or suspension of registration of a Sonography Center etc. As a rule, a notice is required to be given before taking any coercive action. But, sub section 3 of Section 20 provides that the authority may suspend a center in public interest without giving notice in case of emergency.

6. On the face of it, the facts of this case would not warrant action under sub Section 3 of Section 20, there was no emergency or such situation which was sufficiently alarming so as to take this action. If the Civil Surgeon was of the opinion that accused Kamalbai was unqualified and should not have been employed as nurse in the petitioners hospital, at the most he could have advised the petitioners not to engage such unqualified staff in his hospital he ought to have given a notice to them and then could have suspended or cancelled the registration following due process of law. However, in the instant case required procedure is

not followed. We find both these actions taken by the Civil Surgeon illegal.

7. We are not examining the legality of the notice which is also impugned in this petition given to the petitioners under the provisions of Maharashtra (Bombay) Nursing Homes Act. The petitioners have sufficient time and efficacious remedy available to repeal the notice and action proposed pursuant to the notice. The petitioners shall attend to this notice and submit the reply and the Civil Surgeon shall then after giving opportunity of hearing should decide the petitioners fate under the provisions of Maharashtra (Bombay) Nursing Homes Act. In the result, the Criminal Writ Petition is partly allowed in terms of prayer clause "B" and "C".

[V. L. ACHLIYA]
JUDGE

[A. V. NIRGUDE]
JUDGE