

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11217 OF 2014

Dr.Harishchandra s/o Madhavrao
Wange, age: 65 years, Occ: Medical
Practitioner, R/o Jalalpur Road,
Vidyanagar, Parli-Vajinath,
Tq. Parli-Vajinath, District Beed.

Petitioner

Versus

01 The State of Maharashtra

02 Appropriate Authority at
District Level, through
Civil Surgeon, Civil Hospital,
District Beed.

03 Appropriate Authority at
Sub District Level, through
the Tahsildar, Tahsil Office,
Parli-Vajinath, Tq.Parli-
Vajinath, District Beed.

Respondents

Mr.S.S.Panale, advocate for the petitioner.
Mr.V.M.Kagane, AGP for Respondents.

**CORAM : R.M.BORDE &
K.L.WADANE, JJ.
DATE : 09th June, 2016**

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

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

02 The petitioner is objecting to the action of ceiling ultrasound Sonography machine owned and possessed by the

petitioner under the panchanama dated 17.06.2011 drawn by Respondent No.3 Tahsildar, Appropriate authority at Sub Division level, under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'PCPNDT Act').

03 The petitioner is a Medical Practitioner having Master's degree in General Surgery. In pursuance to the application tendered by the petitioner, he was issued an authorisation to operate a Diagnostic Centre. The authorisation was issued for the period of five years commencing from 16.03.2007 to 15.03.2012. The authorisation is only for the purposes of Pre-natal diagnostic procedures approved for Genetic Clinic and Pre-natal diagnostic tests approved for Genetic Laboratory. It is also disclosed that petitioner tendered an application for renewal of registration for further period, however, the application has not been decided.

04 The Appropriate Authority paid visit to the Diagnostic Centre on 17.06.2011 and noticed that the room where the ultrasound Sonography machine was kept, was not put under lock and key. A show cause notice was, therefore, issued to the petitioner calling upon him to explain as to why the room where ultrasound Sonography machine was kept was not put under lock. On the same day, the Tahsildar, without waiting for receipt of explanation from the petitioner, proceeded to draw a panchanama and attached and sealed the machine.

05 The petitioner tendered his explanation informing that he uses the machine for diagnosis of cases for surgical purpose

and does not put it to use for any other purpose. The explanation tendered by the petitioner was not considered and no further steps have been taken by the Respondents. The petitioner, as such, has approached this Court.

06 It is the contention of Respondents that the purported action is justifiable within the ambit of Rule 12 of the PCPNDT Rules, 1996. Rule 12 prescribes the procedure for search and seizure. It lays down that the Appropriate Authority or any officer authorised in this behalf may enter and search at all reasonable times any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or more independent witnesses for the pamphlet, advertisement, or any other material object found therein and seal and seize the same if there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act. The explanation to this Rule clarifies that "material object" would include records, machines and equipments.

07 It has not been brought to our notice that petitioner, at any time in past, has been accused of violating the provisions of the PCPNDT Act, 1994 or Rules framed thereunder. It is not a matter of doubt that the day on which inspection was conducted and ultrasound Sonography machine was put under seal, the authorisation issued in favour of the petitioner, was subsisting. The action taken by the Appropriate Authority appears to be excessive for the reason that on 17.06.2011, the Appropriate Authority proceeded to issue notice to the petitioner calling upon him to tender his explanation in respect of the allegation recorded

in the notice, within a period of eight days, however, without waiting for eight days prescribed under the notice, proceeded to draw a panchanama and sealed the ultrasound sonography machine. It does appear that there is absolutely no material to come to the conclusion that the machine itself may furnish evidence of commission of offence punishable under the Act. It is also an admitted position that during inspection, the Appropriate Authority did not find any objectionable material to come to the conclusion that the petitioner has, in any way, contravened provisions of the Act or Rules framed thereunder. The petitioner is a general surgeon and has stated in the explanation that he is using the ultrasound machine only as a diagnostic tool for the purposes of investigation of general surgical cases. It has been stated by the petitioner that he does not indulge in gynecological practice and has restricted his practice as a general surgeon.

08 There is absolutely no whisper in the affidavit-in-reply tendered by the Appropriate Authority that any objectionable material was found or that there exist certain circumstances to come to the reasonable conclusion that the machine may furnish evidence of commission of offence punishable under the Act. The action taken by the Appropriate Authority is unsustainable. Though the machine is put under the seal since June 2011, no further steps have been taken till this date. Petitioner is not accused of commission of offence punishable under the provisions of the Act of 1994 or Rules of 1996 framed thereunder.

09 In the circumstances, petition deserves to be allowed and same is accordingly allowed. The action impugned in this

petition is quashed and set aside and Respondents are directed to de-seal the ultrasound sonography machine forthwith. In the peculiar circumstances of this case, since the action on the part of Respondent Appropriate Authority is found to be highhanded, we direct the Respondents to pay costs quantified at Rs.10,000/- (Rs.Ten Thousand) within a period of four weeks from today.

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

K.L.WADANE
JUDGE

R.M.BORDE
JUDGE

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