

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.6971 of 2016
and
W.M.P.No.6187 of 2016

Dr.K.Ramachandran

... Petitioner

Vs.

1.Tamil Nadu Medical Council,
Rep. by its Registrar,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam,
Chennai-600 106.

2.The Sub-District Appropriate Authority,
Under the Pre-Conception & Pre-Natal Diagnostic,
Technique (Prohibition of Sex Selection Act), 1994,
The Chief Civil Surgeon Medical Officer,
Government Hospital,
Vridhachalam -606 001.
Cuddalore District.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the relevant records, which culminated in the issuance of the impugned order in Ref.No.TNMC/G93/2016, dated 17.02.2016, suspending the medical practice of the petitioner for a period of five years, from 15.02.2016 by the 1st respondent and to quash the same as illegal, arbitrary and in violation of principles of natural justice.

For Petitioner : Mr.S.Kadarkarai

For respondents : Mr.G.Sankaran (For R1)
Mr.M.Dig Vijayapandian, AGP (For R2)

ORDER

This writ petition has been filed by the petitioner challenging the order dated 17.02.2016 in Ref.No.TNMC/G93/2016, passed by the 1st respondent, suspending the medical practice of the petitioner for a period of five

years, from 15.02.2016.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1. The petitioner, after having completed the Medicine Course in the year 1976, registered himself as a Medical Practitioner and commenced his private practice successfully from 1976 itself. The petitioner established a Nursing Home in the name of "Mahalakshmi Nursing Home", in November, 1995, mainly for rendering medical assistance to the poor and down trodden needy public in Periyakurichi and nearby peripheral villages of Neyveli. In addition to the general Medicine, the petitioner has also undergone and successfully completed the ULTRASOUND TRAINING in the year 2004. After completion of the said course, the petitioner has obtained the Certificate of Registration from the Appropriate Authorities, for running the Ultra Sound Scan Centre in his Nursing Home in the year 2006 as prescribed under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short 'the PCPNDT Act'). The petitioner has been renewing the said Certificate of Registration of the Scan Centre, from time to time and last such renewal was from 24.12.2011 to 24.12.2016.

2-2. While so, on 07.02.2014, presumably based on certain false complaints made by certain motivated elements, against the Scan Centre in his Nursing Home, the 2nd respondent along with his team made a surprise visit and had taken certain records for verification. Subsequently, the petitioner received a notice dated 14.02.2014 from the State Appropriate Authority, Department of Medical and Rural Health Services, Chennai requiring the petitioner to produce certain records, with regard to Cash Receipt Book and Patient Register Nook of Ultra Sound Scan for the period from 07.02.2012 to 06.02.2014. In compliance with the said direction, the petitioner has also submitted the requisite records and explanation. Presumably finding no proof to support the allegations made in the said complaint and accepting the petitioner's explanations, there was no further communication from the said authorities.

2-3. It is further stated by the petitioner that after a lapse of about three months, on 09.05.2014 a team of officials from the Department of Medical and Rural Health Services, Joint Director of Medical & Rural Health Services, Perambalur, along with Scan Inspection Team from the Joint Director of Medical & Rural Health Services, Cuddalore, suddenly visited the petitioner's Nursing Home and conducted a surprise inspection. During the course of such inspection, they interacted with the staff of the Nursing Home and with the patient's who came for a regular check up, and unilaterally

concluded erroneously that the said patient came for fetal sex determination and subsequent feticide. No enquiry or explanation, whatever was sought for from the petitioner and no opportunity was given to the petitioner to explain his stand, before arriving at the said arbitrary conclusion. Based upon the report of the above said officers, the 2nd respondent herein initiated action under Section 30(1) of the PCPNDT Act. Besides seizing the machineries and other accessories in the Hospital, they also sealed the scan room, ignoring petitioner's fervent requests. On the same day, the Sub-District Appropriate Authority and Chief Civil Surgeon, Vridhachalam passed an order under Section 20(3) of the Act, dated 09.05.2014, suspending the registration granted to the Scan Centre in the petitioner's Nursing Home, which is valid up to December, 2016, from performing the Ultra Sound Procedures, until further orders. No opportunity was given to the petitioner before passing the said order dated 09.05.2014, as mandated under Section 20(1) & (2) of the Act.

2-4. That apart, the 2nd respondent has also lodged a private complaint under Section 28(1) of PCPNDT Act, for the offence under Sections 6(a) & 6(b) punishable under Section 25 of PCPNDT Act and under Section 2(d), under Section 3, under Section 4 of Medical Termination of Pregnancy Act, (in short 'MPT Act'), punishable under Section 5(3) and 5(4) of MTP Act 1971 and Section 313 of IPC read with Section 5(2) of MTP Act, 1971, before the learned Judicial Magistrate, Neyveli at Cuddalore District. The criminal complaint was taken on file as C.C.No.68 of 2014 and the same is pending, on framing charges against the petitioner.

2-5. It is further case of the petitioner, he is innocent of the offences alleged to have been committed by him. The petitioner has been personally attending the Court regularly, leaving his professional works, on each and every hearing. Even though the petitioner attended for more than about 20 hearings and he is ready to face the trial to prove his innocence, the case is yet to take off. On one pretext or the other, at the instance of the prosecution, the case is being dragged on endlessly to harass the petitioner.

2-6. According to the petitioner, the arbitrary action of the 2nd respondent in suspending the registration granted to the petitioner's nursing home is causing tremendous setback in rendering medical services to the poor and downtrodden. Hence, the petitioner preferred an appeal to the Appellate Authority, namely, the District Appropriate Authority, under Section 21 of the PCPNDT Act, as early as on 09.06.2014 itself. As per Rule 19(3) of the said Act, the appeal filed under Section 21 of the Act shall be disposed of

by the Appellate Authority within a period of 60 days. Since

the petitioner's appeal was not disposed of, the petitioner had filed a writ petition in W.P.No.30865 of 2014 before this Court and this Court by order dated 27.11.2014 directed the Appellate Authority to dispose of the petitioner's appeal within eight weeks, on merits and in accordance with law. Even thereafter, the petitioner's appeal was not disposed of by the Appellate Authority. Hence, the petitioner has also filed a Contempt Petition in Cont.No.146 of 2016 against the Appellate Authority and the same is pending before this Court.

2-7.While so, according to the petitioner, all of a sudden, to his shock and surprise, the petitioner read a news item in 'The Hindu' Tamil Daily dated 16.02.2016 to the effect that his name has been removed from the register of Tamil Nadu Medical Council and he was debarred from his medical practice for a period of five years. However, the petitioner had not received any official communication from the 1st respondent. Thereafter, the petitioner was frantically making enquiries to ascertain the veracity and correctness of the said news item. Ultimately, the petitioner has received the impugned order on 20.02.2016. On going through the same, the petitioner noticed that the said order came to be passed only on 17.02.2016. Before passing the impugned order, no notice was given to the petitioner to put forth his explanation. Aggrieved over the impugned order, now the petitioner has come forward with the present writ petition.

3.When the matter is taken up for consideration, it is submitted by the learned counsel for the petitioner that the impugned order has been passed by the 1st respondent, without giving any notice to the petitioner as mandated under Regulation 8.2 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002. Further, against the action of the 2nd respondent in suspending registration granted to the petitioner's nursing home, the petitioner has already filed an appeal dated 09.06.2014 under Section 21 of the PCPNDT Act before the Appropriate Authority. As per Rule 19(3) of the Pre-Conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Rules, 1996, the appeal filed under Section 21 of the Act shall be disposed of by the Appellate Authority within a period of 60 days. But, for the past 1 ½ years, the appeal filed by the petitioner has not been disposed of by the Appellate Authority. When that being so, the impugned order dated 17.02.2016 passed by the 1st respondent, that too without hearing the petitioner, is not legally sustainable and the same is liable to be quashed.

4.Per contra, the learned counsel appearing for the 1st respondent, by filing a detailed counsel, submitted that the respondent's complaints against the petitioner stating that the

petitioner is indulging in sex determination in fetus and termination of pregnancy, in violation to the PCPNDT Act and the Medical Termination of Pregnancy Act, 1971 and the Rules made thereunder. Based on the information from the District Collector, Perambalur, a team headed by Joint Director of Health Services, Perambalur made a surprise visit in the Nursing Home run by the petitioner and found that the Nursing Home is in the practice of revealing sex of fetus for patients undergoing scan procedure in their Scan Centre, in violation to Section 6(a) & 6(b) of PCPNDT Act. On surprise visit on 07.02.2014, records were seized by the Joint Director of Health Services, who is the Appropriate Authority under the provisions of the said Act and further proceedings were initiated under the provisions of PCPNDT Act, 1994. That part, the petitioner has not maintained any records/statutory documents in violation of Section 29 of the Act.

5.The learned counsel for the 1st respondent would further submit that again a complaint was made to the State Appropriate Authority by the District Collector, Perambalur in the month of May, 2014 against the petitioner regarding misconduct of Pre-natal Diagnosis of the child and Medical Termination of Pregnancy. Therefore, the State Appropriate Authority and the Director of Medical & Rural Health Services, Chennai, deputed a team to the enquiry into the matter. On surprise check on 09.05.2014 it was found that a room happened to be MTP Room with unhygienic condition kept ready for doing MTP in the same condition and a patient was prepared to undergo the procedure for termination of pregnancy. On interrogation by the Team with hospital authorities, it was found that Medical Termination of Pregnancy being carried out by the hospital for long time in violation of provisions of law and the same being carried out in the most unhygienic condition and further, the patients are getting infected. According to the learned counsel for the 1st respondent, the petitioner qualified with MBBS, D.Ch., and he is not qualified person to do MTP as per the provisions of the Act.

6.It is further submitted by the learned counsel for the 1st respondent that after seizure of records and obtaining statements from the witnesses, the Appropriate Authority under the provisions of the PCPNDT Act filed a criminal complaint under Section 28(1) of PCPNDT Act, for the offence under Section 6(a) & 6(b) punishable under Section 25 of PCPNDT Act and under Section 2(d) under Section 3, under Section 4 of MTP Act punishable under Section 5(3) and 5(4) of MTP Act 1971 and Section 313 of IPC read with Section 5(2) of MTP Act, 1971, before the learned Judicial Magistrate, Neyveli at Cuddalore District. The criminal complaint filed by the Appropriate Authority under the said Act was taken on file in C.C.No.68 of 2014 and the same is pending, after framing charges

against the petitioner. Further, the Joint Director of Health Services has forwarded a report to the 1st respondent - Medical Council as per the proceedings in R.No.5428/E7/2014, dated 21.01.2015 for taking necessary further action against the petitioner and forward an action taken report in this regard, so as to send the same to the Directorate for submitting the same to the Hon'ble Supreme Court of India. Thus, appropriate action was directed to be taken against the petitioner as per the provisions of PCPNDT Act and other relevant statutes.

7.It is further contended by the learned counsel for the 1st respondent that as per Section 23(2) of the PCPNDT Act, the name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years from the first offence and permanently for the subsequent offence. In the instant case, the criminal case in C.C.No.68 of 2014 is pending against the petitioner on the file of the Judicial Magistrate, Neyveli, and the said case, charges have also been framed; therefore, as per Section 23 (2) of the PCPNDT Act, the 1st respondent has passed the impugned order removing the name of the petitioner from the register of the Medical Council for a period of five years. Therefore, the question of giving opportunity to the petitioner before passing the impugned order does not arise in this case. Thus, the learned counsel for the 1st respondent sought for dismissal of the writ petition.

8.The learned Additional Government Pleader has also made his submissions, supporting the impugned order.

9.Keeping in mind the submissions made on either side, I have carefully gone through the materials available on record.

10.At the out set, it would be appropriate to extract Section 23(2) of the PCPNDT Act, which reads as follows_

'23(2).The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the

subsequent offence."

From a reading of the above provision of law, I find that Section 23(2) consists of two limbs.

(1) During the stage of framing of charges till the disposal of the criminal case, the State Medical Council can take necessary action including suspension of the registration of the medical practitioner.

(2) If the Medical Practitioner is convicted, then only his name can be removed from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence if any.

11. In the instant case, though the charges have been framed against the petitioner in C.C.No.68 of 2014, still trial is pending. But, by way of impugned order, the 1st respondent has removed the name of the petitioner from the Tamil Nadu Medical Register, for a period of five years from 15.02.2016 or until further orders. The question of removing the petitioner's name for a period of five years from the medical register would arise only in the event of the petitioner being convicted by the Criminal Court. But, in the instant, only charges were framed by the criminal Court against the petitioner and trial is pending before the Criminal Court. Therefore, the 1st respondent can only suspend the registration of the petitioner till the disposal of the criminal case. Under such circumstance, I am of the opinion, the impugned order passed by the 1st respondent is not in accordance with the provisions under Section 23(2) of the PCPNDT Act.

12. For the foregoing reason, the impugned order is set aside and the matter is remanded back to the 1st respondent, with a direction to pass fresh orders, in accordance with Section 23(2) of the PCPNDT Act, taking note of the fact that only charges have been framed against the petitioner and the trial is still pending in the criminal case in C.C.No.68 of 2014 on the file of the learned Judicial Magistrate, Neyveli. The 1st respondent is further directed to pass fresh orders within a period of two weeks from the date of receipt of a copy of this order. Till such time, status quo as on date shall be maintained by the respondents.

With the above terms, the writ petition is ordered. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

SSV

To

1.The Registrar,

Tamil Nadu Medical Council,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam,
Chennai-600 106.

2.The Sub-District Appropriate Authority,

Under the Pre-Conception & Pre-Natal Diagnostic,
Technique (Prohibition of Sex Selection Act), 1994,
The Chief Civil Surgeon Medical Officer,
Government Hospital,
Vridhachalam -606 001.
Cuddalore District.

1 cc to Government Pleader, sr.22731

1 CC TO Mrs.S. Kadarkarai, Advocate, Sr. 5248 (6/6/2016)

W.P.No.6971 of 2016

and

W.M.P.No.6187 of 2016

pvs co

kra 23.05.2016

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