



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P(MD)No.573 of 2015
and M.P.(MD) No.1 of 2015

Dr.AR.Santhini

... Petitioner

Vs.

The District Appropriate Authority,
Pre-Conception and Pre-Natal Diagnostic
(Prohibition of Sex Selection) Act, 1994 and
Joint Director of Health Services,
Dindigul District,
Dindigul.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the Respondent herein, viz., the proceedings under Ref No.5769/HS/2014 dated 24.12.2014 and to quash the same.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel for M/s.AL.Gandhimathi

For Respondent : Mr.N.S.Karthikeyan
Additional Government Pleader

O R D E R

Challenging the order passed by the respondent suspending the registration granted to M/s.Arunaa Clinic, Senthurai Road, Natham, Dindigul District in Registration No.PNA/1782/2002, the petitioner has come forward with this writ petition.

2.According to the petitioner, she is a registered Medical Practitioner and her husband is also a registered Medical Practitioner with M.S. Degree. For the purpose of rendering advanced medical services in the rural areas, they have set up the above said Clinic in Senthurai Road, Natham, Dindigul District with Scan, X-Ray, Ventilator and other advanced medical equipments for Diagnosis, cure and other surgical and maternity, child health care treatments. They are running a Scan Centre under the name and style of "Aravappa Scan" in the above said Clinic and also obtained a certificate of registration under the name and style of



"Arunaa Clinic". The licence is valid up to 14.05.2017. On 10.10.2014, the respondent conducted an inspection in the petitioner's clinic without any notice. Thereafter, a Show Cause Notice was issued to the petitioner alleging the following violation:

- (a) No Board in English and Tamil was displayed in the prescribed format;
- (b) No copy of the Act and Rules framed thereunder was found at the Centre.
- (c) Form F Register was not maintained properly;
- (d) Monthly report is not regularly submitted.
- (e) Letter of consent not obtained from the patient;
- (f) Sonographic Plates or Slides were not preserved/maintained;
- (g) Copy of monthly report with the signature of the Appropriate Authority acknowledging receipt was not preserved;
- (h) All the records were not preserved for 2 years.

On receipt of the said notice, the petitioner sent a detailed reply stating that all the defects mentioned in the notice has been rectified. Apart from that, it is stated that the petitioner also permitted her daughter, Dr. Rajasulochana to conduct Pre-Natal Diagnostic Techniques on pregnant women, who does not have a valid licence, and her name was not included in the licence issued by the District Appropriate Authority under the Act, subsequently an application was submitted to include her name in the Ultra Sound Scan Licence on 12.11.20014, and the application is pending and until her name not included in the licence, she would not be permitted to conduct Pre-Natal Diagnostic Techniques on pregnant women. Without considering the same, straightaway the respondent passed the impugned order suspending the registration of the petitioner in total violation of principles of natural justice and violation of Section 20(2) of the Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act. Hence, challenging the above order, the present writ petition has been filed.

3. The respondent filed a counter affidavit stating that the petitioner obtained licence in the name of "Arunaa Clinic", Senthurai Road, Natham, but the petitioner is running the scan centre in the name of "Alagappa Scans", which is in absolute violation of the Rule 6(7) of the Pre-Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules. When the respondent conducted Inspection on 10.10.2014, noticed technical discrepancies and faults, and certain lacunae on the part of the petitioner in the above circumstances a Show Cause Notice was issued and the petitioner has also submitted her explanation on 20.11.2014 and the respondent being an competent authority having considered the explanation and other relevant documents available, finally passed the order of suspension of registration belongs to the petitioner for valid reasons in the interest of the public. Apart from that, it is further stated in the counter affidavit that, under Section 20(3)



of the Act, the petitioner is competent to suspend the registration in the public interest without issuing any such notice. In the instant case there are sufficient materials to show that irregularities were committed by the petitioner. The petitioner was also issued with a show cause notice and the explanation submitted by her, was considered and impugned order has been passed.

4.The petitioner filed a reply statement stating that after issuance of show cause notice all the defects have been rectified and regarding the alleged name difference in the Scan Centre is concerned, that issue was not raised in the show cause notice, and there is no violation of Rule 6 (7) of the Rules. The petitioner is running the Scan Centre under the name and style Dr.AR.Shanthini Alagapp's Scan Centre and licence was granted in the name of the petitioner's 'Arunaa Clinic'. Further, in the renewal application for renewal of license Dr.AR.Shanthini Alagappa's Scan Arunaa Clinic, Senthurai Road, Natham, has been duly mentioned. After inspection, the respondent also filed a criminal case against the petitioner in C.C.No.345 of 2003 for the offences under Sections 3(1), 3(3) of the Pre-natal Diagnostic Techniques Act, 1994 punishable under Section 23(1) of the Act. The above Criminal case has ended in acquittal by judgment dated 01.08.2005.

5.Mr.AR.L.Sundaresan, the learned Senior Counsel for the petitioner would submit that all the defects alleged are only curable defects and already the petitioner had rectified all those defects and submitted a representation to the respondent, that as on that date all the defects mentioned in the Show Cause Notice were rectified. The petitioner also given an undertaking that she will not violate any rules and she will not conduct any diagnostics procedure for the purpose of determining the sex of the foetus and she will maintain records as contemplated under the Rules. Considering the above, an interim order of stay has been granted by this Court on 04.02.2015, and pursuant to the interim order, she is running the clinic without any complaint whatsoever. Further, the learned Senior Counsel for the petitioner submitted that as the impugned order has been passed in violation of principles of natural justice and also under Section 20(2) of the Act, without affording a reasonable opportunity of being heard the impugned order has been passed.

6.On the other hand, Mr.N.S.Karthikeyan, the learned Additional Government Pleader appearing for the respondent would submit that the District Appropriate Authority found serious irregularities in the Scan Centre run by the petitioner. Hence in the public interest the impugned order has been passed under Section 20(3) of the Act and there is no necessity to give notice and conduct enquiry and there is no infirmity in the order passed

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7.This Court Considered the rival submissions and perused

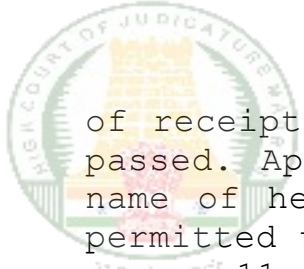
the materials available on record.

8. According to the learned Senior Counsel for the petitioner all the defects mentioned in the impugned order, which are all curable defects, has been rectified by the petitioner and as on today pursuant to the interim order of this Court, the petitioner is running the Scan Centre without any complaint or whatsoever. So far as the contention of the learned Senior Counsel for the petitioner that the impugned order has been passed in violation of Section 20(2) of the Act. Section 20(2) of the Act reads as follows:

"20 (2) If, after giving a reasonable opportunity of being heard to the Genetic Counselling centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, if may, without prejudice to any criminal action that it may take against such Centre, Labouratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

9. As per Section 20(2) of the Act before passing any order cancelling the registration, the Registrar should give a reasonable opportunity to the petitioner, apart from that the respondent also shall consider the advice of Advisory Committee. But, now the impugned order is passed, is in total violation of Section 20(2) of the Act. The contention of the respondent that the order has been passed under Section 20(3) of the Act and hence, no personal hearing is required cannot be accepted for the simple reason that once the respondent decides to invoke Section 20 of the Act and issued a show cause notice they have to necessarily follow the procedure contemplated under Section 20(2) of the Act. Since the show Cause Notice has been issued under Section 20 of the Act, the Registrar should necessarily conduct an enquiry and then to pass orders. Hence, the impugned order has been passed in violation of Section 20(2) of the Act.

10. The learned Senior Counsel for the petitioner submitted that now all the defects have been rectified and the petitioner is conducting the clinic without any complaint or whatsoever. The other defect, namely, the petitioner's daughter is being permitted to to conduct Pre-Natal Diagnostic Techniques on pregnant women, who is not a authorized person is concerned, she is also a qualified Doctor, she is having M.B.B.S. D.G.O. Degree, and she has also made application to include her name in the licence, which is pending with the respondent, she has also filed a writ petition in this Court in W.P.(MD) No.9870 of 2015 and this Court by order dated 18.06.2015, directed the respondent to consider the same and pass orders within two months from the date



of receipt of a copy of that order, but so far no order has been passed. Apart from that, the petitioner undertakes that till the name of her daughter is included in the licence she will not be permitted to conduct any test in the Scan Centre.

11. The learned Senior Counsel also referred to the proceedings of the Review Meeting of the Appropriate Authority under the Act, wherein it has been decided that as per amended Rules a qualified doctor, who have not completed six months training can be permitted to conduct the tests till 01.01.2017. Now the petitioner also ready to give an undertaking before the Appropriate Authority that the petitioner will not permit her daughter to conduct Pre-Natal Diagnostic Techniques on pregnant women, till her name is included in the licence.

12. In the above circumstances, the impugned order is liable to be set aside and the impugned order passed by the respondent dated 24.12.2014 stands quashed. It is made clear that it is always open to the respondent to inspect the Scan Centre of the petitioner and if the authority find any deficiency they are at liberty to proceed further in accordance with law.

13. In the result, the writ petition is allowed. No Costs. Consequently, connected Miscellaneous Petitions also closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar

To

The District Appropriate Authority,
Pre-Conception and Pre-Natal Diagnostic
(Prohibition of Sex Selection) Act, 1994 and
Joint Director of Health Services,
Dindigul District, Dindigul.

+1 cc to MR.AL.Ganthimathi, ADVOCATE, SR NO: 78193

+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 78987

sj

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