

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No. 13730 of 2016 (O&M)
Date of decision: September 28, 2016

Rattan Multispeciality Hospital and Diagnostic Centre and another
...Petitioners

Versus

State Appellate Authority/State Appropriate Authority, Punjab and others
...Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Ms. Supriya Garg, Advocate
for the petitioners.

Mr. Anant Kataria, DAG, Punjab.

RAKESH KUMAR JAIN, J.

The petitioners are aggrieved against the order dated 5th July, 2016 by which application filed by the petitioners for renewal of registration of their Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/Ultrasound Clinic/Imaging Centre has been declined.

Petitioner No.1 was registered as Genetic Counselling Centre/Genetic Laboratory, Genetic Clinic in terms of the provisions of Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short “the Act”) for a period of five years, ending on 7th July, 2016. On 28th August, 2015, respondent No. 2, alongwith the team members of National Inspection and Monitoring Committee (NIMC) inspected the petitioners hospital and diagnostic centre and found certain

discrepancies. It was, inter-alia, found that the petitioners are involved in getting sonography and echocardiography conducted through Dr. V.P. Dhand, who was not competent as he was not a registered practitioner as required under the provisions of the Act. The Inspecting Committee prepared a spot memo on 28.8.2015 itself and vide order of the same date sealed the ultra sound machine of the petitioners for three months. A complaint under Sections 3, 18, 19, 23, 24, 25 and 29 of the Act read with Rules 9 and 10 of the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short “the Rules”) was also filed against both the petitioners in the Court of Chief Judicial Magistrate, Ludhiana.

The petitioners challenged the order dated 28th August, 2015 by way of a statutory appeal provided under Section 21 of the Act. The said appeal was dismissed on 20th October, 2015 and the order of sealing the ultra sound machine was upheld. However, vide order dated 26th November, 2015, the appellate authority passed the order of de-sealing of the ultra sound machine after completion of three months.

Since the petitioners had the registration for a period of five years ending on 7th July, 2016, therefore, it applied for the renewal of registration for Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/Ultrasound Clinic/Imaging Centre in form A, in terms of Rule 4 (1) and 8 (1) of the Rules. The said application dated 17th June, 2016 was however, rejected on 5th July, 2016 on two grounds: (i) under Rule 18-A (4) (ii) of the Rules a complaint was pending; and (ii) as per the Government of India letter dated 29.6.2016 and proceeding of the State Advisory Committee held on 24.6.2016. Aggrieved against the said order dated 5th

July, 2016, the present petition has been preferred.

Learned counsel for the petitioner has submitted that the application for renewal of registration has been illegally declined because there was no violation of Rules 18-A (4) (ii) of the Rules, as no cognizance has been taken in the complaint by the JMIC, Ludhiana, and has referred to the order dated 10th June, 2016 appended with the petition. She has also argued that the letter dated 29.6.2016 relied upon by the respondents is not applicable because it pertains to conditional and temporary registration, whereas the petitioner is not praying for the same. She has further argued that Rule 8 of the Rules lays down the procedure for renewal of registration, which has also to be looked into while applying Rule 18-A (4) (ii) of the Rules. In this regard, she has relied upon Division Bench judgments of the Bombay High Court in Dr. Bela Hitesh Bhatt Versus The State of Maharashtra and others Writ Petition (Lodg) No. 636 of 2013 decided on 6.5.2013 and Maharashtra State Branch of IRIA MSBIRIA, Mumbai Versus Union of India and others Writ Petition No. 4478 of 2015 decided on 5.5.2015. She has basically argued that an opportunity of hearing should have been granted before passing the impugned order.

In reply, learned counsel for the respondents has submitted that the impugned order does not call for any interference as it has been passed strictly in terms of the Rules and the instructions issued by the Government of India, vide its letter dated 29th June, 2016. It is further submitted that Rule 18-A (4) (ii) is independent of the Rule 8 of the Rules and, as such, the petitioners are not entitled to an opportunity of hearing.

I have heard learned counsel for both the parties and perused

the record with their able assistance.

Chapter VI of the Act deals with registration of genetic counselling centres, genetic laboratories and genetic clinics in which Section 19 (3) provides that “Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.” Rule 7 deals with the validity of registration which provides that “every certificate of registration shall be valid for a period of five years from the date of its issue.” Rule 8 pertains to the renewal of registration. It would be appropriate to mention Rule 8 for a quick glance:-

8. Renewal of registration :- (1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. Acknowledgment of receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub rule (2) of rule 4.

(2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the Advisory Committee in this behalf, renew the certificate of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of registration earlier granted.

(3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and these rules, it shall, for reasons to be recorded in writing, reject the application for renewal of certificate of registration and communicate such rejection to the applicant as specified in

Form C.

(4) The fees payable for renewal of certificate of registration shall be one half of the fees provided in sub-rule (1) of rule 5.

(5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication of rejection of application for renewal, both copies of the earlier certificate of registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre.

(6) In the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed.”

Rule 18-A (4) (ii) with which we are concerned, is also reproduced.

“18-A Code of Conduct to be observed by Appropriate Authorities.— (1) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter alia, shall observed the following general Code of conduct, namely:-

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(4) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter alia, shall observe the following conduct for registration and renewal of applications under the Act, namely:-

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(ii) ensure that no application for fresh registration or renewal

of registration is accepted if any case is pending in any Court against the applicant for violation of any provision of the Act and the rules made thereunder.”

Text of the letter dated 29th June, 2016, referred to in the impugned order is also re-produced as under:-

“Subject: Regarding renewal of registration during ongoing court cases.

Sir/Madam,

I am directed to refer your letter No. 1FW (4)/PNDT:2016/2577 dated 17.06.2016 on the above mentioned subject, it is to inform that, there is no provision of conditional or temporary renewal of registration under the PC & PNDT Act and therefore, the Appropriate Authority may take appropriate action as per the Sections 18 & 19 and Rule 4, 5, 6, 7, 8 and 18A (4) (ii) while granting any new registration or renewal of registration under PC & PNDT Act/Rules.”

According to Rule 8, an application for renewal of certificate has to be made in duplicate in form A to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. It is incumbent upon the Appropriate Authority to issue acknowledgment of receipt of such application, which is also provided in a printed performa. According to Rule 8 (2), the Appropriate Authority shall hold an enquiry and after satisfying itself that all the requirements of the Act and the Rules have been complied with and having regard to the advice of the advisory Committee, shall renew the certificate of registration which shall be issued in duplicate in Form B appended with the Rules. As per Rule 8 (3), if the Appropriate

Authority after giving opportunity of hearing to the applicant and after having regard to the advice of the Advisory Committee is satisfied that the applicant has not complied with the requirement of the Act and the Rules, it would record reasons in writing while rejecting the application for renewal of certificate of registration and communicate the same as per form C. Rule 18-A (4) (ii) provides that the Appropriate Authority shall ensure that no application for fresh registration or renewal of registration is accepted, if any case is pending in any Court against the application for violation of any provisions of the Act or the Rules.

In so far as the question as to whether Rule 8 of the Rules has to be applied while applying Rule 18-A (4) (ii), the decision in the case of Maharashtra State Branch of IRIA MSBIRIA (supra), the Assistant Solicitor General of India, on instructions, submitted before the Court that Rule 18-A (4) (ii) has been incorporated with effect from 28.1.2015, which shall not be construed as a total prohibition on the appropriate authority to receive an application for renewal or fresh registration. The application has to be received and processed in accordance with Rule 8 of the Rules and the decision thereof shall be communicated to the concerned doctor.

In so far as decision in Dr. Bela Hitesh Bhatt (supra) is concerned, in the said case there is no discussion on Rule 18-A (4) (ii) of the Rules, as in that case only allegation against the petitioner was that he had applied for renewal of registration certificate with delay and in that respect, the Court has held that an application for renewal of registration could be rejected under Rule 8 (3) of the Rules, if the appropriate authority

is satisfied that requirements of the Act and the Rules have not been complied with.

Rule 18-A (4) (ii) of the Rules is a ground for rejection of an application for seeking renewal of registration, whereas Rule 8 (3) is a procedure which is required to be followed before applying the ground of rejection and in that procedure it is provided that an opportunity of hearing should be granted to the applicant before rejecting the application for renewal of registration.

Thus, in view of the aforesaid discussion, the writ petition is allowed and the impugned order dated 5th July, 2016 is hereby set aside and the matter is remanded back to the District Appropriate Authority-cum-Civil Surgeon, Ludhiana, who has passed the impugned order, to re-consider the matter of rejection of the application for renewal of Registration of Genetic Counselling Centre of the petitioners, after giving an opportunity of hearing to the petitioners and pass a fresh appropriate order in accordance with law.

The parties are directed to appear before the District Appropriate Authority-cum-Civil Surgeon, Ludhiana, on 7.10.2016.

September 28, 2016
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(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No