

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18198 of 2016

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1. Dr. Madhukar Son of late Raj Kishore Prasad Resident of Mohalla- Baghmali, Post Office- Hajipur, Police Station- Town Thawe Hajipur, District Hajipur (Vaishali).
 2. Dr. Pramod Kumar Sekasaria Son of Sri Rameshwar Prasad Sekasaria, resident of Mohalla- Pokhra (South of Subhash Chowk), Post Office- Hajipur, Police Station- Town Thawe, Hajipur, District- Hajipur (Vaishali).

... .. Petitioner/s

Versus

1. The Union of India, through the Secretary, Department of Family Welfare, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi-110011
2. The State of Bihar, through the Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Civil Surgeon-cum-Chief Medical Officer, Hajipur(Vaishali).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Syed Masleh-Uddin Ashraf, Advocate
For the Respondent/s : Ms. Kanak Verma, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 06-11-2017 This writ petition has been filed challenging certain provisions of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996.

The issue in question has been considered by a Co-ordinate Bench of this Court on 16.12.2016 in CWJC No. 13888 of 2016 and decided, wherein it has been held that the rule in question, which provides for six months training, is not a necessary qualification for Sonologist or Registered Medical Practitioner for the purpose of setting up Genetic Counselling Centre,



Genetic Laboratory or Genetic Clinic. In paras 17 to 21 of the judgment the matter has been considered and decided in the following manner:

“17. Therefore, we have no hesitation to hold that in terms of Rule 3(3)(1)(b), six months training under the 2014 Rules is not a necessary qualification either for a Sonologist or for a Registered Medical Practitioner for the purpose of Genetic Counselling Centre, Genetic Laboratory or a Genetic Clinic.

18. Since the requirement of six months training in terms of Rule 3(3)(1)(b) of the 1996 Rules is a separate and distinct qualification disjunctive to the other categories such as Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner, therefore, the training is not a qualifying condition for registration or continuation of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.

19. Still further, the judgment of the Hon'ble Supreme Court in Voluntary Health Association of Punjab Vs. Union of India (UOI) and Ors. in Writ Petition (Civil) No. 349 of 2006 does not deal with the issue raised in the present petition as the legality, validity or applicability of 1996 Rules or 2014 Rules was not an issue raised and decided by the Court. Therefore, the said judgment does not support the stand of the Government of India.

20. We find that though it appears the intention of



the rule making authority was to make mandatory for all Medical Practitioners, such as, the Registered Medical Practitioners or Sonologist to undergo six months training or qualify the competency based assessment but the language of the 1996 Rules and 2014 Rules does not support such objective. One can only say that it is a case of bad drafting of rules which does not appear to serve the objective of the rules.

21. Consequently, the writ applications are allowed holding that the six months training is not required to be undergone either by Registered Medical Practitioner or Sonologist as a qualification to set up Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.”

We allow this petition in identical terms.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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