

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 329 OF 2017

Dr. Miss Minal Shelke
@ Dr. Minal w/o Anand Patil
age 44 years, occ. Medical Practitioner
r/o c/o Patil Hosital
Doctors' Lane, Nanded
Tq. & Dist. Nanded

.. PETITIONER

VERSUS

1 The Medical Officer &
 Appropriate authority,
 Nanded Waghala Municipal
 Corporation, Opposite Nana-Nani Park
 Shivajinagar, Nanded
 Dist. Nanded

2 The State Appropriate Authority
 Saint Jorge Hospital
 V.T. Mumbai

.. RESPONDENTS

Mr. R.N. Dhorde, Senior Counsel i/by Mr. V.R. Dhorde, advocate for
petitioner.

Mr. K.K. Ingole Patil, advocate for respondent no. 1.

**WITH
WRIT PETITION NO. 265 OF 2017**

Dr. Gayatri Shriram Deshmukh
@ Dr. Minal w/o Dr. Shivaji J. Wadekar
age 49 years, occ. Medical Practitioner
r/o Wadekar Hosital
Opp. Shivaji Statue
Nanded
Tq. & Dist. Nanded

.. PETITIONER

VERSUS

1 The Medical Officer &
 Appropriate authority,
 Nanded Waghala Municipal
 Corporation, Opposite Nana-Nani Park
 Shivajinagar, Nanded

Dist. Nanded

- 2 The State Appropriate Authority
 Saint Jorge Hospital
 V.T. Mumbai

.. RESPONDENTS

Mr. R.N. Dhorde, Senior Counsel i/by Mr. V.R. Dhorde, advocate for petitioner.

Mr. K.K. Ingole Patil, advocate for respondent no. 1.

WITH

WRIT PETITION NO. 784 OF 2017

Dr. Pramod Rajaram Zunjare
Age 45 years, occ. Medical Practitioner
r./o Doctors Lane, Nanded
Tq. & Dist. Nanded

.. PETITIONER

VERSUS

- 1 Appropriate Authority cum
 Medical Suprintendent
 Nanded Waghala Municipal Corporation
 Nanded

- 2 The State Appropriate Authority
 St. George Hospital
 chatrapati Shivaji Maharaj Terminus
 Mumbai

.. RESPONDENTS

Mr. V.S. Kadam, advocate for petitioner.

Mr. R.K. Ingole Patil, advocate for respondent no. 1.

Mr. S.R. Yadav Lonikar, AGP for respondent no. 2.

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CORAM : S. B. SHUKRE, J.

DATE : 24th FEBRUARY, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of learned counsel for the respective parties.

3. These petitions challenge the order of the competent authority in refusing to receive application for renewal of license to run ultra sound sonography clinic of petitioners.

4. The only ground on which the renewal application has been refused is restriction imposed under Rule 18A of the Pre Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996.

5. The Division Bench of this Court in the case of Dr. Sudhir Nimakar Vs. The State of Maharashtra and another, Writ Petition No. 6979/2015 had an occasion to consider the nature of restriction imposed by the Rule 18A and it observed in paragraphs no. 4 and 5 thus :

4. This Court, while dealing with Writ Petition No. 4478 of 2015, presented by the Maharashtra State Branch of IRIA MSBIRIA, Mumbai against Union of India and others, ha observed, on the basis of statement made by the Assistant Solicitor General for Union of India that, Rule 18-A (4)(ii) of the Rules of 1994, incorporated with effect from 28.01.2015, shall not be construed as total prohibition on the appropriate authority to receive an application for renewal of fresh registration. The relevant rule imposes restriction on the appropriate authority to receive application for renewal or fresh registration. In view of the clarification made by the Union of India, it is obligatory on the part of appropriate authority to receive applications for registration and renewal of registration in spite of pendency of criminal case or lodging of First Information Report against the concerned doctor or Diagnostic Centre.

5. The application received for renewal of registration has to be dealt with in accordance with Rule 8 of the Rules. Rule 8 provides that the appropriate authority shall, after holding inquiry

and after satisfying itself that the applicant has complied with all the requirements of the Act and Rules and having regard to the advice of the Advisory Committee, renew the certificate of registration, as specified in Form B for a further period of five years from the date of expiry of certificate of registration earlier granted. Sub-rule (3) of Rule 8 provides that 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 the 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.

The Division Bench has also observed in paragraph no. 6 of the judgment that mere pendency of criminal case ordinarily would not constitute reasonable ground for refusal to grant renewal of registration. Relevant observations are reproduced thus :

In our opinion, mere pendency of criminal case or lodging of First Information Report itself may not constitute a ground for refusal to grant renewal of registration.

6. It is clear from the above referred observations that the competent authority can receive applications for registration and renewal of registration inspite of pendency of criminal case or lodging of First Information Report against the concerned doctor or the clinic. This being the case, I am of the view that the competent authority should have applied its mind to the facts of the case, accepted the applications and then should have proceeded to consider the applications in accordance with the rules. Even upon perusal of the criminal complaint being RCC No. 169/2010, prima facie, it appears that only vague allegations of commission of certain

irregularities in keeping record in proper form have been made and, in so far as offences punishable under sections 4 and 5 of the Act are concerned, no specific allegation regarding commission of certain acts prohibited under these sections have been made in the complaint. This is a material aspect of the case which needs to be considered appropriately by the competent authority. I must also say that the competent authority cannot turn Nelson's eye to the order of the State Appropriate Authority passed on 3rd November, 2011, when it renewed the registration upto 3rd November, 2016, inspite of the fact that RCC No. 169/2010 was pending. If pendency of this criminal complaint was to operate as any impediment in renewing license, the State Appropriate Authority, at that time itself would not have renewed the registration.

7. In this view of the matter, I find great substance in these petitions. In my view, the petitions deserve to be allowed with cost.

8. Writ petitions are allowed. Impugned orders are quashed and set aside. The matter is remanded back to the appropriate authority for accepting the applications for renewal of registration and then considering the same in accordance with Rules of 1996, on their own merits, keeping in view the observations made hereinabove. The appropriate authority shall take appropriate decision within two weeks from the date of the order.

(S. B. SHUKRE)
JUDGE