

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12522 OF 2016

Dr. Sunil Diwan Rathod,
Age 40 years, Occ. Medical
Practitioner, R/o Pande Complex
Bus Stand Road, Kannad,
District Aurangabad.

..Petitioner

Versus

1. The State of Maharashtra
Through Secretary,
Family and Child Welfare
and Health Department,
Mantralaya, Mumbai.

2. State Appropriate Authority,
Through Additional Director,
Family Welfare, having its office
at Raja Bahaddur Mill Road,
Pune, Behind Railway Station,
Pune.

3. District Appropriate Authority
and Civil Surgeon, Medical College
Hospital, Aurangabad.

..Respondents

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Advocate for Petitioner : Shri Pramod F.Patni
AGP for Respondents 1 to 3 : Shri S.K.Tambe

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CORAM : RAVINDRA V. GHUGE, J.

Dated: June 12, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner in this petition seeks to challenge the order dated 9.3.2015 passed by respondent No.1 / authority and the order dated 15.11.2016 passed by respondent No.3 / appellate authority by which, the sonography machine utilized by the petitioner has been sealed and the license of the petitioner has been suspended.

5. The substantive prayer put forth by the petitioner in prayer clause 13(C) reads as under:-

“ The judgment and order passed by learned respondent No.2 Appeal no.123/2016, dated 15.11.2016, confirming the order of District Appropriate Authority, Aurangabad dated 19.3.2015, may please be quashed and set aside and the sonography machine of the petitioner may please be ordered to be desal.”

6. The Sonography Center operated by the petitioner upon obtaining a certificate of registration on 5.11.2012 was subjected to an inspection by the respondent No.2 / authority on 11.1.2015. Upon finding certain deficiencies in the operational pattern of the petitioner, a show cause notice dated 17.1.2015 was issued to the

petitioner. The respondents / authorities had listed out about nine deficiencies, pertaining to his failure to maintain a proper register under Rule 9(1) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003, lack of signatures of the patient on the declaration form, cellular phone number of the patient or her relative not being recorded, errors in the online forms and declaration forms, error in the dates on the declaration form and form "F" and discrepancy in the signatures of the Doctor on form "F" and self referral form.

7. It is specifically canvassed by the petitioner that there is no charge or allegation against the petitioner of having used the sonography machine with ulterior motives or for sex determination of the foetus. The petitioner by his reply dated 20.1.2015 has tried to explain away the situation and had also justified the discrepancies that have occurred in some of the documents. An undertaking was given that henceforth the petitioner would be meticulous and would ensure that all the Rules and requirements are fulfilled and the registers and the forms would be maintained as is expected under the Rules, 1996 and 2014.

8. It is further submitted that the registration of the petitioner Sonography Center was suspended by order dated 19.3.2015 and the sonography machine was sealed. The appeal preferred by the

petitioner before the Civil Surgeon was dismissed on the ground of limitation on 29.5.2015. His appeal before respondent No.2 was allowed and the matter was referred to the Civil Surgeon, who dismissed the Appeal on 10.9.2016. Further appeal filed by the petitioner before respondent No.2 was dismissed on 15.11.2016.

9. Learned counsel for the petitioner submits that the sonography machine could have been sealed only if the authorities were of the considered view that the machine has been misused and especially for sex determination of sex and if the authorities were of the serious apprehension that the evidence in the form of the recordings in the machine would be tampered with by the petitioner, that the order of sealing the machine could have been passed. For similar reasons, the license of the petitioner could not have been suspended for allegations of being allegedly guilty of having not maintained the record properly, which is a clerical work.

10. Reliance is placed upon the judgments delivered by the learned Division Bench of this Court in the matters of Dr. Prasanna S. Mishrikotkar Vs.State of Maharashtra and others - Writ Petition No.9252 of 2014, dated 8.1.2015, Dr. Deepesh Bhagwanrao Chemate Vs. State of Maharashtra - Writ Petition No.10578 of 2014, dated 10.2.2015 and the judgments delivered by this Court in the matters of Dr. (Mrs.) Sukhada Dilip Mulay Vs. State of Maharashtra [2012 (6)

ALL MR 778] and Janaki Ultra Sound Center Vs. The Appropriate Authority [2015 (3) ALL MR 381].

11. The learned AGP appearing on behalf of the respondents has strenuously supported the impugned orders. He submits that respondent No.3 as well as respondent No.2 have specifically considered the contentions of the petitioner and have thereafter arrived at findings that the machine deserves to be sealed and the license of the petitioner deserves to be suspended. It is noted that because of irregularity of Register 9/1 being not certified, that the machine was sealed. The explanation put forth by the petitioner was unacceptable. Incorrect entries regarding marital status, full name of the patient, thumb impression of the patient not being supported with signature of any accompanying relatives, were the reasons why the machine was sealed and the license of the petitioner was suspended. He submits that the competent authorities have considered the law laid down by this Court in the case of Dr. (Mrs.) Suhasini Karanjkar Vs. Kolhapur Municipal Corporation - Writ Petition No. 7896 of 2010, wherein this Court has observed that the offences under the Act are committed essentially with the use of the sonography machines and hence the best way for preventing crime is by sealing the machine. He, therefore, submits that the authorities have not committed any error in sealing the said machine.

12. This Court in the matter of Dr. (Mrs.) Sukhada (supra), has observed in paragraph Nos.15 to 17 as under:-

“15. Even Sec. 30 of the said Act lays down that, if the Appropriate Authority has reason to believe that an offence under this Act has been or is been committed, then he may personally or authorize any officer in that behalf to examine the record, register, documents and seize and seal the same. Rule 12 of the Rules of 1996 also authorizes an Appropriate Authority or the Officer authorized in this behalf to enter and search at all reasonable time the said genetic counseling center, ultra sound clinic, etc. and may seal and seize the record, register and evidence or any other material therein, if there is "reasonable belief" that it may furnish evidence of commission of offence punishable under the Act.

16. "Reason to believe" or "reasonable belief" means coming to factual conclusion on the basis of information that a thing, condition, statement or a fact exists. Reason to believe contemplates an objective determination based on intelligent care and deliberation as distinguished from purely subjective consideration. The said expression is not synonymous to subjective satisfaction of the authority. It postulates belief and existence of reason for that belief. The belief has to be held in good faith. It cannot be a mere pretense. The reason for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant for the purpose of the section.

17. In the present case, no such reasons are given. It does not transpire that sonography machines have been sealed

upon the Appropriate Authority satisfying itself or having reason to believe that the said object i.e. sonography machines would furnish evidence of commission of offence punishable under the Act.”

13. The impugned order dated 19.3.2015, by which, the machine was sealed and the registration of the sonography center was suspended, does not deal with the issue of reasonable belief of the said committee in coming to a conclusion that the machine deserves to be sealed. In the absence of reasonable belief and in the absence of any allegation against the petitioner that the machine was used for effecting sex determination test, the impugned order cannot be justified.

14. In a similar matter pertaining to Janaki Ultra Sound Center (Supra), this Court has considered the earlier judgments delivered by the learned Division Bench as well as the judgment delivered in the case of Dr. (Mrs.) Sukhada (supra) and has observed as under:-

“25. Rule 12 of the Rules of 1996 reads thus:-

“12. Procedure for search and seizure.-

1. The Appropriate Authority or any officer authorized in this behalf may enter and search at all reasonable times any

Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or more independent witnesses for the purposes of search and examination of any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seal and seize the same if there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act.

Explanation:- In these Rules-

- 1. 'Genetic Laboratory/Genetic Clinic/Genetic Counselling Centre' would include an ultra-sound center/ imaging center / nursing home / hospital / institute or any other place, by whatever name called, where any of the machines or equipments capable of selection of sex before or after conception or performing any procedure, technique or test for pre-natal detection of sex of foetus is used;*
- 2. 'material object' would include records, machines and equipments; and*
- 3. 'seize' and 'seizure' would include 'seal' and 'sealing'*

respectively.

2. A list of any document, record, register, book, pamphlet, advertisement or any other material object found in the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre and seized shall be prepared in duplicate at the place of effecting the seizure. Both copies of such list shall be signed on every page by the Appropriate Authority or the officer authorized in this behalf and by the witnesses to the seizure:

Provided that the list may be prepared, in the presence of the witnesses, at a place other than the place of seizure if, for reasons to be recorded in writing, it is not practicable to make the list at the place of effecting the seizure.

3. One copy of the list referred to in sub-rule (2) shall be handed over, under acknowledgement, to the person from whose custody the document, record, register, book, pamphlet, advertisement or any other material object have been seized:

Provided that a copy of the list of such document, record, register, book, pamphlet, advertisement or other material object seized

may be delivered under acknowledgement, or sent by registered post to the owner or manager of the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre, if no person acknowledging custody of the document, record, register, book, pamphlet, advertisement or other material object seized is available at the place of effecting the seizure.

4. If any material object seized is perishable in nature, the Appropriate Authority, or the officer authorized in this behalf shall make arrangements promptly for sealing, identification and preservation of the material object and also convey it to a facility for analysis or test, if analysis or test be required:

Provided that the refrigerator or other equipment used by the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre for preserving such perishable material object may be sealed until such time as arrangements can be made for

safe removal of such perishable material object and in such eventuality, mention of keeping the material object seized, on the premises of the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre shall be made in the list of seizure.

5. In the case of non-completion of search and seizure operation, the Appropriate Authority or the officer authorized in this behalf may make arrangement, by way of mounting a guard or sealing of the premises of the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic Ultra- sound Clinic or Imaging Centre, for safe keeping, listing and removal of documents, records, book or any other material object to be seized, and to prevent any tampering with such documents, records, books or any other material object. "

26. Upon going through the "japti panchanama" prepared by the Committee, Aurangabad/ Latur, it is specifically mentioned that the Committee found that the records were not properly maintained and there were several short-comings in the said record. Documents which were not maintained, as is required by Law, have been set out in Clause No. 1 to 8 of the report. It is also observed that the original record available has been seized and taken into the custody of the

Committee.

27. *It is quite conspicuous that the sonography machine has been seized under a single sentence, which is stated to be the conclusion of the Committee in the report. It is merely observed that Dr.D.M. Patil has violated the said Act and therefore the sonography machine is sealed. There is no observation appearing from the said report that the Committee had arrived at a conclusion that the machine was used for committing an offence or that the Committee had a "reason to believe" or had formed a "reasonable belief" about any offence committed with the use of the machine or that there was a high possibility of the said machine being used for committing offences in future. The ingredients of Rule 12 as are required, are obviously missing in the Report.*

28. *The observations of this Court in the case of Dr.Sukhada (supra), in paragraph Nos. 16, 17 and 18 are relevant and which read as under :-*

"16. Even Sec. [30](#) of the said Act lays down that, if the Appropriate Authority has reason to believe that an offence under this Act has been or is been committed, then he may personally or authorize any officer in that behalf to examine the record, register, documents and seize and seal the same. Rule 12 of the Rules of 1996 also authorizes an Appropriate Authority or the Officer authorized in this behalf to enter and search at all reasonable time the said genetic counselling center, ultra sound clinic, etc. and may seal and seize the

record, register and evidence or any other material therein, if there is "reasonable belief" that it may furnish evidence of commission of offence punishable under the Act.

17. *"Reason to believe" or "reasonable belief" means coming to factual conclusion on the basis of information that a thing, condition, statement or a fact exists. Reason to believe contemplates an objective determination based on intelligent care and deliberation as distinguished from purely subjective consideration. The said expression is not synonymous to subjective satisfaction of the authority. It postulates belief and existence of reason for that belief. The belief has to be held in good faith. It cannot be a mere pretense. The reason for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant for the purpose of the section.*

18. *In the present case, no such reasons are given. It does not transpire that sonography machines have been sealed upon the Appropriate Authority satisfying itself or having reason to believe that the said object i. e. sonography machines would furnish evidence of commission of offence punishable under the Act."*

29. *I had specifically called upon the learned AGP to point out from the report of the Committee dated 13/08/2014, which is the "japti panchanama" to indicate as regards its*

conclusions that there was a reasonable belief that the said machine was used for committing offences or was likely to be used for committing such offences. Despite his efforts, he was unable to point out any such observation from the "japti panchanama", which would establish the case of the Committee.

30. *In fact, I find from the "japti panchanama" that it is not the case of the respondent/Committee that they had a reason to believe that the sonography machine was used for committing any offence or was likely to be used for committing any offence or that the machine was an important piece of evidence.*

31. *The respondents have relied upon the judgment of this Court (Coram : Mrs. Roshan Dalvi, J.) dated 23/01/2013 in the case of Dr.Vandana Ramchandra Patil Vs. The State of Maharashtra and others in Cri.Writ Petition No. 4399/2012. The said judgment is of no assistance to the respondents since it is not their case at all that the most important ingredient of a crime of a repetitive nature was the sonography machine.*

32. *The Division Bench of this Court, in the case of Dr.Prasanna Mishrikotkar (supra) has held in paragraph Nos. 4, 5, 6, 7 and 8 as under :-*

"4) The petitioner contends that on 1st October, 2014, the squad, constituted by Respondent No. 2, along with panchas, visited the diagnostic center of the petitioner and drawn a panchanama and put seal on the sonography machines installed in the diagnostic center of the petitioner. The petitioner further contends that such action of

sealing the sonography machines is not preceded by any order passed by Respondent No. 2 - appropriate authority. It is contended that in fact after conducting the inspection on 24th June, 2014, a notice dated 27th August, 2014 was issued calling upon the petitioner to show cause in respect of certain irregularities and deficiencies as set out in the show cause notice. The petitioner tendered his reply to the said show cause notice on 30th August, 2014. The petitioner was directed to remain present himself for personal hearing on 24th September, 2014 at 3.30 p.m. The petitioner did submit relevant record on 1st October, 2014 in response to the communication issued to him earlier. However, on the same day, at the instance of Respondent No. 2, action of sealing of the sonography machines was taken under the panchanama. The petitioner contends that such action of sealing the sonography machines of the petitioner taken on behalf of Respondent No. 2 is bad in law since the action is not preceded by any order passed by the Competent Authority. The impugned action is not referable to any of the provisions of the Rules of 1996 or the Act of 1994.

5) Our attention is invited to Section [30\(1\)](#) of the Act of 1994, which reads thus,

" 30. Power to search and seize records, etc - (1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic

Counselling center, Genetic Laboratory, Genetic clinic or any other place, such Authority or any office authorized in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority or officer considers necessary, such Genetic counselling Centre, Genetic Laboratory, Genetic clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or office has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act."

6) It is contended that the Authority or the officer has not recorded reasons, in writing, for its/his satisfaction to take action as regards sealing of the sonography machines and that he has no reason to believe that the said machines may furnished evidence of the commission of the offence punishable under the Act.

7) In the instant matter, since the impugned action is not preceded by any order, there arises no question of satisfaction or recording the reasons by the Authority empowered to take action. Thus, the impugned action is in breach of

Section [30\(1\)](#) of the Act of 1994. It was open for the Respondent No. 2 to pass appropriate order, on recording his satisfaction, as contemplated under Section [30\(1\)](#) of the Act and then to proceed to take action.

8) It is also noticed that in fact, a notice was issued to the petitioner in pursuance to the inspection carried on 24th June, 2014, which has been appropriately replied by the petitioner and the case/matter was, in fact, posted for hearing. In such circumstances, it was incumbent upon the Respondent No. 2 to pass an order and thereafter, if warranted, upon compliance of the provisions contained in Section [30\(1\)](#) of the Act of 1994, to proceed to take appropriate action against the petitioner. Since the impugned action taken on behalf of respondent No. 2 is not within the provisions of the Act of 1994 and the Rules framed thereunder, the said action deserves to be quashed and set aside."

33. Similar are the observations of the Division Bench of this Court in paragraph Nos. 6, 7 and 8 of Dr. Deepesh Bhagwanrao Chamate judgment (supra), which read as under :-

"6) It is contended that the Authority or the officer has not recorded reasons, in writing, for its/his satisfaction to take action as regards sealing of the sonography machines and that he has no reason to believe that the said machines may furnish evidence of the commission of the offence punishable under the Act.

7) In the instant matter, since the impugned action is not preceded by any order, there arises no question of satisfaction or recording the reasons by the Authority empowered to take action. Thus, the impugned action is in breach of Section [30\(1\)](#) of the Act of 1994. It was open for the Respondent No. 2 to pass appropriate order, on recording his satisfaction, as contemplated under Section [30\(1\)](#) of the Act and then to proceed to take action.

8) In view of the above, writ petition is allowed. The action taken on behalf of Respondent no.2 of sealing the Sonography machines and the probes and taking away the registration documents, is quashed and set aside. Respondent No. 2 is directed to desal the said Sonography machines as well as probes and return back the registration documents to the petitioner within a period of fifteen days from the date of the order. It is needless to point out that it would be open for authorities to take appropriate steps in accordance with the provisions of Act of 1994 and the Rules framed there under. "

34. In the cases of Dr.Prasanna and Dr.Deepesh (supra), a criminal case was registered. The next date of hearing in the said matters before the Chief Judicial Magistrate, Aurangabad and the J.M.F.C. Paithan, respectively are scheduled on 17/03/2015 and 23/03/2015. The Division Bench, in both these above stated cases, has directed the respondent to de-seal the sonography machines, return the probes and the registration documents to the petitioners within a period of

15 days. However, in both these cases, it was left open to the respondents to take appropriate steps in accordance with the provisions of the said Act and the rules framed thereunder.”

15. The learned Division Bench in the case of Dr. Deepesh (supra) has held that unless the authorities are satisfied and record reasons holding the belief that sealing of the machine is necessary as the evidence is likely to be tampered with, the order of sealing cannot be sustained. The Court, therefore, directed the de-sealing of the machine and further directed that the registration documents be returned to the petitioner.

16. The petitioner has tendered an additional affidavit dated 3.6.2017, wherein, it is submitted that Sonography machines can now be put in to service by following online procedure. After form “F” as well as details of the are furnished online and only after the “Okay” report is received online, the machine cannot be operated for conducting ultra-sound sonography test of a patient. Once the test is performed, the report is auto-generated and the authorities are instantly informed about the test performed. Besides the same, the petitioner is willing to submit hard copy of the register maintained under Rule 9 and all such documents as are mentioned in the show cause notice, each week on every Saturday to the competent authorities so that the hard copies are also taken on record.

17. Considering the above, this petition is allowed in terms of prayer clause (C), reproduced above.

18. Needless to state, the criminal case registered against the petitioner shall proceed in accordance with law in so far as the charges are concerned and the same shall be decided by the appropriate authorities on merits of the matter. This judgment shall not come in way of the concerned authorities in dealing with the charges levelled upon the petitioner. The breach of the undertaking given by the petitioner vide the additional affidavit shall make the petitioner liable for strict action under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 and the Rules framed thereunder.

19. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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