

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**WRIT PETITION No.3467 OF 2017**

**ORDER:**

Heard learned counsel for the petitioner, learned standing counsel for the first respondent and learned counsel for the second respondent.

The petitioner, who was registered with the first respondent, is practising as Doctor and she is a post-graduate in MD-Obstetrics and Gynecology. She has been running various clinics at various places in the name of 'M/s.Shrusti Test Tube Baby Centre'.

A complaint was lodged by the second respondent against the petitioner alleging that the second respondent and his wife attended one of the clinics of the petitioner at Kukatpally, for having their own healthy biological child and had discussed about their health. The second respondent got vasectomised, his wife was diabetic and also suffering from psoriasis, and their first daughter was suffering from autism since birth and on disclosing the same to the petitioner by the second respondent, the petitioner assured them that their age and health conditions are not worrying factors and they can get their own healthy biological child. They paid certain expenses and after surrogation, the petitioner handed over the baby to the second respondent on 07.10.2014. When the second respondent and his wife were leaving for U.S.A., the child was subjected to D.N.A., test and it does not confirm that the same relates to either of the parties.

Learned counsel for the petitioner submits that the petitioner explained the second respondent and his wife all the aspects with regard to the process of invitro fertilization and also the risks involved in the said process. He also submits that the second respondent and his wife clearly stated the petitioner that their first daughter was suffering from autism and mental retardation, they do not want to take any risk and as such, they

need a healthy child. The petitioner informed the second respondent and his wife that it is a third party's sperm and egg to be implanted in the womb of the surrogate mother since they need a healthy child, and knowing fully well about the said fact, the second respondent lodged the complaint against the petitioner, which is illegal and not maintainable.

The first respondent issued notice, dated 30.06.2016, to the petitioner and the petitioner gave explanation by way of an affidavit, dated 13.07.2016. The petitioner appeared before the Ethics Committee on 24.08.2016. Again a notice dated 07.09.2016 was issued to the petitioner to submit documents within three days therefrom and accordingly, she submitted the agreement, dated 24.12.2013 executed by the second respondent and his wife. The Executive Committee met on 04.11.2016 and in the said meeting, a decision was taken to recommend to the general body to remove the name of the petitioner from the Medical Register for a period of five years as per Regulation 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (for short 'Regulations 2002'). Thereafter, the general body also met on 04.11.2016 and approved the recommendation of the Executive Committee. Challenging the proceedings dated 04.11.2016 of the first respondent, the petitioner filed the present writ petition.

Learned counsel for the petitioner submits that an elaborate procedure is contemplated under Rule 8.2 of the Regulations 2002 and the said procedure was not followed in the case of the petitioner. He placed reliance on a decision of this Court in W.P.No.16970 of 2015 in support of his contention.

Though the principles of natural justice were followed by issuing a notice and asking for an explanation, the procedure as contemplated under Rule 8.2 of the Regulations 2002 was not followed in the instant

case. No material was shown contrary to the submission made by the learned counsel for the petitioner.

In the circumstances, without going into the merits of the case, in view of the procedural lapse in taking decision by the second respondent, the impugned order dated 04.11.2016 is set aside and the matter is remanded to the first respondent for taking appropriate action in accordance with law, by duly following the procedure as contemplated under the Regulations 2002, and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. It is needless to observe that the petitioner, as well as the second respondent, shall cooperate for the conclusion of the enquiry.

The writ petition is accordingly allowed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed in consequence.

**A.RAMALINGESWARA RAO, J**

03.04.2017  
pln

