

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

CWP No.11171 of 2015

**Date of Order: 02.11.2017**

Ishwar Singh Yadav

....Petitioner

Versus

State of Haryana and Ors.

....Respondents

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

Present: Mr. S.S. Narula, Advocate for the petitioner.

Mr. Sandeep Moudgil, DAG, Haryana.

**RAKESH KUMAR JAIN, J (ORAL)**

The petitioner has challenged the order dated 01.5.2015, passed by Civil Surgeon-cum-District Appropriate Authority, directing all the private Ultrasound Centres in Rewari including the petitioner to send Form 'F' so that their office may put serial number on them and only technical person could perform the job of helper in the Ultrasound Centres.

Learned counsel for the petitioner has submitted that the Civil Surgeon alone cannot act as District Appropriate Authority nor the other members of the Authority can delegate their powers to him. It is also submitted that no jurisdiction vests with the Civil Surgeon to ask for Form 'F' for the purpose of putting serial number and direct the petitioner to engage only technical person as Helper in the Ultrasound Centre. As a matter of fact, the petitioner has challenged the very jurisdiction of the Civil Surgeon-cum- District Appropriate Authority, Rewari on the ground that the District Appropriate Authority is a three members body and he has referred to a Notification dated 07.11.2013 as per which the Government of Haryana, Department of Health has constituted the District Appropriate Authority comprising of the Civil Surgeon as Chairman, District Programme

Officer, Women and Child Development Department and District Attorney as members.

It is submitted that the issue as to whether there would be an Appropriate Authority only in the State or in the District also has been decided by a Division Bench of this Court in CWP No.21565 of 2011 titled Help Welfare Group Society Vs. The State of Haryana and Others vide order dated 18.9.2013, holding that Section 17 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short “the Act”) does not prohibit the State to constitute District Appropriate Authority separately as well besides constituting the same at the State level. It is also submitted that in pursuance thereof the Notification dated 07.11.2013 was issued by the Government, constituting the District Appropriate Authority for the districts which have already been referred to above. It is submitted that in case this Court comes to the conclusion that the impugned order has been passed without jurisdiction then there would be no need for him to challenge the contents of the said order.

In the reply, the respondents have averred that though the District Appropriate Authority comprises of three members which includes Santosh Allawadi (PO, ICDS, Rewari) and Mahaveer Singh Punia, District Attorney, Rewari but they had delegated their Authority vide letter dated 15.9.2015 in favour of the Civil Surgeon, Rewari for the purpose of inspection or raid in Ultrasound Centres in District Rewari and also authorized him to make the inspections in ultrasound centre on his behalf or to order any Deputy Civil Surgeon/Medical Officer.

From the aforesaid pleadings, the question thus arises for

adjudication as to whether the impugned order could have been passed by the Civil Surgeon alone, if not, whether the order has been passed by the District Appropriate Authority and also as to whether two other members of District Appropriate Authority can delegate their powers to the Chairman (Civil Surgeon)?

As per the reply of the respondentes, the Civil Surgeon does not have exclusive powers under the Act as it can only pass orders as a Chairman of the Committee, which is called District Appropriate Authority but the decision has to be taken by the District Appropriate Authority as a whole and not as an individual as has been done by the Civil Surgeon. Thus the first question is answered holding that the Civil Surgeon himself does not possess any power either under the Act or under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996 (amended in 2012) (for short "the Rules"). Since the impugned order has been passed by the Civil Surgeon as District Appropriate Authority, therefore, it is to be seen as to whether the said order has the concurrence of other two members of the Authority. There is nothing on record which could suggest that the impugned decision was taken in a meeting of the District Appropriate Authority by discussion amongst the members of the District Appropriate Authority. Rather the respondents have relied upon the letter dated 15.9.2015 by which the other two members of the District Appropriate Authority have delegated their powers only for making inspection and raids in the Ultrasound Centres in District Rewari to the Civil Surgeon and no Authority even has been delegated for issuing the orders like the one which is being impugned herein.

Be that as it may, the fact remains that there is no such

provision either under the Act or Rules for delegating the powers by the members of the District Appropriate Authority, therefore, the procedure adopted by the other members of the District Appropriate Authority is totally illegal. If they had to delegate their powers to the Civil Surgeon like this, then there is no need for constituting the Committee of three members which is actually put in place so that one member may not pass arbitrary orders and all the decisions are taken by the meeting of minds.

This is not the scheme of the Act because the Act provides that all the decisions have to be taken by the District Appropriate Authority and the Civil Surgeon has not been given any exclusive power. Thus other two questions are also decided in favour of the petitioner, holding that the Civil Surgeon cannot act himself as the District Appropriate Authority as the decision has to be taken by the District Appropriate Authority in which all the three members are to be involved. Since there is no such provision either in the Act or the Rules shown to the Court during the course of hearing in this regard, therefore the letter dated 15.9.2015 by which other two members have delegated the Authority to the Civil Surgeon is erroneous and illegal.

Consequently, the petition is allowed and the order dated 01.5.2015 passed by the Civil Surgeon-cum-District Appropriate Authority is held to be patently illegal and the same is set aside.

**November 02, 2017**  
**manoj**

**(RAKESH KUMAR JAIN )**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No