

CWP No.1386 of 2017

[1]

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

**CWP No.1386 of 2017
Date of decision:07.11.2017**

Anant Ram Janta Hospital, Barwala and another ...Petitioners

Versus

State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sant Lal Barwala, Advocate,
for the petitioners.

Mr. Ashok Muthreja, DAG, Haryana.

Rakesh Kumar Jain, J.

The petitioners have challenged the order dated 04.07.2016 passed by respondent no.3 whereby the registration of Ultrasound Machines Mobile Unit No.57 of the petitioners was cancelled and the same was sealed under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the "Act") and the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as the "Rules") and the order dated 02.09.2016 passed by respondent no.2 in appeal, confirming the order dated 04.07.2016. The petitioners have further prayed for restoration of the registration and de-sealing of ultrasound machines of mobile unit no.57.

In brief, petitioner no.2 is the owner of petitioner no.1 hospital. His Ultrasound Centre installed in the hospital is registered under the Act vide

registration no.18 and his Mobile Ultrasound Machines Unit is registered against registration no.57. At the time of registration, the petitioners furnished affidavits and declaration that they would comply with the provisions of the Act and the Rules. On 27.11.2015, Mobile Medical Unit No.57 of the petitioners was inspected but the owner-cum-operator was not found present and the Manager, namely, Pankaj Mishra was instructed to convey the message to the owner Dr. Anant Ram to get his Mobile Medical Unit inspected within two days but no response was received upto 01.12.2015 and it was found that Dr. Anant Ram was in judicial custody in case FIR No.699 dated 28.06.2015 registered at Police Station City, Hisar. Apprehending that the Mobile Medical Unit may be misused by the petitioners, registration of the same was suspended and it was sealed on 10.12.2015. Petitioner no.2 applied for revoking the order of suspension and de-sealing of the Mobile Medical Unit on 23.12.2015. In pursuance thereof, on 05.01.2016, the team comprising of Dr. Jaya Goyal and Krishan Kumar, DCO, Hisar, visited the premises of Anant Ram Janta Hospital at Barwala. At that time, certain defects were found by the inspecting team, which are reproduced as under:-

- “i. No curative service was available in the mobile van such as
 - * Minor Surgical Procedure and Suturing
 - * Specialist Services, Pediatric Services
- ii. Reproductive and Child Health Services as required under Rule 3(B)(1)(ii)(a to g) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996.
- iii. Family Planning Services as required under Rule 3(B)(1)(iv)(iii)(a,b)
- iv. Diagnostic as required under Rule 3(B)(1)(iv)(a to c)
- v. The Stand alone Mobile Ultrasound Clinic Offering only Prenatal Diagnostic Facilities are Prohibited.”

However, the petitioners, vide letter dated 08.01.2016, informed the respondents that they are using the Mobile Medical Unit for General USG Test especially in emergency cases and during free medical camps in urban slum, rural remote area(s), no-one is charged by them. On 13.01.2016, the petitioners had allegedly informed the respondents that according to Spot Memo, additional medical services are also provided by the petitioners in their mobile unit and the curative and other facilities, as mentioned in Rule 3-B(1)(i to vi) are not mandatory. On 14.01.2016, the registration certificate of mobile unit of the petitioner was suspended by respondent no.3 while exercising its powers under Section 20(2) of the Act, against which the petitioners filed appeal under Rule 19(2) of the Rules, which was decided on 02.05.2016, giving direction to dispose of the matter within 15 days and in pursuance of which, show cause notice under Section 20(1) of the Act was given to the petitioners on 06.06.2016, which was duly replied by them on 16.06.2016 and a meeting of the DAC was held and after discussion, the registration number of Mobile Medical Unit No.57 of the petitioners was cancelled, which was further challenged by the petitioners by way of an appeal but the same was dismissed on 02.09.2016.

Learned counsel for the petitioners has submitted that the inspection dated 05.01.2016 was not done in accordance with law. The respondent-authorities failed to appreciate that the impugned orders were not passed as per the inspection report and the State Appellate Authority has failed to appreciate that Mobile Medical Unit of the petitioners was never used against the provisions of the Act. It is further submitted that the respondents have failed to appreciate that Barwala is a rural area.

On the other hand, counsel for the respondents has argued that as per Rule 3-B(1)(b) and Rule 3-B(2)(a) of the Rules, a mobile genetic clinic shall operate and offer pre-natal diagnostic techniques, only as a part of a mobile medical unit offering a bouquet of other health and medical services, in urban slums or rural or remote or hilly or hard to reach areas for improved access to health care services by under-served population but the petitioner is using his Mobile Medical Unit between Barwala and Hisar and most of the times, it was found standing adjacent to the Anant Ram Janta Hospital at Barwala, which fact has been reflected from the log book of the said van and, thus, use of the said Mobile Medical Unit was in violation of the Rules because Barwala or Hisar do not fall in the category of remote, hilly or hard to reach areas where it is difficult for the public to access for health care services. Moreover, the parked van adjacent to Anant Ram Janta Hospital does not fulfill the basic purpose for which it was registered rather it creates a doubt about its misappropriation. It is further argued that the allegation of the petitioners that Rule 3-B(2)(a) is not applicable to their case is totally wrong as Rule (2)(g) clearly states that the Mobile Medical Unit means a Mobile Vehicle which provides specialized facilities for the patient requiring basic specialist services and provides improved access to health care facilities and equitable distribution of health services at the door steps, across the country, especially in under-served areas and Rule 2(h) clearly states that a Mobile Genetic Clinic means a Mobile Medical Unit where ultrasound machine, imaging machine or scanner or other equipments of determining sex of the foetus or a portable equipment which has the potential for detecting sex during pregnancy or selection of sex before conception is used. It is also argued that Mobile Medical Unit of the

petitioner was not serving any of the purposes, as required under the provisions of the Act or the Rules.

It is also argued that from perusal of the USG OPD register of Mobile Medical Unit of the petitioners, it clearly transpired that the petitioners conducted Echo of 24 patients in just 3 hours approximately and no other health service was provided on that day, which includes the duration of departure and arrival, diagnosis and maintenance of record etc. and there are so many discrepancies in the record of log book and USG OPD register of the Mobile Medical Unit of the petitioners. For example, the petitioners have shown that one free medical camp was conducted by them at Yog Ashram, adjacent to Anant Ram Janta Hospital, Barwala on 10.04.2015, whereas there is no need to conduct such free medical camp through the Mobile Medical Unit especially when there is already a fixed Ultrasound Centre in Janta Hospital, Barwala bearing registration no.18.

I have heard learned counsel for the parties and examined the available record from their able assistance.

There is no dispute that the petitioners are running a Mobile Medical/Ultrasound Unit, registered under the provisions of the Act and the Rules, for the purpose of carrying out the prescribed tests. The registration of Mobile Medical Unit of the petitioners was valid upto 27.05.2018. Before passing the impugned order dated 04.07.2016, a show cause notice was given to the petitioners and after receiving their reply, their unit was sealed and again an opportunity of hearing was given and after satisfaction, it was de-sealed on 05.01.2016 but again, it was inspected on the same day. The petitioners had informed that they have been using the Mobile Medical Unit for

General USG Test especially in emergency cases and during free medical camps in urban slum, rural remote area(s) and no-one is charged during the camps organized by them. However, the respondent-authorities suspended the registration of Mobile Medical Unit of the petitioners on 14.01.2016, against which the petitioners filed appeal, which was disposed of by the State Appropriate Authority to decide the matter within 15 days. Thereafter, the respondents issued a show cause notice to the petitioners under Section 20(1) of the Act on 06.06.2016, to which reply of the petitioners was received on 13.06.2016 and the petitioners were directed to appear on 16.06.2016 and, thereafter, the impugned order was passed on 14.07.2016. The authorities below had found that the Mobile Medical Unit means a mobile vehicle which provides specialized facility for the patients requiring basic specialist services and provides improved access to healthcare facilities and equitable distribution of health services at the doorsteps, across the country, especially in the under-served areas but from the facts and circumstances, it has been found that the Mobile Medical Unit of the petitioners was not used for the purpose for which it was registered. It has been found that Mobile Medical Unit of the petitioners was being operated in the AMC Hospital, Hisar, in which other ultrasound centre of the petitioners are already in operation and, therefore, it was not being used by them in the urban slums or rural or remote or hilly or hard to reach areas as they have been found using the same next to their hospital, where their other Ultrasound Centre was already registered and in operation and hence, they were found guilty of violation of Rule 3-B(1)(b) and Rule 3-B(2)(a) of the Rules.

Thus, no error has been found in the impugned orders as the

petitioners have been remiss in discharge of their legal duties as the Mobile Medical Unit was required to be operated only in urban slums or rural or remote or hilly or hard to reach areas for improved access to health care services by under-served populations in terms of Rules 3-B(1)(b) and 3-B(2)(a) of the Rules, whereas the petitioners in this case were found using their Mobile Medical Unit with portable machines next to their hospital(s) where their other Ultrasound Centre(s) were already operative. The decision has been taken by the respondents after taking into consideration log book of the Mobile Medical Unit and other attending circumstances.

Thus, in my considered opinion, there is hardly any reason to interfere in the present petition in order to set aside the impugned orders.

Consequently, the present petition is hereby dismissed being denuded of any merit, though without any order as to costs.

November 07, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No