

CWP No.14280 of 2017

[1]

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

CWP No.14280 of 2017
Date of decision:07.11.2017

Dr. Sanjiv Kaushal

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Mr. Ashok Muthreja, DAG, Haryana.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 14.10.2016 passed by respondent no.2, by which his application, filed under Rule 8 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as the "Rules"), for renewal of registration of his Ultrasound Clinic has been rejected in terms of Rule 18-A(4)(ii) of the Rules.

In brief, the petitioner is running a diagnostic centre at Sirsa under the name and style of City Diagnostic Centre, which was initially registered with respondent no.2 vide registration No.USSRS-02 dated 12.09.2001. The registration of the said centre was renewed from time to time but the same has lapsed on 11.09.2016. It is alleged by the petitioner that he was on vacation with his family from 03.11.201 to 18.11.2015. However, on 19.11.2015, a team from the office of the Civil Surgeon-cum-District Appropriate Authority, Sirsa (hereinafter referred to as the "DAA"), along with SI Indraj Singh, visited

his diagnostic centre and asked the petitioner to produce the PNDT register, OPD register and F-forms pertaining to the month of November 2015 and took away the aforesaid registers with them after preparing a spot memo. The said team again visited his diagnostic centre on 20.11.2015 and sealed all the four ultrasound machines of the petitioner and, thereafter, registration of the petitioner was suspended on 25.11.2015 on the allegations that ultrasound machines of the petitioner were being used by some unauthorized person, in connivance with him, while he was away for vacation and on the basis of which FIR No.870 dated 25.11.2015, under Sections 3, 4, 5, 6, 23 & 29 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the "Act") Rules 9 & 18 of the Rules and Sections 420, 468, 471, 474, 120-B of the IPC was registered at Police Station City, Sirsa. The petitioner challenged the registration of FIR against him by way of CRM-M-10426-2016, in which filing of the report under Section 173 Cr.P.C. was stayed. It is further alleged that while the FIR was stayed, respondent no.3 filed a complaint against the petitioner and another bearing Complaint No.160 titled as "Dr. Suraj Bhan Kamboj vs. Dr. Sanjiv Kaushal and another", in which the petitioner was summoned on 17.09.2016. These proceedings were also challenged by the petitioner by way of CRM-M-6362-2017 and proceedings therein were stayed by this Court on 07.03.2017.

It is submitted that in the meantime, since registration of the diagnostic centre of the petitioner expired on 11.09.2016, therefore, the petitioner applied for the renewal of registration vide application dated 12.08.2016, which was rejected vide impugned order dated 14.10.2016.

Counsel for the petitioner has submitted that the order of rejection is totally illegal as Rule 18-A(4)(ii) does not apply while entertaining the application under Rule 8 of the Rules. In this regard, he has referred to two decisions of the Bombay High Court rendered in the cases of **Maharashtra State Branch of Iria Msbiria, Mumbai vs. Union of India**, Writ Petition No.4478 of 2015, decided on 05.05.2015 and **Dr. Sudhir vs. The State of Maharashtra and another**, Writ Petition No.6979 of 2015, decided on 13.08.2015 and a Division Bench judgment of this Court rendered in the case of **Dr. Kanwal Raj vs. Union of India and others**, CWP No.2400 of 2017, decided on 27.02.2017.

On the other hand, learned counsel for the respondents has submitted that on 19.11.2015, since the then Chairman of the DAA got a secret information that diagnostic centre of the petitioner has made gross violations of the provisions of the Act and the Rules, therefore, the Chairman of the DAA formed a team consisting of Dr. Viresh DCMO and Dr. Raj Kumar DCMO and authorized them to get help of the local police, if needed. The said team, along with SI Indraj Singh, raided diagnostic centre of the petitioner on 19.11.2015 and inspected F-forms from F-48 to F-76. Those forms were belonging to the pregnant women whose ultrasound were conducted by the petitioner from 04.11.2015 to 09.11.2015. The petitioner disclosed that he was present in his diagnostic centre during that period and the tests were conducted by him. Thereafter, mobile location of the petitioner was traced and it was found that he was present in West Bengal from 04.11.2015 to 09.11.2015, which shows that he was not present in Sirsa and even in his diagnostic centre, therefore, the FIR was lodged and during investigation, the petitioner admitted that he was not

present in his diagnostic centre during the said period as he along with his wife had gone to West Bengal to spend vacations. Meaning thereby, during the said period, the petitioner was in West Bengal and in his absence, USG machines installed at his diagnostic centre were used by some unauthorized and untrained person in collusion with the petitioner and, thus, the petitioner had manipulated and fabricated the false record in the shape of F-forms, PNDT registers etc. as all these documents bear his signatures, which amounts to grave violation of the Act and the Rules and lateron, in order to avoid such practice in future by the petitioner, the DAA sealed the ultrasound machines of his diagnostic centre and the application moved by the petitioner to de-seal his machines was dismissed by the Court of Shri Sachin Tyagi, JMIC, Sirsa, on 21.01.2017.

It is further submitted that since the impugned order passed by the DAA is amenable to appeal under Rule 19(2) of the Rules and, therefore, the present petition is not maintainable in view of the statutory remedy of appeal available to the petitioner.

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

In order to appreciate the rival contentions, it would be relevant to refer to Rules 8, 18-A(4)(ii) and 19 of the Rules, which are reproduced as under:-

“8. Renewal of registration.-- (1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. Acknowledgment of receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub-rule (2) of Rule 4.

- (2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the Advisory Committee in this behalf, renew the certificate of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of registration earlier granted.
- (3) 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 these 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.
- (4) The fees payable for renewal of certificate of registration shall be one-half of the fees provided in sub-rule (1) of Rule 5.
- (5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication or rejection of application for renewal, both copies of the earlier certificate of registration shall be surrendered immediately to the Appropriate Authority by the Genetic Conselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Cliic or Imaging Centres.
- (6) In the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed.

“18-A. Code of Conduct to be observed by Appropriate Authorities.--

- (1) to (3) xxx xxx xxx xxx
- (4) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following conduct for registration and renewal of applications under the Act, namely--
- (i) xxx xxx xxx xxx
- (ii) ensure that no application for fresh registration or renewal

of registration is accepted if any case is pending in any court against the applicant for violation of any provision of the Act and the rules made thereunder.”

“19. Appeals.-- (1) Anybody aggrieved by the decision of the Appropriate Authority at sub-district level may appeal to the Appropriate Authority at district level within 30 days of the order of the sub-district level Appropriate Authority.

(2) Anybody aggrieved by the decision of the Appropriate Authority at district level may appeal to the Appropriate Authority at State/UT level within 30 days of the order of the district-level Appropriate Authority.

(3) Each appeal shall be disposed of by the District Appropriate Authority or by the State/Union Territory Appropriate Authority, as the case may be, within 60 days of its receipt.

(4) If an appeal is not made within the time as prescribed under sub-rule (1), (2) or (3), the Appropriate Authority under that sub-rule may condone the delay in case he/she is satisfied that appellant was prevented for sufficient cause from making such appeal.”

There is no dispute that FIR No.870 dated 25.11.2015 (Annexure P-1) and a Criminal Complaint No.160 titled as “Dr. Suraj Bhan Kamboj vs. Dr. Sanjiv Kaushal and another” are pending against the petitioner and filing of the report under Section 173 Cr.P.C. in the FIR case and the proceedings in the Criminal Complaint case have been stayed by this Court. There is also no dispute that registration certificate of the diagnostic centre of the petitioner had expired on 11.09.2016, the petitioner had applied for renewal of the registration certificate on 12.08.2016 and the said application for renewal of registration has been rejected by the impugned order dated 14.10.2016 by the DAA in view of the Rule 18-A(4)(ii) of the Rules.

The Appropriate Authority is defined under Section 2(a) of the Act, which means the Appropriate Authority appointed under Section 17 of the Act. Section 17 of the Act empowers the Central Government or the State

Government to appoint one or more Appropriate Authorities for each of the Union Territories and for the whole or part of the State, which includes the District Appropriate Authority. The Genetic Counselling Centre, Genetic Clinic and the Genetic Laboratory, as defined under Sections 2(c), (d) and (e) of the Act, can be run only after a certificate of registration is granted by the Appropriate Authority. Rule 8 provides for renewal of the registration certificate, for which application has to be filed 30 days before the date of expiry of the certificate of registration. Rule 18-A(4)(ii) of the Rules says that the application for renewal of registration is not to be accepted if any case is pending in any court against the applicant for violation of any provision of the Act and the Rules made thereunder. Rule 19 further provides that if the application is not entertained by the District Appropriate Authority by passing an order, then the said order is open to challenge by way of an appeal.

In this case, the application of the petitioner for renewal of registration has been declined in terms of the provisions of Rule 18-A(4)(ii) of the Rules by the District Appropriate Authority.

Learned counsel for the petitioner has basically relied upon two decisions of the Bombay High Court in **Maharashtra State Branch of Iria Msbiria's case (supra)** and **Dr. Sudhir's case (supra)** to contend that Rule 18-A(4)(ii) of the Rules would not be a hurdle for the District Appropriate Authority for the purpose of considering the application under Rule 8 of the Rules for renewal of registration.

Although learned counsel for the petitioner has mentioned in para no.19 of the petition that he does not have any alternative equal efficacious remedy either under the Act or otherwise as the matter pertains to the issuance

of a direction to the respondents for renewal of registration certificate of the Ultrasound Clinic of the petitioner, without taking into consideration the embargo contained in Rule 18-A(4)(ii) of the Act in view of the settled position, which cannot be considered by the Appellate Authority but the question would be as to whether the State Appellate Authority would not be in a position to consider the law laid down by this Court while considering the validity of the impugned order dated 14.10.2016 passed by the District Appropriate Authority.

The purpose for enactment of the Act was to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto and in order to achieve the said purpose, the Parliament has enacted the Act and the Rules were framed in terms of Section 32 of the Act.

There is a total procedure provided in the Rules itself that in case any decision is taken by the sub-district level Appropriate Authority, then the aggrieved person can approach the District Appropriate Authority in appeal and in case any decision is taken by the District Appropriate Authority, then the aggrieved person can approach the State Appropriate Authority. It is also provided that in case such appeal is filed, then endeavour shall be made to decide the appeal within the prescribed period. It is also provided that in case the appeal is not filed within the prescribed period, then the application for

condonation of delay in appeal can be filed.

Thus, I am not in agreement with the contention of the petitioner that this Court should entertain the writ petition on the ground that the State Appropriate Authority cannot appreciate the law while deciding the appeal.

Consequently, I am of the considered opinion that once there is a statutory remedy of appeal provided under the Act or the Rules, it has to be first exhausted by the aggrieved person before invoking the extraordinary writ jurisdiction of this Court provided under Article 226/227 of the Constitution of India, otherwise the statutory remedy provided under the Act or the Rules would become redundant and defeat the very purpose of its availability in the Act or the Rules.

In view thereof, the present petition is hereby dismissed as not maintainable. However, the petitioner is at liberty to approach the State Appropriate Authority against the order passed by the District Appropriate Authority in terms of the remedy available to him under Rule 19(2) of the Rules. In case the petitioner chooses to file appeal before the State Appropriate Authority, coupled with an application for condonation of delay in terms of Rule 19(4) of the Rules, the same shall be considered sympathetically by the State Appropriate Authority and try to hear the appeal on merits and shall decide the issue involved, in accordance with law.

November 07, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No