

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 25712 of 2016 (O&M)
Date of decision: 20.1.2017

Kanwal Raj

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Abhishek Sethi, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. Advocate General, Haryana.
Mr. Arun Gosain, Advocate for respondent No. 4.

...

Rajesh Bindal J.

In the present petition, the petitioner has challenged the vires of Rule 3(3)(3) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short, 'the Rules'). Further prayer is for quashing the communication dated 6.12.2016 (Annexure P-9), vide which the application filed by the petitioner for renewal of his certificate of registration has been rejected.

Learned counsel for the petitioner submitted that he may be permitted to withdraw the present petition with reference to challenge to the vires of Rule 3(3)(3) of the Rules with liberty to file a fresh one for the same

relief independently.

As regards challenge to the communication dated 6.12.2016 is concerned, the submission is that the application filed by the petitioner was returned by the authority to the petitioner in terms of Rule 18-A(4)(ii) of the Rules, without considering the same on merits after affording opportunity of hearing to the petitioner. In fact, the stand taken by the Assistant Solicitor General of India appearing before Bombay High Court in Writ Petition No. 4478 of 2015—Maharashtra State Branch of IRIA MSBIRIA, Mumbai v. Union of India and others was that pendency of a criminal case will not debar any applicant to file the application for renewal, as it is obligatory on any appropriate authority to receive the application for registration. The applications so received are to be considered in accordance with Rule 8(3) of the Rules after enquiry and affording opportunity of hearing to the applicant. If the application is to be rejected, the reasons have to be recorded in writing and communicated to the applicant in form 'C'.

As far as the first prayer made by the petitioner regarding withdrawal of the writ petition with liberty to file a fresh one challenging the vires of Rule 3(3)(3) of the Rules, in case the petitioner has any grievance, learned counsel for the respondents does not have any objection.

As far as second prayer is concerned, as is evident from the impugned communication, the application filed by the petitioner was returned back to him in original opining that there being a case pending against the petitioner, the registration cannot be done. No opportunity of hearing was afforded to the petitioner.

After hearing learned counsel for the parties, the petitioner is permitted to withdraw the writ petition qua challenge to the vires of Rule 3

(3)(3) of the Rules with liberty to file a fresh one for the same relief, if so advised. In our opinion, the communication dated 6.12.2016 (Annexure P-9) deserves to be quashed. It is undisputed that the application filed by the petitioner was not entertained and no opportunity of hearing was granted to him before returning the application in original to him. Ordered accordingly. The petitioner shall be at liberty to re-submit the application, which shall be dealt with by the competent authority in terms of the provisions of the Rules after affording opportunity of hearing to the petitioner and having advice of the Advisory Committee. In case the petitioner fulfils the requirements, registration shall be granted to him, whereas in case the registration is not to be granted, the reasons shall be communicated to him in writing, as provided for under the Rules. As and when the application is filed by the petitioner, the same shall be finally decided by the competent authority within two weeks.

The petition stands disposed of, accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

20.1.2017
mk

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No