

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

CWP No.2400 of 2017 (O&M)

Date of decision: 27.2.2017

Dr. Kanwal Raj

.. Petitioner

vs

Union of India 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. Arun Gosain, Advocate, for respondent No.1.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Rajesh Bindal, J.

The petitioner has challenged the vires of Rule 18-A (4) (ii) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short 'the Rules') and the order dated 3.2.2017 (Annexure P-9) passed by the Chairman, Appropriate Authority-cum-Civil Surgeon, Jhajjar rejecting the application filed by the petitioner for renewal of certificate of registration under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'the Act').

Learned counsel for the petitioner submitted that in challenge to the Rule 18-A(4)(ii) of the Rules in Bombay High Court, learned Assistant Solicitor General stated the aforesaid Rule shall not be construed as a prohibition on the appropriate authority to receive application for renewal or fresh registration. The same has to be received and processed in accordance with the aforesaid Rules. Bombay High Court further opined that it shall be open for the appropriate authority to receive and decide the application for renewal or grant of registration without impeded by Rule 18-

A(4)(ii) of the Rules. The aforesaid order was passed in Writ Petition No. 4478 of 2015 titled as Maharashtra State Branch of Iria Msbiria, Mumbai vs. Union of India and others, decided on 5.5.2015. Subsequently in Writ Petition No.6979 of 2015 – Dr. Sudhir vs. The State of Maharashtra and another impugning the rejection of renewal of registration, Bombay High Court vide order dated 13.8.2015, set aside the order refusing renewal of registration and further observed that mere pendency of criminal case or lodging of FIR may not constitute a ground for refusal to renew registration certificate. In the light of the aforesaid orders and the stand taken by the Assistant Solicitor General before Bombay High Court, the ground on which the application for renewal has been rejected, cannot be sustained.

Learned counsel for the State submitted that no doubt in the order passed, the ground mentioned is pendency of criminal case and in terms of Rule 18-A(4)(ii) of the Rules. In fact, matter was considered by the District Advisory Committee and there is other material with the authorities in terms of which, the petitioner does not satisfy the conditions laid down in the Rules for renewal of his registration, even if Rule 18-A(4)(ii) of the Rules is ignored. He further submitted that the competent authority shall pass a fresh order after hearing the petitioner, even ignoring the requirement of Rule 18-A(4)(ii) of the Rules as has been observed by the Bombay High Court. The needful shall be done within 10 days. He further submitted that in terms of Rule 19 of the Rules, the petitioner has remedy of appeal against the order passed by the appropriate authority rejecting the application for renewal. The petitioner shall be at liberty to avail of that.

After hearing learned counsel for the parties, leaving the issue regarding vires of Rule 18-A(4)(ii) of the Rules open, the matter is remitted back to the District Appropriate Authority to reconsider the application filed by the petitioner for renewal of his registration under the Act, in terms of the stand taken by the Assistant Solicitor General before Bombay High Court in Maharashtra State Branch of Iria Msbiria's case (supra) and the order passed in Dr. Sudhir's case (supra). The order dated 3.2.2017 (Annexure P-9) is accordingly set aside. Needful shall be done within a period of 10 days.

The material, which is sought to be relied upon by the District Appropriate Authority for considering the application of the petitioner, shall be confronted to the petitioner on or before 3.3.2017. Personal hearing shall be afforded to him on 6.3.2017. The application shall be finally decided on or before 9.3.2017.

The petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

27.2.2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No