

118

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

**CWP-4069-2017**

**Date of decision : 01.03.2017**

Anant Ram Janta Hospital, Barwala

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Abhishek Sethi, Advocate  
for the petitioner.

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**AMIT RAWAL, J. (ORAL)**

The grievances of the petitioner in the present writ petition is against the suspension of the registration granted for using of the ultrasound machines and other scanning machines for the purpose of determining the various diseases on recommendations of the specialists. The appropriate authority, vide order dated 18.05.2016 (Annexure P-2), in pursuance to the provisions of Section 17 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection), Act, 1994 (for short 'the 1994 Act'), has suspended the registration.

Learned counsel for the petitioner submits that in pursuance to the aforementioned raid, an FIR bearing No.99 dated 05.05.2016 has been registered under Sections 3-A, 4(3), 5, 6 and Rule 9 (4) of the 1994 Act, for which, the petitioner has already availed the remedy by filing the CRM-M bearing No.37161 of 2016, which is stated to be pending for 06.03.2017.

He further submits that the suspension orders dated 18.05.2016 & 19.09.2016 (Annexures P-2 & P-3, respectively), remedy of appeal being availed, are erroneous and could not have been passed, for, the hard-disk contained in the CCTV Camera i.e. recorded by the DVR and installed in the ultrasound machine have been sent to the Forensic, which is not the scope and jurisdiction of the aforementioned authorities. He submits that the appropriate authority has invoked the provisions of Sub-Section 3 of Section 20 of the 1994 Act and against the same, the petitioner has already availed the remedy of appeal.

He further submits that there is no other procedure prescribed under the aforementioned Act, except under sub-Section 2 of Section 23 of the 1994 Act which prescribes only for suspension of the registration with the MCI. All these points have been raised, but not looked into, thus, the orders under challenge are liable to be set aside.

I have heard the learned counsel for the petitioner and appraised the paper book.

For the purpose of appreciating the contentions of Mr. Abhishek Sethi, learned counsel appearing on behalf of the petitioner, it would be apt to reproduce the provisions of Sections 17, 17-A, 20 & 23 of the 1994 Act which read as under:-

**"17. Appropriate Authority and Advisory Committee.-**

*(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.*

*(2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act*

*having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.*

*(3) The officers appointed as Appropriate Authorities under sub- section (1) or sub-section (2) shall be,--*

*(a) when appointed for the whole of the State or the Union territory, consisting of the following three members -*

*(i) an officer or above the rank of the Joint Director of Health and Family Welfare – Chairperson-*

*(ii) an eminent woman representing women's organization; and*

*(iii) an officer of Law Department of the State or the Union Territory concerned:*

*Provided that it shall be the duty of the State or the Union Territory concerned to constitute multi-member State or Union Territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:*

*Provided further that any vacancy occurring therein shall be filled within three months of the occurrence,*

*(b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.*

*(4) The Appropriate Authority shall have the following functions, namely:--*

*(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;*

*(b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic*

*Clinic;*

*(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action; and*

*(d) to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration.*

*(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;*

*(f) to create public awareness against the practice of sex selection or pre-natal determination of sex;*

*(g) to supervise the implementation of the provision of the Act and rules;*

*(h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;*

*(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.*

*(5) The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.*

*(6) The Advisory Committee shall consist of—*

*(a) three medical experts from amongst gynaecologists, obstericians, paediatricians and medical geneticists;*

*(b) one legal expert;*

*(c) one officer to represent the department dealing with information and publicity of the State Government or the*

*Union territory, as the case may be;*

*(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.*

*(7) No person who, in the opinion of the Central Government or the State Government, as the case may be, has been associated with the use or promotion of pre-natal diagnostic technique for determination of sex shall be appointed as a member of the Advisory Committee.*

*(8) The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon: Provided that the period intervening between any two meetings shall not exceed the prescribed period.*

*(9) The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed.*

**17-A. Powers of Appropriate Authorities.**—*The Appropriate Authority shall have the powers in respect of the following matters, namely:—*

*(a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;*

*(b) production of any document or material object relating to clause (a);*

*(c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and*

*(d) any other matter which may be prescribed.*

**20. Cancellation or suspension of registration.-**

*(1) The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its*

*registration should not be suspended or cancelled for the reasons mentioned in the notice.*

*(2) If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.*

*(3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is, of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).*

**23. Offences and penalties.-** *(1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.*

*(2) The name of the registered medical practitioner who has been convicted by the court under subsection (1), shall be*

*reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.*

*(3) Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or of a medical geneticist, gynaecologist or registered medical practitioner for conducting prenatal diagnostic techniques on any pregnant woman (including such woman unless she was compelled to undergo such diagnostic techniques) for purposes other than those specified in clause (2) of section 4, shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for first offence and for any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.*

*(4) For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection."*

I am in agreement with the submissions of Mr. Abhishek Sethi, learned counsel appearing on behalf of the petitioner with regard to the provisions of sub-Section 2 of Section 23 of the 1994 Act, which only deals with the suspension of the registration with the MCI. The orders assailed under herein, are only the order of suspension, but there is no order of cancellation of the registration.

Since the appropriate authority has initiated the action for suspension of the registration under sub-Section 3 of Section 20 of the 1994 Act, it would be within the domain of the petitioner to urge/challenge the alleged

suspension and accordingly, I deem it appropriate to direct the appropriate authority to afford an opportunity of hearing to the petitioner under the provisions of Section 20 of the 1994 Act with regard to the alleged suspension of the registration and pass an order thereon.

Let this exercise be done within a period of 30 days from the date of the receipt of the certified copy of this order.

The appropriate authority shall decide the matter uninfluenced with the findings rendered by the Appellate Authority qua suspension of the registration as the provisions of Section 20 of the 1994 Act envisage two situation (i) cancellation; and (ii) suspension.

With the aforesaid observations, the present writ petition stands disposed of.

01.03.2017  
Yogesh Sharma

( AMIT RAWAL)  
JUDGE

|                           |         |
|---------------------------|---------|
|                           | ✓       |
| Whether speaking/reasoned | Yes/ No |
|                           | ✓       |
| Whether Reportable        | Yes/ No |