

CWP No.6897 of 2017

[1]

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

**CWP No.6897 of 2017
Date of decision:07.11.2017**

Dr. Anant Ram Janta Hospital, Barwala ...Petitioner

Versus

State of Haryana and another ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Mr. Ashok Muthreja, DAG, Haryana.

Rakesh Kumar Jain, J.

The petitioner has prayed for a writ in the nature of *certiorari* for quashing the order dated 04.12.2015 (Annexure P-7) passed by the Civil Surgeon, Hisar (respondent no.2 herein) by which the approval certificate issued to the petitioner in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the "Act") has been suspended in terms of Rule 7 of the Medical Termination of Pregnancy Rules, 2003 (hereinafter referred to as the "Rules").

In brief, the petitioner is the owner of Dr. Anant Ram Janta Hospital, Barwala. The Medical Termination of Pregnancy Centre (MTP Centre) of the petitioner was registered under the Act vide registration No.FW-Steno-2002/469 dated 17.06.2002. It was inspected by the officials of respondent no.2 and some record of Ultrasound Centre was taken into possession by them. The ultrasound machine of the petitioner was sealed on

10.12.2015. It is alleged that at the time of personal hearing, afforded on 31.12.2015 in respect of the sealing of Ultrasound Centre, the petitioner received a letter dated 04.12.2015 informing him that registration certificate of his MTP Centre has been suspended on the ground of pendency of a criminal case against him. After receiving the order dated 04.12.2015, the petitioner made a representation in terms of Rule 7(2) of the Rules on 13.01.2016, which was rejected by respondent no.2 on 18.06.2016 but in the meantime, the petitioner had also filed a review application to the Government under Rule 8 of the Rules, which is allegedly not decided so far.

In the reply filed on behalf of both the respondents, it is averred that the approval of MTP centre of the petitioner has been suspended on account of pendency of a criminal case against the petitioner registered vide FIR No.699 dated 28.06.2015, under Sections 3, 3A & 6, 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Section 5(4) of the Act and 315/420/417/120-B IPC, at Police Station City, Hisar on the allegation that pre-conception and pre-natal diagnostic tests were being conducted at the hospital of the petitioner and one lady, namely, Deepika Sharma, was also got aborted in his hospital, without maintaining the record of abortion. The respondents have, however, admitted that the petitioner had filed the review application in terms of Rule 8 of the Rules, which is pending and has not been decided by the Competent Authority so far.

Learned counsel for the petitioner has argued that the approval granted to the petitioner for running the MTP centre vide Registration No.FW-Steno-2002/469 dated 17.06.2002 cannot be suspended because of pendency of

a criminal case as the suspension order could only be passed under Rule 7 of the Rules for non-compliance of the provisions of Rule 5 of the Rules. It is further submitted that the petitioner had also availed its remedy of filing the review application to the Government in terms of Rule 8 of the Rules but the said review application has not been decided so far, one way or the other, and the order regarding suspension of MTP centre of the petitioner has been maintained.

I have heard learned counsel for the parties and examined the available record.

In order to appreciate the arguments raised by learned counsel for the parties, it would be relevant to refer to certain provisions of the Act and the Rules, which are reproduced as under:-

Sections 4 and 5 of the Act

“4. Place where pregnancy may be terminated.-- No termination of pregnancy shall be made in accordance with this Act at any place other than--

- (a) a hospital established or maintained by Government, or
- (b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

5. Sections 3 and 4 when not to apply.-- (1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the

life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in Section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.-- For the purposes of this section, the expression “owner” in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.- For the purposes of this section, so much of the provisions of clause (d) of Section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynecology and obstetrics shall not apply.”

Rules 5, 6, 7 and 8 of the Rules

5. Approval of a place, - (1) No place shall be approved under clause (b) of section 4,--

- (i) unless the Government is satisfied that termination of pregnancies may be done therein under safe and hygienic conditions; and
- (ii) unless the following facilities are provided therein, namely:-

in case of first trimester, that is, up to 12 weeks of pregnancy:-

a gynecology examination/labour table, resuscitation and sterilization equipment drugs and parenteral fluid, back up facilities for treatment of shock and facilities for transportation; and

in case of second trimester, that is up to 20 weeks of pregnancy:-

- (a) an operation table and instruments for performing abdominal or gynecological surgery;
- (b) anesthetic equipment, resuscitation equipment and sterilization equipment;
- (c) drugs and parenteral fluids for emergency use, notified by Government of India from time to time.

Explanation:- In the case of termination of early pregnancy up to seven weeks using RU-486 with Misoprostol, the same may be prescribed by a Registered Medical Practitioner (RMP) as defined under clause (d) of section 2 of the Act and Rule 4 of MTP Rules, at his clinic provided such a Registered Medical Practitioner has access to a place approved under Section 4 of the MTP Act, 1971 read with MTP amendment Act, 2002 and Rules 5 of the MTP Rules. For the purpose of access the RMP should display a Certificate to this effect from the owner of the approved place.

(2) Every application for the approval of a place shall be in Form A and shall be addressed to the Chief Medical Officer of the District.

(3) On receipt of an application under sub-rule (2), the Chief Medical Officer of the District may verify any information contained, in any such application or inspect any such place with a view to satisfying himself that the facilities referred to in sub-rule (1) are provided, and that 19 termination or pregnancies may be made under safe and hygienic conditions.

(4) Every owner of the place which is inspected by the Chief Medical Officer of the District shall afford all reasonable facilities for the inspection of the place.

(5) The Chief Medical Officer of the District may, if he is satisfied after such verification, enquiry or inspection, as may be considered necessary, that termination of pregnancies may be done under safe and hygienic conditions, at the place, recommend the approval of such place to the Committee.

(6) The Committee, may after considering the application and the recommendations of the Chief Medical Officer of the District approve such place and issue a certificate of approval in Form B.

(7) The certificate of approval issued by the Committee shall be conspicuously displaced at the place to be visible to persons

visiting the place.

(8) The place shall be inspected within 2 months of receiving the application and certificate of approval may be issued within the next 2 months, or in case any deficiency has been noted, within 2 months of the deficiency having been rectified by the applicant.

(9) On the commencement of these rules, a place approved in accordance with the Medical Termination of Pregnancy Rules 1975 shall be deemed to have been approved under these rules.

6. Inspection of a place.-- (1) A place approved under rule 5 may be inspected by the Chief Medical Officer of the District, as often as may be necessary with a view to verify whether termination of pregnancies is being done therein under safe and hygienic conditions.

(2) If the Chief Medical Officer has reason to believe that there has been death of, or injury to, a pregnant woman at the place or that termination of pregnancies is not being done at the place under safe and hygienic conditions, he may call for any information or may seize any article, medicine, ampoule, admission register or other document, maintained, kept or found at the place.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to seizure, so far as it may, apply to seizure made under sub-rule (2).

7. Cancellation or suspension of certificate of approval.--

(1) If, after inspection of any place approved under rule 5, the Chief Medical Officer of the District is satisfied that the facilities specified in rule 5 are not being properly maintained therein and the termination of pregnancy at such place cannot be made under safe and hygienic conditions, he shall make a report of the fact to the Committee giving the detail of the deficiency or defects found at the place and the committee may, if it is satisfied, suspended or, cancel the approval provided that the committee shall give an opportunity of making representation to the owner of the place before the certificate issued under rule 5 is cancelled.

(2) Where a certificate issued under rule 5 is cancelled, the owner of the place may make such additions or improvements in the place and thereafter, he may make an application to the Committee for grant of approval under Rule 5.

(3) In the event of suspension of a certificate, or approval, the

place shall not be deemed to be an approved place during the suspension for the purposes of termination of pregnancy from the date of communication of the order of such suspension.

8. Review:- (1) The owner of a place, who is aggrieved by an order made under rule 7, may make an application for review of the order to the Government within a period of sixty days from the date of such order:

Provided that the Government may condone any delay in case it is satisfied that applicant was prevented by sufficient cause to make application within time.

(2) The Government may, after giving the owner an opportunity for being heard, confirm, modify or reverse the order.”

As per the scheme of the Act, the termination of pregnancy can be allowed at a place either in the hospital established or maintained by the Government or at a place which is approved for the said purpose by the Government or the District Level Committee. This is so provided in Section 4 of the Act and Section 5(3) of the Act further provides that whoever terminates any pregnancy in a place other than that mentioned in Section 4, shall be punished with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Rule 5 of the Rules deals with the procedure for grant of approval in terms of Section 4(b) of the Act, which basically refers to the facilities to be provided at the time of termination of up to 12 weeks and 20 weeks of pregnancy, for which powers have been conferred upon the Chief Medical Officer of the District to inspect the said place.

Rule 6 further provides that if the Chief Medical Officer of the District has a reason to believe that some death or injury has been caused to the pregnant woman at the said place or that termination of pregnancies is not being done at the place under safe and hygienic conditions, then he may call

for any information or may seize any article, medicine, ampoule, admission register or other document, maintained, kept or found at the said place.

Rule 7 provides that after the inspection is conducted at a place approved under Rule 5, if the Chief Medical Officer of the District is satisfied that the facilities specified in Rule 5 are not being properly maintained therein and the termination of pregnancy at such place cannot be made under safe and hygienic conditions, he shall make a report of that fact to the Committee giving the detail of the deficiencies or defects found at the place and the Committee may, if it is satisfied, suspend or cancel the approval, after giving an opportunity of hearing to the owner of the place. Rule 7(2) further provides that if the approval is cancelled, then the owner of the place may make an application/representation to the Committee by improving upon the deficiencies or removing the defects pointed by the Chief Medical Officer for grant of approval.

Rule 8 provides for the review, which power is conferred upon the State government, to whom the owner of the place, if aggrieved against the order of cancellation of approval, may make an application within a period of 60 days from the date of the order, on which the Government, after giving the owner an opportunity of being heard, may confirm, modify or reverse the order of cancellation of approval passed in terms of Rule 7.

The argument of the learned counsel for the petitioner that registration of a criminal case is not a ground provided in Rule 7 of the Rules for the purpose of suspension or cancellation of approval is not required to be commented upon by this Court at this stage when the review application has also been filed by the petitioner, which has not been decided by the State

Government. Once the petitioner has availed the remedy of review, which is a statutory remedy under the Rules, the Competent Authority, to whom the review application has been filed, is obliged to take a decision on the said review application, one way or the other, while taking into consideration the facts and circumstances of the case presented before it and cannot sit over the said review application to the detriment of the interest of the petitioner.

In view thereof, the present petition is hereby disposed of with a direction to the Competent Authority, who is seized of the review application (Annexure P-8) filed by the petitioner in terms of Rule 8 of the Rules, to decide the same in accordance with law as early as possible, preferably within a period of one month from the date of receipt of certified copy of this order, after affording an opportunity of hearing to the petitioner in terms of Rule 8(2) of the Rules. The Competent Authority shall serve a notice of hearing to the petitioner immediately after receiving the certified copy of this order and shall then decide the review application by passing a speaking order.

November 07, 2017
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(Rakesh Kumar Jain)
Judge

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