

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

CWP No. 7690 of 2017 (O&M)

Date of decision : 26.5.2017

Dr. Neelam Mittal

.. Petitioner

versus

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 Union of India.
 Mr. Ankur Mittal, Additional Advocate General, Haryana.

Rajesh Bindal, J.

The petitioner has approached this Court challenging 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'). Further prayer has been made for quashing of order dated 22.3.2017 passed by the District Appropriate Authority refusing the renewal of registration of the petitioner's Ultrasound Centre.

Learned counsel for the petitioner submitted that the petitioner is practising as a Doctor in district Kurukshetra. She purchased an ultrasound machine on 17.1.2006, for which registration was got done. Vide notification dated 28.1.2015, certain amendments were made in the Rules, interalia, adding Rule 18-A(4)(ii) in the Rules. Vires of the aforesaid Rule was challenged before the Bombay High Court, wherein learned Assistant Solicitor General appearing for Union of India stated that the aforesaid Rule shall not be construed as a total prohibition on the appropriate authority to receive application for renewal or fresh registration. Pendency of criminal

case shall not be a reason to deny renewal of registration.

The registration of Ultrasound Centre was being got renewed by the petitioner from year to year. However, in the year 2016, it escaped notice of the petitioner and the registration expired on 17.1.2016. On 22.5.2016, when it came to the notice of the petitioner, she immediately got a demand draft prepared for getting registration renewed. There had been regular inspection of the clinic of the petitioner and no discrepancy was ever found in maintenance of record. There was no complaint regarding illegal sex determination of foetus. The application for renewal filed by the petitioner was rejected by the District Appropriate Authority vide order dated 20.7.2016 referring to Rules 8 and 18-A(4)(ii) of the Rules. The petitioner preferred appeal before the Appropriate Authority. The same was accepted vide order dated 6.2.2017. The Appropriate Authority while quashing the impugned order remanded the matter back to the District Appropriate Authority. The District Appropriate Authority again vide order dated 22.3.2017 has not only denied renewal of registration, but also opined that no case is made out for grant of fresh registration.

While impugning the aforesaid order, learned counsel for the petitioner submitted that the petitioner was not alone, who inadvertently could not apply for renewal of registration. There were five other hospitals also, as per her knowledge. The period of delay was different in all cases. In those cases, the authorities though did not renew registration already granted but granted fresh registration from the date of issue of certificate. No FIR or complaint was filed against them for alleged violation of provisions of the Pre-conception and Pre-natal Diagnostic Techniques

(Prohibition of Sex Selection) Act, 1994 (for short, 'the Act') and the Rules, whereas the petitioner was discriminated. In her case not only FIR was registered but even renewal was refused and fresh registration was also denied. Learned counsel further submitted that even at the time of inspection, the authorities did not find any violation of provisions of the Act or the Rules with reference to maintenance of record. There was no case of carrying out illegal sex determination of foetus at the Ultrasound Centre of the petitioner. Learned counsel for the petitioner further submitted that for the last one year, the centre of the petitioner is lying closed. Staff engaged is to be paid salaries. No doubt, there is some lapse but the same deserves to be condoned as was done in the case of other ultrasound centres, the lapse being procedural.

On the other hand, learned counsel for the State submitted that denial of renewal of registration of Ultrasound Centre of the petitioner is not on the ground of violation of Rule 18-A(4)(ii) of the Rules. It has merely been referring to in the order. Application filed by the petitioner was entertained and decided on merits. He further submitted that on 8.7.2015, there was inspection of the Ultrasound Centre of the petitioner and it was found that 20 weeks pregnancy was terminated. However, no further action was taken. The explanation of the petitioner was that the foetus was not growing properly. He was fair enough to submit that at the time of inspection carried out on 26.5.2016, no discrepancy as such was found in the centre of the petitioner. He further did not dispute the fact that in other five cases, where there was delay in filing applications for renewal of registration, the authorities had granted them fresh registration. Neither any

FIR was got registered nor any complaint was filed against them. He sought to explain that in these cases period of delay was quite small as compared to the petitioner. He further submitted that against the impugned order passed by the District Appropriate Authority, appeal is maintainable before the Appropriate Authority. Hence, the petition should not be entertained.

Heard learned counsel for the parties and perused the record.

The Act in question has been enacted to ensure that there is no illegal sex determination of foetus with a view to get it aborted or pregnancy terminated. It was for the reason that the sex ratio was declining rapidly. The authorities have been given wide powers under the Act to ensure its compliance. Certain procedure has been provided in terms of which all the ultrasound centres have to get themselves registered and have to maintain records properly. In the case in hand, the petitioner had set up an Ultrasound Centre and got it registered on 17.1.2006. The registration certificate was got renewed from time to time. It expired on 17.1.2016. The petitioner inadvertently forgot to get the same renewed. When it came to her notice, she got prepared demand draft for filing application for renewal, however, before the needful could be done, the premises was inspected. No discrepancy as such was found in the record nor any illegal sex determination of foetus was found. However, the default remained regarding the centre being run without registration for some time. The petitioner's was not an isolated case, there were five other centres where the doctors concerned for different reasons could not apply for renewal of their registration well in time. They filed applications for renewal of registration, belatedly. Though renewal was not done but they were granted fresh

registration. Neither any complaint was filed against them nor any FIR was got registered. It was for the reason that they were not found to be violating the provisions of the Act. Otherwise also registration of Ultrasound Centre as such does not give licence to any doctor to determine sex of a foetus but it is for the purpose of better regulation and monitoring by the authorities. However, in the case of the petitioner not only application for renewal of registration was refused, but even FIR was also got lodged. The District Appropriate Authority while refusing renewal of registration of Ultrasound Centre of the petitioner had opined that the petitioner is not even entitled to get fresh registration. It remained undisputed that no violation of the provisions of the Act was found even at the time of inspection or earlier but the petitioner was discriminated for which no apparent reason is available on record.

For the reasons mentioned above, in our opinion, the impugned order passed by the District Appropriate Authority dated 22.3.2017, deserves to be set aside. The petitioner shall be at liberty to file application for fresh registration, which shall be considered and decided by the competent authority expeditiously.

The petition stands disposed of.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

26.5.2017
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No