

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8289 OF 2017

DR. MANGALA DILIP DESHMUKH
Age : 48 years, Occu.: Medical Practice,
R/o.: Radhika Hospital, Mahavir
Society, Shivaji Nagar, Nanded. ..Petitioner..

VERSUS

1. THE REGISTRAR,
Maharashtra Medical Council,
189-A, Anand Complex,
First Floor, Seneguruji Marg,
Arthur Road Naka, Chinchpokli (W),
Mumbai-11.
2. CIVIL SURGEON,
General Hospital, Nanded,
District Nanded.
3. THE ADDITIONAL DIRECTOR,
Health Service and School Health,
State Family Welfare Bureau,
Rajabhaddur Mill Road,
Behind Pune Railway Station,
Pune-1. Respondents

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Advocate for petitioner : Mr. S. S. Gangakhedkar
Advocate for Respondent No.1 : Mr. G. G. Kadam
A.P.P. for respondent Nos.2 & 3 : Mr. S. N. Kendre

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CORAM : V.K. JADHAV, J.

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Reserved on : February 07, 2018
Pronounced on : February 21, 2018.

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COURT'S ORDER:-

1. Heard finally with consent at admission stage.
2. By means of present writ petition, the petitioner is seeking quashment of the impugned communication/ letter dated 23.05.2017 issued by respondent No.1, thereby directing suspension of the Registration No. 2010/12/3443 of the petitioner in respect of medical practice and refrained the petitioner from practice in the interest of the society till pendency of Regular Criminal Case No. 603 of 2012 pending adjudication before the learned Chief Judicial Magistrate, Nanded under the provisions of Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'PCPNDT' Act).
3. Brief facts, giving rise to the present writ petition, are as follows :-
 - a] The petitioner is doing the profession of medical practice since last several years. On 23.08.2007, being a registered medical practitioner, the petitioner has also

registered the Ultra Sonography Clinic under the name and style as “Radhika Hospital” at Nanded. The Health Officer of local self Government i.e. Nanded-Waghala Municipal Corporation has also accorded necessary permission for running the Ultra Sonography machine vide its letter dated 23.08.2007 and the permission so accorded is renewed time to time from 19.07.2007 to 18.07.2012 for carrying out the practice of Ultra Sonography.

b] The Collector, Nanded has appointed a Task Force (Dakshat Pathank) for finding out illegal activities of sex determination test carried out in the Sonography Centers. On 06.06.2012 the officers forming part of the purported Task Force visited the hospital run by the present petitioner and inspected the clinic situated at the address mentioned in the title clause. The said Task Force alleged to have noticed some irregularities committed by the petitioner in the form of not properly maintaining the record which is mandatory as per the provisions of PCPNDT Act. It has also been alleged by

the Task Force that the written consent of the pregnant patient is incomplete and irregular one upon the formalities to be complied with while carrying out Ultra Sonography. Thus, on 16.08.2012 the Appropriate Authority under the provisions of PCPNDT Act has issued a show cause notice to the petitioner calling upon the explanation and the petitioner has also replied the said notice on 11.06.2012. In consequence of the inspection as aforesaid and purported report, the license of the Ultra Sonography Center was suspended on 16.08.12 by the Appropriate Authority and accordingly, the said machine was sealed under the panchanama.

c]. On 28.08.2012 the Appropriate Authority of Nanded-Waghala City Municipal Corporation has filed Regular Criminal Case No. 603 of 2012 as against the petitioner for having committed the offences punishable under Sections 4(3), 29 read with Rule 9 (4) and 10(1A) read with Section 5 and 6 and 23 of PCPNDT Act, 1994 and Rules of 1996. During the course of proceedings of

the aforesaid RCC No. 603 of 2012, on 11.11.2013 the learned Chief Judicial Magistrate, Nanded before whom the complaint is pending, has framed charges and now the evidence is being recorded in the said matter by examination of the witnesses. It is a part of the record that yet, the said complaint is pending adjudication and has not been concluded nor any adverse order is passed against the petitioner.

d]. On 08.12.2015, respondent No.1 got information from the Appropriate Authority under PCPNDT Act about the pendency of the criminal case as stated above and also the charges framed for violation of the various provisions under the PCPNDT Act by the Court and as such the registration of the petitioner being medical practitioner be suspended. In consequence thereof, a show cause notice came to be issued on 09.12.2015 by respondent No.1 to which the petitioner has replied on 18.12.2015 and hearing was also extended on 18.12.2015, 19.03.2016 and 01.04.2017.

e]. On 23.05.2017, respondent No.1 vide the impugned communication dated 23.05.2017 suspended the registration of the petitioner with immediate effect and also refrained her from rendering her medical practice. Hence, this writ petition.

4. The learned counsel for the petitioner submits that the minutes of the meeting of the Executive Committee held on 18.12.2015 clearly demonstrates that since the Sonography Machine of the present petitioner is already seized and therefore the question of further indulging into the similar activities which are in violation of the PCPNDT Act are ruled out. In the meeting dated 19.03.2016 respondent No.1 has adjourned the proceedings till final decision of Regular Criminal Case No. 603 of 2011. However, without any substantial reason and carving out grave emergency and urgency, the proceedings were taken up by respondent No.1 and consequently the resolution was adopted in respect of suspension of the registration of the petitioner thereby directing Registrar to act accordingly. The learned

counsel submits that the minutes of meeting dated 01.04.2017 does not spell out any special circumstances or reasons or any application of mind to the effect that under what extraordinary circumstances, the license of the present petitioner is required to be suspended thereby overruling the decision of the committee rendered on 19.03.2016. The learned counsel for the petitioner submits that, the impugned order of suspension of the petitioner's medical practice as passed by the respondents, undoubtedly having a severe consequence and drastic effect in as much as petitioner's livelihood is directly affected. It is the part of the record that the Ultra Sound Sonography machine and other equipments which were utilized for carrying and conducting Sonography upon the patients is already sealed by the Appropriate Authority in the year 2012 and, the condition of the said equipment is unchanged until date. The learned counsel for the petitioner submits that the exercise of powers under Section 23(2) of the PCPNDT Act in the present factual scenario is completely unwarranted and without any

justifiable cause. The learned counsel for the petitioner submits that the impugned communication whereby the registration of the petitioner is suspended until decision of the criminal case is nothing but an interim suspension and such powers are not vested with respondent No.1 unless the Medical Council forms an opinion for instance that the continuation of the medical practitioner on its register for any length of time is detrimental to public interest or is likely to lead to the violation of provisions of the said Act. In the instant case, there is no such grave urgency or incident or occasion referred to or mentioned in the impugned communication. The petitioner is only rendering her medical practice and she is not doing any act of engaging her into running any other Sonography Center including her own, which is already seized. There are absolutely no reasons scribed in the impugned communication to the effect that the council has formed an opinion and, as such the continuation of the name of the petitioner in the register is detrimental to the public interest and that is likely to be in violation of the

provisions of PCPNDT Act, 1994. The learned counsel submits that the impugned communication so issued by respondent No.1 is contrary to the decision of this court in the matter of *Dr. Raminei Venugopal Sominath Vs. Maharashtra Medical Council Mumbai and others*, reported in 2013 (6) Mh.L.J. 42.

5. The learned counsel for the petitioner submits that Section 23(2) of the PCPNDT Act, 1994 provides that in the event of the charges framed against the registered Medical Practitioner under the Act, the Appropriate Authority shall report the same to the State Medical Council “for taking necessary action, including suspension of the registration”. Section 23(2) does not state that upon the Appropriate Authority reporting the fact of charges being framed, the State Medical Council must suspend the registration with immediate effect without waiting for decision of the Court. Section 23(2) of the Act, does not require the State Medical Council to suspend the registration of the medical practitioners but only to take necessary action for suspension.

6. The learned counsel for the petitioner in order to substantiate his contention placed his reliance on the following cases :

- 1) ***Sadanand Madhukar Ingle Vs. Maharashtra Medical Council and others, reported in 2014 (4) Mh.L.J. 360.***
- 2) ***Sai Santosh Shiradkar (Dr.) Vs. State of Maharashtra, reported in 2016 All MR (Cri). 5071.***
- 3) ***Udaysingh Mansingh Patil (Dr.) Vs. State of Maharashtra and another, reported in 2017 (2) Mh.L.J. 232.***
- 4) ***Dr. Raminei Venugopal Sominath Vs. Maharashtra Medical Council, reported in 2015(2) BCR, 147, 2013 (6) Mh.L.J. 42.***

7. The learned counsel for respondent No.1 submits that, the writ petition is liable to be dismissed only on the ground of availability of alternate remedy of appeal as provided under section 24(2) of the Maharashtra Medical Council Act, 1965 read with Regulation 8.8 of Chapter 8 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002. The learned counsel for respondent No.1 submits that the Appropriate Authority-Nanded-Waghala City Municipal

Corporation through respondent No.2 lodged complaint bearing Regular Criminal Case No. 603 of 2012 against the present petitioner before the Chief Judicial Magistrate, Nanded. The charges were framed on 06.10.2015 as against the petitioner for not properly maintaining the 'F-form' of pregnant women while conducting Ultra Sonography as per Rule 9(4), not obtained declaration on each report of Ultra Sonography/image scanning that she has neither detected nor disclosed the sex of her foetus to anybody, not obtained declaration before undergoing Ultra-Sonography/image scanning, not maintaining records charts, forms, reports, consent letters and all other documents required to be maintained under the PCPNDT Act and Rules and not preserving record for a period of two years or for such a period as prescribed by the Law. Further not displaying prominently in the premises of genetic clinic ultrasound clinic and imaging center a notice in English and in the local language for the information of the public to the effect that disclosure of the sex of the foetus is prohibited under

law. Further not making available copy of the Act and Rules of the PCPNDT Act in the clinic premises. Thus, the said charges were duly intimated and communicated by the said Appropriate Authority on 01.12.2015 to respondent No.1 to take action under section 23 (2) of the said Act. The copy of the charges framed against the petitioner by the Chief Judicial Magistrate in the pending case also received by the respondent No.1 from the Appropriate Authority. On the basis of the same, respondent No.1 has issued a show-cause notice dated 09.12.2015 and after receiving explanation from the petitioner during hearing before the Council on 18.12.2015 and further giving an opportunity of being heard on 18.12.2015, 19.03.2016 and 01.04.2017, rightly suspended the registration of the petitioner as per the mandatory provisions of Section 23(2) of the PCPNDT Act.

8. The learned counsel for respondent No.1 submits that the petitioner is the owner of the 'Radhika Hospital' and the petitioner alleged to have conducted sex

determination and failed to keep the mandatory records under PCPNDT Act, and, as such grossly violated the various provisions of said Act. The petitioner is having appropriate remedy under the Criminal Procedure Code to challenge the charges framed by the Court below under the PCPNDT Act and, as such, writ petition is not maintainable and required to be dismissed. Even the petitioner can very well pursue the petition before this Court in its inherent powers under Section 482 of Cr.P.C. and, in the event, if, the order of framing of the charge is quashed and set aside, in that case, the petitioner can approach the respondents for revoking of her suspension. The learned counsel for respondent no.1 submits that the council while issuing the impugned order has relied upon the order of the Apex Court in case *Punjab Voluntary Health Association Vs. Union of India*, Writ Petition (Civil) No.349 of 2006, decided on 08.11.2016, which directed/suggested for strictly following the provisions of PCPNDT Act.

9. I have also heard the learned A.P.P. for respondent

Nos. 2 & 3.

10. On careful perusal of the compilation of the undisputed documents/communication, it appears that in the Executive Committee meeting on 28.02.2012 the Appropriate Authority of Nanded-Waghala City Municipal Corporation has filed a Regular Criminal Case No. 603 of 2012 as against the petitioner for having committed the offence punishable under provisions of PCPNDT Act as detailed in the complaint. On 11.11.2013 the learned Chief Judicial Magistrate, Nanded before whom the complaint is pending against the petitioner has framed the charges and now the evidence is being recorded in the said complaint by examination of the witnesses. It is the part of the record that Regular Criminal Case No. 603 of 2012 is pending adjudication and has not been concluded so far. In terms of the provisions of Section 23(2) of the PCPNDT Act the Appropriate Authority has reported the name of the present petitioner to the State Medical Council for taking necessary action including suspension of the

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registration on the ground that the charges are framed by the court. It is also the part of the record that on receiving such communication in the Executive Committee Meeting dated 18.12.2015 and on consideration of the explanation submitted by the petitioner dated 18.12.2015, it has been resolved that the statement given before the Council by the petitioner that she is not doing the Sonography as her Sonography equipments have already been sealed and said criminal case would be decided shortly, the matter is adjourned. It is also a part of record that in the Executive Committee Meeting dated 19.03.2016 after giving an opportunity of being heard to the petitioner, as well as the Advocate present on behalf of the Appropriate Authority and upon noticing that the charges have been framed by the Criminal Court in pending RCC No.603 of 2012, the Committee has resolved and decided to adjourn the matter and wait till the final decision of the Court and after the final decision of the said Regular Criminal Case No. 603 of 2012, call upon the recommendations from the Appropriate Authority. It

further appears from the minutes of the meeting held on 01.04.2017 that it has been resolved in the meeting dated 01.04.2017 in the following manner :-

“Resolved”, since criminal case under PCPNDT Act is pending after framing of the charges, therefore, the Registered Medical Practitioner (RMP) is required to be suspended till dismissal of the said Regular Criminal Case. In view of the recent guidelines given by the Apex Court in the case of Dr. Raminei Venugopal Sominath Vs. Maharashtra Medical Council Mumbai and others, reported in 2013 (6) Mh.L.J. 42, which suggests strict implementation of the PCPNDT Act, therefore, Council should suspend the registration of the Registered Medical Practitioner. The Registrar is directed to issue the suspension order of the Registered Medical Practitioner (RMP) in view of Section 23(2) of PCPNDT Act.

11. In Writ Petition (Civil) No. 349 of 2006 Voluntary Health Association of Pubjab Vs. Union of India and others with Writ Petition No.575/2014, the Supreme Court had an occasion to consider the issue about the increase of the female foeticied, resultantly imbalance of sex ratio and in difference of the implementation of

the stringent law i.e. in force, the non-implementation of the provisions of the PCPNDT Act 1994 and Rules of 1996 framed under the Act by the competent authorities who are obliged to do so. The Supreme court by giving reference to the various cases and the data of sex ratio and birth across the country and various provisions of the PCPNDT Act, in para no.33 of the order, has issued the direction in addition to the direction issued in the earlier order and prominent amongst it is 33(d), which is relevant for the present discussion, is reproduced herein below :-

“33(d) : The provisions contained in Sections 22 and 23 shall be strictly adhered to Section 23(2) shall be duly complied with and it shall be reported by the authorities so that the State Medical Council takes necessary action after the intimation is given under the said provision. The Appropriate Authorities who have been appointed under Sections 17(1) and 17(2) shall be imparted periodical training to carry out the functions as required under various provisions of the Act.”

12. On careful perusal of the impugned order, it appears that, by giving reference to the said order passed by the Supreme Court in Writ Petition (*Civil*)

No.349 of 2006, Punjab Voluntary Health Association Vs. Union of India, decided on 08.11.2016, respondent No.1 has passed the order.

13. The provisions of Section 22 of the Maharashtra Medical Council Act falls for consideration of the Division Bench of this Court in case of *Remineni Venugopal Somaiah and another Vs. Maharashtra Medical Council, Mumbai and others*, reported in 2013 (6) Mh.L.J. 42. It is a case where an order passed by the Medical Council suspending registration of a medical practitioner for a period of five years till the final decision of the criminal case on charges framed against them for contravening the provisions of the PCPNDT Act and the Rules framed thereunder sought to be set aside. The Division Bench of this Court has held that the consequences of suspension of registration of Registered Medical Practitioner are extremely drastic and Section 23(2) of the Act does not exclude the principles of natural justice either expressly or by necessary intendment. It has been held that Section

23(2) does not require the State Medical Council to suspend the registration of the medical practitioner, but only to take necessary action for suspension, otherwise the legislature would have provided for such an action to be taken forthwith by the State Medical Council. It has been held that, said provisions merely enables the authority to initiate the process for considering the suspension and not to suspend the registration without anything more. The Court has further taken a note of the fact that there is no guarantee as to when the pending case will be disposed of and to continue the suspension pending such case from the date of framing the charge would invite drastic consequences, which the legislature never intended.

In paragraphs No.32 and 34 of the said judgment the Division Bench of this court has made following observations :-

32. There is a distinction between suspensions which are made as holding operations and suspensions by way of punishment. Although the said Act does not expressly provide for interim suspension, the State Medical Council would always have the power in appropriate cases or grave urgency to suspend the registration as a holding action and afford the registered medical practitioner a post-decisional hearing. Such an order pending the enquiry would not be a

penalty or punishment. It would be open thereafter for the Council, after the enquiry is conducted, to suspend the registration for such period of SRP 28/37 OSWP1176.13 time as may be warranted by the facts of a particular case. The period of suspension naturally would depend upon the nature of the alleged offence. Such an order, after hearing the medical officer finally, would be by way of penalty.

34. Thus, if in a case of grave urgency and if the Medical Council forms an opinion for instance that the continuation of a medical practitioner on its register for any length of time is detrimental to public interest or is likely to lead to the violation of the provisions of the said Act, it can always issue an order of suspension as a holding order and then follow it by an enquiry to consider whether or not to continue the suspension. The exercise of such power would only be in cases where the matter cannot be delayed at all.

14. In case of **Sadanand Madhukar Ingle Vs. Maharashtra Medical Council and others**, this court (Coram:R.K. Deshpande, J.) reported in 2014, Mh.L.J. 360 by referring the case of *Remineni Venugopal Somaiah and another Vs. Maharashtra Medical Council, Mumbai and others* (Supra), in para no. 6 and 10 of the judgment has made following observations :-

6. The suspension of registration of a medical practitioner pending enquiry or prosecution is a drastic action and takes away the fundamental right to practice the profession, as guaranteed under Article 19(1)(g) of the Constitution of India. Such an action can be taken only to enforce reasonable restriction imposed by making a law in the general public interest in terms of Clause (6) of Article 19(1)(g) of the Constitution of India. The exercise of power under Section 10 or 22 of the said Act is guided by the circumstances pointed out by the judgment of the Division Bench in the case of *Raminei*, cited supra. The action can

be taken in cases of grave urgency and in appropriate cases, even without affording an opportunity of being heard in the matter and the validity of action can be judged in a post-decisional hearing. The cases of grave urgency would be those where the continuation of a medical practitioner on the register for any length of time is considered to be dangerous or detrimental to public interest, health and welfare, and the danger or detriment found to be imminent, is required to be averted by taking such action of suspending the registration, as the said Council deems fit and proper.

10. Merely quoting the words of public interest is not enough, but the formation of opinion has to be based upon the objective assessment of the material relevant to the action taken. It is not the charge against the petitioner that the sex determination test was undertaken by the petitioner with an intent to terminate the life of a female foetus developing in the mother's womb or has actually terminated the pregnancy. It is not the opinion formed as per the resolution reproduced above, that to permit the petitioner to practice a medical profession as Gynecologist is in any manner considered to be dangerous or detrimental to public health, safety and welfare and it is to avert such danger or detriment that an action impugned has been taken. The fundamental rights cannot be taken away merely because it is prudent to do so. It is also not the case that the continuation of medical practice by the petitioner is likely to hamper the investigation in progress. In view of this, the action impugned cannot be sustained.

15. In the instant case, the Appropriate Authority has filed the complaint way back in the year 2012 and the Regular Criminal Case No. 603 of 2012 is pending adjudication before the learned Chief Judicial Magistrate, Nanded under provisions of PCPNDT Act. It is also a part of the record that, in consequence of the inspection and purported report of Task Force, the

license of Ultra Sound Sonography machine and Ultra Sonography Center came to be suspended on 16.8.2012 by the Appropriate Authority and, accordingly, the machine was sealed under the panchanama. The Learned Chief Judicial Magistrate, Nanded by order dated 11.11.2013 has framed charges against the petitioner for having committed an offence punishable under various provisions of the PCPNDT Act. On 08.12.2015 the Appropriate Authority under PCPNDT Act has submitted the report to respondent No.1 about the framing of the charges by the Criminal Court in pending Regular Criminal Case No. 603 of 2012 as against the present petitioner for violation of the various provisions under PCPNDT Act. In the year, 2017 the impugned order came to be passed by the Medical Council though in earlier meeting held in the year 2016, the Council has decided to adjourn the matter and wait till the final decision of the Court in the said Criminal Case No. 603 of 2012. There is no reference in the impugned order as to the grave urgency in the matter and as to how the continuation of the petitioner as a

medical practitioner on its registration is detrimental to the public interest or is likely to lead to the violation of principles of the provisions of the PCPNDT Act. Merely quoting the word “in the interest of the society” in the impugned order is not enough, and as held by this court in *Sadanand Madhukar Ingle’s* case (supra) the formation of such opinion has to be based upon the objective assessment of the material relevant to the action taken.

16. On careful perusal of the impugned order, I do not find that the opinion has been formed to the effect that to permit the petitioner to practice a medical profession is dangerous or detrimental to public health, safety and welfare. It is also not the case that the continuation of the medical practice by the petitioner is likely to affect the pending case before the criminal court.

17. In the result, the petition deserves to be allowed. Hence, the following order.

ORDER

1. Writ petition is hereby allowed.
2. In the circumstances, there shall be no order as to costs.
3. The impugned communication/letter dated 23.05.2017 passed by respondent No.1- Maharashtra Medical Council, Mumbai, thereby directing suspension of Registration No.2010/12/3443 of the petitioner is hereby quashed and set aside.
4. Writ petition is accordingly disposed of.

(V.K. JADHAV, J.)

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