

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 6501 OF 2015****Dr.Mrs.Rehana Imatiyaz Ahamad Mulla Petitioner****VERSUS****State of Maharashtra & Ors. Respondents**

Mr.R.A.Thorat, Senior Advocate, i/b. Mr.Kalpesh U.Patil for the Petitioner.

Mr.S.D.Rayrikar, A.G.P. for the State – Respondent no.1.

Mr.Uday P. Warunjikar for the Respondent nos.2 and 3.

CORAM : R.D. DHANUKA, J.**DATE : 7th FEBRUARY, 2018****P.C.**

Rule. Mr.Rayrikar, learned A.G.P. waives service for the respondent no.1. Mr.Warunjikar, learned counsel waives service for respondent nos. 2 and 3. Writ petition is heard finally by consent of parties.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 29th October,2014 passed by the respondent no.2 and also order dated 18th July, 2014 passed by the respondent no.3.

3. The petitioner had applied for grant of registration under section 18 of the Pre-conception and Pre-natal Diagnostic Techniques

(Prohibition of Sex Selection) Act, 1994 before the Authority. By an order dated 18th July, 2014 appropriate authority informed the petitioner that the District Advisory Committee had rejected the application of the petitioner on 10th July, 2014.

4. Being aggrieved by the said communication dated 18th July, 2014, the petitioner filed an appeal before the State Appropriate Authority Maharashtra Mumbai under section 19(2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The said Appeal No.101 of 2014 came to be rejected on 29th October, 2014. The petitioner has impugned both those orders in this writ petition.

5. Mr.Thorat, learned senior counsel invited my attention to both these orders which are subject matter of this petition and also placed reliance on section 19(2) of the said Act and would submit that the impugned order dated 18th July, 2014 passed by the appropriate authority is without rendering any opportunity of being heard. He submits that the said alleged enquiry conducted by the appropriate authority is in gross violation of principles of natural justice and thus deserves to be set aside. It is submitted that appropriate authority has also passed the said order by referring to various alleged complaints which were not brought to the notice of the petitioner before the said appropriate authority passed the said order on 18th July, 2014.

6. A perusal of section 19(2) of the Pre-conception and Pre-natal

Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 indicates that the appropriate authority has to comply with the principles of natural justice by rendering an opportunity of being heard to the applicant who applies for a certificate of registration under section 19(1) and only after rendering such opportunity, it has to record reasons in writing in the impugned order while rejecting an application for registration.

7. A perusal of the order dated 18th April, 2014 passed by the appropriate authority clearly indicates that the same is in defiance of the mandatory requirement under section 19(2). Neither any personal hearing is given to the petitioner nor any reasons are recorded in the impugned order. The impugned order dated 18th April, 2014 thus deserves to be set aside. In view of the fact that the order dated 18th April, 2014 is set aside, the impugned order passed by the appellate authority falls to the ground.

8. The matter is remanded back to the appropriate authority for re-consideration of the application filed by the petitioner under section 19(1) of the Act and the same shall be decided after applying with principles of natural justice. If the authority proposes to rely upon any material against the petitioner, the petitioner shall be furnished with a copy of such material in advance. The appropriate authority shall record the reasons in compliance with section 19(2) of the Act while deciding the said application.

9. It is made clear that the appropriate authority shall decide the

matter afresh without being influenced by the observations made and the conclusion drawn by the appropriate authority in the order dated 29th October, 2010 and also without considering the conclusion drawn in the order dated 18th July, 2014 passed by the appellate authority. The application shall be decided within three months from the date of communication of this order.

10. The appropriate authority to act on the authenticated copy of this order.

11. The petitioner is directed to remain present before the appropriate authority on 20th February, 2018 at 11.00 a.m.

12. The petitioner is directed to convey this order to the appropriate authority for compliance.

13. Rule is made absolute in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]