

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.5482 of 2018

ORDER:

Heard Sri P.Gangaiah Naidu, learned Senior Counsel, representing Sri B.Somasekhar, learned counsel for the petitioners and the learned Government Pleader for Medical and Health, appearing for Respondents.

2. The District Medical and Health Officer, District Appropriate Authority for Pre-Conception and Pre-Natal Diagnostic Techniques 1994 and Rules 1996, Hyderabad district-4th respondent issued a show cause notice vide proceedings Rc.No.Spl/E5/PC&PNDT/DMHO/HYD dated 31.7.2017, calling upon the petitioners herein to submit explanation.

3. On the request made by the petitioners herein, the 4th respondent vide proceedings in Rc.No.Spl/E5/PC&PNDT/DMHO/HYD/2017/3688 dated 8.8.2017, granted time to the petitioners to submit explanation within (10) days from the date of receipt of show cause notice dated 31.7.2017, which was received by the petitioners on 2.8.2017. According to the learned Senior Counsel appearing for the petitioners, the said extension order was dispatched by the office of 4th respondent on 15.8.2017. It is the further submission of the learned Senior Counsel that the petitioners herein submitted explanation on 14.8.2017, but without considering the said explanation dated 14.8.2017, the 4th respondent passed the impugned order under Section 20 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Rules 1996 and Section 7(a) of the Andhra Pradesh Private Medical Care Establishments (Registration and Regulation) Act, 2002 adopted by the Government of Telangana. The learned Senior Counsel contends that the impugned order passed by the 4th

respondent is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and contrary to Section 20 of the PC and PNDT Act, 1994 and Rules 1996 and also violative of principles of natural justice. In elaboration, it is further contended by the learned Senior Counsel that having issued a show cause notice, calling for explanation of the petitioners herein, the respondent authorities are not justified in passing the impugned order without considering the explanation submitted by the petitioners herein.

4. On the contrary, it is contended by the learned Government Pleader that as against the order impugned, there is an effective alternative remedy of appeal to the petitioners herein under Section 21 of the Act.

5. During the course of arguments, the learned counsel for the petitioners has placed on record the proceedings of the 4th respondent dated 8.8.2017, by virtue of which, the 4th respondent granted (10) days time to the petitioner herein for submission of explanation from 2.8.2017. It is significant to note that the said order of extension was dispatched on 15.8.2017, which is evident from a reading of the said order dated 8.8.2017, which is placed on record. It is also significant to note that the explanation dated 14.8.2017 was received by the 4th respondent on 16.8.2017 and in support thereof, track particulars obtained from India Post are placed on record by the learned counsel.

6. Admittedly, in the present matter, the appropriate authority/4th respondent herein issued show cause notice under sub-section (1) of Section 20 of the Act, calling upon the petitioner herein to submit explanation. As per sub-section (2) of Section 20 of the Act, it is incumbent and obligatory on the part of the appropriate authority to afford reasonable opportunity of

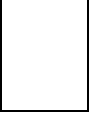
being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic. It is also pertinent to note that in the affidavit filed in support of the writ petition, it is specifically stated by the petitioners herein that the 4th respondent neither provided any opportunity of being heard nor there is any recommendation made by the Advisory Committee. The impugned order also does not indicate anything as to providing of opportunity of being heard to the petitioner.

7. Therefore, in the considered opinion of this Court, the order impugned suffers from statutory infirmity and the same is also violative of principles of natural justice. As this Court is of the opinion that the impugned action is totally in violation of principles of natural justice, the contention of the learned Government Pleader as to availability of alternative remedy of appeal cannot be sustained in the eye of law.

8. For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the 4th respondent vide proceedings Rc.No.Spl/DMHO/PC&PNDT/2018 dated 16.2.2018 and the matter is remanded to the 4th respondent for consideration of the issue afresh and passing appropriate orders strictly in accordance with law, after taking into consideration the explanation offered by the petitioners herein. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 20.2.2018
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