

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.28825 OF 2018

O R D E R

4th respondent – District Appellate Authority under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'the Act'), vide proceedings No.106/PC & PNDTCell/ DM & HO/2018 dated 17.05.2018, suspended the registration of the petitioner – scanning centre. Challenging the same, petitioner filed appeal before the 2nd respondent - State Level Appropriate Authority. As the 2nd respondent was not passing any interim orders for release of seized machinery, petitioner preferred W.P.No.19305 of 2018 and by order dated 12-06-2018, this court disposed of the writ petition, directing the 2nd respondent to dispose of the appeal within a period of two weeks from the date of receipt of a copy of the order in accordance with law, affording opportunity of hearing to the petitioner. In pursuance of the orders of this court, 2nd respondent vide proceedings in Rc.No.145/PC & PNDT/ NIMC VIST/2018, dated 23.07.2018, informed the petitioner that as per Rules, there is no provision to de-seal the ultrasound scanning machine. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner, based on the averments made in the affidavit filed in support of the writ petition, submits that initially the petitioner was issued with a show cause notice dated 27.04.2018 mentioning some allegations, which are numbering in six, to which the petitioner has filed explanation, but without considering the same in proper perspective, 4th respondent – primary authority, passed order dated 17.05.2018 under Section 20 of the Act, suspending the registration of the petitioner, on different grounds, which does not form part of show

cause notice. He further submits that when this court in W.P.No.19305 of 2018 dated 12.06.2018, directed the 2nd respondent – appellate authority, to dispose of the appeal, the said authority passed the impugned order dated 23.07.2017, which is not clear whether the said order is in the nature of disposing of the appeal, or passing any interim order. On these grounds, learned counsel for the petitioner, seeks to set aside both the orders passed by the primary as well as the appellate authorities.

Learned Assistant Government Pleader for Medical and Health, on instructions, submits that as there are serious allegations against the petitioner, it was issued with a show cause notice and after considering the explanation of the petitioner and affording it opportunity of hearing, primary authority, after satisfying that the petitioner committed breach of the provisions of the Act and the rules made there-under, passed order dated 17.05.2018, suspending the registration of the petitioner under Section 20 of the Act. He submits that under the impugned proceedings dated 23.07.2018, the 2nd respondent - appellate authority, passed interim orders and the appeal is pending consideration.

In this case, it is to be seen that in the show-cause notice dated 27.04.2018, 4th respondent alleged six lapses on the part of the petitioner. Petitioner filed its explanation and in the proceedings dated 17.05.2018, 4th respondent – primary authority, noted ten more allegations, which does not form part of show-cause notice dated 27.04.2018, and accordingly suspended the registration of the petitioner – scanning centre. Traveling beyond the allegations, made in the show-cause notice, and suspending the registration on those grounds, amounts to violation of principles of natural justice.

Further, this court by order dated 12.06.2018 in W.P.No.19305 of 2018 directed the 2nd respondent – appellate authority, to dispose the appeal within a period of two weeks from the date of receipt of the said order. But the impugned order dated 23.07.2018 is not clear whether it is disposing of the appeal or any interim orders are issued. This circumstance also amounts to non application of mind on the part of appellate authority.

The above circumstances show that the 4th respondent – primary authority, as well as the 2nd respondent – appellate authority, passed the orders dated 17.05.2018 and 23.07.2018 respectively, without any application of mind and in violation of principles of natural justice. In view of the same, the said orders are set aside and the 4th respondent is directed to consider the explanation of the petitioner and pass appropriate orders in according with law, after affording the petitioner an opportunity of hearing.

Writ petition is accordingly allowed to the extent indicated above.

Interlocutory applications pending, if any, shall stand closed. No costs.

A. RAJASHEKER REDDY, J

DATE: 27—08—2018

AVS