

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

WRIT PETITION NOs. 24079, 24086, 24463, 24469, 24470, 24480, 24482,

24483, 24506, 24596, 24601, 24603, 24604, 24606, 24607, 24612,

24614, 24618, 24624, 24629 OF 2015

COMMON ORDER:

Heard Si P.Veera Reddy, learned Senior Counsel appearing for the learned counsel for the petitioners and the learned Government Pleader appearing for the respondents.

2. The prayer sought in these Writ Petitions is to declare the cancellation of the Registration of the petitioners issued under the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection Act), 1994 by the Respondents through the impugned proceedings dated 1.7.2015 as illegal, irregular, arbitrary, without jurisdiction, in violation of Principles of Natural Justice, unconstitutional, unjustified and unsustainable and set aside the same.

3. The case of the petitioners is that they are running genetic laboratory/genetic clinic/hospital for carrying out genetic counselling/Pre-Natal Diagnostic Procedure/ Pre-Natal Diagnostic Tests. The petitioners' hospitals are being run by qualified doctors under a valid certificate of registration under Section 19 (1) of the Pre-Natal Diagnostic Techniques (Registration and Prevention of Misuse) Act, 1994 read with Rules 6 and 8 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996. The period of registration is for five years and as per Section 19(3) of the Act, the registration is renewable for further period. The validity of the registrations of the petitioners is upto 2019. When

the petitioners were running the clinics/scanning centres/hospitals in accordance with the provisions of the Act and the Rules made there under, without any complaint of whatsoever, respondent Convener of District Level Multi Member Appropriate Authority-cum-District Medical and Health Officer, Kurnool/East Godavari districts, all of a sudden cancelled the registrations of the petitioners vide impugned proceedings. In the said proceedings it is mentioned that as per the instructions of the Collector and District Magistrate vide reference 2nd cited, the registration/renewal certificates issued to the petitioners' hospitals without the approval of the District Level Multi Member Appropriate Authority, are cancelled. It is also mentioned in the said proceedings that the registration/renewal certificates would be issued after approval of the District Level Multi Member Appropriate Authority, Kurnool/East Godavari. The said proceedings came to be questioned in this batch of Writ Petitions.

4. Learned Senior Counsel appearing for the petitioners contended that as per Section 20 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection Act), 1994. unless a prior notice is issued to show cause as to why the registrations should not be suspended or cancelled for the reasons mentioned in the notice, the cancellation orders cannot be passed straightaway. Section 20 of the said Act, reads as under:

“20. Cancellation or suspension of registration – (1) The Appropriate Authority may suo motu, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the

Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing suspend the registration of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1)."

5. This Court, on 3.8.2015, passed the following order:

"13 petitioners have filed the present writ petition and their common grievance is that their renewed licences, which are in force upto 2019, are cancelled without notice, basing on the directions of the Collector, which is contrary to Section 20 of the and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection Act), 1994 (for short 'the Act'). Though all the petitioners have paid the requisite court fee, since there were separate impugned orders, dated 1.7.2015 against each one of them and renewal certificates for each one of them are separate, common writ petition cannot be maintained and each one of them has to question individual orders separately.

Learned Senior Counsel for the petitioners fairly submits that this writ petition is confined to the 1st petitioner only. Therefore, the writ petition on behalf of petitioners 2 to 13 shall stand dismissed as withdrawn with a liberty to petitioners 2 to 13 to question their individual orders by separate writ petitions.

I have heard the learned Senior Counsel for the 1st petitioner. On the face of it, the impugned order is contrary to Section 20 of the Act and though the renewal was granted by appropriate authority for the period 29-8-2014 to 28.8.2019 under renewal order, dated 19.12.2014, the present impugned order straightaway cancelled the renewed licence at the instructions of the District Collector, without notice to the 1st petitioner. Hence, the impugned order dated 1.7.2015 and the consequential proceedings issued by the 4th respondent, dated 13.7.2015, shall remain stayed. However, this order will not preclude the appropriate authorities from considering each case of such licensees by issuing notice and taking appropriate action in terms of Section 20 of the Act."

6. In spite of the above order, no counter affidavit has been filed by the respondents till date. From the perusal of the impugned proceedings, it is evident that as per the instructions of the Collector and District Magistrate, the registration/renewal certificates of the petitioners have been cancelled, which prima facie establishes that the procedure contemplated under Section 20 of the Act has been violated. Therefore, the issuance of the impugned proceedings amounts to violation of principles of natural justice as well as contrary to the mandate of Section 20 of the Act.

7. This Court, while granting the interim order observed that the order will not preclude the appropriate authorities from considering each case of such licensees by issuing notice and taking appropriate action in terms of Section 20 of the Act.

8. Therefore, this Court is of the opinion that even if the matter is taken up on merits, no useful purpose would be served since there is an inherent defect in the impugned proceedings in not giving a prior show cause notice before cancelling the registrations. The said defect cannot be rectified.

9. Be that as it may, since this Court has already given liberty to the respondents to initiate fresh proceedings by issuing notice, the Writ Petitions can be allowed.

10. Accordingly, the Writ Petitions are allowed by setting aside the impugned proceedings dated 1.7.2015.

11. It is needless to observe that this order will not preclude the appropriate authority to take appropriate action by initiating appropriate proceedings as per law.

Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.

P. KESHA VA RAO,J

Date: 4.12.2018

KPM

