

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

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**CWP No. 9109 of 2018  
Date of Decision: 11.5.2018**

**Bourn Hall International India Pvt. Ltd.**

**.....Petitioner**

**v.**

**State of Haryana and others**

**.....Respondents**

**CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present:- Mr. Sunil Chadha, Senior Advocate with  
Mr. Maneet Kumar Arya, Advocate, for the petitioner  
Mr. Vishal Garg, Addl. AG, Haryana  
Mr. Aman Pal, Advocate, for respondent No. 4

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**RAKESH KUMAR JAIN, J. (Oral)**

This petition is directed against the order dated 19.3.2018 passed by the District Appropriate Authority-cum-Civil Surgeon, Gurugram by which registration of the petitioner for running an Ultrasound Center has been suspended in terms of Section 20(2) of the Pre-Conception and Pre-Natal Diagnostic Techniques, (Prohibition of Sex Selection) Act, 1994 (for short 'the Act') and the order dated 5.4.2018 passed by the State Appropriate Authority, Panchkula, dismissing the appeal filed by the petitioner under Rule 19 (2) of the Pre Conception and Pre Natal Diagnostic Techniques, (Prohibition of Sex Selection) Rules, 1996 (for short 'the Rules').

Shorn of unnecessary details, the petitioner has averred in para No. 16 of the writ petition that “there is no other efficacious remedy of appeal or revision available with the petitioner other than filing of this petition against the impugned order dated 5.4.2018”.

After notice was issued, the respondents have put in appearance and filed their respective replies.

Mr. Aman Pal, Advocate, appearing for added respondent No. 4 has raised a preliminary objection about the maintainability of the writ petition on the ground of availability of appeal in terms of Rule 19A(2)(a) of the Rules. He has submitted that the petitioner is aggrieved against the order of suspension of the registration, passed in terms of Section 20 (2) of the Act by the District Appropriate Authority, Gurugram against which it had already preferred an appeal under Rule 19 (2) of the Rules and lost. However, he still has a right to challenge the order of the State Appropriate Authority before the State Appellate Authority as provided under Rule 19A(2)(a) of the Rules. He has also submitted that Health Department, Government of Haryana, has issued Notification No. 47/63/17-4HBII dated 21.11.2017 for the purpose of appointing Additional Chief Secretary/Principal Secretary to Government Haryana, Health Department as State Appellate Authority for whole of the State with immediate effect. It is, thus, submitted by learned counsel for respondent No.4 that the petitioner may be relegated to avail the remedy of appeal and that the averments made in para No. 16 of the writ petition are not correct.

In reply, learned Senior counsel for the petitioner has vehemently submitted that there is only one right of appeal provided under Section 21 of the Act which the petitioner had already availed and the Rules cannot override the provisions of the Act.

In this regard, learned State counsel has submitted that the right of appeal provided under Rule 19A(2)(a) of the Rules is also a creation of statute, therefore, the petitioner has to avail the right of appeal instead of maintaining this petition and thereafter, the extraordinary jurisdiction of this Court under

Articles 226/227 of the Constitution has been invoked.

I have heard learned counsel for the parties on the preliminary issue of maintainability of this writ petition.

The question raised for the consideration of this Court is as to whether there is a right of appeal before the State Appellate Authority under Rule 19A(2)(a) of the Rules even after availing the remedy of appeal before the State Appellate Authority against the order passed by the District Appellate Authority?

In order to answer this question, it would be relevant to refer to certain provisions of the Act :

***“Section 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 any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).*

***“21. Appeal.—****The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the*

*Appropriate Authority under section 20, prefer an appeal against such order to—*

- (i) the Central Government, where the appeal is against the order of the Central Appropriate Authority; and*
- (ii) the State Government, where the appeal is against the order of the State Appropriate Authority, in the prescribed manner.”*

**“Section 32 -Power to make rules (2) (xi) - The manner in which an appeal may be preferred under section 21.”**

**“Rule 19 – Appeals -(1)** *Anybody aggrieved by the decision of the Appropriate Authority at sub-district level may appeal to the Appropriate Authority at district level within 30 days of the order of the sub-district level Appropriate Authority.*

*(2) anybody aggrieved by the decision of the Appropriate Authority at district level may appeal to the Appropriate Authority at State/UT level within 30 days of the order of the district level Appropriate Authority.*

*(3) Each appeal shall be disposed of by the District Appropriate Authority or by the State/Union Territory Appropriate Authority, as the case may be, within 60 days of its receipt.*

*(4) If an appeal is not made within the time as prescribed under sub-rule (1), (2) or (3), the Appropriate Authority under that sub-rule may condone the delay in case he/she is satisfied that appellant was prevented for sufficient cause from making such appeal.”*

**Rule 19A – The manner for filing and disposal of the appeal under Clause (i) and (ii) of Section 21 of the Act. (i)(a)-** *The Central Government, may, by Notification in the Official Gazette, appoint a Central Appellate Authority for each of the Union Territories, for the purpose of hearing appeal against the order of the Central Appropriate Authority or the Union Territory Appropriate Authority.*

*(b)- The Central Appellate Authority shall consist of an officer not below the rank of the Union Territory Appropriate Authority.*

*(2)(a)- The State Government, may by Notification in the official Gazette, appoint a State Appellate Authority for the whole State, for the purpose of appeal against the order of State Appropriate Authority.*

As per the scheme of the Act, the right of appeal is provided under

Section 21 (ii) of the Act before the State Government as it is provided therein

that there would be a right of appeal against the order of the State Appropriate Authority before the State Government. It appears that earlier the State Appellate Authority was not made and only the authorities were mentioned who would hear the appeals against the orders of the Sub District Appropriate Authority, District Appropriate Authority etc.

Rule 19 of the Rules provides that if a person is aggrieved against the order of the Appropriate Authority at sub-district level, then he may appeal before the Appropriate Authority at District Level for redressal of their grievance by way of an appeal which may be filed within 30 days from the date of passing of the order. Similarly, if anybody is aggrieved by the order of the Appropriate Authority at District Level then he may appeal before the Appropriate Authority at the State/UT Level within a period of 30 days of the order of the District Level Appropriate Authority.

This exactly has been done by the petitioner in this case. After suffering the order of the District Appropriate Authority of suspension of registration, the petitioner filed the appeal before the State Appropriate Authority.

Rule 19 A was inserted vide Notification GSR 492(E) 2017 dated 23.5.2017 in which it is provided that the State Government may by Notification in the Official Gazette appoint the State Appellate Authority.

In consonance with this provision, the Government of Haryana issued a Notification for the purpose of appointing Additional Chief Secretary/Principal Secretary as the State Appropriate Authority for whole of the State w.e.f. the date of issuance of Notification dated 21.11.2017.

Thus, the State Appellate Authority, for whole of the State, is available w.e.f. 21.11.2017 i.e. much before the order passed against the

petitioner by the State Appropriate Authority, therefore, in my considered view, the objection raised by learned counsel for respondent No.4 has a substance, on the basis of which I am of the opinion that in the presence of a remedy of appeal under the Rules, much less Rule 19A(2)(a), the writ petition in its present form is not maintainable by averring para No. 16 of the writ petition that the petitioner does not have any remedy of appeal or revision, for the purposes of invoking the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution.

At this stage, learned Senior counsel for the petitioner has prayed that the petitioner may be relegated to its remedy of appeal as provided under Rule 19A (2)(a) of the Rules but at the same time, he has prayed that keeping in view the fact that the Center is closed for such a long time, the State Appellate Authority may be directed to decide the appeal expeditiously.

In view of the prayer made by learned counsel for the petitioner, the present petition is hereby dismissed as not maintainable.

However, the petitioner is relegated to the remedy of appeal in terms of Rule 19A(2)(a) of the Rules before the State Appellate Authority.

In case, any such appeal is filed by 15.5.2018, the Appellate Authority shall not raise any objection with regard to the limitation. The Appellate authority is rather directed to decide the appeal as early as possible, preferably within a period of 10 days after issuing notice to the respondents herein and by passing a speaking order. Copy dasti.

**(RAKESH KUMAR JAIN)**  
**JUDGE**

**11.5.2018.**

*Ashwani*