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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8320/2018 & CM No. 31936/2018

M/S ORBIT IMAGING AND PATH LABS
PVT. LTD.

..... Petitioner

Through: Mr Kirti Uppal, Sr. Advocate with Mr
Mohit Bhandari, Advocates.

versus

STATE OF NCT DELHI AND ANR.

..... Respondents

Through: Mr Anjum Javed, ASC, GNCTD with
Mr Devendra Kumar, Mr Faran
Ahmed, Advocates with Dr Pandit,
Nodal Officer, DAA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.08.2018**

1. The petitioner impugns an order dated 23.07.2018 (hereafter 'the impugned order') passed by the Appropriate Authority under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereafter 'the Act'), whereby the petitioner's registration under the Act has been suspended and the petitioner has been directed to stop all operations under the Act including CT/MRI scans and surrender the original registration certificate immediately.

2. At the outset Mr Javed, the learned counsel appearing for the respondents points out that the impugned order has been passed under Section 20(3) of the Act and an appeal lies against the impugned order under Section 21 of the Act. He submits that the petitioner has an equally

efficacious remedy, therefore, the present petition would not be maintainable.

3. Mr Uppal, learned senior counsel appearing for the petitioner submits that the impugned order has been passed in violation of principles of natural justice as the petitioner was not afforded any opportunity to be heard. This submission is countered by Mr Javed. He submits that in terms of Section 20(3), notices under Section 20(1) and (2) are not required to be issued prior to passing any order suspending the registration under that provision.

4. At this stage, Mr Uppal states that the petitioner would avail its appellate remedies. He however prays that the impugned order may be stayed to the extent that the petitioner has also been restrained from using CT/MRI machines.

5. At this stage, it is relevant to refer Section 20(3) of the Act. Section 20 of the Act is set out below:-

“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).”

6. A plain reading of section 20(3) of the Act indicates that there are two conditions that must be complied for an order to be passed under Section 20(3) of the Act. First, the Appropriate Authority must be of the opinion that it is necessary or expedient to do so in public interest; and second, that the authority must record its reasons in writing for doing so. It is also relevant to note that the order under Section 20(3) of the Act is by its very nature an interim order and survives till the final order is passed under Section 20(1) and (2) of the Act. It necessary follows that the reason for passing such order must be such as to warrant an immediate and urgent closure of the genetic centre, genetic laboratory or genetic clinic, as the case may be.

7. In the present case, the Appropriate Authority has indicated certain reasons for passing the impugned order. One of the reasons is that an ultra sound test was conducted on a decoy sent by the respondent and the other is that certain discrepancies were found in certain records.

8. The discrepancies in certain forms may not warrant an immediate closure of the petitioner’s centre. Insofar as the test conducted on the decoy is concerned, there are serious disputes regarding the same. However, there is no allegation with regard to misuse of any CT/MRI machines. Considering the adverse effect not only on the petitioner but also on the public at large (as this court is informed that there are no other similar centres in the vicinity), this Court considers it apposite to stay the impugned

order to the limited extent that the petitioner would be permitted to operate the CT/MRI machines till the petitioner has an opportunity to avail its statutory remedies. It is so directed.

9. It is clarified that this order would be operative for a period of one week from today. In the event, the petitioner prefers an appeal under Section 21 of the Act within the said period, the operation of the said order will be extended till the Appellate Authority (State Government) renders a final decision. It is clarified that all rights and contentions of the parties are reserved and the appellate authority shall consider the petitioner's case as and when filed uninfluenced by any observations made by this Court.

10. The petition is disposed of in the above terms. The pending application is also disposed of.

11. Order *dasti*.

VIBHU BAKHRU, J

AUGUST 09, 2018
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