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

Judgment Reserved on: 19.07.2018

% *Judgment Pronounced on: 29.10.2018*

+ **W.P.(C) 8975/2017, CM APPL. 36733/2017, CM APPL. 44323/2017**

DR. SUNIL PURI

..... Petitioner

Through: Mr. Siddharth Aggarwal, Mr. Rajeev Kumar
Yadav, Ms. Jhanvi Subey, Mr. Faraz Mazbool,
Adv.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. J.P. Swarna with Mr. Narula, Adv. for UOI.
Mr. M. Mishra, Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K.CHAWLA

S.RAVINDRA BHAT, J.

Relevant Facts

1. The petitioner, in these proceedings under Article 226 of the Constitution, seeks a direction for quashing the impugned notification bearing No. GSR 60 (E) dated 28.01.2015 issued by Union of India, through the secretary, ministry of Health & Family welfare (hereafter referred to as "the UOI"). A further direction to the Government of NCT of Delhi (hereafter "NCT") to grant the registration/renewal of registration of the petitioner or any genetic clinic/ultrasound clinic in which the petitioner is a radiologist.
2. The facts, briefly are that the Petitioner challenges the *vires* of Rule 18A(4) (ii) of the Pre- Conception and Pre-Natal Diagnostic Techniques (Prohibition of

Sex Selection) Rules, 1996 (hereafter referred as the 'Rules') as amended by the Notification bearing No. GSR 60 (E) dated 28.01.2015, issued by the UOI which amended the Rules, stating that

"(ii) ensure that no application for fresh registration or renewal of registration is accepted if any case is pending in any court against the applicant for violation of any provision of the Act and the rules made thereunder".

3. The Petitioner contends that the impugned Notification and the amendment brought thereon to the Rules is, *ultra vires*, the provisions of Section 32 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereafter referred to as the 'Act') and unconstitutional as offending Article 14, 19 and 21 of the Constitution of India, 1950 (hereafter referred to as the 'Constitution').

4. The Petitioner is a radiologist and was working as a consultant radiologist with one Fertility Research & IVF Centre owned by its Director Dr. Mangla Telang. The NCT, upon receiving a complaint against Dr. Mangla Telang regarding a BBC sting operation showing that she was offering to abort a female foetus, conducted a raid on the Fertility Research & IVF Centre. This led to a criminal case; wherein the Petitioner was named a co-accused in the complaint case filed on 04.04.2008 in Patiala House Court, by the appropriate authority under Section 5(2), Section 6, Section 22, Section 23 and Section 29 of the Act read with Section 200 of the Code of Criminal Procedure. In the meanwhile, another criminal complaint was filed against Dr. Mangla Telang before the Sessions Court in Noida, wherein Dr. Telang was acquitted.

5. Thereafter, the Petitioner with an intention to start its own clinic submitted an application for registration. In reference to the application dated 31.03.2010 for registration of Genetic Clinic & Ultrasound Clinic by the name of Dr. Puri's Ultrasound Clinic at I-1805, C. R. Park, New Delhi under the Act, Letter no. F.

DL/SD/PNDT/ New/ 2010 dated 11.10.10 was issued by the NCT to the Petitioner informing that the registration of the center was deferred till the final judgment is issued by the Court in the pending case.

6. After this event, an application was filed on behalf of another centre owned by Dr. Neena Singh Kumar requesting NCT to allow the Petitioner to perform ultrasound under the Act at her center. However, the NCT, by its letter no. F. No. 12(41)/DL/SD/PNDT/Adv Com(SED/1288) dated 28.04.2015 informed the Petitioner that the District Advisory Committee members of PCPND Techniques, South East District, had not approved the centers application to allow the Petitioner to perform ultrasound under the PCPND Techniques. Further, in response to an application for renewal of registration under the Act submitted *via* letter dated 23.02.2017 by Dr. (Mrs.) R.S. Hansdak, CMO (SG)/ SR, Commandant (med.), CISF Hospital, Saket, New Delhi -17, a letter no. F. DL/ SD/ 336/ 2011-12 dated 14.03.2017, a letter was issued by the NCT informing that in terms of Rule 18A (4) (ii), no application for fresh registration is accepted if any case is pending in any court against the applicant for violation of any provision of the Act and Rules made there under.

7. The Petitioner argues that the notification was issued in the exercise of the powers under Section 32 of the Act, but that provision does not confer any such power on the Central Government to make the amendment that has been made. It is urged that the UOI exceeded the powers rendered to it under Section 32 of the Act and these rules are contrary to the parent act, therefore, the Notification is *ultra vires* the provisions of Section 32 of the Act. It is argued, further that the amendment in the Rules by the Notification deprive the Petitioner or any other practitioner (against whom any case is pending in any court for violation of the Act and Rules) of all means of earning a livelihood and thus, are unconstitutional as offending Article 14, 19 and 21 of the Constitution. It was highlighted that the impugned amendment is violative the right to be presumed innocent until proved

guilty according to law. The criminal complaint is pending adjudication before the District and Sessions Judge for over 9 years, and thus has rendered the Petitioner unable to practice his profession, thus, depriving him of his fundamental rights under Article 14, 19 and 21 under the Constitution. It was argued that the presumption of innocence is available to the Petitioner under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law, and herein the criminal complaint is pending adjudication, thus the presumption lies in favor of the Petitioner. It was highlighted that the Sessions Court has acquitted Dr. Mangla Telang in the criminal complaint. Thus, the presumption of his innocence of the Petitioner is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court in Noida.

8. It is also urged that the UOI failed to follow a just and fair procedure established by law in issuing the notification and amending the Act. Further, the Petitioner submits that Section 23 of the Act clearly provides that any action such as suspension of registration or non-renewal of the certificate can only be taken after charges have been framed against the radiologist. In the present case, the respondents have clearly violated a settled law. They refused to renew the registration even before the charges against the Petitioner have been framed in the criminal proceeding pending before the Additional Sessions Judge.

9. Mr. Siddharth Agarwal, learned counsel argued for the petitioner. It was argued, firstly that the said Rule was made by the Central Government in excess of the power under Section 32 of the Act which empowers the Central Government to make rules for carrying out the provisions of the Act. Delegated power to legislate by making rules “for carrying out the purposes of the Act” is a general delegation without laying any guidelines, it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act. More specifically, in light of the fact

that the Rule prohibits an applicant from even applying for fresh registration or renewal or registration is there is a case pending in any court against the Applicant.

10. Further, the counsel submits that Section 18 of the Act deals with the registration of Genetic Counselling Centre/ Genetic Laboratories or Genetic clinic. The Counsel contends that the as per Section 18, the Central Government is delegated only to make Rules either with respect to the form and manner in which an application shall be made for registration or the facilities to be provided, equipment and other standards to be maintained. Therefore, the Rule which prohibits an applicant from even applying for registration is clearly beyond the scope of the specific delegation as provided in the Act.

11. In this regard, the counsel places reliance on the decision in the case of *Addl. District Magistrate (Rev.) Delhi Admin vs. Siri Ram*, (2000) 5 SCC 451, which held that the delegated power to legislate Rules cannot be used to bring within its purview/ambit disabilities/prohibitions not contemplated by the provisions of the Act. In the present case, by way of the impugned Rules, it is sought to bring in disabilities/prohibition which was not envisaged in the main Act. Reliance was also placed on *Kunj Behari Lai Butail Vs State of H.P.*, (2000) 3 SCC 40, which held that Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. However, in the present case, by way of the delegated legislation, a new prohibition is sought to introduce which was not envisaged in the main Act.

12. Mr. Agarwal argued that the said Rules directly affect the right of a citizen to practice their profession and also right to live. Furthermore, the impugned Rule is contrary to the principle of natural justice which entails that every individual has the right to be presumed innocent until proven guilty in accordance with law. Therefore, it is a well settled principle of law that just because a case is registered

against a person, he cannot be held guilty and also be debarred him from practicing his profession. In the present case, Rule 18(4)(ii) prohibits the authority from even accepting the Application for registration/renewal of registration if a case is registered against him under the Act. The Rule itself does not contemplate any natural justice compliance. Hence, the same is bad in law and hence requires to be quashed.

13. The learned counsel also argued that no registration under the Act is required for an individual doctor to practice her/his profession. The Act only envisages Registration (a) Genetic Counselling Centre (b) Genetic Laboratory (c) Genetic Clinic to function (Section 18). An individual doctor, in order to practice her or his profession, needs be registered under the Indian Medical Council/State Medical Council. The 'registration of a case' in itself will not be ground for the Indian Medical Council/State Medical Council to cancel the registration of a registered medical practitioner. Therefore, even if a case is registered against an individual doctor, he can carry on with his professional work. But Rule 18(4)(ii) prohibits an individual doctor who is having a valid registration under the Indian Council Act, 1956 to practice his profession and hence Rule 18(4)(ii) is in conflict with the Indian Medical Council Act, 1956.

14. Counsel explained that Section 23(2) of the Act specifically mentions that the name of the registered medical practitioner shall be reported to the State medical council concerned for taking necessary action including the suspension of the registration if 'charges are framed' by the Court till the disposal of the case. From the said provision, it is clear that the Act contemplates action against the individual medical practitioner once the Charge sheet is filed. Whereas, Rule 18(4)(ii) bars even acceptance of the Application from the 'Applicant' if there is a case pending against him. Hence, Rule 18(4)(ii) is directly in conflict with the Section 23 (2) of the Act.

15. It was argued, also that as per Rule 18(4)(ii), a duty is cast upon the appropriate Authority to ensure that no application for fresh registration or renewal is accepted if any case is pending against the 'Applicant'. The 'Applicant' for the purposes of the Act is (i) Genetic Counselling Centre (ii) Genetic Laboratory (iii) Genetic Clinics as the Act is contemplating a registration/renewal of registration by these establishments. No individual doctor requires any separate registration under the Act. This being the legal position, it is wrong on the part of the Authorities to not to accept an application of an Establishment which contain the name of an employee doctor against whom a case is registered under the Act. The learned counsel also explained that as per Rule 13, every Genetic Counselling Centre/ Genetic Laboratory/ Genetic Clinic/Ultrasound Clinic/Imaging Centre shall intimate every change of employee, place, address and equipment installed to the Appropriate Authority and seek re-issuance of the certificate of registration. There is a huge difference between 're-issue' and fresh registration/renewal of registration. Fresh registration/renewal of Registration is to be done as per Rule 4,5,6 and 8 of the Rules. However, re-issue is a mere formality where the fresh certificate of registration is issued after incorporating the newly employed person. Hence, there is no fresh registration/renewal of registration when a new employee is added in the list. As per Section 19 of the Act, registration/renewal of registration can be rejected after conducting an enquiry as envisaged in these Sections/Rules. But Rule 18(4)(ii) contemplates a straight away rejection which itself is contrary to the specific provision of the Act.

16. The petitioner's Counsel further submits that the same provision was challenged before the Bombay High Court in *Dr. Sudhir Vs The State of Maharashtra (W.P(C) No. 6979/2015)* and also in *Maharashtra State branch of IRIA MSBIRIA, Mumbai Vs UOI 86 Ors (W.P(C) No. 4478/2015)* and before the Bombay High Court, the UOI's stand was that Rule 18A(4)(ii) shall not be construed as a total prohibition on the appropriate authority to receive an

application for renewal or fresh application. But in Delhi, the Appropriate Authority is not even accepting the said application. Therefore, the UOI was behaving in an arbitrary manner by its inconsistent stands. Counsel further placed reliance on the decision of this Hon'ble Court in *Indian Radiological and Imaging Association (IRIA) & Ors. vs. Union of India & Ors.* 227 (2016) DLT 538, which held as under:

" The PNDT Act, clearly has failed to serve the purpose.

40. One of the reasons therefor, as far as we can gauge is the unnecessary emphasis on regulating and enforcing those provisions which do not serve the aim and objective of the Act and at the expense of detection of violations of the prohibitions imposed by the Act and which appear to continue unabated. The entire enforcement machinery created under, the Act appears to be engrossed in the mammoth paper work of registration of ultrasound machines and other diagnostic tools, even if in use of medical professionals for non-prenatal diagnosis and of ensuring that the records required to be maintained by the registrants are maintained. In all this exercise, there appears to be little time left for identifying those misusing the ultrasound machine for sex determination and who are going undetected."

17. The UOI argued that the widening gap in the Child sex ratio (0-6 years) over the last 5 decades, from 976 to 1961 to 918 in 2011, reveals a high percentage of female foeticide and gender discrimination in the country. It was highlighted that the child sex ratio is presently the lowest since independence. Continuous and unabated fall in Child Sex Ratio across 18 states and 3 Union Territories shows that the phenomenon has spread to all corners of India, including the rural and far flung areas which were earlier out of its clutches. With a view to overcome the growing problem of sex selective termination of pregnancy after determining the sex of foetus by using pre-natal sex determination, the Act was enacted.

18. Counsel argued that the Act was brought into operation from 1st January, 1996 and has since been amended to make it more comprehensive. It is a social welfare legislation, with an objective to prevent elimination of female foetus before birth. The legislature in its wisdom, in view of decreasing Child Sex Ratio skewed against the girl child has enacted the ACT and accordingly prescribed provisions including the definitions. The specific choice of legislature cannot be called arbitrary and is in no way *ultra vires* or violative of the Constitution.

19. Learned counsel for the UOI submits that the Act is a Central legislation, wherein the Government of India is committed to providing a legal framework for intensifying efforts to curb the practice of sex determination through effective implementation of the Act lies primarily with the States, who are required to enforce the law through the statutory bodies in the States/UT, constituted under the Act. The person conducting such diagnostic procedures on a pregnant woman has to maintain a complete record thereof in the manner prescribed in the Rules and a deficiency or inaccuracy in maintaining such records would amount to an offence, unless the person conducting such sonography is able to show that there was no such deficiency and inaccuracy.

20. The Act was enacted by the Parliament with a special and specific object which promotes the right to life under Article 21 of the Constitution as held in 2005 Cri LJ 3408 by the Hon'ble High Court of Mumbai titled *Vinod Soni & Anr v. Union of India*, wherein the court observed that the Article 21 is now said to govern and hold that – “*it is a right of every child to full development*”. It is contended that the Act empowers the Central Government to regulate the use of pre-natal diagnostic techniques. The proliferation of the technology is resulting in a catastrophe in the form of female foeticide leading to severe imbalance in the male-female ratio. The Central Government is duty bound to intervene in such a case to uphold the welfare of the society, especially of the women and the children. It is, therefore, necessary to make provisions for penalties and

imprisonment for contravening any of the provisions of this Act. Chapter VII of the Act prescribes Offences and Penalties. There is no gradation of offences under the Act as it does not classify offences. The Act prescribes punishment in furtherance of its objects and purposes which is to prevent detection of female foetus, which is in the larger public interest. Therefore, Section 23 does not violate Article 14, 21 of the Constitution. Further, right to practice profession under Article 19(1)(g) of the Constitution is not an absolute right.

21. The learned counsel emphasized that Section 32 empowers the Central Government to make rules to carry out the provisions of the Act. Section 32 (2)(iv)(a) lays down that the Rule may provide for the code of conduct to be observed by any person working at the Genetic Counselling Centers, Genetic Lab and clinics and it is to be laid down by the Central Supervisory Board under clause (iv) of section 16. It is further submitted that the Appropriate Authorities on the receipt of the application shall decide as per Rule 6 and Rule 8 of the Rules which lay down the procedure to be adopted and as per Rule 18A(4)(ii) which decided the fate of the case as per the pendency of the court case while deciding the application for renewal/registration. Therefore, the rules are in consonance to the objects of the Act. Moreover, the UOI argues that there is one case pending against Dr. Sunil Puri as a co-accused in the Court of MM, Saket, Delhi. Further, all the decisions taken in compliance of the Rules and regulations of the Act by the District appropriate Authority or District Advisory Committee. The Counsel for the Respondent argued that the present petition is not maintainable as there are remedies available under Section 21 of the Act as well as Rule 19.

22. It was alleged that the petitioner is a part of the racket spreading in Delhi and Haryana and has suppressed this fact. The UOI's Counsel submits that that on the 4th of October 2017, the petitioner was caught red handed by the joint team of Delhi and Haryana. The Counsel alleged that unregistered ultra sound machines and money given by the pregnant lady was also recovered from the petitioner's

pocket. The Counsel explaining the incident submitted that the racket was initially intercepted by the authorities of Haryana and the Delhi authorities were intimated later. A criminal complaint was filed against the petitioner under section 3, 4, 5(2), 6, 29, 23, 25, 27 of the Act and under Rule 9(4), 10 (1A), 18 and a FIR no. 0105 dated 05.10.2017 was also filed. Further, the counsel alleged that the petitioner was also running a clinic at Chittaranjan Park illegally. Therefore, the grievance of the petitioner that he is not able to work is false as he was illegally running his clinic his clinic in the basement. Also, the petitioner was working as a Radiologist with Dr. Mangala Telang, Dir. Fertility Research & IVF Centre and were caught on cameras by BBC sting operation as being involved in an illegal act of sex determination and aborting female foetus. It was argued, besides that the UOI justifiably rejected the petitioner's application dated 31.03.2010 and passed the order dated 11.10.2010 deferring the registration of his proposed clinic in the name of Dr. Puri's Ultrasound clinic at CR Park in view of the criminal case against him. Thereafter, another center asked for the approval of their center with the petitioner as radiologist but was rejected, on the ground that the petitioner has not been approved by the advisory committee. All these decisions were taken by the District Appropriate Authority, South East District after taking the advice of the District advisory committee as per law and taking note of the interests of public at large.

23. Explaining the reasonableness of the impugned rule, the UOI's Counsel submitted that the act was passed to prohibit pre-natal diagnostic techniques for determination of the sex of the foetus leading to sex selective elimination of female foetuses. Reliance is placed on WP No. 301/ 2000, *Centre for Enquiry into Health and Allied Themes (CEHAT) vs. Union of India*, and the Supreme Court in that case, passed some directions to the central government, including to implement the Act and Rules and also the Appropriate Authorities under the Act

to take prompt action with respect to violators. Likewise, reliance was placed on *Voluntary health Association of Punjab v. Union of India* where it was held that:

“32. Having stated about the scheme of the Act and the purpose of the various provisions and also the Rules framed under the Act, the dropping of sex ratio still remains a social affliction and a disease.

33. Keeping in view the deliberations made from time to time and regard being had to the purpose of the Act and the far reaching impact of the problem, we think it appropriate to issue the following directions in addition to the directions issued in the earlier order:-

(a) All the States and the Union Territories in India shall maintain a centralized database of civil registration records from all registration units so that information can be made available from the website regarding the number of boys and girls being born.

(b) The information that shall be displayed on the website shall contain the birth information for each District, Municipality, Corporation or Gram Panchayat so that a visual comparison of boys and girls born can be immediately seen.

(c) The statutory authorities if not constituted as envisaged under the Act shall be constituted forthwith and the competent authorities shall take steps for the reconstitution of the statutory bodies so that they can become immediately functional after expiry of the term. That apart, they shall meet regularly so that the provisions of the Act can be implemented in reality and the effectiveness of the legislation is felt and realized in the society.

(d) The provisions contained in Sections 22 and 23 shall be strictly adhered to. Section 23(2) shall be duly complied with and it shall be reported by the authorities so that the State Medical Council takes necessary action after the intimation is given under the said provision. The Appropriate Authorities who have been appointed under Sections 17(1) and 17(2) shall be imparted periodical training to carry out the functions as required under various provisions of the Act.

(e) If there has been violation of any of the provisions of the Act or the Rules, proper action has to be taken by the authorities under the Act so that the legally inapposite acts are immediately curbed.

(f) The Courts which deal with the complaints under the Act shall be fast tracked and the concerned High Courts shall issue appropriate directions in that regard.

(g) The judicial officers who are to deal with these cases under the Act shall be periodically imparted training in the Judicial Academies or Training Institutes, as the case may be, so that they can be sensitive and develop the requisite sensitivity as projected in the objects and reasons of the Act and its various provisions and in view of the need of the society.

(h) The Director of Prosecution or, if the said post is not there, the Legal Remembrancer or the Law Secretary shall take stock of things with regard to the lodging of prosecution so that the purpose of the Act is subserved.

(i) The Courts that deal with the complaints under the Act shall deal with the matters in promptitude and submit the quarterly report to the High Courts through the concerned Sessions and District Judge.

(j) The learned Chief Justices of each of the High Courts in the country are requested to constitute a Committee of three Judges that can periodically oversee the progress of the cases.

(k) The awareness campaigns with regard to the provisions of the Act as well as the social awareness shall be undertaken as per the direction No 9.8 in the order dated March 4, 2013 passed in Voluntary Health Association of Punjab (supra).

(l) The State Legal Services Authorities of the States shall give emphasis on this campaign during the spread of legal aid and involve the para-legal volunteers.

(m) The Union of India and the States shall see to it that appropriate directions are issued to the authorities of All India Radio and Doordarshan functioning in various States to give wide publicity pertaining to the saving of the girl child and the grave dangers the society shall face because of female foeticide.

(n) All the appropriate authorities including the States and districts notified under the Act shall submit quarterly progress report to the Government of India through the State Government and maintain Form H for keeping the information of all registrations readily available as per sub- rule 6 of Rule 18A of the Rules.

(o) The States and Union Territories shall implement the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 forthwith considering that the training provided therein is imperative for realising the objects and purpose of this Act.

(p) As the Union of India and some States framed incentive schemes for the girl child, the States that have not framed such schemes, may introduce such schemes.”

24. It was submitted that there is no anomaly between Section 23(2) and Rule 18(4)(ii), rather these two provisions support each other and brings out a complete legal framework against the violators. Rule 18(4)(ii) imposes duties on the Appropriate authorities to ensure that no application for fresh registration or renewal of registration of accepted of any case is pending against the applicant for the violation of any provision of this Act or Rules. Under Rule 18, the appropriate authority appointed under the Act is authorized and duty bound to observe the mandatory conduct for registration and renewal of license whereas under Section 23(2), appropriate authority is expected only to inform to the Medical Council for necessary action including the suspension of the medical practitioner. These provisions are inserted to ensure that a doctor who commits crime relating to sex determination under the Act, in addition to the punishment (imprisonment + fine) given in the Act, must also face appropriate action including suspension or removal of his name by the Disciplinary body that Medical council of India.

25. Rule 14A (4)(ii) is like remedial and preventing measures to ensure that the culprit doctor should not indulge in the offences under the Act. So far as Section 23(2) is concerned, the Medical council of India generally does not take

appropriate action against the erring doctors. Therefore, such provisions are inserted to ensure that a doctor who commits crime relating to sex determination under the Act, in addition to the punishment given in the Act, must also face appropriate action indulging suspension or removal of his name by the Disciplinary body that MCI.

26. Section 23(2) is only applicable to the individual doctors whereas rule 18, applies to doctors, ultrasound clinics, any genetic center etc, registered under the Act for the purpose specifies. Any person registered under the Act and he was bound to perform duties as per law.

27. The Counsel for the Respondent relied on the decision of the Rajasthan High court in the case of *Shipra Katta vs. State of Rajasthan* (S.B. Civil Writ Petition No. 16322/2017), wherein, a case was pending against the petitioner for violation of the provisions of the Act and the rules made thereunder. The court held that the petitioner would be at liberty to make a fresh application only if rigor of Rule 18A(4)(ii) comes to an end.

Relevant provisions of the Act and Rules.

28. Before dealing with the merits of the case, it would be necessary to notice the relevant provisions of the Act and rules; they are extracted below:

“Section 19. Certificate of registration.- (1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.

(2) If, after the inquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act or the

rules, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.

(4) The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.

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23. Offences and penalties.- (1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

(2) The name of the registered medical practitioner who has been convicted by the court under sub- section (1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or of a medical geneticist, gynaecologist or registered medical practitioner for conducting pre-natal diagnostic techniques on any pregnant woman (including such woman unless she was compelled to undergo such diagnostic techniques) for purposes other than those specified in clause (2) of section 4, shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

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Section 32. Power to make rules.- (1) *The Central Government may make rules for carrying out the provisions of this Act.*

(2) *In particular and without prejudice to the generality of the foregoing power, such rules may provide for—*

(i) *the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (1) of section 3;*

(ii) *the form in which consent of a pregnant woman has to be obtained under section 5; (iii) the procedure to be followed by the members of the Central Supervisory Board in the discharge of their functions under sub-section (4) of section 8;*

(iv) *allowances for members other than ex officio members admissible under sub-section (5) of section 9;*

(v) *the period intervening between any two meetings of the Advisory Committee under the proviso to sub-section (8) of section 17;*

(vi) *the terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee under sub-section (9) of section 17;*

(vii) *the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 18;*

(viii) *the facilities to be provided, equipment and other standards to be maintained by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under sub-section (5) of section 18;*

(ix) *the form in which a certificate of registration shall be issued under sub-section (1) of section 19;*

(x) *the manner in which and the period after which a certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 19;*

(xi) *the manner in which an appeal may be preferred under section 21;*

(xii) *the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 29;*

(xiii) *the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody such documents, records or objects were seized under sub-section (1) of section 30;*

(xiv) *any other matter that is required to be, or may be, prescribed."*

The Rules

“Rule 8. Renewal of registration.-

(1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. Acknowledgement of receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub-rule (2) of rule 4. (2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the Advisory Committee in this behalf, renew the certificate of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of registration earlier granted.

(3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and these rules, it shall, for reasons to be recorded in writing, reject the application for renewal of certificate of registration and communicate such rejection to the applicant as specified in Form C.

(4) The fees payable for renewal of certificate of registration shall be one half of the fees provided in sub-rule (1) of rule 5.

(5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication of rejection of application for renewal, both copies of the earlier certificate of registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.

(6) In the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed.

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Rule 18A. Code of Conduct to be observed by Appropriate Authorities

(4) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following conduct for registration and renewal of applications under the Act, namely:-

(i) dispose of the application for renewal and new registration within period of seventy days from the date of receipt of application;
(ii) ensure that no application for fresh registration or renewal of registration is accepted if any case is pending in any court against the applicant for violation of any provision of the Act and the rules made thereunder."

The notification No. GSR 60 (E) dated 28.01.2015 (impugned in this case) reads as under:

"2. In the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996, rule 18-A, sub-rule (4) in clause (ii), the following shall be substituted, namely: —

"(ii) ensure that no application for fresh registration or renewal of registration is accepted if any case is pending in any court against the applicant for violation of any provision of the Act and the rules made thereunder"

Analysis and Conclusions

29. In the facts of the present case, it is not a matter of dispute that First Information Report (FIR) was lodged against the petitioner for alleged violation of the Rules and failure to maintain record in proper form. In pursuance to lodging of FIR, criminal case is registered and same is pending consideration before the Judicial Magistrate.

30. In essence, the fulcrum of the grievance lays stress on the question of law whether the powers and jurisdictions of the appropriate authorities with respect to acceptance of an application of fresh or renewal of registration- of an applicant third party, who wishes to engage the petitioner or employee, because of any pending case in any court for violation of any provision of the Act and rules made thereunder. The petitioner complains that the pattern of action adopted by the respondents is such that whenever an establishment wishes to engage his services and discloses that to the appropriate authorities in its application for registration, that is denied; he is then not engaged. He therefore stresses that without following any due procedure, the indirect method of refusing registration to others (who

wish to avail his services as a medical practitioner) has *in effect deprived his livelihood*. In this regard, it is pointed out that the only procedure which the law permits is to cite a convicted individual and refer his case to the concerned State Medical Council for appropriate disciplinary action, under the Indian Medical Councils Act.

31. The definitions of various expressions under the Act relevant for this case are i) genetic counseling centre which is defined by Section 2 (c) as “institute, hospital, nursing home or any place, by whatever name called, which provides for genetic counselling to patients”; ii) the term “genetic clinic” is defined as (Section 2 (d)) “ a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures”; and iii) “genetic laboratory” is defined by Section 2 (e) as “a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test”. By Section 3 (1) no clinic or any other establishment can operate as a genetic counselling centre, genetic clinic or genetic laboratory, unless it is registered under the Act; Section 3 (2) prescribes that no establishment can operate as a genetic counselling centre, genetic clinic or genetic laboratory, can employ or “cause to be employed” “any person who does not possess the prescribed qualifications”. Section 4 regulates prenatal diagnostic techniques; Section 6 prohibits the determination of sex of a foetus by any registered institution (genetic clinic, counselling centre or genetic laboratory) by using any pre-natal diagnostic technique. The institutions concerned (genetic clinic, counselling centre or genetic laboratory) have to be registered under Section 18; the procedure for inquiry to issue the registration certificate is provided under Section 19.

32. Section 20 deals with cancellation or suspension of registration; it empowers the appropriate authority to “*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. After giving “a reasonable opportunity of being heard” if 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*”.

33. Section 23 of the Act is important; it provides that (Section 23 (2)) in the event of conviction under Section 23 (1) a medical practitioner “*shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence*”.

34. During the course of arguments, the Petitioner relied on the case of *Maharashtra State Branch of IRIA MSBIRJA* (supra), where the Union of India stated that that the impugned rule would not be construed as a total prohibition on the appropriate authority to receive an application for renewal or fresh registration. The application shall have to be received and processed in accordance with Rule 8 of the said Rules and decision thereon shall be communicated to the concerned doctor. It would be open for the appropriate authorities in State to receive and decide the applications for renewal of registration or grant of registration without impeded by the impugned Rules. The said Order records the statement made on behalf of Union of India in *Maharashtra State Branch of IRIA MSBIRJA*, (supra) that the amended Rule 18A(4) (ii) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 incorporated with effect from 28.01.2015, shall not be construed as total prohibition on the appropriate authority to receive an application for renewal or fresh registration.

35. The Bombay High Court (Aurangabad Bench) in another case, relied on the above statement (of the Union of India) and held that it is obligatory on the part of

the appropriate authority to receive applications for registration and renewal of registration in spite of pendency of criminal case or lodging of FIR against the concerned doctor or Diagnostic Centre. It was further held that the application received for renewal of registration has to be dealt with in accordance with Rule 8 of the Rules. Rule 8 provides that the appropriate authority shall, after holding enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and Rules, having regard to the advice of the Advisory Committee, renew the Certificate of registration.

36. Subsequently in *Dr. Sudhir v State of Maharashtra* (WP 6979/205) impugning the rejection of renewal of registration, Bombay High Court by its order dated 13.8.2015, set aside refusal (of renewal of registration) and further observed that mere pendency of criminal case or lodging of FIR may not constitute a ground for refusal to renew registration certificate.

37. In the case of *Dr. Kanwal Raj vs. Union of India* (CWP No. 2400 of 2017), leaving the question of the validity of said Rule open, the Punjab and Haryana High Court remitted the matter back to the District Appropriate Authority to reconsider the application filed by the petitioner for renewal of his registration under the Act, in terms of the stand taken by SG before the Bombay High Court in *Maharashtra State Branch of IRIA MSBIRUA's* case and the order passed in *Dr. Sudhir's* case. In *Ramineni Venugopal Somaiah and Ors. vs. Maharashtra Medical Council and Ors.* 2013(6) Mah. LJ. 42 the Bombay High Court dealt with the issue, in the following observations:

“We do not, however, find the Legislature having gone to the extent of visiting registered medical practitioners with drastic and far reaching consequences without affording them any opportunity of even having their case considered in any manner whatsoever. More important, we do not find the Legislature as having intended visiting registered medical practitioners with drastic civil consequences for a substantially long period of time irrespective of the nature or extent of the alleged violation of the provisions of the Act. It is clear

from the provisions of the Act itself that the intention of the Legislature was not so. Much less, do we find the Legislature having intended in such cases to render the powers and the jurisdiction of the Maharashtra Medical Council redundant.

25. It is pertinent to note that the Medical Council itself was not of this view. Its present stand is only in view of the said judgment of the learned single Judge of this Court. This is evident from the judgment itself. In paragraph 2, the learned Judge noted that the Maharashtra Medical Council understood section 23 to mean that it would have to hold an enquiry before suspension or removal of the concerned registered medical practitioner.

26. Firstly, if the Legislature intended the name of a registered medical practitioner to be suspended the moment charges are framed against him by the Court under the Act and till the case is disposed of without affording the registered medical practitioner an opportunity of defending himself, it would have provided for the same in clear language to that effect. Further, if the Legislature intended the suspension to continue till the case is disposed of, it would have provided for the same in clear, express terms. Most important, if the intention of the Legislature was to do so irrespective of the gravity of the offence under the Act, irrespective of the nature of the offence under the Act and irrespective of the extent of the offence under the Act, it would have provided for the same in clear language to that effect. The language of the section would have been entirely different. If that was the intention of the Legislature, it would have provided that upon charges being framed, the registration of the registered medical practitioner would stand suspended.

27. Section 23(2) provides that in the event of the charges being framed against a registered medical practitioner under the Act, the Appropriate Authority shall report the same to the State Medical Council "for taking necessary action, including suspension of the registration". The section does not state that upon the Appropriate Authority reporting the fact of charges being framed, the State Medical Council must suspend the registration. Section 23(2) does not require the State Medical Council to suspend the registration of the medical practitioners but only to take necessary action for suspension. Had the intention been otherwise, sub-section (2) would have provided that the name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council for suspending the registration if the charges are framed by

the Court. In other words, sub-section (2) would in that case have provided that the name of such registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council and upon receipt thereof, the registration of the concerned medical practitioner will be deemed to have been suspended. Sub-section (2) would have provided that in such a case, the State Medical Council would forthwith suspend the registration.

28. To the contrary section 23(2) only provides that upon receiving the report from the Appropriate Authority, the State Medical Council must take steps, including for suspension of the registration, meaning thereby, it must initiate the process for considering suspending the registered medical practitioner and not to suspend his registration without anything more.

29. This view is, in fact, supported by sub-section (1) of section 23. Before construing sub-section (1), it is necessary to note that under sub-section (2), the suspension is to continue from the date of framing of the charges till the case is disposed of. There is no guarantee as to when the case will be disposed of. Under sub-section (1) the persons contemplated therein who contravene any of the provisions of the Act or Rules shall be punishable with imprisonment for a period which may extend to three years and with fine which may extend to Rs. 10,000/- and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to Rs. 50,000/-. There is no minimum term of imprisonment. This is clear from the words "with imprisonment for a term which may extend to" in respect of the first offence and any subsequent conviction.

There can be various offences under the Act with varying degrees of seriousness. For instance, the carrying out of a test prohibited under the Act with a view to determine the sex of the foetus would be a serious offence. On the other hand, the Rules provide for various things to be done, including in respect of the paper work. If, for instance, through inadvertence and with no mala fide intention some paper work remains to be done and such a lapse has no adverse consequence, the offence would not be serious. This is especially so when the person covered by section 23, though technically responsible for maintaining the records was, not responsible, for the lapse having entrusted it to another. It may still be an offence under the Act or the Rules. In such a case, however, the concerned person would in all probability not be visited with a drastic sentence. The Legislature could never have intended suspending the registration of

such a person for an inordinately long period of time - indeed an indeterminate period of time viz. from the framing of the charge till the case is disposed of and that too by depriving him of any opportunity whatsoever of having his case even considered.

30. Although the respondents did not raise the issue, it did occur to us that considering the mischief sought to be suppressed by the Act, a serious offender may, by being afforded an opportunity of being heard, manage to avoid the consequences of the law till the State Medical Council concludes the hearing. Our apprehension in this regard is, however, unfounded.

31. There is a distinction between suspensions which are made as holding operations and suspensions by way of punishment. Although the said Act does not expressly provide for interim suspension, the State Medical Council would always have the power in appropriate cases or grave urgency to suspend the registration as a holding action and afford the registered medical practitioner a post-decisional hearing. Such an order pending the enquiry would not be a penalty or punishment. It would be open thereafter for the Council, after the enquiry is conducted, to suspend the registration for such period of time as may be warranted by the facts of a particular case. The period of suspension naturally would depend upon the nature of the alleged offence. Such an order, after hearing the medical officer finally, would be by way of penalty.

33. We may add that if interim action, which is of a drastic nature is to be taken ex parte, it must necessarily be animated by sense of urgency and to quote the words of Chinnappa Reddy, J. (SCC pg. 492, 493 paras 23, 24). "The sense of urgency may be infused by a host of circumstances such as trafficking and unscrupulous puddling in licences, large scale misuse of imported goods, attempts to monopolise or corner the market, whole sale prevalence of improper practices among classes of importers, public sentiment etc. etc Public interest must nolens volens be the paramount consideration.

33. Thus, if in a case of grave urgency and if the Medical Council forms an opinion for instance that the continuation of a medical practitioner on its register for any length of time is detrimental to public interest or is likely to lead to the violation of the provisions of the said Act, it can always issue an order of suspension as a holding order and then follow it by an enquiry to consider whether or not to continue the suspension. The exercise of such power would only be in cases where the matter cannot be delayed at all.

34. In this manner, public interest, the implementation of this provision of the Act and the interest of registered medical practitioners are adequately and fairly protected.

37. Indeed, nothing prevents the Maharashtra Medical Council from proceeding against a registered medical practitioner under section 22 of the Maharashtra Medical Council Act, 1965 (MMC Act) even where a criminal case is pending against him.

38. It is well established that the nature of the proceedings and the level of proof in a criminal case and in an enquiry of the nature contemplated by section 22 of the MMC Act are different. In certain circumstances, even if a registered medical practitioner is acquitted in the criminal proceeding, that by itself would not prevent the Maharashtra Medical Council from taking action against him under the MMC Act.

39. It is a moot point whether the powers and jurisdiction of the Council or the Executive Committee to suspend a registration as a holding operation only pending an enquiry can also be traced to section 23(2) of the Act. We, however, do not express any view on this issue as in this case, in any event, the power to do so lies in section 23(2) of the said Act. In the circumstances, Rule is made absolute by quashing the suspension order. Respondent No. 1, however, is directed to forthwith initiate proceedings to consider whether the registration of the petitioners under the said Act ought to be suspended and if so, for what period of time. Further, the respondent No. 1 shall be entitled to issue such directions and orders to the petitioners in respect of the working of the said J.P. Hospital in order to ensure that there are no violations of the provisions of the said Act and/or the said Rules.

There shall be no order as to costs."

38. In the facts of the present case, it does not appear that the appropriate authority has taken decision having regard to the advice of the advisory committee nor has extended an opportunity of being heard to the petitioner as contemplated by sub-rule (3) of the Rule 8 of the Rules. There are no reasons recorded by the appropriate authority while rejecting the application tendered by the petitioner for

renewal of registration. The sole ground, disclosed from the statement recorded in the order, that a criminal case is pending against the petitioner, is, in the opinion of this court not a valid ground for refusal to grant renewal of certificate of registration of a third party applicant. The impugned rule – to the extent it bars consideration and grant of registration to an *applicant* (for registration as a genetic counseling centre, genetic clinic or genetic laboratory). If the petitioner were to apply for registration of his clinic, or centre or laboratory, undoubtedly, the appropriate authority would be within its rights to refuse registration. That, however, is not the case here. The petitioner however, did not apply; others did. Their applications were rejected on the ground that a case against the petitioner was pending. Now, the rule does not authorize this course of action.

39. If the authorities were of the opinion- at any time previously in the last over 8 years (and they do not so appear to have been of such opinion) that the petitioner's continuation as a medical practitioner – *on account of his implication in the criminal case especially having regard to the facts and materials*, was in any manner detrimental to public interest, it was open to them to have reported this aspect to the Delhi Medical Council, under Section 21 of the Delhi Medical Council Act, 1997. In such event the Delhi Medical Council would have dealt with the issue in consonance with law, after considering the materials on record and providing due opportunity to the petitioner. However, the action and the pattern of behavior complained against, of refusing registration to third party applicants for centres (under the PNDT Act) merely because they showed that the petitioner was employed by them amounts to doing indirectly what cannot be directly achieved: i.e. to blackball the petitioner and prevent him from freely associating with others in the practice of his profession, in an entirely arbitrary manner.

40. In the view that this court has expressed, it would not be necessary to consider the issue as to whether Rule 18A (4) (ii) is invalid or *ultra vires*. That

rule is applicable for denying registration to an *applicant which involved in a case*. The petitioner has not applied; nor did the applicants who did, fall within the mischief of the rule. This, its validity cannot be properly considered. However, as held earlier, that rule cannot be invoked to deny registration to any applicant which is not itself involved in a criminal case, merely because it proposes to employ the petitioner, as a medical practitioner or specialist. If the petitioner is to be dealt with, action in accordance with law against him had to be taken.

41. This court is of the opinion that in view of the above discussion, it is obligatory on the part of appropriate authority to receive applications for registration and renewal of registration in spite of pendency of criminal case of lodging of FIR against a concerned doctor (as long as the applicant is not involved in any case or against which FIR is not lodged). Therefore, the order passed by the appropriate authority (Respondent no.2) refusing to grant renewal of registration to a third party (against which there is no known record of pendency of criminal case) is set aside.

42. In view of the above discussion, the writ petition is entitled to succeed; it is accordingly allowed to the above extent without order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
(JUDGE)

OCTOBER 29, 2018