

HIGH COURT of CHHATTISGARH, BILASPUR

WPC No. 58 of 2017

- Dr. Shweta Andhare, W/o Dr. Pranav Andhare, aged about 37 years, R/o Behind Luthra Hospital, Nehru Nagar Police Station Civil Lines, District Bilaspur Chhattisgarh Civil and Revenue District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Union of India through Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi
2. State of Chhattisgarh, Through Secretary, Department of Health and Welfare, Mantralaya, Mahanadi Bhawan, New Raipur, District : Raipur, Chhattisgarh
3. Director, Health Services (PNDT), 3rd Floor, Indrawati Bhawan, New Raipur, District : Raipur, Chhattisgarh

---- Respondents

WPC No. 68 of 2017

1. Dr. G.B.Singh, S/o Late Sardar Mahindra Singh, aged about 69 years, R/o Nirala Nagar, Bilaspur, District Bilaspur, Chhattisgarh
2. Dr. Shailja Ghosh, W/o Shri Tapan Ghosh, aged about 50 years, R/o Ghosh Sonography Centre, Ashok Prasuti Mandir Premises, Devki Nandan Chowk, Bilaspur, District Bilaspur Chhattisgarh
3. Dr. Harikrishna Agrawal, S/o Late Shri Matadeen Agrwal, aged about 58 years, R/o Mukim Udyan, Akaltara, District Janjgir Champa, Chhattisgarh
4. Dr. R. C. Agrawal, S/o Late Shri Nathmal Agrawal, aged about 64 years, R/o Gayatri Hospital, Gurudwara Road, Kharsiya, District Raigarh, Chhattisgarh
5. Dr. A. K. Paliwal, S/o Late Shri Lakheshwar Lal Paliwal, aged about 59 years, R/o Lakeshwar Lal Paliwal Memorial Hospital, Ring Road, Janjgir, District Janjgir Champa, Chhattisgarh
6. Dr. N. K. Motwani, S/o Dr. Arjun Kumar Motwani, aged about 51 years, R/o V-5 Rama Life city, Sakri, P.S. Chakarbhatta, Civil and Revenue District Bilaspur, Chhattisgarh
7. Dr. D. N. Agrawal, S/o Late Shri Gopinath Agrawal, aged about 54 years, R/o Agrawal Sonography, Lions Chawk, Road Champa, District Janjgir Champa, Chhattisgarh
8. Dr. Mohammed Parvez, S/o Late Shri Sayyid Ali Mohammed, aged about 64 years R/o Khan Nursing Home, J K D Road, Manendragarh, District : Koriya, Chhattisgarh
9. Dr. Prabeer Kumar Niyogi, S/o Late Shri Tara Prasad Niyogi, aged about 70 years, R/o Behind Bus Stand, Near Lalpur Bridge Manendragarh, District Koriya Chhattisgarh
10. Dr. Bhaskar Prasad, S/o Shri Diwakar Prasad, aged about 29 years, R/o Ward No.5, Near High School, Thankhamaria, Police Station Than Khamaria, District Bemetara, Chhattisgarh
11. Dr. Anil Wasti, S/o Shri J. L. Wasti, aged about 43 years, R/o L- 2, Vishal Nagar, Raipur, District Raipur, Chhattisgarh

- 12.** Dr. Nita Kumari Shrivastava, W/o Dr. P. K. Shrivastava, aged about 52 years, R/o Ware House Road, Bilaspur, District Bilaspur, Chhattisgarh

---- **Petitioners**

Versus

- 1.** Union of India Through Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi
- 2.** State of Chhattisgarh, Through Secretary, Department of Health and Welfare, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh
- 3.** Director, Health Services P N D T, 3rd Floor, Indrawati Bhawan, New Raipur, District Raipur, Chhattisgarh

---- **Respondents**

WPC No. 72 of 2017

- Dr. Niharika Rathore, W/o Dr. Atul Rathore, aged about 35 years, R/o Lions Chawk, Police Station Champa, District Janjgir Champa Chhattisgarh, Civil and Revenue District Janjgir Champa Chhattisgarh

---- **Petitioner**

Versus

- 1.** Union of India Through Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi
- 2.** State of Chhattisgarh, Through Secretary, Department of Health and Welfare, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh
- 3.** Director, Health Services P N D T, 3rd Floor, Indrawati Bhawan, New Raipur, District Raipur, Chhattisgarh

---- **Respondents**

WPC No. 131 of 2017

- 1.** Dr. Dindayal Sahu, S/o Shri Purushottam Sahu, aged about 33 years, R/o Village and Post Kedar, Tahsil Sarangarh, District Raigarh Chhattisgarh
- 2.** Dr. Manjeet Singh Chandrasen, S/o. Late R. L. Chandrasen, aged about 32 years, R/o Mahasamund, Trimurthy Colony, District Mahasamund Chhattisgarh

---- **Petitioners**

Versus

- 1.** State of Chhattisgarh Through Secretary, Department of Health and Family Welfare, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh
- 2.** Director, Health Services P N D T, 3rd Floor, Indrawati Bhawan, New Raipur District Raipur Chhattisgarh
- 3.** Director of Medical Education, Old Nurses Hostel, D K S Bhawan Premises, Raipur Chhattisgarh

---- **Respondents**

For Petitioners

: Shri Sunil Otvani, Shri Manoj

Paranjpe and Shri K Rohan,
Advocates

For Respondent/Union of India : Shri B Gopa Kumar, Assistant
Solicitor General

For Respondent/State : Shri Amit Buxi, Panel Lawyer

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per PR Ramachandra Menon, CJ.

19.09.2019

1. The prayers in the leading Writ Petition (C)- 58 of 2017 are to the following effect:

“10.1 It is respectfully prayed to the Hon'ble court that the suitable writ/directions may kindly be issued for declaring Rule 3 (3)(1)(b) of the Rules after amendment, 1996 and Rule 6 of the Rules, 2014 to be declared ultra vires to the Act of 1994.

10.2 The suitable writ/ direction may kindly be issued for setting aside the order dated 30.12.2016 passed by the respondent No.3. The same is annexed as Annexure- P-2.

10.3 Any other further order(s) as deemed fit and necessary by this Hon'ble Court in the interest of justice.”

2. Heard Shri Sunil Otvani and Shri K Rohan, learned counsel for the petitioners, Shri B Gopa Kumar, learned Assistant Solicitor General for the Union of India and Shri Amit Buxi, learned Panel Lawyer for the State.

3. When the matter came up for consideration before this Court on 19.01.2017, considering the facts of the case, following interim order was passed:

“Considering the facts and circumstances of the case, till the next date of hearing, respondents are restrained from conducting any such Competency Base Assessment Test. State authorities are further directed not to take any coercive steps against the petitioners and similarly placed doctors.”

4. Subsequently, it was brought to the notice of this Court that the interference made by the Delhi High Court [in respect of the challenge raised against the validity of Rule 3(3)(1)(b) of Pre conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 and Rule 6 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 2014 (these two Rules hereafter be referred to as 'the Rules')] setting aside the relevant Rule for not being in conformity with the law was taken up before the Apex Court (SLP Nos.16657 to 16659 of 2016), where a stay was granted. It was also pointed out that the matter was still pending consideration before the Apex Court. Taking note of the sequence of events, an order was passed by this Court on 17.05.2019, vacating the stay granted on 19.01.2017. The said order reads as follows :

“After hearing both the sides and particularly with reference to specific direction given by the Apex Court as to further course of action to be followed by all the States, we are of the view that the interim order passed by this Court on 19.01.2017 cannot continue any more.”

5. After hearing both the sides, we are of the view that since the very same issue, as involved in these cases, is pending consideration before the Apex Court, once the said issue is decided, it will govern the field and the grievance projected in these writ petitions.

6. By virtue of the order passed by this Court on 17.05.2019, vacating the stay/ interim order passed on 19.01.2017, it is quite open for the respondents to proceed further steps; but it will be subject to the decision of the Apex Court, as above.

7. In the said circumstances, we dispose off these Writ Petitions, making it clear that all further proceedings pursued by the respondents pursuant to the orders passed by this Court, shall be subject to the final verdict to be passed by the Apex Court in the matters which are stated pending consideration as mentioned above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge