

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4569 of 2019

1. Dr. Shailja Ghosh W/o Shri Tapan Ghosh Aged About 52 Years R/o Chaddawadi, P. S. Civil Lines, Bilaspur District Bilaspur Chhattisgarh
2. Dr. R. C. Agrawal S/o Shri Nathmal Agarwal Aged About 68 Years R/o Gayatri Hospital, New Gurudwara Road, Post Office Kharsia, District Raigarh Chhattisgarh
3. Dr. Harikrishna Agrawal S/o Late Matadin Agrawal Aged About 61 Years R/o Late B. M. S. S. Chikitsa Kendra, P. S. Akaltara, Akaltara, District Janjgir Champa Chhattisgarh,

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Department of Health And Welfare Department, Mantralaya Mahanadi Bhawan,, Atal Nagar Nawa Raipur District Raipur Chhattisgarh,
2. Director Health Services (PNDT), 3rd Floor, Indrawati Bhawan, New Raipur District Raipur Chhattisgarh,
3. Director Medical Education Old Nurses Hostel, D. K. S. Bhawan, Raipur District Raipur Chhattisgarh,

---- Respondents

WPC No. 4572 of 2019

1. Dr. Anil Wasti S/o J. L. Wasti Aged About 46 Years R/o L-2, Vishal Nagar, Raipur District Raipur Chhattisgarh,
2. Dr. Manjeet Singh Chandrasen S/o Late Shri Rang Lal Chandresen Aged About 35 Years R/o Trimurti Colony Mahasamund, District Mahasamund Chhattisgarh,
3. Dr. Bhaskar Prasad S/o Shri Diwakar Prasad Aged About 31 Years R/o Ward No. 05, Near High School, P. S. Khamaria, District Bemetara Chhattisgarh,

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Department of Health And Welfare , Mantralaya Mahanadi Bhawan,, Atal Nagar Nawa Raipur District Raipur Chhattisgarh
2. Director Health Services (Pndt), 3rd Floor, Indrawati Bhawan, New Raipur District Raipur Chhattisgarh,
3. Director Medical Education Old Nurses Hostel, D. K. S. Bhawan, Raipur District Raipur Chhattisgarh,

---- Respondents

For Petitioner	: Shri Prafull N. Bharat, Shri Sunil Otwani, Shri Khowaja Siddiqui, Shri Arup Sinha, Respective Advocates.
For State	: Shri Jitendra Pali Dy. A.G. with Shri Ayaz Naved, G. A.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

13.12.2019

1. Challenge in the present writ petition is to the notification dated 06.12.2019 issued by the State Government prescribing certain conditions for operating Sonography Centre in the stage of Chattisgarh.
2. The contention of the petitioners primarily is that the said notification of the State Government is contrary to the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Rules framed thereunder i.e. the Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as, "the Rules of 1996")
3. The second contention of the counsel for the petitioners is that the conditions put forth by the respondents in the instant case are such conditions which are not available as on date or are not being imparted by any of the institution in the country and therefore these conditions are arbitrary or bad in law and are unable to be obtained.
4. The further contention of the counsel for the petitioners is that a similar notification was issued by the other State Governments as well and which has been interfered by the concerned High Courts and therefore the present notification also deserves to be interfered on the ground of parity.

5. Before moving further, it would be relevant, at this juncture, to mention that the amendment Rules of 2014 i.e. the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014, whereby the Rules of 1996 were amended itself was questioned before a Division Bench of this High Court in a bunch of writ petitions in WPC No. 58/2017 and other analogous writ petitions.
6. It is all the more necessary to mention that when the matters were agitated before the Division Bench of this Court, initially an interim relief was granted by the Division Bench on 19.01.2017, the operative part of which was:-

“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.”
7. This order dated 19.01.2017 was later on vacated vide order dated 17.05.2019. The stay was vacated on the ground that the matter has already been seized by the Apex Court in SLP Nos. 16657 to 16659 of 2016. While vacating the stay the Division Bench held as under:-

“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.”
8. Those writ petitions came up for hearing before the Division Bench of this Court on 19.09.2019. While disposing of said writ petitions, the Division Bench in Paragraphs 4 to 7 held as under:-

“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 19.01.2014. 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”.

9. From the plain reading of the observations made by the Division Bench in Paragraph-6, it clearly reflects that the Division Bench had permitted the respondents to proceed further by taking appropriate steps, which, however, would be subject to the outcome of the decision of the Hon'ble Supreme Court in the matters seized before it challenging the amended Rules of 2014.
10. In Paragraph-7, again the Division Bench clearly had further reiterated that all further proceedings pursued by the respondents pursuant to the order passed by the Division Bench would be subject to the outcome of the final outcome of the judgment of the Hon'ble Supreme Court.
11. Once when there is a categorical observation made by the Division Bench in the bunch of writ petitions permitting the State Government to proceed further, it would not be appropriate for this Court now to sit over the liberty granted by the Division Bench and test the veracity of the steps taken by the State Government subsequently while issuance of notification dated 06.12.2019.
12. This Court is however of the opinion that it does not need any observation of this Court that the said notification dated 06.12.2019 which is under challenge before this Court would in terms of the

order of the Division Bench would be subject to the outcome of the decision of the Hon'ble Supreme Court.

- 13.** Under the circumstances, the writ petition fails and is accordingly dismissed.

Certified Copy Today

**Sd/-
(P. Sam Koshy)
Judge**

Jyotijha