

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 355 OF 2010

Dr. Pramod S/o Rajaram Zunjare,
Aged : 39 years, Occ : Medical Practitioner,
R/o Doctors' Lane, Nanded.
Tq. & Dist. Nanded. ...Petitioner

VERSUS

Appropriate Authority Nanded
Block and Tahsildar, Nanded,
Tq & Dist. Nanded. ...Respondent

ALONG WITH
CRIMINAL WRIT PETITION NO. 354 OF 2010

1. Dr. Minal W/o Anand Patil,
Aged : 35 years, Occ : Medical Practitioner,
R/o C/o Patil Hospital,
Doctors' Lane, Nanded.
Tq. & Dist. Nanded.
2. Dr. Chitra W/o Rangrao Patil,
Aged : 65 years, Occ : Medical Practitioner,
R/o C/o Patil Hospital,
Doctors' Lane, Nanded.
Tq. & Dist. Nanded. ...Petitioners

VERSUS

Appropriate Authority Nanded
Block and Tahsildar, Nanded,
Tq & Dist. Nanded. ...Respondent

ALONG WITH
CRIMINAL WRIT PETITION NO. 401 OF 2010

Dr. Gayatri Shivaji Wadekar,
Aged : 43 years, Occ : Medical Practitioner,
R/o Wadekar Hospital,
Opp. Shivaji Statute,
Vazirabad, Nanded
Tq. & Dist. Nanded. ...Petitioner

VERSUS

Appropriate Authority Nanded
Block and Tahsildar, Nanded,
Shri. Mahesh Ajabrao Wadekar,
Aged : 37 years, Occ : Service
As Tahsildar, Nanded,
R/o Sneh Nagar, Nanded,
Tq & Dist. Nanded. ...Respondent

ALONG WITH
CRIMINAL WRIT PETITION NO. 502 OF 2010

Dr. Uma Avinash Deo,
Aged : 40 years, Occ : Medical Practitioner,
R/o Maher Hospital Regional
Workshop, Nanded
Tq. & Dist. Nanded. ...Petitioner

VERSUS

Appropriate Authority Nanded
Block and Tahsildar, Nanded,
Tq & Dist. Nanded. ...Respondent

Mr. R. N. Dhorde, Senior Advocate i/by Adv. P. S. Dighe for the
Petitioner in all petitions.

Smt. G. L. Deshpande, APP, for Respondent – State.

CORAM : PRASANNA B. VARALE

DATE : MARCH 22, 2019

JUDGMENT

1. Heard learned Counsels appearing for the respective parties.
2. It would not be out of place to state here that in all these petitions an identical/common issue is involved, as such, the petitions are tagged together and accordingly are taken up for hearing and disposal. By consent of the parties Criminal Writ Petition No. 355 of 2010 is taken up as lead petition.
3. Petitions challenges the action of the respondent authority i.e. lodging of complaint and the proceeding arising out of the complaint bearing RCC No. 167/2010 filed in the Court of Learned Chief Judicial Magistrate, Nanded, for the offences punishable under Sections 4(3), 5, 23, 29 and 30 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 (for short “**Act of 2003**”) and the order dated 20.03.2010 issuing process against the petitioner.
4. It is the case of the petitioner that petitioner is a medical

practitioner having completed his M.D. (Radiology) in the year 1997 and since last 10 years is running a clinic at Nanded in the name and style as Trimurti Diagnostic Centre, Nanded. It is the case of the petitioner that petitioner in the year 2002 opened the ultrasound clinic after getting necessary registration certificate. The registration certificate was renewed by the competent authority on 03.11.06 for the period upto 02.11.2011. The said certificate is placed on record at Exhibit 'A' duly signed by the medical officer and the competent Authority. The petitioner had complied with all the necessary formalities for running the said ultrasound clinic including notice displayed as required under Section 4(1)(ii) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short "**Rules of 1996**") which are framed under the Pre-Natal Diagnostic Techniques Act, 1994. Petitioner regularly maintains the record from which some record is kept in the clinic and some record is kept in the adjoining premises. It is the case of the petitioner that on 08.03.2020 the Respondent visited the ultrasound clinic of the petitioner and seized the ultra sonography machine along with record which is kept in the clinic and to that effect p;anchanama has also been drawn and same is placed

on record at Exhibit 'B'.

On the very same day i.e. 08.03.2010 the Respondent passed the order suspending the registration of the petitioner under clause 20(3), on the ground that record of form 'F' was not available for the period from 21.01.2010 and incomplete record was maintained by the petitioner. It is also alleged against the petitioner that the petitioner failed to maintain the copy of the said Act and the rules. Order passed by the authority is placed on record at Exhibit 'C'. On the said material, Respondent filed a complaint bearing R.C.C. No. 167/2010 in the Court of learned Chief Judicial Magistrate, Nanded under Sections 4(3), 5, 23, 29 and 30 of the Act of 2003.

5. Learned Chief Judicial Magistrate, Nanded by order dated 20.03.2010 issued process against the petitioner for committing offences punishable under Sections 4(3), 5, 23, 29 and 30 of the Act of 2003. Being aggrieved by the action of the respondent authority, petitioner had approached this Court.

6. Learned Senior Advocate Mr. Dhorde vehemently submitted that action of the respondent authority is arbitrary, illegal and only based on the whims and fancy of respondent authority. Learned Senior

Advocate further submitted that the respondent authority had seized the record of the petitioner for period upto 2009. It is further submitted that on the year end and on opening of new year i.e. year 2010, a separate register was maintained by the petitioner but the respondent authority without asking the petitioner to provide the latest register only on assumption alleged that no record is maintained by the petitioner of year 2010. Thus, the submissions of learned Senior Counsel is that the respondent authority without applying mind only on a preconceived notion proceeded against the petitioner and lodged the complaint. Learned Senior Counsel then submitted that to show that some action is taken the respondent authorities without there being any supportive material on picking and choosing the medical practitioner like the petitioner. It is then submitted that order passed by the authority dated 08.03.2010 refers to non-availability of certain record and then it further proceeds to refer some hearsay material and on that hearsay material a blanket charge leveled against the petitioner that the petitioner is blatantly violating the provisions of PCPNDT Act and misusing the Pre-Natal diagnostic techniques. It is further submitted by learned Senior Advocate that the complaint lodged before learned Chief Judicial

Magistrate is only reiterating of the charges leveled in the order and reference of some secret information is there. Learned Senior Advocate by inviting attention of this Court to the complaint then submitted that a general statement is made in the complaint and the emphasis was laid and in support of this submissions attention of this Court was invited to paragraph 5 of the complaint and same reads thus:

5) That, it is fact that, the sex ratio of Nanded city and Nanded District is decreased continuously from 1991 to 2001 and 2001-2009 due to misuse of the Pre-natal diagnostic techniques for the purpose of pre natal sex determination leading to the female foeticide.

7. He further submitted that paragraph 6 only refers to some secret information. Learned Senior Advocate invited attention of this Court to paragraph 9 and the same reads thus:

9) That, as per the sec.5 of the above act written consent of pregnant women is required for pre natal diagnostic techniques and also not communicates the sex of the foeticide and as per sec. 6 of the above act prohibited the determination of sex.

8. Then by inviting attention of this Court to paragraph 13,

learned Senior Advocate submitted that a statement is made in this paragraph about issuance of notice to the petitioner and same reads thus:

13) That, for the

Hence department has also conducted the workshop of concern clinic and also issue notices to the accused to obey and abide the rules and regulations and mandatory provisions of the above act. But inspite of this fact accused has violated the mandatory provisions of the act and committed the offence u/s. 4(3),5,6,23,29 and 30 of the Act.

Learned Senior Counsel submitted that in fact there is no such notice issued to the petitioner. Learned Senior Counsel then invited attention of this Court to the copy of the monthly statements placed on record and submitted that though the medical officer is expected to visit the clinic and the hospital of ultrasound clinic every month and to counter sign the monthly statements maintained by the petitioner, the medical officer is not regularly attending the clinic, as such, there are no counter signs on some of the statements. It is submitted by the learned Senior Counsel that though the medical officer of Nanded Waghala Municipal Corporation failed to counter sign the statements, but the petitioner was periodically submitting the statements to the Nanded

Waghala Municipal Corporation as required under the rules. Learned Senior Counsel then submitted that on bare perusal of this certificates would show the necessary details such as, number of patients who have visited to the diagnostic center, age group of the patients, history and the observations indicative of Pe-natal diagnosis. Learned Senior Counsel then submitted that the certificates even show the results of the stage of pregnancy of the patient visiting to the clinic. Thus, it was his first limb of submission of learned Senior Counsel that without there being any material only on assumption and presumption the action is initiated against the petitioner including the order and the initiation of the proceedings.

9. Learned Senior Counsel also invited attention of this Court to the requisite provisions of the Act, more particularly, provisions of which breach or violation is alleged. It is also submitted that by order dated 08.03.2010 the license of the petitioner is suspended and his hospital was sealed with an immediate effect without even considering the Section 20(2) of the Act. It is submitted that Section 20(2) is couched in a way to follow the principles of natural justice. It opens that an opportunity of hearing. It would not be out of place to reproduce

Section 20(2) here for our purposes:

20. Cancellation or suspension of registration.-

*(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.***

Learned Counsel though vehemently submitted that in the present matter no opportunity of hearing is granted to the Petitioner.

10. Learned Senior Counsel then invited attention of this Court to order of learned Single Judge in a group of petitions whereby the matters were remanded back to the competent Authority. Learned Senior Counsel then placed heavy reliance on the judgment of the Division Bench of this Court (Coram : A.V. Nirgude and V.L. Achliya, JJ) in the matter of Dr. Sai w/o. Santosh Shiradkar Vs. The State of Maharashtra and Anr¹. Learned Senior Counsel then submitted that PCPNDT Act

¹ 2016 ALL MR(Cri) 5071

refers in which procedure to be followed before passing a stringent order against the medical practitioner. Thus, it is the submission of learned Senior Counsel that there is a total go by to this procedural safeguard. It would be appropriate to reproduce relevant portion of order in the matter of Dr. Sai (supra) which reads thus:

16. If we look into the provisions of PCPNDT Act, then u/s 28(1)(a) of the said Act it is specifically provided that no Court shall take cognizance of an offence under the PCPNDT Act except on a complaint made by an Appropriate Authority i.e. the Authority notified u/s 17 of PCPNDT Act. The provision has been engrafted with an object that the provisions of the Said Act may not be misused and police have been deliberately kept out of the purview of initiating prosecution though the offences are made cognizable, nonbailable and noncompundable by virtue of Section 27 of the said Act. The entire process of taking legal action against the person violating the investigation of complaint has been entrusted to Appropriate Authority.

S.17(4) The Appropriate Authority shall have the following functions, namely:

(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic

Clinic;

- (b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;*
- (c) to investigate complaints breach of the provisions of this Act or the rules made thereunder and take immediate action;*
- (d) to seek and consider the advice of the Advisory Committee, constituted under subsection(5), on application for registration and on complaints for suspension or cancellation of registration;*
- (e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;*
- (f) to create public awareness against the practice of sex selection or prenatal determination of sex;*
- (g) to supervise the implementation of the provisions of the Act and rules;*
- (h) to recommend to the Board CSB and State Boards modifications required in the rules in accordance with changes in technology or social conditions;*
- (i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.*

17. Thus, if we read the provisions of [sections 17, 17-A and 28](#) of the said Act together, then the role of the Appropriate Authority is very important. The Appropriate Authority has to act as an investigator to inquire into the allegations of violation of the PCPNDT Act and Rules thereunder either on the basis of complaint received as well as to act suo motu. The role of the Appropriate Authority is not just to receive the complaint and file the proceeding in the Court of law. Section 17(4)(c) specifically provides that, one of the function of the Appropriate Authority is to investigate the complaints of breach of provisions of the act and the rules made thereunder and take legal action. Section 17(4)(e) provides that, the Appropriate Authority to take legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice or also to initiate independent investigation in such matter. Thus, to investigate the complaints received against the persons violating the provisions of PCPNDT Act is the job of Appropriate Authority. Outcome of such investigation provides basis either to drop the proceeding or to initiate appropriate proceeding which includes initiation of criminal prosecution by filing complaint u/s 28 of PCPNDT Act. Mere report or complaint or information received cannot be sole basis to prosecute

the person. If the complaint is inquired and investigated results into collection of evidence sufficient to prosecute the person for violation of the provisions of PCPNDT Act, then only criminal proceeding is expected to be filed u/s 28 of the PCPNDT Act. There appears to be specific legislative intent behind introducing [Section 17-A](#) in the PCPNDT Act (incorporated by amended act of 2003) to vest full-fledged powers of inquiry and Appropriate Authority to investigate the matter. Thus, the role of the Appropriate Authority is much more than the authority to file complaint. (Emphasis supplied)

18. In the light of role of the Appropriate Authority discussed as above, it was expected on the part of the Appropriate Authority to have investigated the information received in the form of inspection report from the Vigilance Squad to find out there was any violation of provisions of PCPNDT Act on the part of the petitioner. It was expected on the part of Appropriate Authority to have summoned the persons referred in the inspection report to verify as to whether the petitioner had complied with the requirement of obtaining written consent as contemplated under [Section 5](#) r/w Rule 9 of the PCPNDT Act and there was any violation in observing the mandatory conditions. Simply certain lacunae, omission detected in the consent form could not be the basis to prosecute the person. By exercising the

powers u/s 17-A, certainly the Appropriate Authority could have summoned those persons, recorded their statement and conducted further investigation as deemed fit and proper to collect the evidence to sustain the prosecution in the Court of law. However, in the instant case, it appears that Appropriate Authority has failed to discharge its statutory obligations as contemplated u/s 17(4) of PCPNDT Act i.e. to investigate the report of inspection received from Vigilance Squad which restricts to noting of certain lacunae, omission and certain mistakes in maintenance of record. The report of inspection itself could not be the basis to arrive at the conclusion that such lacunae, omission and mistake were deliberate and acts of omission and commission committed on the part of the petitioner with an intention to violate the provisions of PCPNDT Act. It was also expected on the part of Appropriate Authority to look into explanation given by the petitioner vide reply dt. 09.03.2015 and opportunity of personal hearing and then to arrive at just decision.

11. Learned Senior Counsel also placed heavy reliance on the judgment of learned Single Judge of this Court (Coram : A.V. Nirgude,J) in the matter of Dr. Mrs. Uma Shankarrao Rachewad Vs. Appropriate

Authority, Nanded². In the matter of Dr. Mrs. Uma Rachewad an order was issued against the petitioner by referring certain irregularities. It is then submitted by the learned Senior Counsel that though this vague allegations are made against the petitioner in the complaint that the authority refers to a non-availability of record post 2010 but without giving any opportunity to the petitioner to produce the record prior to year 2010 and without following procedure the action is initiated against the petitioner. It is also submitted by the learned Senior Counsel that in the statements placed before this Court disclosing the details about the patient the observations are made in abbreviation 'NA' and this aspect is considered in the judgment of Dr. Uma Rachewad (supra). It would be appropriate to reproduce paragraph 7 which reads thus:

7. On perusal of the form including the the important note quoted above, it becomes clear that the petitioner was under obligation to mention in the form as to why she decided to examine the pregnant women patients with ultrasound technique. While filling up the

² 2012 ALL MR (Cri) 3991

form, there are number of items which are required to be stricken off and for saying that they are not applicable to the case, word N.A. is conveniently used. It is common knowledge that the word N.A. Is synonym or abbreviation for "Not Applicable". So, while filling the form "F" on number of occasion, the work "N.A." is required to be used whenever the Doctor finds certain case as not applicable. Using of word "N.A." in the forms, thus does not amount to incomplete filling of the form. Besides this, form "F" is prescribed for genetic clinic, ultrasound center and genetic center. Therefore, some of the information required to be filled up, would be irrelevant for clinic from that of the centers. So, word "N.A." would be used for filling up such form. Apparently, therefore, using the word "N.A." while filling up the forms would not amount to maintaining incomplete record or would not amount to deficiency or inaccuracy in the information filled in the form.

12. It is also submitted by learned Senior Counsel that breach is alleged against the petitioner would be at the most an irregularity and certainly would not be an illegality to initiate an action against the petitioner. In support of his submissions learned Senior Counsel placed reliance on the Gujarat High Court Judgment in the matter of Dr.

Manish C. Dave Vs. State of Gujarat and Anr. It would be useful to reproduce relevant portion of above judgment which reads thus:

15. From a bare perusal of the complaints it is apparent that it is not the case of the authority that provisions of Sections 5 or 6 are applicable inasmuch as the authority has not been able to show or even alleged that (i) any pregnant woman or her relative or any other person has been communicated the sex of foetus by the petitioners or (ii) at any place and by any person, including the person conducting ultrasonography, there has been either sex determination or sex selection. In absence of such specific allegations in the complaint it cannot be said that provisions of Sections 5 and 6 of the Act would be attracted.

16. Reading the proviso to Section (3) it is to be presumed that the deficiency or inaccuracy in the record would amount to contraventions of the provisions of Section 5 or Section 6 of the Act. As a natural consequence, in view of such deficiency or inaccuracy, there should be allegation of contravention of provisions of Sections 5 and 6 of the said Act. In the present case there are no specific allegations in the complaint pertaining to the provisions of Sections 5 and 6. Apart from that the language of Sections 5 and 6 is prohibitory

in nature, and therefore, the burden of proof will be on the authority to prove that there was contravention and thereupon to rely on the provisions of Statutory Form-F for filing criminal complaint.

17. In the present case, without alleging the contravention to provisions of Sections 5 and 6, the complaint has been filed merely on the alleged deficiency or inaccuracy. In short, when there is an allegation of the alleged deficiency or inaccuracy, it should follow contravention of provisions of Sections 5 and 6. Such is not the case in the complaints in question.

18. As far as Section 4(3) is concerned, it is the case of the petitioners that the register is maintained with all the columns which fall within the four corners of the duties and functions of the petitioners. Apart from that no opportunity is afforded to the petitioners to prove contrary and put up their case. Further, such deficiency or inaccuracy, at least so far as the present proceedings are concerned, is merely a procedural lapse, which do not in any manner contravene the provisions of Sections 5 and 6 of the Act.

13. Learned APP appearing for the Respondent Authority opposes the petitions and her submissions are based on the affidavit filed on behalf of the respondent through the Tahsildar Nanded.

14. There is merit in the submissions of learned Senior Counsel that no procedure is followed by the respondent authority before initiation of action against the petitioner and no opportunity of hearing was offered to the petitioner. There is also merit in the submissions of learned Senior Counsel that only on the basis of some information action was initiated against the petitioner and safeguards as provided in the Act such as, inspection and report by appropriate authority is not complied with. There is also merit in the submissions of learned Senior Counsel that there is no material to show that a particular patient was subjected to a pre-natal diagnostic test and without there being any scrutiny of the record only on assumption the action is initiated by the respondent authorities against the petitioner. Needless to state that, such initiation of action is untenable and unsustainable.

15. On hearing the learned Counsels appearing for the respective parties and after going through the provisions of the Act as well as the judgments relied on by the learned Senior Counsel appearing for the Petitioner, I am of the opinion that learned Senior Counsel appearing for the Petitioner made out case for allowing the Writ Petitions. Hence, I

pass the following order:

:ORDER:

- A. Criminal Writ Petitions are allowed.
- B. Complaint bearing R.C.C. No. 167/2010, filed by the Respondent in the Court of Learned Chief Judicial Magistrate, Nande for the offences punishable U/Sec. 4(3), 5, 23, 29 and 30 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 and the order dated 20.03.2010 issuing process against the petitioner is hereby quashed and set aside.
- C. Complaint bearing R.C.C. No. 168/2010, filed by the Respondent in the Court of Learned Chief Judicial Magistrate, Nande for the offences punishable U/Sec. 4(3), 5, 23, 29 and 30 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 and the order dated 20.03.2010 issuing process against the petitioners is hereby quashed and set aside.
- D. Complaint bearing R.C.C. No. 169/2010, filed by the Respondent in the Court of Learned Chief Judicial Magistrate, Nande for the offences punishable U/Sec. 4(3), 5, 23, 29 and 30 of the Pre-Conception and Pre-

Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 and the order dated 20.03.2010 issuing process against the petitioner is hereby quashed and set aside.

- E.** Complaint bearing R.C.C. No. 170/2010, filed by the Respondent in the Court of Learned Chief Judicial Magistrate, Nande for the offences punishable U/Sec. 4(3), 5, 23, 29 and 30 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 is hereby quashed and set aside.

(PRASANNA B. VARALE, J.)