

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. No. 7959 of 2018

Dr. Kopperumdevi

... Petitioner

-vs-

The Appropriate Authority,
For Sub District Under Pre-Conception &
Prenatal Diagnostic Techniques (Regulation and
Prevention of Misuse) Act (Central Act) No.57 of 1994
The Chief Medical Officer,
Government Hospital,
Vridhachalam,
Cuddalore District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent and in Na.Ka.No.915/211/2017 dated 05.09.2017 and quash the same and consequently, to direct the Respondent to grant license to the petitioner in accordance with Rule 10 of the Amended Rules under the PCPNDT Act.

For Petitioner : Mr. G. Surya Narayanan

For Respondent : Mr. R. Venkatesh, Government Advocate

O R D E R

Heard Mr. G. Surya Narayanan, Learned Counsel for the Petitioner and Mr. R. Venkatesh, Learned Government Advocate appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The relief sought by the Petitioner for release of machine in this Writ Petition is based upon Rule 11(2) of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996, as amended by the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Rules, 2003, which had come into force with effect from 14.02.2003, and reads as follows:-

"(2) The Appropriate Authority or the officer authorized by it may seal and seize any ultrasound machine, scanner or any other equipment, capable of detecting sex of foetus, used by any organisation if the organization has not got itself registered under the Act. These machines of the organizations may be released if such organisation pays penalty equal to five times of the registration fee to the Appropriate Authority concerned and gives an undertaking that it shall not undertake detection of sex of foetus or selection of sex before or after conception." (emphasis supplied on the underlining)

It is brought to the notice by the Learned Government Advocate appearing for the Respondent that the aforesaid rule has been subsequently amended further by the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Amendment Rules, 2011, which had come into force with effect from 31.05.2011, and reads as follows:-

"(2) The Appropriate Authority or the officer authorised by it may seal and seize any ultrasound machine, scanner or any other equipment, capable of detecting sex of foetus, used by any organisation, if the organisation has not got itself registered under the Act. These machines of such organisations shall be confiscated and further action shall be taken as per the provisions of Section 23 of the Act." (emphasis supplied on the underlining)

It is not in dispute that the machine of the Petitioner in this case had been confiscated on 21.07.2016, which is obviously after the aforesaid change in the legal position.

3. In view of the same, the benefit of release of the machine by paying penalty equal to five times of the registration fee claimed by the Petitioner cannot be availed and that the machine has to be necessarily confiscated and further action has to be taken as per the provisions of Section 23 of the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. As such, the misconceived claim of the Petitioner cannot be entertained.

4. In fine, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Appropriate Authority,
For Sub District Under Pre-Conception &
Prenatal Diagnostic Techniques (Regulation and
Prevention of Misuse) Act (Central Act) No.57 of 1994
The Chief Medical Officer,
Government Hospital,
Vridhachalam,
Cuddalore District.

+1cc to Mr.Surya Narayanan, Advocate Sr.78570

W.P. No. 7959 of 2018

rsk[co]
srg 31/10/2019