



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.5682 of 2019

and

WMP (MD) No.4483 of 2019

Krishna MRI and CT Scan,
Rep.by its Manager G.Ravikumar

... Petitioner

Vs.

Appropriate Authority for District
under Pre-conception and Pre-Natal
Diagnostic Techniques (Prohibition of
Sex Selection) Act, 1994
O/o.The Joint Director,
Medical and Rural Health Service and
Family Welfare, Trichy.

... Respondent

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned seizure mahazer issued by the respondent dated 08.06.2018, quash the same and to direct him to remove the seal affixed by him on 08.06.2018 on the machines/equipments and the premises of the petitioner's scan centre.

For Petitioner : Mr.M.Saravanan
For Respondents : Mr.M.Rajarajan,
Government Advocate

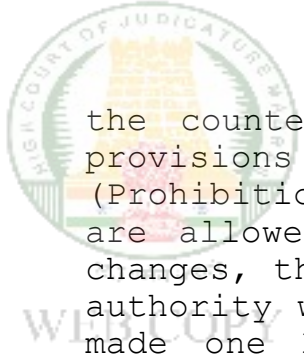
ORDER

Heard the learned counsel on either side.

2.The writ petitioner is a Scan Centre registered under the Central Act 57 of 1994. While so, the petitioner's premises were inspected by the respondent officials on 17.03.2018 and on 02.06.2018. Certain discrepancies were noticed. Therefore, show cause notice was issued to the petitioner on 04.06.2018. It appears that the writ petitioner did not respond. Hence, the impugned sealing came to be made on 08.06.2018. Seeking de-sealing of the premises as well as equipments, this writ petition has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The respondent has filed a detailed counter affidavit. In



the counter affidavit, it has been pointed out that as per the provisions of Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, only the endorsed persons are allowed to handle the scan machine. If the endorsed doctor changes, the owner of the clinic will have to inform the appropriate authority within 30 days. In this case, when the inspection was made one Mary Nirmala Jeyaraj was handling the scan machine. Admittedly, her name is not found in Form B. Few other technical defects were also found. The Appropriate Authority has also filed STC No.565 of 2018 on the file of the Judicial Magistrate No.IV, Trichy under Section 2(m) and 3(2) r/w. Section 25 of the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

4.The learned Government Advocate appearing for the respondent after reiterating the contentions set out in the counter affidavit, pointed out that the action taken by the respondent cannot be characterised as one without jurisdiction. Section 30 of the Act confers power to search and seizure and seal the machines as well as the premises, if there is any violation of the provisions of the Central Act 57 of 1994. Section 30 of the said Act reads as follows :

30.Power to search and seize records, etc. -

1.If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place, such Authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

2.The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act."

5.It is alleged that the petitioner committed violation of the provisions of the Central Act 57 of 1994. But, whether he has actually done so or not, will have to be determined only in the prosecution that has been initiated against him. The question that arises for consideration is whether the respondent is justified in taking recourse to the extreme measure of sealing the premises and machines on this ground.

6.I am satisfied that the violations attributed to the writ petitioners are only technical in nature. The object of the Act is to ensure that the scan machines are not misused for sex



determination. It is not the case of the respondent authority that the writ petitioner was found to have engaged in such prohibited activity. Therefore, seizing the machines and sealing the premises, appears to be too drastic and disproportionate. The principle of proportionality is very well applicable in this case.

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7. In this view of the matter, the order impugned in this writ petition is quashed and I direct the respondent to forthwith and without any delay de-seal the premises and the machines in question. This writ petition stands allowed. The observations made in this writ petition will not prejudice the case of the writ petitioner either in the pending quash proceedings or in the criminal prosecution. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

SKM

To
Appropriate Authority for District
under Pre-conception and Pre-Natal
Diagnostic Techniques (Prohibition of
Sex Selection) Act, 1994
O/o. The Joint Director,
Medical and Rural Health Service and
Family Welfare, Trichy.

1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-60649[F]
dated 12/04/2019)
+1 CC to M/s.SPL GP (SR-60735[F] dated 12/04/2019)

WP (MD) No. 5682 of 2019

and

WMP (MD) No. 4483 of 2019

11.04.2019

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