

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH**

CWP No. 13296 of 2020 (O&M)  
Date of Decision: September 29, 2020  
**(Heard through VC)**

Anant Ram Janta Hospital Barwala and another

...Petitioners

Versus

State of Haryana and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Abhishek Sethi, Advocate  
for the petitioners.

Ms. S.S. Pannu, DAG, Haryana.

**JAISHREE THAKUR, J.**

1. The petitioners herein seek to challenge the order dated 25.06.2020 as issued by the Chairman, District Appropriate Authority-Cum-Civil Surgeon, Hisar, by which permission given to the petitioners to sell ultrasound machines in question has been withdrawn.

2. In brief, the facts as stated are that petitioner No. 1 applied to respondent No. 3, namely District Appropriate Authority (under the PC & PNDT Act 1994) for grant of Certificate of Registration to run a mobile ultrasound unit, which was issued on 27.05 2003. Thereafter, the petitioner No. 1 purchased two WIPRO GE Healthcare Mobile Ultrasound machines by invoices dated 3.5.2012 and 24.6.2012.

3. That on 05.01.2016, an inspection of the mobile unit registered under Certificate of Registration No. 57 was done and certain discrepancies

were found by the team which were put up before the Appropriate Authority. After obtaining the opinion of the District Appropriate Authority and exercising powers under Section 20 (2) of the PC & PNDT (Prohibition of Sex Selection) Act 1994 (henceforth called '**the Act of 1994**'), respondent No. 3 suspended the Certificate of Registration and sealed the above ultrasound machines. This order was challenged before this Court and the same was dismissed, as was the Letters Patent Appeal. Since the two ultrasound machines were not being put to use, the petitioners decided to sell/dispose of the portable ultrasound machines and therefore, wrote a letter dated 10.09.2019 to respondent No. 3 asking for the machines to be de-sealed. Sanction for sale of the machines was accorded to the petitioner by respondent No. 3 by an order dated 18.10.2019. As per the said order, petitioner No. 2 was to inform the office of the Nodal Officer, PNDT, whenever there was a prospective buyer of the machines and it was stated that the machines would be de-sealed. Since the petitioner had a buyer i.e M/s. Triveni Medical System Private Limited, Delhi, a request was made by letter dated 08.11.2019 to de-seal the ultrasound machines so the same could be disposed of. However, instead of de-sealing the same, letter dated 25.06.2020 was issued by the Chairman, District Appropriate Authority-Cum-Civil Surgeon, Hisar recalling the order dated 18.10.2019, by citing that as per Section 3 (B) of the PC & PNDT (Prohibition of Sex Selection) Act 1994, only a Registered Center owner has permission to sell the machines. Consequently, petitioner No.2 was asked to register himself under the Act of 1994 if he was interested in selling the machines.

Aggrieved against the withdrawal of permission to sell, the instant writ petition has been filed.

4. Mr. Abhishek Sethi, learned counsel appearing on behalf of the petitioners, submits that the order dated 25.06.2020 is not justified, as once permission has been granted, it cannot be recalled, as it would amount to reviewing the said order without affording an opportunity of hearing to the petitioners. It is also argued that there is total misreading of Section 3 (B) of the Act of 1994, as there is no provision in the said section that only a Registered Center can sell ultrasound machine/imaging machines and the rules are silent to this effect as well.

5. Per contra, Mr. S.S. Pannu, DAG, Haryana submits that the writ petition itself is not maintainable, as the petitioners have not exhausted the remedy of an appeal to the Appropriate Authority at State level against the order of a District Level Appropriate Authority as provided under Rule 19 (2) of PC & PNDT (Prohibition of Sex Selection) Rules 1996. It is submitted that only a registered centre owner can be permitted to sell the machines, and since the Certificate of Registration of petitioner No. 1 stood cancelled, the permission was rightly withdrawn.

6. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case.

7. The facts are not disputed to the extent that the registration of the petitioner was cancelled by the authorities concerned, which order has been upheld by the this Court. It is also not in dispute that the ultrasound machines purchased by petitioner No. 1 were sealed by the authorities

concerned and petitioner No.2 sought for de-sealing the same so that he could sell them, which request was acceded to by letter dated 18.10.2019. However, the said permission stands cancelled/withdrawn on the ground that only a registered centre owner can sell the machines in question to the registered centre owner. It would be relevant to reproduce para 5 of the preliminary submissions as made by the respondent—State “...*But it is pertinent to mention here that as per Section 3 (B) of PC and PNDT Act only registered centre owner can sell the machines in question to the registered centre.*”

8. The preliminary submission as raised by the counsel for the respondents regarding the maintainability of the writ petition in the light of an alternative remedy being available under Rule 19 (2) of the PC & PNDT Rules, 1996, requires to be addressed at the very outset. Rule 19 (2) of the Rules of 1996 are reproduced here under:-

**“19. Appeals**

*(1) Anybody aggrieved by the decision of the Appropriate Authority at sub-district level may appeal to the Appropriate Authority at district level within 30 days of the order of the sub-district level Appropriate Authority.*

*(2) Anybody aggrieved by the decision of the Appropriate Authority at district level may appeal to the Appropriate Authority at State/UT level within 30 days of the order of the District level Appropriate Authority.*

*(3) xx xx xx.”*

No doubt the law is well settled by a *catena* of judgements wherein it has been held that a High Court ought not to entertain a writ petition under

Article 226 of the Constitution if an effective alternative remedy is available to an aggrieved person. Some of the celebrated judgments are **Nivedita Sharma v. Cellular Operators Association of India (2011) 14 SCC 337**, **Commissioner of Income Tax v. Chhabil Dass Agrawal (2014) 1 SCC 603**. However, there can never be a complete bar upon the High Court from exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, even in the face of an alternate remedy available/statutory remedy to an aggrieved party. In **Harbanslal Sahnia vs. Indian Oil Corpn. Ltd. (2003) 2 SCC 107**, it has been held that in an appropriate case inspite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act are challenged. Recently in a judgment rendered by the Supreme Court in **Maharashtra Chess Association Vs. Union of India and others 2019 (3) Apex Court Judgements (SC) 166**, it held as under:

*“13. While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self imposed. It is a well settled principle that the writ jurisdiction of a High*

*Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.[9\*]*

*[9\* **Minerva Mills v. Union of India (1980) 3 SCC 625; L Chandra Kumar v. Union of India (1997) 3 SCC 261]***

14. *These principles are set out in the decisions of this Court in numerous cases and we need only mention a few to demonstrate the consistent manner in which they have been reiterated. In **State of Uttar Pradesh v. Indian Hume Pipe Co. Limited, (1977) 2 SCC 724** this Court observed that the High Court's decision to exercise its writ jurisdiction is essentially discretionary:*

*"4...It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably, or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court."*

9. In the case in hand, the permission to sell and de-seal the ultra sound machines was initially allowed by the competent person i.e. respondent no 3 vide its letter dated 18.10.2019. Subsequently, respondent No. 3 withdrew the permission by letter dated 25.6.2020. A reading of the letter itself would reveal that the permission has been withdrawn after State Appropriate Authority communicated with respondent No. 3 that sale of machines can be permitted only to a registered Centre owner in terms of Section 3 (B) PC & PNDT Act. On receipt of the communication from the

State Appropriate Authority, the impugned order was issued by respondent No. 3 declining permission, as the registration of the petitioner stood cancelled. Under the provisions of Rules of 1996, the impugned order would have to be challenged under Rule 19 (2) before the State Appropriate Authority, who in fact had issued the necessary direction, and thus relegating the petitioners to avail of their remedy under Rule 19 (2) of the 1996 Rules would be an exercise in futility. The State Appropriate Authority in the instant case would take the same stand, since it is at their behest that the permission was withdrawn after a period of almost eight months. Therefore, this is one of those circumstances when this Court would choose to exercise its jurisdiction under Article 226 of the Constitution of India, to see whether the impugned order is sustainable or not.

10. The Act of 1994 was enacted with the objectives as specified in the preamble: *“An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto.”* As noticed above, the Act of 1994 and the rules framed thereunder are to stop indiscriminate use of the ultra sound machines for sex determination, and safeguards are provided thereunder. The Act mandates compulsory registration of all diagnostic laboratories, all

genetic counseling centres, genetic laboratories, genetic clinics and ultrasound clinics. Violation of the provisions of the Act invites cancellation of registration, and even initiation and visitation of criminal prosecution.

11. Section 18 of the Act of 1994 provides for Registration of Genetic Counseling Centres, Genetic Laboratories, or Genetic Clinics. It is specified therein, that no such Genetic Counseling Centres, Genetic Laboratories, or Genetic Clinics which has an ultrasound or imaging machine or scanner or any technology capable of undertaking determination of sex foetus, can render any service without registration. An application for registration would have to be preferred to the Appropriate Authority, who after determination and on satisfying itself that all requirements of the Act and the Rules thereunder had been complied, would then issue a Certificate of Registration under Section 19. This certificate would be renewed every 5 years.

12. De-sealing of the ultrasound machines has been declined on an interpretation of Section 3 (B) PC & PNDT Act. It would be necessary to reproduce the said section and the rules pertaining to sale of ultrasound machines for proper adjudication:

**“Under the Section of 1996**

***‘3B. Prohibition on sale of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered under the Act.- No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.’***

***And under the Rules of 1996:******3 A: Sale of ultrasound machines/imaging machines:***

*(1) No organization including a commercial organization or a person including manufacturer, importer, dealer or supplier of ultrasound machines/imaging machine or any-other equipment, capable of detecting sex of foetus, shall sell, distribute, supply, rent, allow or authorize the use of any such machine or equipment in any manner, whether on payment or otherwise, to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person unless such Centre, Laboratory, Clinic, body or person is registered under the Act.*

*(2) The provider of such machine/equipment to any person/body registered under the Act shall send to the concerned State/UT Appropriate Authority and to the Central Government, once in three months a list of those to whom the machine/equipment has been provided.*

*(3) Any organization or person, including manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment capable of detecting sex of foetus selling, distributing, supplying or authorising, in any manner, the use of any such machine or equipment to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person registered under the Act shall take an affidavit from the Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or, any other body or person purchasing or getting authorisation for using such machine/equipment that the machine/equipment shall not be used for detection of sex of foetus or selection of sex before or after conception.”*

13. On a conjoint reading of both the Act and the Rules framed thereunder, the only embargo laid down is as to **whom** the sale can be made to. Both, Section 3B of the Act of 1994 and Rule 3 A clearly specify that a sale cannot be made by any person, manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment capable of detecting sex of foetus selling, distributing, to any centre, Laboratory, Clinic, body or person unless they are registered under the Act. There is no mention in either the Section or the Rule that only a registered centre owner can sell to a registered centre. If the argument of the respondents is taken to its logical conclusion, it will mean that Manufactures, Importers etc. etc. of Ultra Sound Machines/Imaging Machines would have to be registered under the Act of 1994 before they can make any sale. This argument is bereft of any logic. The only requirement imposed upon the seller is as stipulated under Rule 3A (2) (3) of the Rules of 1996 to the effect that information will be supplied to the Appropriate Authority as to whom the sale has been made, and also to take an affidavit from the registered centre that the machine will not be used for detection of sex of foetus or selection of sex before or after conception.

14. Furthermore, while declining permission to sell the ultra sound machines by the letter dated 25.6.2020, respondent No. 3 had opined that *‘If you intend to sell your machine, you would require to get yourself registered under the PC & PNDT Act. This is for your information.’* A question arises in the mind of the court as to why petitioner No. 2 would require to sell the ultrasound machines if it got registered again? If the

argument of the respondents is to be accepted, that only registered center owners are permitted to sell machines, all those centers whose registrations have been cancelled will be saddled with costly machines, whose value would depreciate daily, without any hope of recovery of their investment. Whereas if permitted to be sold, these machines can be put to good use.

15. Therefore, this court is of the opinion that the order passed withdrawing permission is neither sustainable nor justified by any provision of the Act or the Rules framed thereunder. Consequently, the writ petition is allowed and the impugned order dated 25.6.2020 is set aside and a direction is issued to the respondents that in case the petitioners apply for sale of the machines in question, giving full particulars of the registered Centre etc. to whom the same are being sold, the same shall be considered expeditiously and preferably within two weeks from the date of receipt of such application.

**September 29, 2020**  
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**(JAISHREE THAKUR)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes  
No