

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12280 OF 2019

Dr.Ramesh Mahadu Bole,
age: 38 years, Occ: Medical Practitioner,
R/o Bole Hospital, Tamsa Road,
Ardhapur, District Nanded.

Petitioner

Versus

01 The State of Maharashtra,
through its Secretary,
Department of Public Health &
Family Welfare, Mantralaya,
Mumbai-32.

02 District Appropriate Authority/
Civil Surgeon, Nanded, Main Road,
Opposite to Collector Office,
Vazirabad, Nanded.

Respondents

Mr.S.G.Chapalgaonkar, advocate for the petitioner.
Mr.K.B.Jadhavar, AGP for the Respondents.

CORAM : V.K.JADHAV, J.

DATE : 04th February, 2021.

JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective
parties.

2 This is regarding renewal of registration of Sonography Centre run by the petitioner. Respondent No.2-Appropriate Authority, by an order dated 16th May, 2019, has rejected the application of the petitioner seeking renewal of registration of Sonography Centre of the petitioner on the ground that criminal case is pending against the petitioner. Being aggrieved by the same, the petitioner has preferred an appeal under Rule 19 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter called as "Rules of 1996"). The appellate authority has also confirmed the order passed by the Appropriate Authority by an order dated 31st July, 2019. Hence, this writ petition.

3 The learned Counsel for the petitioner submits that the petitioner is a Medical Practitioner possessing MBBS, DGO qualification. He runs his own hospital at Ardhapur. He had applied for grant of registration for running Sonography Centre in the year 2009 in terms of provisions of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Rules made thereunder. Respondent No.2/Appropriate Authority granted such registration initially for five years and it was lastly renewed from 07.04.2014 to 06.04.2019. On 17th March, 2016, the Medical Team of Rural Hospital Barad has

inspected record of the Sonography Centre of the petitioner and alleged to have noted certain discrepancies in respect of maintenance of "F" Form. On 22nd March, 2016, notice was issued to the petitioner as to why registration of Sonography Centre should not be suspended. Though the petitioner has submitted his explanation with all required details, Respondent No.2/Appropriate Authority was pleased to suspend registration of the Sonography Centre. Furthermore, a Complaint, being RCC No.16 of 2016 also came to be filed before the Judicial Magistrate, First Class, Ardhapur. The learned Counsel submits that however, further proceedings in the said criminal case are stayed under the orders of the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No.9574 of 2018. Furthermore, the petitioner has also challenged suspension of registration of the Sonography Centre before the Appropriate Authority and thereafter before this Court by filing Writ Petition No.2349 of 2017. By order dated 13th February, 2018 in Writ Petition No.2349 of 2017, the Division Bench of this Court (**Coram: S.V.Gangapurwala & A.M.Dhavale, JJ.**) has quashed and set aside the impugned order directing suspension of registration of Sonography Centre of the petitioner with the further observation that the order would not be an impediment for the Appropriate Authority to take further course of action upon culmination of the

criminal proceedings.

4 The learned Counsel for the petitioner submits that the petitioner has filed an application on 01st March, 2019, seeking renewal of registration of Sonography Centre in terms of Rule 8 (1) of the Rules of 1996. On 16th May, 2019, the application filed by the petitioner seeking renewal of registration of Sonography Centre came to be rejected only on the ground that criminal case is pending against the petitioner. Respondent No.2/Appropriate Authority has also issued the order sealing the Sonography Machine. The petitioner has filed Writ Petition No.4765 of 2019, challenging the order directing sealing of the Sonography Machine. This Court (**Coram: P.R.Bora, J.**), by order dated 16th February, 2019, stayed the order sealing the Sonography Machine by granting interim relief in terms of prayer clause “B”. Ultimately, by order dated 29th April, 2019, the said writ petition came to be disposed of by directing the Appellate Authority to decide the appeal preferred by the petitioner.

5 The learned Counsel for the petitioner submits that the Respondent/Appropriate Authority seems to have passed the order under Rule 18-A (4) (ii) of the Rules of 1996, incorporated with effect from 28th January, 2015. The learned Counsel submits

that insertion of the aforesaid sub-rule was subjected to challenge by filing Writ Petition No.4498 of 2015. In the said writ petition, the learned Assistant Solicitor General, appearing for Union of India, on instructions, has made a statement that the aforesaid sub-rule incorporated with effect from 28th January, 2015, shall not be construed as total prohibition on the appropriate authority to receive an application for renewal or fresh registration. The applications shall have to be received and processed in accordance with Rule 8 of the Rules of 1996 and the decision thereon shall be communicated to the concerned doctor. Thus, by recording the said statement, the Division Bench of this Court, in the aforesaid writ petition, has not issued any interim order. However, it was observed that it would be open for the Appropriate Authorities in the State to receive and process the applications for renewal of registration or grant of registration without impeded by the said rule 18-A (4) (ii) of the Rules of 1996.

6 The learned Counsel for the petitioner submits that even then, by the impugned order dated 16th May, 2019, the Respondent-Appropriate Authority has rejected the application filed by the petitioner seeking renewal of registration only on the ground that RCC No.16 of 2016 is pending against the petitioner

before the Judicial Magistrate, First Class, Ardhapur. The appellate authority has taken the similar view and dismissed the appeal by order dated 31st July, 2019.

7 The learned Counsel for the petitioner submits that in most of the districts, considering the directions given by the Division Bench of this Court, the Appropriate Authority, even during pendency of criminal case, has granted renewal of the Registration in terms of provisions of Rule 8 of the Rules of 1996.

8 The learned AGP has vehemently opposed grant of any relief to the petitioner. It is submitted that the petitioner has not filled "Form-F" properly and accurately which is mandatory under Section 4(3) of the PCPNDT Act, 1994 and under Rule 9(4) of the Rules of 1996. It is submitted that after receipt of complaint by the Appropriate Authority, inspection of the Sonography Centre was carried out and during inspection, certain discrepancies were found in the record maintained by the petitioner. It is further submitted that the Appropriate Authority has constituted a Advisory Committee under the Act of 1994. The Advisory Committee came to the conclusion that the petitioner has violated the provisions of Act of 1994 and Rules of 1996 made thereunder and, therefore, the Appropriate Authority

has passed an order of suspension of registration of Sonography Centre of the petitioner and filed a complaint, being RCC No.16 of 2016 before the Judicial Magistrate, First Class, Ardhapur against the petitioner. It is submitted that the State Appropriate Authority, in the appeal, confirmed the order passed by the District Appropriate Authority, directing sealing of sonography machine of the petitioner. It is submitted that as per Rule 18-A (4) (ii) no application for renewal and new registration is accepted if any case is pending in any Court against the applicant for violation of any provisions of the Act and the rules made thereunder. It is submitted that the said criminal case is still pending before the learned Magistrate.

9 The learned AGP submits that being an owner and handler/operator of the Sonography machine, it is the prime responsibility of the petitioner to follow all the regulatory provisions of the Act of 1994 and Rules of 1996 made thereunder. The learned AGP submits that in view of the above facts and circumstances and, action taken by the Appropriate Authority in respect of cancellation of registration of Sonography Centre is legal and in accordance with the provisions of the Act of 1994 and Rules made thereunder. The learned AGP submits that there is no merit and substance in the petition and same

deserves to be dismissed.

10 In the instant case, allegedly there are certain discrepancies in maintaining “Form-F” by the petitioner and certain “Form-F” were found without signature of the doctor or the concerned patients.

11 The petitioner has assailed the order of suspension of registration of Sonography Centre and order of sealing the sonography machine, passed by the District Appropriate Authority along with the order of the appellate authority confirming the said order, by filing Writ Petition No.2349 of 2017. By order dated 13th February, 2018, the Division Bench of this Court (**Coram: S.V.Gangapurwala & A.M.Dhavale, JJ**) quashed and set aside the impugned order making the rule absolute in terms of prayer clauses “B” and “C” of the said writ petition. In para 10 of the judgment, the Division Bench has made following observations:

“10 Considering the aforesaid anomalies and the fact that, the criminal proceedings have been stayed against the petitioner so also the suspension is almost for a period of two years and the allegations were in respect of non-maintenance of “F” form in a particular manner

and further *prima facie* finding that the ladies who were shown to have not signed the “F” form have subsequently delivered male/female child, we are inclined to exercise our jurisdiction.”

12 Relevant clause (ii) of Rule 18-A (4) of the Rules of 1996 is reproduced hereunder, which reads as under:

**18-A. Code of Conduct to be observed by
Appropriate Authorities-**

(1)

(2)

(3)

(4) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter alia, shall observe the following conduct for registration and renewal of applications under the Act, namely:-

(i)

(ii) ensure that no application for fresh registration or renewal of registration is accepted if any case is pending in any Court against the applicant for violation of any provision of the Act and the rules made thereunder.

13 It seems that the Respondent No.2-Appropriate Authority has rejected the application of the petitioner seeking renewal of registration mainly on the ground of clause (ii) of Rule 18-A (4) of the Rules of 1996. Though said clause (ii) is not referred in the impugned order passed by the Respondent No.2-Appropriate Authority, however, the application filed by the petitioner came to be rejected only for the reason that RCC No.16 of 2016 is pending against the petitioner before the Judicial Magistrate, First Class, Ardhapur.

14 In Writ Petition No.4478 of 2015, the Division Bench of this Court (**Coram: R.M.Borde and V.K.Jadhav, JJ.**) on 05th May, 2015, has recorded statement made on instructions by the learned Assistant Solicitor General, appearing for the Union of India. The order dated 05th May, 2015 in Writ Petition No.4478 of 2015 reads as under:

1 The learned Assistant Solicitor General for the Union of India, states on instructions that Rule 18-A (4) (ii) of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996, incorporated with effect from 28.1.2015 shall not be construed as a total prohibition on the appropriate authority to receive an application for renewal or fresh registration. The application shall

have to be received and processed in accordance with rule 8 of the said Rules and decision thereon shall be communicated to the concerned doctor.

2 In view of the explanation furnished on behalf of the Union of India by the learned A.S.G., on instructions, no interim orders are necessary.

3 It would be open for the appropriate authorities in the State to receive and decide the applications for renewal of registration or grant of registration without impeded by Rule 18-A (4) (ii) of Rules.

4 The applications already disposed of citing provisions of Rule 18-A (4) (ii) and such of those applications which have not been decided, and pending consideration, shall be decided by respective appropriate authorities considering the merits of the application.”

15 In view of the above, I find that the approach of Respondent No.2-Appropriate Authority and the appellate authority is not proper and correct. Rule 8 of the Rules of 1996 prescribes renewal of registration. In terms of sub-rule (2) of Rule 8, the Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all requirements of the Act and these Rules and having regard to the advice of advisory Committee in this behalf, renew the certificate

of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of the registration earlier granted.

16 In the instant case, since the Appropriate Authority has not applied its mind in terms of provisions of Rule 8 (2) of the Rules of 1996, this Court is left with no other alternative to remand the matter to the Respondent No.2-Appropriate Authority for deciding the application filed by the petitioner seeking renewal of the registration of Sonography Centre afresh by giving an opportunity of being heard to the petitioner.

17 Hence, the following order:

(i) Writ Petition is hereby partly allowed.

(ii) The impugned order dated 16th May, 2019, passed by Respondent No.2/Appropriate Authority and confirmed by the State Appropriate Authority/appellate authority in appeal vide order dated 31st July, 2019, are quashed and set aside.

(iii) The Respondent No.2/Appropriate Authority shall decide the application dated 01st March, 2019, filed by the

petitioner seeking renewal of registration of the Sonography Centre afresh by giving an opportunity of being heard to the petitioner, as expeditiously as possible.

(iv) The petitioner shall appear before the Respondent No.2-Appropriate Authority on 22nd February, 2021.

18 Rule is made absolute partly in above terms. No order as to costs.

(V.K.JADHAV)
JUDGE

adb