



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.07.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .Nos.14969 and 14971 of 2018

and

W.M.P (MD) .Nos.13531,13533 and 10185 of 2018

T.Rajakumari ... Petitioner
in W.P(MD) .No.14969 of 2018

M.s.Tamilnadu and Pondicherry Chapter of
Indian Radiological and Imaging Association
Rep. by its Secretary of Madurai Sub-Chapter
S.Alagappan ... Petitioner
in W.P(MD) .No.14971 of 2018

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai-2.

2.The Director of Medical Education,
Kilpauk, Chennai. ... Respondents in both cases

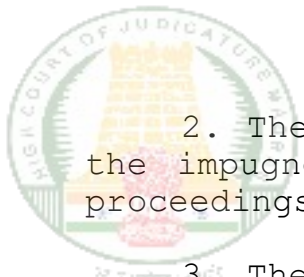
Common Prayer: Writ petitions are filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Ref.No.13381/ME1/1/2014 dated 12.06.2018 and quash the same as illegal and arbitrary in so far as the instructions relating to conducting of practical examination and issuance of certificates to the candidates who have allegedly completed six months of USG Training.

In both cases:

For Petitioner : Mr.B.Saravanan
For Respondents : Mr.R.Suresh Kumar
Government Advocate

COMMON ORDER

The issue involved in both the writ petitions are common and hence they are taken up together, heard and disposed of through this common order.



2. The subject matter of challenge in these writ petitions is the impugned notification issued by the second respondent through proceedings dated 12.06.2018.

3. These writ petitions have been filed by the Association and an individual Doctor. The case of the petitioners is that the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 1994 (hereinafter called as 'Act') was brought into force with the primary object to prevent sex selection, before or after conception. The Rules were also framed in the year 1996. The Act specifically provides under Section 2(P) that a sonologist or the imaging specialist means a person who possesses any one of the medical qualification recognized under the Indian Medical Council Act, 1956 or who possesses a Post Graduate qualification in ultra-sonography or imaging techniques or radiology.

4. While dealing with the same under the Rules, it also recognized a six months training in the manner prescribed under the Rules also to qualify under Section 2(P) and according to the petitioners, this was running counter to the main provision in the Act. Rule 3(3)(1)(b) of the Rules became a subject matter of challenge before the Delhi High Court and by an order dated 17.02.2016, the Delhi High Court struck down the rule as *ultra vires* the Act.

5. The order of the Delhi High Court was taken on appeal before the Hon'ble Supreme Court by the Union of India in SLP(C) Nos.16657-16659 of 2016. The Hon'ble Supreme Court by an order dated 14.03.2018 stayed the operation of the order of the Delhi High Court dated 17.02.2016. The case is still pending before the Hon'ble Supreme Court.

6. Pursuant to the order passed by the Hon'ble Supreme Court, the second respondent issued a notification dated 12.06.2018 to issue certificate to the candidates who have completed six months of ultrasonography training. Aggrieved by the same, the present writ petitions have been filed before this Court.

7. The first and second respondents have filed a counter affidavit in this case and the relevant portions of the counter affidavit are extracted hereunder:

" 5. I am to state that, the provisions made in the pre-conception and pre natal diagnostic techniquis (prohibition of sex selection) (six months training) rules 2014 was struch down by the Hon'ble Delhi High Court by its order dated 17.02.2016 only ie., after the selection and completion of more than half of the period of USG training.



6. With reference to the averments made in paragraph 6&10 of the affidavit, it is submitted that the 6 months USG training program was started during 2015 in all 20 Government Medical Colleges and since more than half of the period of training was in a completing stage, the training alone has been completed in May 2016 and the examination and evaluation of the candidates was not done and certificates were not issued to the candidates as there was stay order granted by the Hon'ble Delhi High Court dated 17.02.2016 on which appeal was prepared by Union Government of India in SLP(C) Nos.16657-16659 of 2016.

7. I am to state that SLP(C)Nos.16657-16659 of 2016 was preferred by Union of India, in which the Hon'ble Supreme Court was pleased to grant an order of stay of operation of the judgment and order of the Hon'ble Delhi High Court dated 17.02.2016 by its order dated 14.03.2018. Hence, I am to state that the proceedings to conduct practical examination and issuances of certificate to the candidates who have completed 6 months of USG training was issued vide Ref.No.13381/ME1/1/2014 dated 12.06.2018 of the Director of Medical Education ie., after the date of order issued by the Hon'ble Supreme Court."

8. Heard Mr.B.Saravanan, learned counsel appearing for the petitioners and Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondents .

9. The main thrust of the arguments advanced by the learned counsel for the petitioners is that the relevant rule was struck down by the Delhi High Court on 17.02.2016 and from that date onwards, the rule was not in force till it was ultimately stayed by the Hon'ble Supreme Court. Therefore, the learned counsel for the petitioners submitted that the three batches of students who were undergoing training from November 2015 onwards could not have continued the training beyond 17.02.2016 and therefore no certificate can be issued to those candidates as if they have completed the six months training. To that extent, the notification issued by the second respondent is liable to be interfered by this Court.

10. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that by virtue of the interim orders granted by the Hon'ble Supreme Court on 14.03.2018, the same dates back to the order passed by the Delhi High Court on 17.02.2016 and it has the effect of keeping the order of the Delhi High Court in suspended animation. The learned Government Advocate therefore



submitted that even if the training undergone beyond 17.02.2016 is construed to be illegal, the same gets sanctified by virtue of the stay order granted by the Hon'ble Supreme Court.

11. This Court finds a lot of force in the submissions made by the learned Government Advocate. The respondents have taken a very specific stand in the counter affidavit to the effect that all the students had completed the six months training programme in the month of May, 2016. Therefore obviously the statement goes to show that even after the order has passed by the Delhi High Court, the training had continued. At the time when the training was continued after 17.02.2016, it could have been considered as illegal since the rule itself was not in force. However, by virtue of the order of stay granted by the Hon'ble Supreme Court, the order of the Delhi High Court ceases to operate and therefore the training that was given during the interregnum period upto May, 2016 gets regularised. This Court also takes into consideration the stand taken at paragraph No.7 of the counter affidavit to the effect that the practical examinations were conducted and the certificates were issued only after the stay order was granted by the Hon'ble Supreme Court.

12. Hence the impugned notification issued by the second respondent directing the issuance of certificate to the candidates who have completed six months training in ultra-sonography, cannot be faulted with.

13. The petitioners will have to necessarily await the final orders of the Hon'ble Supreme Court which will decide the fate of the relevant Rule.

14. This Court does not find any ground to interfere with the impugned notification issued by the second respondent and accordingly these writ petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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



To

1. The Secretary,
The State of Tamilnadu,
Health and Family Welfare Department,
Fort St.George,
Chennai-2.

2.The Director of Medical Education,
Kilpauk,
Chennai.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-21479[F] dated 07/07/2021)

+1CC to M/s.SPL GP, SR.No.21522 dated 07.07.2021

W.P. (MD) .Nos.14969 & 14971 of 2018
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KM(CO)

KB(14.07.2021) 5P 5C