

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-3583-2021

Date of decision : September 06, 2021

Dr. Manisha Singhal

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ramesh Chander Sharma, Advocate for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

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LISA GILL, J.

Prayer in this writ petition is for quashing of order dated 28.10.2016 passed by respondent No. 3 cancelling the certificate of approval under the Medical Termination of Pregnancy Act, 1971 alongwith rejection of application for shifting of MTP centre besides quashing of order dated 18.11.2020 passed by respondent No. 2 whereby petitioner's review application has been rejected.

Brief facts as narrated in the writ petition are that petitioner is a qualified doctor having MBBS degree and diploma in Gynaecology and Obstetrics with 14 years of experience. It is further stated that petitioner being a fully qualified doctor was granted certificate of approval for medical termination of pregnancy (MTP) in respect to her hospital by the competent authority i.e. District Appropriate Authority (PC-PNDT)-cum-Civil Surgeon, Karnal under the provisions of Section 4 of the Medical Termination of Pregnancy Act, 1971 (for short – 'MTP Act'). Hospital of the petitioner, it is stated, separately registered under The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'PNDT Act'). It is stated that raid/inspection under PNDT Act was conducted somewhere in April 2016 but no action was taken as no irregularity was found. Thereafter on 30.06.2016, a team constituted by the District

Appropriate Authority (PNDT)-cum-Civil Surgeon, Karnal visited the ultra

sound centre of the petitioner. Show cause notice was issued to her under the PNDT Act and allegedly not under the MTP act. No violation of provisions of the MTP Act are stated to have been attributed. FIR No. 699 dated 01.11.2016 for offences punishable under Sections 3, 4, 5 of PNDT Act, 1994 read with Rule 9(4), 9(6) of the PNDT Rules, 1996 and Sections 3, 4, 5 of MTP Act, 1971 read with Rule 5 of the MTP Rules, 2003 at Police Station Assandh, District Karnal was registered. It is stated that reply was submitted by the petitioner but the authorities without any justification cancelled approval of registration of the petitioner's MTP Centre under the Act and her application for shifting of MTP centre to the new building at the hospital was also rejected vide impugned order dated 28.10.2016.

Review under Rule 7 of The Medical Termination of Pregnancy Rules, 1975 was filed by the petitioner, which was rejected by the Additional Chief Secretary to Government of Haryana, Health Department vide impugned order dated 18.11.2020. It is specifically observed in order dated 18.11.2020 that the petitioner has been restrained from conducting MTP till final conclusion of the trial in criminal case pending against her as per orders dated 10.05.2017 and 10.07.2017 in CRM-M-42198-2018, therefore, it is not permissible to grant approval of registration under MTP Act to the petitioner. Aggrieved therefrom, this writ petition has been filed.

Learned counsel for the petitioner vehemently argues that petitioner's certificate of approval has been cancelled solely on the ground of order dated 04.09.2017 passed by this High Court in CRM-M-42198-2016. Petitioner has been granted anticipatory bail in FIR No. 699 dated 01.11.2016 registered against her vide said order dated 04.09.2017 with a specific direction that petitioner is restrained from carrying out any kind of medical termination of pregnancy even if permissible under the Act and she also be restrained from, herself or in her clinic, from conducting

ultrasound procedures during pendency of trial. Learned counsel for the petitioner submits that provisional certificate of approval can be afforded as petitioner is ready to give an undertaking that she will not carry out any medical terminations of pregnancy till the conclusion of trial. It is submitted that petitioner has successfully established on the basis of the documents presented before the authorities that no medical procedure in violation of the Act was ever conducted by her. Therefore, manifest injustice has been caused by not addressing the pleas raised by her on merits. It is, thus, prayed that this writ petition be allowed.

Learned counsel for the State has sought dismissal of this writ petition being devoid of any merit.

Heard learned counsel for the parties.

Cancellation of approval of registration certificate pursuant to the raids is not in dispute. Learned counsel for the petitioner is further unable to deny that this High Court while affording the concession of interim anticipatory bail specifically restrained the petitioner from performing any kind of medical termination of pregnancy even if permissible under the MTP Act and has further restrained her from, herself or in her clinic, to conduct even ultra sound procedures, though she is permitted to perform other functions and procedures as a gynecologist. While confirming anticipatory bail on 04.09.2017 in CRM-M-42198-2016, it is observed as under:-

“ The petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in FIR No.699 dated 01.11.2016 registered under Sections 3, 4, 5 of PC & PNDT Act, 1994 read with Rule 9(4), 9(6) of the PC & PNDT Rules, 1996 and Sections 3, 4, 5 of MTP Act, 1971 read with Rule 5 of the MTP Rules, 2003 at Police Station Assandh, District Karnal.

Heard learned counsel for the rival parties.

The petitioner was granted interim bail by this court vide order dated 30.11.2016. Vide order dated 10.05.2017 this Court had continued the interim order however, subject to a condition that the petitioner shall not perform any operation.

On the application of the petitioner this Court had further made order dated 10.07.2017 by clarifying order dated 10.05.2017, the relevant portion of which is reproduced hereunder:

“Without making any comment on this issue of the interim order in the anticipatory bail continuing, which would be subject matter of consideration before the Bench before which the petition comes up for hearing, however, as regards the issue of the petitioner performing other procedures and functions as a Gynecologist, it is considered appropriate to allow her to do so, other than to obviously conduct any kind of medical termination of pregnancy, even if permissible under the Act, and further, that she be restrained from, herself or in her clinic, conducting even ultrasounds procedures; subject to the outcome of her appeal stated to be pending before the appropriate authority.”

Learned senior counsel for the petitioner submits that the said condition may be deleted.

However, in my opinion, this Court had consciously incorporated the condition by making orders dated 10.05.2017 and 10.07.2017. **Therefore, the same shall continue till the trial is continuing.**(emphasis added)

In that view of the matter interim order dated 30.11.2016 is made absolute.

Disposed of accordingly.”

Learned counsel for the petitioner informs that trial arising from FIR No. 699 dated 01.11.2016 has not been concluded as yet. It is further a matter of record that order dated 04.09.2017 has not been set aside or modified till date.

In this view of the matter, there is no infirmity or illegality in denying certificate of approval to the petitioner. Needless to say as and when trial arising out of the above said FIR is concluded, petitioner shall be at liberty to apply afresh for approval, which shall be considered by the competent authority in accordance with law.

No other argument has been addressed.

Present writ petition is, accordingly, dismissed with no order as to costs.

(Lisa Gill)  
Judge

September 06, 2021  
rts