

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12097 OF 2021

Dr. Avinash Ramesh Patil
Age:37 years, occ : medical practitioner
R/o Plot No. 9, Laxmi Niwas,
Wagheshwar Chaufuli, Dhule Road,
Nandurbar.

Petitioner

Versus

1. The State of Maharashtra
Through it's Secretary
Public Health Department,
Mantralaya, Mumbai – 32.
2. The District Appropriate
Authority / Civil Surgeon,
Nandurbar, District Civil
Hospital, Nandurbar.

Respondents

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Mr. Veerdhawal Deshmukh a/w Mr. Bharatkumar Nukte, holding
for Mr. Rajesh H. Mewara, Advocates for the petitioner.
Smt. R.P. Gaur, A.G.P. for the respondents.

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**CORAM : C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

Reserved on : 15 July 2022
Pronounced on : 22 July 2022

JUDGMENT (PER SANDIPKUMAR C. MORE, J.) :

Rule made returnable forthwith. Learned A.G.P. waives
service for the respondents. Heard finally by consent of the
parties.

2. Under this writ petition, the petitioner is seeking direction to respondent No. 2 i.e. the District Appropriate Authority / Civil Surgeon, Nandurbar to decide his application bearing No. GHN-51 dated 22.03.2021 for renewal of Certificate of Registration in respect of his Sonography Centre and to further de-seal his Sonography machine and record seized under panchnama dated 24.03.2021. The petitioner has also sought quashing of impugned order dated 05.04.2021 of respondent No.2 alongwith order dated 23.06.2021 passed by State Appropriate Authority, Maharashtra at Pune in Appeal No. 144 of 2021.

3. According to the petitioner, he is a Medical Practitioner possessing M.B.B.S., DNB qualification. He runs his own hospital as well as Sonography Centre at Nandurbar under the name and style as Krupasindhu Maternity Hospital and Sonography Centre. The petitioner has registered his aforesaid Sonography Centre for the period of five years starting from 23.10.2015 to 22.10.2020 by following all the guidelines and procedural requirements of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as “the PCPNDT Act”). The petitioner claims that upto now his record is unblemished.

4. It is contended by the petitioner that during ongoing Covid-19 pandemic situation, his Certificate of Registration of Sonography Centre got expired on 22.10.2020. Since he was busy

in attending his family members being the only doctor in the family during Covid-19 pandemic period, failure to renew the registration certificate of his Sonography Centre was purely an inadvertent act. After having realised that he missed the date of renewal of registration, he immediately stopped doing sonography activities and on 22.03.2021, applied for renewal of the said registration certificate.

5. However, only after two days of filing of the said application for renewal, a team from the office of the Appropriate Authority suddenly and without any notice to the petitioner, made surprise visit to the Sonography Centre on 24.03.2021 and issued show-cause notice to the petitioner under Section 20 (1) of the PCPNDT Act as to why the petitioner failed to renew the registration certificate of the said Sonography Centre and also for submitting reasons as to why registration of the said Sonography Centre should not be cancelled. The said team, without holding any enquiry, arbitrarily seized and sealed the documents and sonography machine of the petitioner without giving him any opportunity of hearing. Though the petitioner filed reply to the aforesaid show-cause notice on 25.03.2021 by explaining the circumstances which prohibited him to renew the registration certificate, but respondent No. 2 without assigning any reasons and also without giving proper opportunity to the petitioner, cancelled the registration of Sonography Centre of the petitioner under order dated 05.04.2021. The petitioner also filed appeal before the Appellate Authority at Pune against the aforesaid order

dated 05.04.2021, however, under covering letter dated 12.07.2021, the Appellate Authority informed its order dated 23.06.2021 to the petitioner mentioning that they had dismissed his appeal. Hence, this petition.

6. One Dr. Sulochana Sitaram Bagul on behalf of respondent No.2, under affidavit-in-reply dated 14.12.2021, strongly opposed the petition by supporting the impugned orders dated 05.04.2021 and 23.06.2021 passed by respondent No.2 as well as the State Appropriate Authority. It is contended by respondent No. 2 that the licence of the petitioner for running the disputed Sonography Centre was valid only for the period from 23.10.2015 to 22.10.2020, but the petitioner despite expiry of the said certificate, conducted the same unauthorisely and thereby committed offence as per Section 23 (1) of the PCPNDT Act. Further, it is also submitted by respondent No. 2 that sufficient opportunity of hearing was given to the petitioner by respondent No. 2 and the State Appropriate Authority, Pune. As such, respondent No.2 prayed for dismissal of the petition.

7. We have carefully gone through the entire material on record in the light of the rival submissions made on behalf of the petitioner as well as the respondents. The learned Counsel for the petitioner also relied on the judgment dated 6 May 2013 passed by this Court at the Principal Seat at Bombay in Writ Petition (Lodg) No. 636 of 2013 (Dr. Bela Hitesh Bhatt vs. State of Maharashtra and others).

8. Admittedly, the petitioner could not renew his certificate of registration regarding his Sonography Centre within the prescribed period of limitation as contemplated under PCPNDT Act. The petitioner was supposed to file such application for renewal of the said certificate, 30 days prior to the date of its expiry i.e. 20.10.2020. Further, it is also not in dispute that the petitioner ultimately filed such renewal application on 22.03.2021 alongwith necessary documents. However, without holding any inquiry in respect of the said renewal application, respondent No. 2 raided Sonography Centre of the petitioner on 24.03.2021 and seized and sealed documents and Sonography machine therein. A show-cause notice dated 24.03.2021 was also served to the petitioner on the same day whereby charge of running Sonography Centre without any authorisation was levelled against the petitioner. Though the petitioner filed reply to the said show-cause notice, the respondent No. 2 cancelled the registration of Sonography Centre of the petitioner under the order dated 05.04.2021 only on the ground that the petitioner failed to renew the registration certificate.

9. Learned Counsel for the petitioner submitted that the respondent No. 2 despite pendency of the application for renewal of registration certificate, took a drastic step of sealing the Sonography machine of the petitioner without deciding the application for renewal in the light of the provisions and rules of the PCPNDT Act. He also submitted that there are no reasons

mentioned in the cancellation order dated 05.04.2021 passed by respondent No. 2. He further submitted that even the Appellate Authority also has not assigned any reason while dismissing Appeal No. 144 of 2021 filed by the petitioner and dismissed the same on 23.06.2021. He relied upon the judgment in the case of ***Dr. Bela Hitesh Bhatt vs State of Maharashtra*** (supra), wherein the action of sealing of sonography machine in respect of the petitioner therein was set aside. However, on going through the said judgment, it appears that there was no delay in filing renewal application by the concerned petitioner. In the instant matter, admittedly there is delay in filing such renewal application on the part of the petitioner.

10. Under such circumstances, we have to assess the act of respondent No. 2 of cancelling registration of Sonography Centre of the petitioner without deciding renewal application.

11. Section 18, 19 and 20 of the PCPNDT Act deal with registration and cancellation of the sonography / genetic clinics. Whereas Section 21 provides remedy of appeal in case Appropriate Authority cancels or suspends the registration. Though these provisions are there, but for the renewal of registration Rule 8 is provided under the PCPNDT Act, which reads as under :

“8. Renewal of registration - (1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. Acknowledgement of

receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub-rule (2) of rule 4.

(2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the 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 registration earlier granted.

(3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and these rules, it shall, for reasons to be recorded in writing, reject the application for renewal of certificate of registration and communicate such rejection to the applicant as specified in Form C.

(4) The fees payable for renewal of certificate of registration shall be one half of the fees provided in sub-rule (1) of rule 5.

(5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication of rejection of application for renewal, both copies of the earlier certificate of registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.

(6) In the event of failure of the Appropriate Authority to renew the certificate of registration or

to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed”

12. It is the case of the petitioner that during pendency of his renewal application, drastic action of sealing his Sonography machine has been taken by respondent No. 2. On going through the aforesaid Rule 8 of the PCPNDT Act, it is evident that the Appropriate Authority is under an obligation to hold an enquiry as soon as the application for renewal of certificate of registration is made. The Appropriate Authority has to satisfy itself that the applicant has complied with all the requirements of the Act and Rules. Under Rule 8 (3), the Appropriate Authority is bound to give an opportunity of being heard to the applicant and if it is satisfied that the applicant has not complied with the requirements of the Act and Rules, the application for renewal can be rejected only after recording reasons in writing. Further under Rule 8 (3) a duty is cast upon the Appropriate Authority to communicate such rejection of application for renewal of certificate of registration to the concerned applicant as specified in Form C.

13. In the instant matter, the record shows that respondent No.2 i.e. the Appropriate Authority, on receiving the renewal application dated 22.03.2021 by the petitioner, immediately issued show-cause notice on 24.03.2021 without holding any enquiry as contemplated in Rule 8 of the PCPNDT Act and on

the same day sealed the sonography machine of the petitioner by making necessary panchnamas. Moreover, after receiving reply of the petitioner on the said show-cause notice dated 24.03.2021, respondent No. 2 did not pass order dated 05.04.2021 by giving reasons in respect of the explanation given by the petitioner in writing on 25.03.2021 to the aforesaid show-cause notice. Perusal of the said order dated 05.04.2021 clearly indicates that nothing is mentioned by respondent No.2 in the said order as to why they are in dis-agreement with the written explanation of the petitioner dated 25.03.2021. Further, the order dated 05.04.2021 is not at all in the prescribed Form C as mentioned in the PCPNDT Act. Moreover, the order of Appellate Authority, Pune in Appeal No. 144 of 2021 is also silent as to how it dealt with the cause of delay mentioned by the petitioner which resulted into failure of submitting application for renewal of registration within prescribed time. It appears that respondent No. 2 as well as the Appellate Authority have passed the order of cancellation of registration certificate of the petitioner only on the ground that it remained without renewal for the period of five months and in that period the appellant performed total 823 sonography cases in his centre.

14. Admittedly, the petitioner has run his Sonography Centre without renewal of registration certificate for about five months. It is significant to note that for such act of running Sonography Centre without authorisation or by continuation of earlier registration, the petitioner is also facing criminal action

before the learned Chief Judicial Magistrate, Nandurbar vide R.C.C. No. 101/2021. The record further shows that the charge is also framed against the petitioner in that case. On perusal of the said charge, it appears that the petitioner is charged for the offence punishable under Section 23 (1) of the PCPNDT Act since in between 22.10.2020 and 23.03.2021 the petitioner illegally ran Sonography Centre and diagnosed sonography tests over 823 pregnant women in absence of any valid registration of the Sonography Centre. However, the aforesaid charge will be taken to its logical end by the concerned Chief Judicial Magistrate, Nandurbar on its own merit in the aforesaid R.C.C. No. 101/2021. We refrain ourselves to go into this aspect and to see whether the petitioner is guilty under the said charge. We make it clear that we have not expressed any view or opinion in respect of the said charge of which the concerned Chief Judicial Magistrate is entitled to take care of.

15. We are only assessing whether the respondent No.2 can take such drastic action of sealing the sonography machine when the application for renewal of certificate of registration, though delayed, is pending before it. In view of Rule 8 of the PCPNDT Act in respect of renewal of registration we have already observed herein-above that respondent No. 2 after receiving the application from the petitioner for renewal of registration certificate, did not hold any enquiry as contemplated in sub-rule (2) of Rule 8. Even no opportunity of being heard as per sub-rule (3) of Rule 8 was given to the petitioner. Moreover, the order of

rejection of the application for renewal of certificate of registration was also not communicated to the petitioner by respondent No. 2 as per Form C as specified in PCPNDT Act. Thus, it is clearly evident that while passing the order dated 05.04.2021, respondent No.2 acted contrary to Rule 8 of the PCPNDT Act. Further, the Appellate Authority while confirming the order dated 05.04.2021 by respondent No. 2, has also failed to give proper reasoning in respect of the cause of delay mentioned by the petitioner in his written reply to the show-cause notice dated 24.03.2021. Thus, It appears that the action of respondent No. 2 in respect of sealing the sonography machine of the petitioner has been taken without deciding the renewal application of the petitioner in accordance with rule.

16. It is extremely important to note that the object of PCPNDT Act is to prohibit the sex selection of the foetus with a view to protect the girl child and to stop female foeticide. It is important to note that there is no case forthcoming against the petitioner of such sex selection. Nothing is found in the raid conducted by respondent No. 2 on the Sonography Centre of the petitioner that he illegally disclosed the sex of any foetus. The refusal of registration of certificate of the Sonography Centre appears to be done only on his failure to make the application for renewal it within the prescribed period.

17. In so far as challenge to order of sealing is concerned, we are not inclined to pass any order of de-sealing of sonography

machine of the petitioner as his application for renewal is yet to be decided and at present, the Sonography Centre is not registered. However, since the order of cancellation of registration dated 05.04.2021 appears to be passed in contravention of Rule 8 of PCPNDT Act, we propose to direct respondent No.2 to decide the application of renewal of certificate of registration dated 22.03.2021 of the petitioner in the light of his written explanation dated 25.03.2021 in response to the show-cause notice dated 24.03.2021 and in the light of the provisions, especially Rule 8 of PCPNDT Act. In case if respondent No. 2 finds it proper to renew the certification and registration of the petitioner, then it will be at liberty to make any suitable order in respect of de-sealing. In view of the above, we pass the following order.

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) The impugned order dated 05.04.2021 passed by the second respondent and the order dated 23.06.2021 passed by the State Appropriate Authority, Maharashtra at Pune in Appeal No.144 of 2021, are hereby set aside.
- (iii) The second respondent shall decide the matter about cancellation of the registration alongwith the application dated 22.03.2021 filed by the petitioner for renewal of certificate of registration of his Krupasindhu Maternity Hospital and

Sonography Centre, Nandurbar afresh and in the light of the applicable provisions and Rules of the PCPNDT Act. It will be open to the second respondent to grant an opportunity of hearing to the petitioner or his authorised representative. The show cause notice and application for renewal be decided within two months from today.

- (iv) Respondent No. 2 – Authority shall pass necessary orders of de-sealing of Sonography Centre of the petitioner, in the event if the application for renewal is allowed.

Rule is made absolute in the aforesaid terms, with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.