

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Delivered on: 22nd April, 2022*

+ **CRL.M.C. 4556/2015**

MANISH GUPTA Petitioner

Represented by: Mr.Amardeep Singh, Adv. with
Ms.Shruti Khosla, Adv.

versus

THE STATE NCT OF DELHI & ANR. Respondent

Represented by: Mr.Rajesh Mahajan, ASC for State
with Ms.Jyoti Babbar, Ms.Shrutika
Vedi, Advs. with SI Vineet Kumar,
P.S.Timarpur
Mr.Anil Soni, CGSC for UOI

+ **W.P.(CRL.) 519/2017**

DR.V.K.SEHDEV Petitioner

Represented by: Mr.Samarth Raj Mehta, Adv.
versus

STATE & ANR. Respondent

Represented by: Mr.Rajesh Mahajan, ASC for State
with Ms.Jyoti Babbar, Ms.Shrutika
Vedi, Advs. with SI Vineet Kumar,
P.S.Timarpur
Mr.Anil Soni, CGSC for UOI

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these two petitions, the petitioners essentially seek quashing of the complaint being CC No.235/G titled as Dr.Aruna Jain Vs. Dr.V.K. Sehdev and Ors. filed by the Appropriate Authority for violation of Rule 4 and Rule 9 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of

Sex Selection) Rules, 1996 (in short, 'PC&PNDT Rules') punishable under Section 23 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short, 'PC&PNDT Act') and the proceedings pursuant thereto including framing charges against the petitioners. Dr. Manish Gupta also challenges the orders dated 1st June, 2015 and 15th October, 2015 passed by the learned Metropolitan Magistrate framing charge and the learned ASJ dismissing the revision petition respectively.

2. One of the principle contention of the petitioners is that the complaint has been filed by a Single Member Authority which is contrary to the requirement of law and an 'Appropriate Authority', as defined under Section 17 of the PC&PNDT Act, is required to be necessarily a Three Member Committee who can file a competent complaint. Learned counsels for the petitioners rely upon the decision of the Full Bench of the Punjab and Haryana High Court in the group of petitions titled Dr.Zoni Jain and Others Vs. State of Punjab and Others etc. Crl.Writ Petition No. 977/2016 (O&M) decided on 11th April, 2019, wherein the Full Bench upheld the decision of the Division Bench of Punjab and Haryana High Court in Help Welfare Group Society Vs. State of Haryana and others (CWP No. 21565 of 2011) decided on 18th September, 2013.

3. Contentions of the learned counsels for the petitioners are that after the amendment to Section 17 of the PC&PNDT Act, which came into force on 14th February, 2003, the 'Appropriate Authority' was required to be a Three Member Committee and since the present complaint has not been filed by competently appointed Three Member Appropriate Authority being a Single Member under Section 17(3)(b) of the PC&PNDT Act, the

cognizance taken on the complaint is illegal and no trial against the petitioners can proceed.

4. Learned counsel for the petitioner Dr. V.K.Sehdev further states that being a special Statute, Section 4 of the Code of Criminal Procedure will not be applicable and Section 28 of PC&PNDT Act which is a special enactment will prevail. Since the cognizance of the offences punishable under the Act cannot be taken except on the complaint of an Appropriate Authority and if the Appropriate Authority which filed the complaint is not constituted in accordance with the law, the cognizance of offences taken against the petitioner is bad in law.

5. Learned counsel for Dr. Manish Gupta besides adopting the argument made on behalf of Dr. V.K.Sehdev also contends that co-accused who was similarly placed, has been discharged and on the same fact, one accused i.e. Dr.Sandeep Jain has been discharged and the petitioner Dr.Manish Gupta has been charged for the offences aforementioned. Dr. Manish Gupta is not running the clinic and hence, has no responsibility or liability to maintain the records. Initially, the so called competent authority filed the complaint only against Dr.V.K.Sehdev who was running the clinic and Dr. Manish Gupta was not summoned. The only reference to Dr. Manish Gupta in the complaint was in paragraph 5 wherein, it was stated that Dr. V.K.Sehdev did not inform that Dr. Manish Gupta and Dr. Sandeep Jain were working in the clinic. As noted above, with the same role, Dr.Sandeep Jain has since been discharged. At the time of hearing of the charge, no opportunity was afforded to the petitioner to address arguments and charge was framed against him. No witness has deposed against Dr. Manish Gupta.

6. Learned Additional Standing Counsel for the State, on the other hand, states that though there was an amendment in Section 17(3)(a) of the PC&PNDT Act, however, there was no corresponding amendment in Section 17(3)(b) of the PC&PNDT Act. If the argument on behalf of the petitioners is to be accepted, the same amounts to reading words brought by the amendment under Sub-Section (a) into Sub-Section (b) which would result in legislation by the Court. It is well settled principle of interpretation that if the words of the Statute are clear and unambiguous, then, literal meaning is required to be given to the said Statute. A perusal of Sections 17(3)(a) and 17(3)(b) of the PC&PNDT Act would reveal that if the authority is for the entire State, then, it should be a multi-member Committee and if the Authority is for a part of the State or Union Territory, then, it can be of any officer duly authorized. The Division Bench and Full Bench of the Punjab and Haryana High Court held that the Authority even for part of the State should be a Three Member Committee, for the reason that it would be better to have a Three Member Committee, by employing purposive construction. The said reasoning is not sufficient to re-legislate a provision in the Statute. Different High Courts have taken different views. Rajasthan High Court in the decision reported as 2015 RLR 2824 Ramesh Chand Gupta Vs. State of Rajasthan, wherein the notification allegedly challenged before the Court had been issued after the amendment was brought in Section 17(3)(a) of the PC&PNDT Act, held that there being no corresponding amendment in Clause (b), the amendment in Section 17(3) Clause (a) cannot be inserted in Clause (b) of Section 17(3) by the Court. The Full Bench of Gujarat High Court in the decision reported as 2009 CrILJ 721 Suo Moto Vs. State of Gujarat held that the Authority, where

appointed for the whole State or Union Territory has to consist of three members and where it has been appointed for a part of the State or Union Territory, it could consist of an officer of such rank as the government may deem fit.

7. Learned Additional Standing Counsel for the State, on merits, contends that initially, the complaint was filed against Dr. V.K.Sehdev, however, name of Dr. Manish Gupta and Dr. Sandeep Jain were also mentioned in the complaint. Learned Counsel further submits that the documents collected and filed along with the complaint showed that certain forms 'F' were duly signed, counter signed by Dr. Manish Gupta and based on the documentary evidence, Dr. Manish Gupta has been summoned. There was no documentary evidence against Dr. Sandeep Jain who has since been discharged. Para 5, 7 and 9 of the complaint mentions that Dr. V.K.Sehdev had mentioned about the machines and that Dr. Anil was coming to the clinic as Ultrasonologist but did not disclose about Dr. Manish Gupta and Dr. Sandeep Jain. Dr. Manish Gupta's signatures were found on various incomplete and blank forms with incomplete details thereby making him liable for the offences punishable under the PC&PNDT Act. Since the cognizance has rightly been taken on the complaint of the competent authority and charge has already been framed, neither the complaint nor the proceedings pursuant thereto be quashed. Proviso to Section 24 PC&PNDT Act provides for statutory presumption and it will be for the petitioners to prove to the contrary during the course of trial.

8. The moot issue in the present petitions is whether cognizance on the complaint filed by a single member Appropriate Authority is illegal warranting quashing of the complaint and proceedings pursuant thereto.

Section 28 of the PC&PNDT Act provides that no Court shall take cognizance of an offence under this Act except on a complaint made by an Appropriate Authority concerned. Section 28 reads as under:

“28. Cognizance of offences

(1) No court shall take cognizance of an offence under this Act except on a complaint made by-

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or state Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than [fifteen days] in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation: For the purpose of this clause, "person" includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.”

9. Section 17(3)(a) and (b) are the two provisions which provide for the constitution of the Appropriate Authority and an amendment in Section 17 sub-Section (3) Clause(a) was brought about with effect from 14th February, 2003. The difference in Section 17 of the PC&PNDT Act as it stood prior to the amendment and post the amendment is as under:

<u>UNAMENDED</u>	<u>AMENDED</u>
CHAPTER V Appropriate Authority and Advisory Committee	CHAPTER V Appropriate Authority and Advisory Committee
17. Appropriate Authority and Advisory Committee.-	17. Appropriate Authority and Advisory Committee.-

(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union Territories for each of the Union Territories for the purposes of this Act. (2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. (3) The officers appointed as Appropriate Authorities under sub-section (1) or subsection (2) shall be, - (a) when appointed for the whole of the State or the Union Territory, of or above the rank of the Joint Director of Health and Family Welfare: and (b) when appointed for any part of the State or the Union Territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.	(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union Territories for each of the Union Territories for the purposes of this Act. (2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. (3) The officers appointed as Appropriate Authorities under sub-Section (1) or subsection (2) shall be,- (a) when appointed for the whole of the State or the Union Territory, consisting of the following three members- (i) an officer of or above the rank of the Joint Director of Health and Family Welfare Chairperson; (ii) an eminent woman representing women's organization; and (iii) an officer of Law Department of the State or the Union Territory concerned; Provided that it shall be the duty of the State of the Union Territory concerned to constitute multimember State or Union Territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002: Provided further that any vacancy occurring therein shall be filled within three months of the occurrence (b) when appointed for any part of the State or the Union Territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.”
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10. In the Full Bench decision of the Punjab and Haryana High Court in the batch of petitions titled as Dr. Zoni Jain (supra), dealing with the differences of opinion between the two Division Benches, noted as under:-

“2. The issue for consideration before the two Division Benches was whether the Appropriate Authority to be constituted under section 17 of the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short refer to ‘PC& PNDT Act of 1994’) for any part of the State or the Union Territory is to be a multi-member body or a single member body. The Division Bench in the case of Help Welfare Group Society’s (supra) applying the principle of purposive construction held as under:-

“In our view the purposive construction must be given to the said provisions and the intent to have a multi member body is not eschewed in Sub-section (b) when the appointment is for a part of the State or the Union Territory. We find it difficult to accept that if the appointment is for the whole of the State, it will be three members committee, while it is for part of State, it will be single member committee.

Whereas another Division Bench in the case of Dr. Zoni Jain’s case (supra) has taken a contrary view and observed as under:-

“We thus find that what has not been provided by the legislature in Clause (b), cannot be inserted by the Court nay it is not the function of the Court to do so. We, therefore, respectfully differ with the view taken by the Division Bench in Help Welfare (supra) that even for the purpose of Clause (b) of sub-Section (3) of Section 17 of PNDT Act, there shall be multi-member Appropriate Authority consisting of three members.”

11. After adverting to the various provisions of the Act, the Full Bench held that prior to the amendment of clause (a) of Section 17(3) of the PC&PNDT Act, Appropriate Authority consisted of only one member body,

however, vide Amending Act, a distinction was drawn by providing that when the Appropriate Authority was to be appointed for whole of the State or Union Territory, it had to be an officer either of the rank of Joint Director of the Health and Family Welfare or any officer of higher rank and in case of appointment of an Appropriate Authority for any part of the State or Union Territories, the officer could be of such other rank as the State Government or the Central Government may deem fit. By amending the Act, the constitution of the Appropriate Authority was widened by adding two more members i.e. eminent woman representing the women organizations and an officer of the Law Department of the State or the Union Territory. Sub-Clause (b) of Section 17(3) was not amended and remained the same and that the legislative intent must be gatherable from the text, content and context of the Statute and in such circumstances, intent of the Legislature behind the amendment was to expand the scope and applicability of the PC&PNDT Act and to provide the authorities appropriate powers so that they can take appropriate action as and when necessary. It was further held that keeping in view the powers and functions of the Appropriate Authority, the multi members body would serve the object and reasons more effectively for which the Act has been enacted. The Full Bench thus concluded:

“38. Keeping in view the aforesaid parameters, statement of object and reasons, preamble, and statute as a whole, the principle of purposive construction seem more conducive to invoke while interpreting clause (b) of Section 17(3) of the Act.

Constitution of multi-member, appropriate authority for a part of the State and the Union-Territory shall enhance the functional principle of the enactment. Interpreting clause (b) of

Section 17(3) in aforesaid manner would only fructify object and purpose of the act.

Keeping in mind the aforesaid, appointment of multi-member appropriate authority for a part of the State or the Union Territory shall advance the purpose of the Act while removing the mischief observed in the functioning of the enactment which lead to making large scale amendments”.

12. The Full Bench decision rendered by the Gujarat High Court and relied upon by the learned Additional Standing Counsel for the State though did not deal with the interpretation of Section 17(3)(a) of the PC&PNDT Act, however, distinguished Clause (a) and Clause (b) of Section 17(3) and held that the use of the word 'Appropriate Authority' twice, at the beginning and end of Clause (a) of sub-Section (1) of Section 28 clearly conveys that the complaint could be made by an officer who is authorized in that behalf by the Central Government, the State Government or the Appropriate Authority, besides the Appropriate Authority itself.

13. On a perusal of Section 28 PC&PNDT Act, it is evident that the learned Metropolitan Magistrate/ Judicial Magistrate of the first class is competent to take cognizance and try the offence punishable under this Act on the complaint of an Appropriate Authority or any officer authorised in this behalf by the Central Government or the State Government or the Appropriate Authority under sub-Section (1) of Section 28. The complaint can also be filed by any person who has given notice of fifteen days to the Appropriate Authority. Thus the Central Government and the State Government can even authorize an officer other than the Appropriate Authority to file a complaint on which cognizance can be taken by the Court.

14. The complaint against the petitioner has been filed by Dr. Aruna Jain being a single member authority. Since cognizance on the complaint of an Appropriate Authority or an officer authorised in this behalf is a sine-qua-non for taking cognizance of an offence under the PC&PNDT Act, the Appropriate Authority should be validly appointed.

15. “Appropriate Authority” is defined under section 2(a) of the PC&PNDT Act to mean the Appropriate Authority appointed under section 17 of the PC&PNDT Act. Though amendment was carried out in Section 17(3)(a) by the Act 14 of 2003, however no corresponding amendment was carried out in Section 17(3)(b). Reading Section 17(3) as it stood prior to the amendment, there was no stipulation on the number of members and only stipulation was on the rank whether it be an Appropriate Authority for the whole of State or Union Territory under section 17(3)(a) or for any part of the State or Union Territory under section 17(3)(b). Legislature in its wisdom amended only clause (a) of sub-section 17(3) and not clause (b) to sub-Section 17(3) which was retained as it existed prior to the amendment. Thus, only if the Appropriate Authority is appointed for the whole of the State or Union Territory it would be required to be a multi-member authority. However when Appropriate Authority is appointed for part of the Union Territory or part of the State, a single member Appropriate Authority can competently be appointed and a valid cognizance taken on the complaint of such a single member Authority. If the Legislature had so desired it could have amended clause (b) of sub-section 17(3) as well.

16. It is trite law as held by the Constitution Bench in the decision reported as (1984) 2 SCC 183 R.S. Nayak Vs. A.R. Antulay that if the words of the Statute are clear and unambiguous, it is the duty of the Court to give

effect to the natural meaning of the word used in the provision. The question of construction arises only in the event of an ambiguity or if the plain meaning of the word used in the Statute would be self-defeating. In the decision reported as (1974) 3 SCC 337 State of Mysore Vs. R.V. Bidap the Constitution Bench held “Where it is plain, the language prevails, but where there is obscurity or lack of harmony with other provisions and in other special circumstances, it may be legitimate to take external assistance such as the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters”.

17. The notification dated 4th July, 2003 issued by the Ministry of Health and Family Welfare, Union of India appointing a three member Appropriate Authority for the Union Territory of Delhi is in exercise of its power conferred under clause (a) of sub-Section 3 of Section 17 PC&PNDT Act and not in respect of clause (b) of sub-Section 3 of Section 17 of the PC&PNDT Act. Thus the notification appoints a multi-member Appropriate Authority under Section 17(3)(a) for the whole of Delhi. The foot note of the said notification also state that the notification is in supersession of earlier notification dated 12th October, 2001 pertaining to entry No.1 and thus the earlier notification in respect of entry 2 which pertains to Appropriate Authority at District Level remains unchanged in the subsequent notification for the reason there was no corresponding amendment to Section 17(3)(b).

18. Section 17(4) provides for the functions of the Appropriate Authority as under:

“(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;

- (b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;*
- (c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;*
- (d) to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;*
- (e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;*
- (f) to create public awareness against the practice of sex selection or pre-natal determination of sex;*
- (g) to supervise the implementation of the provisions of the Act and rules;*
- (h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;*
- (i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration."*

19. In view of the multifarious functions assigned to the Appropriate Authority, the Act contemplates constituting Appropriate Authority both at the State level as well as the District level or part of the State. In such a situation to perform the various functions it is not unusual for the Act to provide multiple Appropriate Authorities to perform the multiple functions. Thus by reading the requirement of Section 17(3)(a) into Section 17(3)(b) though it may be desirable but it cannot be said that a single member Appropriate Authority would be contrary to the said Statute and thus incompetent to file the complaint. Further in terms of Section 28(1)

PC&PNDT Act even a person duly authorised by the Appropriate Authority can file a valid complaint.

20. As noted above, the functions assigned to the appropriate authority are multifarious and in view thereof the Act contemplating appropriate authorities at State level and District or part of the State level is duly conceived by Sections 17 (3) (a) and Section 17 (3) (b) PC&PNDT Act. Hence, every time when a raid is conducted in different areas of the State, it cannot be accepted that an officer of the Department of Law will be available every time. This prima facie appears to be the reason why no corresponding amendment has been brought in Section 17 Sub-Section 3 Clause (b) of the Act. It is trite law that when the language of the Section is plain and simple the Court would not substitute its opinion about the desirability to have a multimember committee even under Section 13 sub-section (3) Clause (b) of the Act. In view of the plain language of Section 17(3)(b) PC&PNDT Act, it cannot be held that even for part of State, a Multi Member Committee would be a validly constituted Appropriate Authority.

21. Further by giving a purposive construction to Section 17 (b) & (c) of the Act, the acts performed by the Appropriate Authority of filing complaints pursuant to a valid notification cannot be quashed. As held by the Division Bench of Punjab and Haryana High Court that by giving a purposive construction, it would be desirable to have multi-member Committee even at the district level or part of the State and directions in this regard were issued to the State Government. Thus by resorting to purposive construction, the Court in Help Welfare Group Society (supra) did not give a retrospective operation of the application of that construction.

22. Help Welfare Group Society (supra) relied upon by the learned counsel for the petitioner was a public interest litigation filed before the Punjab & Haryana High Court seeking directions to the respondents to implement the provisions of the PC & PNDT Act in its true spirit and letter whereby giving a purposive construction to Clause (b) and Section 17(3), the Division Bench held that even for the part of the State it should be a multi member Committee. The only change being that an officer of the rank of the Joint Director of the Health and Family Welfare Department need not be a member of the said Committee. While issuing directions, the Court directed the State to cure the defect within one month and disposed of the petition.

23. The present complaint was filed on 2nd August, 2006 after an inspection was conducted at Sant Hospital by the complainant alongwith the team members on 31st July, 2006. Indubitably, a retrospective operation of the judgment in the PIL passed by the Division Bench of the Punjab & Haryana High Court further upheld by the Full Bench in Dr. Zoni Jain (supra), cannot be availed to quash the complaint filed by the respondent No.2.

24. Learned counsel for Dr.Manish Gupta besides the abovenoted proposition, has also challenged summoning him as an accused in the complaint case on merits. As noted above, Dr.Manish Gupta stated that he has not been named in the complaint and was not summoned initially but subsequently summoned and that similarly placed Dr.Sandeep Jain has been discharged by the learned Metropolitan Magistrate.

25. In the complaint filed by respondent No.2 in para-5 it is clearly stated that Dr.V.K. Sehdev has mentioned in Form-A about the equipment

available as Logiq Alpha 100-V4 which is a mobile ultrasound machine and that the ultrasonologist was Dr. Anil Kumar Grover, MD, Radio Diagnosis, but he has not informed that Dr. Manish Gupta and Dr. Sandeep Jain had been visiting the hospital for ultrasonography as is evident from the reports sent to the competent authority. On scrutiny of records, they were found to be incomplete and blank consent forms were got signed for surgical procedures. Case records were incompletely and improperly maintained. Form-F, a mandatory requirement for ultrasound done on pregnant females, were incomplete. The records maintenance is not as per PC & PNDT Act and MTP Act. Incomplete and improper maintenance of records are indicative of the fact that ultrasound was being done without keeping proper records for concealment of facts so that unwanted pregnancies for a particular sex can be terminated, there is thus clear violence of PC & PNDT Act and MTP Act. Form-F under the PC & PNDT Rules requires declaration both by the doctor who conducts the ultrasound as also the patient.

26. Learned counsel for the State has taken this Court through the copies of various forms which show that neither the patient nor the doctor has signed or if the patient has signed Dr. Manish Gupta has not signed though he performed the ultrasound.

27. Learned counsel for the petitioner Manish Gupta claims parity with Dr. Sandeep Jain who was summoned under Section 319 Cr.P.C. and discharged vide order dated 30th June, 2015. Since no documents in relation to Dr. Sandeep Jain were found and documents collected showed that the petitioner Dr. Manish Gupta was one of the doctors who had performed ultrasound without following the rules, this Court finds that the petitioners'

case cannot be at par with that of Dr.Sandeep Jain and hence no case for discharge on that count is made out.

28. Consequently, this Court finds no ground to quash the complaint filed by the respondent and the proceedings pursuant thereto.

29. Petitions are dismissed.

Crl.M.As. 16244/2015, 18372/2017 in CRL.M.C. 4556/2015

Crl.M.As. 2759/2017, 4533/2017, 4534/2017, 5316/2018 in W.P.(CRL.) 519/2017

Dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

APRIL 22, 2022

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