

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10995 of 2022

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Dr. Raj Kishore Prasad S/o Late Ram Dutta Prasad R/o Bhadra Ghat, Post-Gulzar Bagh, P.S.- AlamGanj, District- Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health, Government of Bihar, New Secretariat, Patna.
2. The Additional Chief Secretary, Health, Government of Bihar, New Secretariat, Patna.
3. The Director-in-Chief Health Services, Government of Bihar, New Secretariat, Patna.
4. The Executive Director, State Health Committee Bihar, Patna.
5. The Civil Surgeon-Cum-Chief Medical Officer, Patna.
6. The Nodal Officer-Cum-In-Charge Medical Officer, Primary Health Centre, Dhanarua, Patna.
7. The In-Charge Medical Officer, Government Hospital, Kasba, Patna City, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Singh
For the Respondent/s	:	Mr. Ajay Behari Sinha (Ga 8)
	:	Mr. Suryakant Kumar, AC to GA8

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 13-10-2023

Heard the learned counsels for the parties.

The present writ petition has been filed for the following

relief(s):-

“1. To issue an appropriate writ, order or direction for quashing the Memo No. 2142 Dated 07.03.20 issued by Respondent Civil Surgeon, ordering to seal the Surbhi Imaging Centre, the Ultrasound Centre run by the petitioner, further directing/authorizing the Respondent 5&6 to take action of sealing with assistance of the Clerk and the Peon.



II. To issue further appropriate writ, order or direction commanding the Respondents to unseal the Surbhi Imaging Centre, the Ultrasound Centre, run by the Petitioner forthwith as the same has been done without following the procedure of the Act and Rule as also against the principles of the Natural Justice as also without any Inquiry, Report or findings of guilt against the Petitioner or the Centre of the Petitioner.

III. To issue an appropriate writ, order or direction commanding the Respondents comply the order/direction as contained in order Dated 17.07.2019 passed by Additional District and Sessions Judge-17 Patna as also the order dated 19.07.2019 passed by S.D.J.M. Patna.

IV. To issue further appropriate writ, order or direction commanding the Respondents not to disturb the petitioner in the peaceful running of his centre.

V. This Hon'ble High Court may adjudicate and hold that initiation of a proceeding vide Complaint Case no. 161(0)/2018 under Section 23 and 34 of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'Act') without holding any inquiry as also without recording any finding of guilt as against the Petitioner prior to the same, is an act of mala fide and arbitrary exercise of authority by the Respondent Civil Surgeon.

VI. This Hon'ble Court may further adjudicate and hold that after an order passed by the S.D.J.M. Patna on 23.04.2018 dropping the criminal proceeding initiated vide Alam Ganj



P.S. Case No. 21 of 2016 U/s 420 of I.P.C. and 23(1) of the Act against the petitioner and his wife Dr. Hena Rani Devnath, there was no occasion for the Respondent Civil Surgeon to file a Complaint on same set of facts which were considered and rejected by learned Magistrate as also further without holding any proper inquiry and report as prescribed under various provision of the Act including Section 17(4)(e) & (1) of the Act.

VII. This Hon'ble court may further adjudicate and hold that in view of the order dated 17.07.2019 passed by Additional District and Sessions Judge-17th Patna and the order dated 19.07.2019 passed by S.D.J.M. Patna, it was the duty of the Respondent authorities to forthwith unseal the Surbhi Imaging Centre, the Ultrasound Centre run by the petitioner and any delay and denial amounts contempt of the above noted two orders of the Court.

VIII. This Hon'ble Court may further adjudicate and hold that under the law without any show cause, notice or proper inquiry, finding of guilt, prior to the institution of the complaint, the action by the Respondent Civil Surgeon is ab-initio void, illegal and not sustainable in the eye of law and thus the same is not sustainable in the eye of law.

IX. To award the cost of litigation suitable compensation to the petitioner for the loss or damages caused to him.

X. To award any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case.”



3. Learned counsel appearing on behalf of the petitioner has stated that the Memo dated 07.03.2019 bearing Memo No. 2142 issued by the Respondent No. 05 herein directing to seal the ultrasound unit of the petitioner is illegal, arbitrary and passed contrary to the principles of natural justice and equity and the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Learned counsel has stated that without conducting any enquiry or putting the petitioner on show cause notice, the unit of the petitioner has been directed to seal. That the authority concerned has not conducted any enquiry and straightway passed the order for sealing the ultrasound centre of the petitioner. That the order is contrary to the orders passed by the SDJM Patna, vide order dated 23.04.2018 in PS Case No. 21 of 2016, whereby the criminal proceedings initiated against the petitioner and his wife were dropped. That the Respondent No. 5 on the very same set of facts ought not to have passed the order for sealing the ultrasound unit of the petitioner. Thereafter, 17th ADJ Patna, vide order dated 17.07.2019 has directed for unsealing the ultrasound unit of the petitioner but the same has not been done till date. Learned counsel has relied on the following judgments of the Hon'ble High Court passed in CWJC No. 23728 of 2013 dated 11.07.2014 and



also the judgment dated 26.04.2016 in CWJC No. 13080 of 2013 to buttress his case.

4. Even though, the learned counsel for the respondents has tried to support the action of the respondents in sealing the premises of the petitioner when queried by this Court as to whether the petitioner has been put on notice prior to the sealing of the said premises, the counsel has replied in the negative.

5. However, learned counsel for the respondent has stated that only after the orders of the Respondent No. 5, the unit of the petitioner has been sealed. Learned counsel has stated that the petitioner has an alternative remedy of filing an appeal and without availing the said remedy, the petitioner has approached this Hon'ble Court under Article 226 of the Constitution of India and, therefore, the present writ petition has to be dismissed on this ground. Learned counsel has prayed this Hon'ble Court to dismiss the present writ petition.

6. This Court vide order dated 15.09.2022 has directed the counsel for the respondents to get necessary instructions with regard to the below mentioned three issues.

“1. whether the Civil Surgeon-cum-Chief Medical Officer, Patna has passed any order under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 or not.



2. whether any opportunity of fair hearing was ever afforded to the petitioner.

3. whether the order dated 17.07.2019 passed by learned Add. Sessions Judge XVII, Patna has attained finality or not.”

7. A supplementary counter-affidavit has been filed stating that the Respondent No. 5 has passed the order dated 07.03.2019 directing for closure of the unit of the petitioner. To the second query as to whether any opportunity of fair hearing was ever accorded to the petitioner, learned counsel for the respondents has fairly stated that no prior notice was issued to the petitioner before the unit was sealed and with regard to the third query as to whether the order dated 17.07.2019 passed by the learned 17th Additional Sessions Judge, Patna has attained finality or not. Learned counsel has stated that the authorities have not challenged the same and the same has become final. However, the authorities when they tried to implement the order of the learned 17th Additional Sessions Judge, Patna could not do so as the petitioner and his staff obstructed the authorities from doing so.

8. In order to appreciate the issue involved in the present case, it is necessary to extract the relevant provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 more specifically Section 17, which reads as under;



“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 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 sub-section (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 or 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 that 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.

4. The Appropriate Authority shall have the following functions, namely:—

(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 CSB 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.

5. The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

6 The Advisory Committee shall consist of—

(a) three medical experts from amongst gynaecologists, obstericians, paediatricians and medical geneticists;

(b) one legal expert;

(c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be;

(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

7. No person who has been associated with the use or promotion of pre-natal diagnostic technique for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.

8. The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon: Provided that the period intervening between any two meetings shall not exceed the prescribed period.



9. The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed.”

9. A reading of the above extracted portion reveals that the petitioner has to be put on notice and given a reasonable opportunity of being heard prior to the cancellation or suspension of the registration. This Court in CWJC No. 13080 of 2013 vide order dated 26.04.2016 has held as under;

“Having regard learned counsel for the parties and considering the admitted circumstances where the order impugned has been passed without notice and without giving opportunity of hearing to the petitioner who has not even been given a copy of the inspection report which is the foundation for the impugned order.”

10. This Court in CWJC No. 23728 of 2013 dated 11.07.2014 has held as under;

“Any order which has civil consequences and affects the right of parties, requires adherence to the principles of natural justice. The Order neither reflects whether the copy of the inspection report was afforded to the petitioner nor does it reflect whether any opportunity was provided to him to explain his defence. The order clearly violates the principles of natural justice and thus cannot be sustained.”

11. Having regard to the above mentioned facts and circumstances and the law laid down by this Court, this Court is of



the opinion that the sealing of the unit by the authorities concerned without putting the petitioner on notice or giving him an opportunity of giving any explanation is bad in law and is an arbitrary exercise of power and done contrary to the provisions of the said Act. Therefore, the present writ petition is allowed and the impugned order dated 07.03.2019 is set aside, the authorities are directed to unseal the premises of the petitioner within a period of one week from the date of receipt of a copy of this order. This Court has not dealt with the issue of the renewal of the license of the petitioner even though both the counsels have argued at length on the same. The authorities concerned are directed to consider the application of the renewal of the license of the petitioner duly taking into consideration the provisions of the said Act more specifically Rules 6 & 8 of the said Act within a period of four weeks from the date of receipt of the copy of this order.

12. Accordingly, the present writ petition is allowed to the extent indicated above.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.10.2023.
Transmission Date	N/A

