

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11491 of 2023

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Suraj Kumar @ Dr. Suraj Kumar Son of Dr. Bijay Kumar Gupta Resident of
Village- Kusmar, Sangrampur, P.O. and P.S.- Sangrampur, District- Munger-
813212.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The District Magistrate-cum- Collector, Munger, Bihar.
4. The Civil Surgeon-cum- Chief Medical Officer, Munger.
5. The Sub- Divisional Officer, Tarapur, Munger.
6. The Communicable Disease Officer, Munger.
7. The Non- Communicable Disease Officer, Munger.
8. The Medical Officer, Sadar Hospital, Munger.
9. The Superintendent of Police, Munger.
10. The Block Development Officer, Sangrampur, District- Munger.
11. Primary Health Officer, Community Health Centre Sangrampur, District- Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Adv.
	:	Mr. Sumit Kr. Jha, Adv.
	:	Mrs. Riya Gira, Adv.
	:	Mr. Bivotosh Kr. Adv.
For the Respondent/s	:	Mr. Rajeshwar Singh (Ga10)

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

Date : 11-10-2023

Heard the learned counsels for the parties.

The present writ petition has been filed for the
following relief(s):-

*“(i) To issue a writ/order/
direction in the nature of certiorari for
quashing of Letter contained in Memo
No. 1352 dated 27.05.2023 issued
under the signature of Civil Surgeon-
cum-Chief Medical Officer, Munger by
which a direction has been given to seal
the Ultrasound Centre of the petitioner*



with immediate effect on the ground that the degree of the petitioner from Global Open University, Nagaland, is not recognized for Ultrasound.

(ii) To issue a writ/order/ direction in the nature of certiorari for setting aside Memo No. 164 dated 30.05.2023 issued by a committee constituted as per the direction of Civil Surgeon Munger, by which in light of Memo No. 1352 dated 27.05.2023 the Ultrasound Centre of the petitioner situated in Sangrampur, Munger has been sealed.

(iii) To issue a writ/order/ direction in the nature of mandamus directing the respondent authorities to unseal /open the Ultrasound Centre of the petitioner which is running in name and style as "Sangrampur Ultrasound Centre".

(iv) To hold and declare that the action of the respondent authorities in sealing the ultrasound center of the petitioner is wholly without jurisdiction.

(v) To hold and declare that the petitioner has valid qualification under the provisions of PC & PNDT Act and the Rules framed thereunder for running of ultrasound centre and as such entitled to continue running the Ultrasound centre.

(vi) To hold and declare that the License of Ultrasound Centre of the petitioner bearing 07/2002 has been deemed renewed in terms of Rule 8(6) of PC-PNDT Rules 1996 on the ground that the petitioner has applied for renewal/ registration of its license on 21.11.2022 and the same has not been rejected upto now.

(vii) To pass interim/ad-interim order allowing the petitioner to operate the Ultrasound centre after unsealing the same during the pendency of this writ application.



(viii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

3. Learned counsel for the petitioner has stated that the sealing of the ultrasound centre of the petitioner by the Respondent No. 4 herein vide Memo No. 1352 dated 27.05.2023 is arbitrary, illegal and against the provisions of the Act. Learned counsel for the petitioner has stated that the ground on which the ultrasound centre of the petitioner was sealed is that the degree obtained by the petitioner from Global Open University is not a recognised one. Learned counsel has stated that the ground taken by the authorities is contrary to the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 more specifically Section 2(p), Section 18(2), Rule 3(1)b Rule 4, Rule 8(6) and also Form-A.

4. Learned counsel has stated that initially the father of the petitioner was running the unit and, thereafter, the petitioner has started practising as a sonologist. That before the expiry of the registration standing in the name of the father, the petitioner has applied for registration of the license in his name under application made in Form-A but till date the



authorities concerned have not considered the said application made by the petitioner nor rejected the same. Learned counsel has stated that under Rule 8 sub-clause 6, there is a deeming provision, which envisages that in case the authorities do not pass any order of rejection of the application for renewal, the same is deemed to have been automatically renewed. Further, learned counsel has stated that the form for registration and renewal is one and the same and, therefore, the authorities cannot state that the petitioner has no locus to file an application for renewal on behalf of the father under whose name the registration is there. Learned counsel has stated that as per the definition of sonologist under Section 2(p), the petitioner is having the requisite qualifications to work as a sonologist or as imaging specialist and, therefore, the contention of the respondent authorities that the petitioner does not have the necessary qualifications is contrary to the provisions of the Act. Learned counsel has further argued that as per the Memo No. 1069(12) dated 18.07.2023, the competent authority for passing any order is the District Magistrate and, therefore, the orders passed by the Respondent Nos. 5 & 4 is without jurisdiction and the same is



non est in the eye of law. Learned counsel has also relied on the judgement of this Court passed in CWJC No. 13888 of 2016 to buttress his contention. Therefore, learned counsel has prayed this Hon'ble Court to set aside the impugned order and direct the authorities to unseal the premises of the petitioner by allowing the present writ petition.

5. *Per Contra*, the learned counsel for the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has an alternative and efficacious remedy of filing an appeal before the concerned authority. Learned counsel has stated that the petitioner is not registered under the provisions of the said Act and any application made by the petitioner for renewal of the registration which is in the name of the father cannot be entertained. Learned counsel has stated that the petitioner without registering himself first cannot seek renewal of the license which is admittedly in the name of his father. Therefore, learned counsel has prayed this Hon'ble Court to dismiss the present writ petition.

6. A perusal of the impugned order passed by the authority reveals that the order has been passed solely on the



ground that the degree obtained by the petitioner is not a recognised one however, it is to be noted that Section 2(p) clearly states that any person having the valid degree and sufficient training can be registered as a sonologist. This Court in CWJC No. 13888 of 2016 vide order dated 16.12.2016 has held as under;

“15. The question is that the expression used of six months training duly imparted in the manner prescribed under the 2014 Rules has to be read with the earlier expression of Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner is a stand alone condition. If Rule 3(3)(1)(b) is read along with Section 2(p) of the 1994 Act, a Sonologist is the one who possesses one of the medical qualifications recognized under the IMC Act. Similarly. Registered Medical Practitioner as defined under Section 2(m) of the 1994 Act is also a Medical Practitioner who possesses a recognized medical qualification, as defined under Section 2(h) of the IMC Act. Therefore, the distinction between a Sonologist or a Registered Medical Practitioner in terms of Section 2(p) and 2(m) of the Act is that name of a Registered Medical Practitioner is required to be entered in the State Medical Register whereas, there is no such condition in respect of a Sonologist. Still further, each of the expressions in Rule 3(3)(1)(b) is separated by the word 'or'. Therefore, each of the qualifications is independent and separate and cannot be read conjunctively. Therefore, the condition of six months training imparted in the manner prescribed under the 2014 Rules is an independent condition which cannot be read conjunctively either with the Sonologist or Imaging Specialist or a Registered Medical Practitioner.”



7. Further, it is to be noted that before passing the impugned order, the petitioner has not been put on notice nor his explanation called for. The impugned order is passed on 27.05.2023 whereas as per the classificatory letter issued by the Secretary of Bihar Government on 18.07.2023, the District Magistrate is the authorised person under the Act for taking any action with effect from 10.05.2023. Therefore, on this ground also the impugned order is liable to be set aside. That insofar as the contention of the respondent that the petitioner does not have the registration, it is to be noted that the petitioner has made his application on 21.11.2022 under Form-A, admittedly, under the said rules, there is no distinction with regard to the application for registration or renewal.

Rule 8 reads as under;

“8. Renewal of registration

(1) An application for renewal of certificate of registration shall be made in duplicate in FormA, 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, Genetic Clinic, Ultrasound Clinic and Imaging Centre.

(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.”

As per Rule 8(6), the authorities are mandated to either pass an order rejecting the application or pass necessary orders renewing the license, in the absence of which the deeming provisions contained in the said rule comes into play and the application made by the petitioner will be deemed to have been automatically renewed. Even though, learned



counsel for the respondents has stated that the petitioner is having an alternative remedy of filing an appeal, it is to be noted that once this Court comes to the conclusion that there are violation of principles of natural justice and equity and the impugned order is passed contrary to the above said principles, this Court under Article 226 of the Constitution of India can exercise its extraordinary jurisdiction. The plea of an alternative remedy pales into insignificance, once, it is established that the principles of natural justice and equity have been violated. This Court in CWJC No. 23728 of 2013 vide order dated 11.07.2013 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.”

This Court in CWJC No. 13080 of 2013 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.”*

8. Having regard to the above made facts and circumstances, the impugned order is set aside and the authorities are directed to unseal the ultrasound unit of the petitioner within a period of one week from the date of the receipt of a copy of this order. The authorities are further directed to pass necessary orders on the application made by the petitioner for registration/renewal of the license as expeditiously as possible.

9. With the above directions, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.10.2023.
Transmission Date	N/A

