

WPA 19742 of 2022

**Manas Neogy & Anr.
Vs.
The State of West Bengal & Ors.**

Ms. Sucharita Biswas,
Mr. Bhaskar Dutta Gupta.

... for the Petitioners

Mr. Prolay Bhattacharya,
Ms. Tanushree Ghosh.

...for Union of India

The writ petitioners are aggrieved with the inaction on part of the respondent authority to issue him and/or renew his license under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 and also under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

The writ petitioner no.1 claims himself to be a duly qualified medical geneticist. He has been running genetic laboratory and counseling centre in the name and style “Advanced Immunogenetic Diagnostic Clinic Centre” at Bhadreswar, Hooghly. The functioning of the said laboratory was started pursuant to the petitioners obtaining licenses under the

provisions of the statutes of 2017 and 1994 respectively, as mentioned above. The petitioners say that for about twenty years, the laboratory has successfully run, providing service to the consumers and by following all the statutory formalities and compliances. During all those period, he says, that the license earlier issued in his favour was renewed for more than once by the concern authority.

The smooth functioning of the laboratory, however, has come to a halt pursuant to rejection of petitioners' prayer for renewal of license.

Ms. Biswas, who is representing the petitioners, has submitted firstly that the order of rejection of renewal of license of the petitioners was never communicated in terms of the statutory provision, i.e, by the written letter, by the authorities. She says that the information was only uploaded in the website which is even in violation of the statutory mandate regarding communication of the order. Thereafter, she submits, that, the decision of rejecting license of the petitioner is in contradiction of the decision of the department itself, in so far as by dint of a letter dated August 30, 2019, the Additional DHS (ADMIN)

DoHFW, Government of West Bengal, has informed the petitioner in the manner as follows:-

“Now as per the PCPNDT Acts and rules, there is no bar to allow him PCPNDT License as Medical Geneticist.”

Ms. Biswas's client is also aggrieved with the findings of the authorities in the order passed by the Commissioner Health Services and communicated under cover of letter dated August 14, 2019, that the necessary infrastructure and equipments would not be available for grant/renewal of license of the petitioners with respect to his laboratory.

Finally Ms. Biswas has submitted that the requirements as sought for by the department to be followed by the writ petitioner, to secure renewal of his license would no further be necessary in terms of the amended provisions under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, is amended in 2017. Ms. Biswas has prayed for directions of this Court in terms of the prayer of the writ petition.

The respondents are not present inspite of service of notice. Hence, the writ petition is taken up for adjudication in absence of the respondents.

The relevant prayers of the writ petitioner may be set out as herein below:-

- a) A Writ in the nature of Mandamus commanding the Respondent Authorities to take steps to renew the Clinical Establishment License of AIDC in a time bound manner as per the Act and rules framed therein;
- b) A Writ in the nature of Mandamus commanding the Respondent Authorities to take steps to provide the PCPDNT license to the Petitioners;
- c) A Writ in the nature of Mandamus commanding the Respondent Authorities to take steps to provide adequate compensation to the Petitioners;

The petitioners application for renewal of license granted under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017, has been rejected by the concerned authority after inspection done on May 7, 2018. The grounds appeared to have been recorded of non-confirming with the statutory specifications for grant of license to run a genetic laboratory as for the provisions of the said statute. Record shows that the writ

petitioners, for years together, have been running the laboratory successfully and without any plea raised from any corner regarding non-compliance of any statutory norms or specifications of maintaining such a laboratory. It further appears that previously for all times the license of the writ petitioner was renewed without any objections raised as regards the maintenance and functioning of the concerned laboratory.

The respondent authority has come up with the ground that the equipments, infrastructure and qualified medical persons were found to be absent to run the said laboratory, as was necessary under the law. The respondents have indicated that inspection was caused as to the laboratory which the writ petitioner has however denied that any inspection was ever caused by the authorities in his presence, before rejection of his application for renewal of license.

On the facts and circumstances as above this writ petition is disposed of with the direction upon the respondent authority that the authority considers petitioners prayer for renewal of license/grant of license afresh, after affording an opportunity of hearing to the

petitioners and any other person it finds necessary. In considering the matter afresh, the concerned authority would be at liberty to inspect the premises in question again, in presence of the petitioner and his authorized representative, if any. After exhausting the exercises as above, the respondent authority shall pass a reasoned order, concerning the question of grant and/or renewal of license to the writ petitioner under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017, covering the point of applicability of the same in the petitioner's case.

With the directions as above the writ Petition being WPA 19742 of 2022 is disposed of.

(Rai Chattopadhyay, J.)