

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2407 of 2024

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Ajay Kumar, S/o Kapil Muni Singh, Resident of Mohalla-A.G. Colony,
Kautilya Nagar, P.S.-Shastrinagar, Distt-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Bihar, Patna.
3. The Joint Secretary, Health Department of Bihar Patna.
4. The District Magistrate, Bhojpur, Arrah.
5. The Civil Surgeon cum Chief Medical Officer, Bhojpur, Arrah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vivek Anand Amritesh, Adv. Mr.Kumar Kamal Nayan,Adv.
For the Respondent/s	:	Mr.Standing Counsel 11 Mr. Akash Chaturvedi, AC to SC 11

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

3 10-05-2024 Heard the learned counsels for the parties.

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

*“(i) for setting aside the order as
contained in memo no. 992 dated 29.03.2023
passed by Civil Surgeon, Bhojpur, Ara whereby
the Ultrasound Centre of the petitioner bearing
Registration No. 82/2019 has been suspended
with immediate effect and further asked show
cause as to why not the registration no. 82/2019
of the Ultrasound Clinic be cancelled under PC
& PNDT Act.*

*(ii) In the nature of mandamus for directing and
commanding the respondent authorities to direct*



the respondent authorities to give the same treatment as others who have been allowed to run their Ultrasound centre after being their registration suspended in the same inspection during which petitioner's registration was suspended.

(iii) In the nature of mandamus for directing and commanding the respondent authorities to allow the petitioner to run his ultrasound centre.

(iv) In the nature of mandamus for directing and commanding the respondent authorities to give an opportunity to remove any short coming (if any) as per provisions of Pre- Conception and Pre-Natal Diagnostic Techniques Act, 1994 (herein after referred as PC & PNDT Act) as the other ultrasound centre has been given the opportunity to open their ultrasound centre after removing the short-come as per PC & PNDT.”

3. Learned counsel appearing on behalf of the petitioner has stated that the inspection of the Ultrasound Centre of the petitioner was conducted on 21.03.2023 and vide Memo No. 992 dated 29.03.2023 (Annexure P/2) while suspending the licence of the petitioner have made certain allegations against the petitioner. That the Ultrasound Centre of the petitioner was sealed on the very same day. Learned counsel has stated that though the petitioner has submitted his



explanation to the said show cause notice, the authorities till date have not passed any final order. Learned counsel has stated that the authorities have sealed the premises of the petitioner and not permitting the petitioner to operate the Ultrasound Centre. That the petitioner has a valid licence till 06.11.2024 for running the Ultrasound Centre. Learned counsel has drawn the attention of this Court to the show cause notice dated 29.03.2023 issued by the authorities concerned, which reads as under:-

01. चिकित्सक उपस्थित पाये गये। परन्तु दिनांक 11.03.2023 को चिकित्सक उपस्थित नहीं थे। जिससे इस संभावना से इनका नहीं किया जा सकता की अल्ट्रासाउण्ड का कार्य चिकित्सक न कर किसी अन्य व्यक्ति के द्वारा किया जाता है।
02. जाँच के क्रम में पाया गया कि आपके द्वारा PC&PNDT के पोर्टल पर प्रतिमाह 01 से 05 तारीख तक ऑनलाईन फर्म एफ प्रस्तुत नहीं किया जाता है एवं अधोहस्ताक्षरी कार्यालय में कई महिनो से फर्म एफ नहीं जमा किया गया है। जो PC&PNDT एक्ट का अवहेलना है।
03. रिकार्ड को सही ढंग से संधारित नहीं पाया गया:
04. संस्थान में भूखण्ड परीक्षण नहीं किये जाने संबंधित चेतावनी अंदर या बाहर कही भी लिखा हुआ नहीं पाया गया।
05. मरीजों को बैठने की समुचित व्यवस्था नहीं है। स्वच्छ प्रेय जल की अनुपलब्धता पाई गई।

4. Learned counsel has stated that in so far as Allegation No. 1 is concerned, the same is speculative. That as a matter of fact, when the inspection took place on 29.03.2023,



the authorities took note of the fact that a Doctor was working at the centre but on the ground that he was not present on the date of inspection, they came to the conclusion that the scanning was being done by somebody other than the Doctor. In far as Allegation Nos. 2 and 3 are concerned, it is stated that the petitioner has maintained all necessary forms and records but the authorities have not properly verified the same. That in so far as Allegation Nos. 4 and 5 are concerned, the petitioner has drawn the attention of this Court to the photographs taken at the time of inspection showing that the statutory warning regarding the ban on prenatal sex determination test was clearly displayed in the Ultrasound Centre and proper sitting arrangements for the patients and attendees have been made in the Ultrasound Centre. Therefore, the suspension and sealing of the Ultrasound Centre is not only contrary to the facts of the case but also the provision of the Act.

5. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the writ petition and stated that the order which is impugned in the present writ petition is an orders of suspension and not the final order of cancellation. Learned counsel has stated that the authorities during the



inspection have found some irregularities and taking into consideration the same have passed the order for suspension. A perusal of the pleadings reveal that the main allegation against the petitioner is that at the time of inspection, the duty Doctor was not present and the authorities were of the view that the Ultrasound Centre was being run by some other than the Doctor. However the authorities were also of the view that regular Doctor was working. Merely because the duty Doctor was not present on the day of inspection. The authorities cannot come to the conclusion that the scanning is being conducted by an unqualified person. The show cause does not reveal that they have caught some unqualified person conducting the tests red handed, the conclusion reached by the authorities is nothing but speculative. In so far as Allegation Nos. 4 and 5 are concerned, the photographs taken at the time of inspection clearly revealed that the petitioner has displayed necessary information with regard to the ban on prenatal sex determination test and also proper seating arrangements have been made for the patients and their attendees. The other two allegations made against the petitioner are that he is not maintaining the records and forms as prescribed under the Act. The petitioner has categorically stated that the authorities



without verifying the records have made the above allegations as a matter of fact the petitioner has stated that if an opportunity is given, the petitioner will produce all the necessary records and forms before the authorities concerned and the same is taken on record.

6. Having regard to the above facts and circumstances, the impugned Memo No. 992 dated 29.03.2023 is set aside. The authorities are directed to immediately unseal the premises of the petitioner and permit him to run the Ultrasound Centre during the subsistence of the license. The petitioner shall produce all the necessary records and forms prescribed under the Act before the competent authority within a period of four weeks from today. It is also made clear that in case the authorities on further inspection find any irregularities, they are free to take necessary action strictly in accordance with law.

7. With the above directions, the Writ Petition stands disposed of.

Bhardwaj/-

(A. Abhishek Reddy , J)

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