2024:PHHC:113356

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 12th of July, 2024

228 **CWP No.25466 of 2022 (O&M)**

Dr. Garima Mangla ....Petitioner

Versus

Union of India and others ...Respondents

229 **CWP No.25468 of 2022 (O&M)**

Dr. Sangeeta Arya ....Petitioner

Versus

Union of India and others ...Respondents

230 **CWP No.9834 of 2023**

Dr. Anup Aggarwal ....Petitioner

Versus

Union of India and others ....Respondents

230-2 **CWP No.23773 of 2023**

Dr. Anup Aggarwal ....Petitioner

Versus

The Director General of Health Services (PNDT), Panchkula, Haryan and another ....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sudhir Aggarwal, Advocate for
Mr. Ishan Aggarwal, Advocate
for the petitioner(s) in CWPs No.25466 & 25468 of 2022.

Mr. Harlove Singh Rajput, Advocate and
Mr. Gursher Singh Dhillon, Advocate
for the petitioner(s) in CWPs No.9834 & 23773 of 2023.

Mr. Anil Chawla, Senior Panel Counsel, UOI
for respondent No.1 in CWPs No.25466 & 25468 of 2022.

Mr. Sudhir Nar, Senior Panel Counsel, UOI
for respondent No.1/UOI in CWP No.9834 of 2023.

Mr. Arpandeep Joshi, Dy. Advocate General, Haryana.

Mr. Nilesh Bhardwaj, Advocate
for respondent No.3 in CWPs No.25466 & 25468 of 2022
and CWP No.9834 of 2023.

PANKAJ JAIN, J. (ORAL)

This is a bunch of petitions wherein the petitioners are aggrieved of the action of the respondents of not permitting them to appear in competency test examination as contemplated under Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 framed under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

2. The petitioners seek writ in the nature of mandamus

directing the respondents to permit them to appear in the next Competency Based Examination/Test (CBT).

3. For convenience, the facts are being taken up from CWP No.25466 of 2022 titled as 'Dr. Garima Mangla vs. Union of India and others' to adjudicate upon the proposition of law.

4. The petitioner is a qualified doctor. She is MD Pathology. The petitioner was enrolled with Haryana Medical Council under registration No. HN 7057 on 6th of November, 2012. The petitioner completed training for performing ultrasound on males & females (including pregnancy) under the guidance of a qualified Consultant Radiologist. The training commenced from 6th of November, 2012 till 20th of May, 2014. Certificate to that respect has been placed on record as Annexure P-2. Union of India notified the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 w.e.f. 9th of January, 2014. The petitioner claims to have submitted communication dated 9th of March, 2015 informing the appropriate authority under PNDT Act of her appointment as Sonologist at Mediscan Diagnostics Centre registered under the PCDNDT Act, 1994. The same communication was again sent to the District Appropriate Authority on 12th of January, 2017 and thereafter on 17th of January, 2018. 2014 Rules were challenged before

the Delhi High Court in Writ Petition (Civil) titled as 'Indian Radiological and Imaging Association (IRIA) vs. Union of India'. Vide judgment dated 17th of February, 2016, Delhi High Court declared the rules *ultra vires*. Supreme Court in **SLP No.16657-16659 of 2016** titled as **'Union of India vs. Indian Radiological and Imaging Association and others'**, stayed the operation of the judgment passed by the Delhi High Court.

5. Union of India vide Public Notice dated 14th of August, 2018 invited public views/suggestions with an intent to revise 2014 Rules. The registration of the petitioner(s) issued vide Annexure P-7 up to 31st of March, 2020 was further renewed up to 30th of March, 2025 vide Annexure P-9 dated 11th of May, 2020 by the Chairman District Appropriate Authority. Union of India vide Notification dated 26th of June, 2020 (Annexure P-10) amended 2014 Rules. The amendment as per notification came into force on the date of its publication in the official gazette i.e. 26th of June, 2020.

6. The petitioner by relying upon amended rules claims that her case is fully covered under Rule 6 read with Rule 9. She is entitled to take competency based examination/test as contemplated under Rule 6 without undergoing statutory training. Vide Notification dated 16th of June, 2022, respondent No.3 invited application to conduct the

competency based assessment test on 28th of June, 2022. Eligible candidates were allowed to submit their applications. The petitioner submitted her application form. She, however, could not appear in the examination on account of respondents not responding.

7. Counsel for the petitioner submits that from bare perusal of Rule 6, it is evident that an existing registered medical practitioner conducting ultrasound procedures, is not required to undergo statutory training and can appear in the competence based assessment examination. He thus submits that for the test to be conducted in the year 2022, it is the Training Rules, 2014 as amended w.e.f. 26th of June, 2020 which will be applicable. He submits that the position stands further clarified by deletion of, "on or before 1st of January, 2017" from Rule 9 which evidently and explicitly makes Rules applicable to the merits of the present case. It has been further contended that the right to appear in the examination having direct effect on petitioner's right to continue practice as a professional is linked to her livelihood and right to work as guaranteed under Article 19 and Article 21 of the Constitution of India. Thus, the respondents cannot take away the right guaranteed to the petitioner under the relevant rules.

8. Per contra, counsel for the State has emphatically opposed the plea raised by the petitioner. Ld. State Counsel has argued on the

lines of reply filed on behalf of respondent No.2 wherein categoric stand of the State is that statutory training as provided under the Rules is necessary. The rationale for imparting training is to sensitize the concerned persons regarding the salutary object and purpose of the legislation having a defined objective to eradicate social evil of female foeticide. Reliance is being placed upon orders dated 8th of November, 2016 and 13th of November, 2017 passed in WP(C) No.349 of 2006. It has been further contended that bare perusal of Rule 9 would reveal that Six Months Training Rules, 2014 shall come into force with immediate effect in the case of new registrations. Exemption has only been conferred on already registered medical practitioners to the effect that they shall have to compete the competency based assessment within two years of the notification and in case they failed to do so, they will have to undergo complete six months training as per the Rules.

9. It needs to be noticed that this Court while issuing notice of motion order on 7th of November, 2022 passed the following :

> "It is submitted that according to the amended Rules notified on 26.06.2020, there is no cut off date for passing the competency based test. Thus, respondent No.4 was duty bound to forward the application submitted by the petitioner for appearing in the said test scheduled for 15.11.2022.
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> Notice of motion for 14.11.2022.

Respondent No.1 be served through the office of Sh. S.P. Jain, Additional Solicitor General of India. Respondent Nos.2 and 4 be served through the office of Advocate General, Haryana and respondent No.3 be served through dasti process only.

Meanwhile, respondent No.4 shall forward the application submitted by the petitioner to the appropriate authority."

10. Under the interim orders of this Court, the petitioner was allowed to take test. Result thereof was produced before this Court on 22nd of September, 2023. The same was taken on record as Mark 'A'. The result of the petitioner reads as under:

Sr. No.	ROLL No.	CANDIDATE NAME	FATHER'S NAME	Marks obtained in Theory (Max. Marks 100)	Marks obtained in Practical (Max. Marks 100)	RESULT
1	200025	GARIMA	SUSHIL GARG	71*	69	PASS

10.1 Similarly, in CWP-25468-2022 the result of petitioner Dr. Sangeeta Arya was taken on record as Mark 'B'. The same reads as under:

Sr. No.	ROLL No.	CANDIDATE NAME	FATHER'S NAME	Marks obtained in Theory (Max. Marks 100)	Marks obtained in Practical (Max. Marks 100)	RESULT
1	200024	SANGEETA ARYA	JAGJEEVAN RAM ARYA	56*	64	PASS

11. I have heard counsel for the parties and have gone through records of the case.

12. The legislature enacted Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'the 1994 Act') with an intent to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities, metabolic disorders, chromosomal abnormalities, certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters incidental thereto.

13. The statements of objects and reasons appended to the 1994 Act reads as under:

> "**Statement of Objects and Reasons. -** It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.
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> 2. The Bill, inter alia, provides for:-
>
> (i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
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> (ii) prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex;

(iii) permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;

(iv) permitting the use of such techniques only under certain conditions by the registered institutions; and

(v) punishment for violation of the provisions of the proposed legislation.

3. The Bill seeks to achieve the aforesaid objectives.

(m) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in a State Medical Register;"

14. The relevant provisions of the 1994 Act to effectively adjudicate the present *lis* are reproduced herein below:

Section 2(a) "Appropriate Authority" means the Appropriate Authority appointed under section 17;

Section 2(p) "sonologist or imaging specialist" means a person who possesses any one of the medical qualifications recognized under the Indian Medical Council Act, 1956 or who possesses a postgraduate qualification in ultrasonography or imaging techniques or radiology;

Section 3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.- On and from the commencement of this Act,—

1. no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting

activities relating to prenatal diagnostic techniques;

2. no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess qualifications as may be prescribed;

3. no medical geneticist, gynaecologist, paediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.

Section 4. Regulation of pre-natal diagnostic techniques.- On and from the commencement of this Act,—

1. no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

2. no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:—

(i) chromosomal abnormalities;

(ii) genetic metabolic diseases;

(iii) haemoglobinopathies;

(iv) sex-linked genetic diseases;

(v) congenital anomalies;

(vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

3. no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:—

(i) age of the pregnant woman is above thirty-five years;
(ii) the pregnant woman has undergone of two or more spontaneous abortions or foetal loss;
(iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
(iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
(v) any other condition as may be specified by the Central Supervisory Board;

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

4. no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2).

5. no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection

technique on her or him or both.

15. Exercising powers under Section 32 of the Act of 1994, Central Government enacted Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as 'the 1996 Rules'). The same deals with minimum requirements and the qualifications of the employees for Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre.

16. Rule 4 of the 1996 Rules reads as under:

> "4. **Registration of [Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres]** - [(1) An application for registration shall be made to the Appropriate Authority, in duplicate, in Form A, duly accompanied by an Affidavit containing-
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> (i) an undertaking to the effect that the Genetic Centre/Laboratory/Clinic/Ultrasound Clinic/ Imaging Centre/ Combination thereof, as the case may be, shall not conduct any test or procedure, by whatever name called, for selection of sex before or after conception or for detection of sex of foetus except for diseases specified in section 4(2) nor shall the sex of foetus be disclosed to any body; and
>
> (ii) an undertaking to the effect that the Genetic Centre/Laboratory/Clinic/Combination thereof, as the case may be, shall display prominently a notice that they do not conduct any technique, test or procedure, etc., by whatever name called, for detection of sex of foetus or for selection of sex before or after conception.]

(iii) [The registration of a genetic clinic shall also Include the registration of each and every mobile genetic clinic offering pre-natal diagnostic facilities as part of a medical mobile unit and such a vehicle has to be registered as a mobile genetic unit.]

(2) The Appropriate Authority, or any person in his office authorised in this behalf, shall acknowledge receipt of the application for registration, in the acknowledgement slip provided at the bottom of Form A, immediately if delivered at the office of the Appropriate Authority, or not later than the next working day if received by post."

17. Rules 6, 7 and 8 thereof, deal with certificate of registration, validity of registration and renewal of registration. The same read as under:

"Rule 6. Certificate of registration.

(1) The Appropriate Authority shall, after making such enquiry and after satisfying itself that the applicant has complied with all the requirements, place the application before the Advisory Committee for its advice.

(2) Having regard to the advice of the Advisory Committee the Appropriate Authority shall grant a certificate of registration, in duplicate, in Form B to the applicant. One copy of the certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic at a conspicuous place at its place of business:

PROVIDED that the Appropriate Authority may grant a certificate of registration to a Genetic Laboratory or a

Genetic Clinic to conduct one or more specified pre-natal diagnostic tests or procedures, depending on the availability of place, equipment and qualified employees, and standards maintained by such laboratory or clinic.

(2)[A (a) One copy of the certificate of registration shall be displayed by the registered mobile medical unit inside the vehicle at a conspicuous place.

(b) The certificate of registration for such unit, shall clearly specify the following -

(I) the area of its operation, which shall not exceed the district wherein it is registered;

(II) the number of portable machines installed and being used in the vehicle;

(III) the make and model number of the portable machine;

(IV) the registration number of the vehicle;

(V) full address of the service provider for the mobile medical unit;

(2) B The portable equipment used for conducting pre-natal diagnostic test shall be an integral part of the mobile medical unit and such equipment shall not be used outside such unit under any circumstances.

(2) C In case of a breakdown of the vehicle or for any other reason due to which the registered unit cannot be used as a Genetic Clinic, the Appropriate Authority has to be informed within a period of seven days.]

(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 the reasons to be recorded in writing, reject the application for registration and communicate such rejection to the applicant as specified in Form C.

(4) An enquiry under sub-rule (1), including inspection at the premises of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, shall, be carried out only after due notice is given to the applicant by the Appropriate Authority.

(5) Grant of certificate of registration or rejection of application for registration shall be communicated to the applicant as specified in Form B or Form C, as the case may be, within a period of ninety days from the date of receipt of application for registration.

(6) The certificate of registration shall be non-transferable. In the event of change of ownership or change of management or on ceasing to function as a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, both copies of the certificate of registration shall be surrendered to the Appropriate Authority.

(7) In the event of change of ownership or change of management of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the new owner or manager of such Centre, Laboratory or Clinic shall apply afresh for grant of certificate of registration.

Rule 7.Validity of registration.

- Every certificate of registration shall be valid for a period of five years from the date of its issue.

Rule 8.Renewal of registration.

(1) An application for renewal of certificate of registration shall be made in duplicate in Form A, 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 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 or rejection of application for renewal, both copies of the earlier certificate or registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.

> (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."

18. Objective of the Act is salutary and in order to effectively enforce the same any violation of the provisions has been prescribed as offence which entails penalties including corporeal punishments under Chapter VII of the 1994 Act. Section 2(p) of the 1994 Act prescribes qualification for a Sonologist or Imaging Specialist. The requisite qualification is any of the medical qualifications recognized under the Indian Medical Council Act, 1956, or a post-graduate qualification in ultrasonography or imaging techniques or radiology. The petitioner is enrolled with the State Medical Council. Her certificate of registration placed on record at Annexure P-1 is not in dispute. Thus, in terms of Section 2(p) she is eligible to be a Sonologist. Petitioner further undertook training of about eighteen months under a Consultant Radiologist who possesses qualification of Post-graduation in Radiology. Supreme Court in **Writ Petition (Civil) No.349 of 2006** titled as **Voluntary Health Association of Punjab vs. Union of India and others** issued comprehensive directions vide judgment dated 8th of

November, 2016. The same read as under:

> "33. Keeping in view the deliberations made from time to time and regard being had to the purpose of the Act and the far reaching impact of the problem, we think it appropriate to issue the following directions in addition to the directions issued in the earlier order:-
>
> (a) All the States and the Union Territories in India shall maintain a centralized database of civil registration records from all registration units so that information can be made available from the website regarding the number of boys and girls being born.
>
> (b) The information that shall be displayed on the website shall contain the birth information for each District, Municipality, Corporation or Gram Panchayat so that a visual comparison of boys and girls born can be immediately seen.
>
> (c) The statutory authorities if not constituted as envisaged under the Act shall be constituted forthwith and the competent authorities shall take steps for the reconstitution of the statutory bodies so that they can become immediately functional after expiry of the term. That apart, they shall meet regularly so that the provisions of the Act can be implemented in reality and the effectiveness of the legislation is felt and realized in the society.
>
> (d) The provisions contained in Sections 22 and 23 shall be strictly adhered to. Section 23(2) shall be duly complied with and it shall be reported by the authorities so that the State Medical Council takes necessary action after the intimation is given under the said provision. The Appropriate Authorities who have been appointed under Section 17(1) and 17(2) shall

be imparted periodical training to carry out the functions as required under various provisions of the Act.

(e) If there has been violation of any of the provisions of the Act or the Rules, proper action has to be taken by the authorities under the Act so that the legally inapposite acts are immediately curbed.

(f) The Courts which deal with the complaints under the Act shall be fast tracked and the concerned High Courts shall issue appropriate directions in that regard.

(g) The judicial officers who are to deal with these cases under the Act shall be periodically imparted training in the Judicial Academies or Training Institutes, as the case may be, so that they can be sensitive and develop the requisite sensitivity as projected in the objects and reasons of the Act and its various provisions and in view of the need of the society.

(h) The Director of Prosecution or, if the said post is not there, the Legal Remembrancer or the Law Secretary shall take stock of things with regard to the lodging of prosecution so that the purpose of the Act is subserved.

(I) The Courts that deal with the complaints under the Act shall deal with the matters in promptitude and submit the quarterly report to the High Courts through the concerned Sessions and District Judge.

(j) The learned Chief Justices of each of the High Courts in the country are requested to constitute a Committee of three Judges that can periodically oversee the progress of the cases.

(k) The awareness campaigns with regard to the provisions of the Act as well as the social awareness shall be undertaken as

per the direction No.9.8 in the order dated March 4, 2013 passed in Voluntary Health Association of Punjab (supra).

(l) The State Legal Services Authorities of the States shall give emphasis on this campaign during the spread of legal aid and involve the para-legal volunteers.

(m) The Union of India and the States shall see to it that appropriate directions are issued to the authorities of All India Radio and Doordarshan functioning in various States to give wide publicity pertaining to the saving of the girl child and the grave dangers the society shall face because of female foeticide.

(n) All the appropriate authorities including the States and districts notified under the Act shall submit quarterly progress report to the Government of India through the State Government and maintain Form H for keeping the information of all registrations readily available as per sub-rule 6 of Rule 18A of the Rules.

(o) The States and Union Territories shall implement the Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 forthwith considering that the training provided therein is imperative for realising the objects and purpose of this Act.

(p) As the Union of India and some States framed incentive schemes for the girl child, the States that have not framed such schemes, may introduce such schemes."(Emphasis supplied)"

19. In the interregnum, while Writ Petition (Civil) No.349 of 2006 was pending before the Apex Court, respondent No.1 notified

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014. As per the directions contained in order dated 8th of November, 2016, one of the direction was also to implement 2014 Rules forthwith. However, the same were ambushed and were struck down as *ultra vires* of the parent Act by Delhi High Court in WP(C) No.3184 of 2014. The matter was taken before the Supreme Court in SLP No.16657-16659 of 2016. The Apex Court while staying the operation of the judgment passed by Delhi High Court observed as under:

> "8 *Prima facie*, the High Court has erred in its finding that there is an absence of statutory power. Sub-section 1 of Section 32 of the PCPNDT Act confers rule making power upon Central Government for "carrying out the provisions of the Act". Illustratively, sub Section 2 of Section 32 stipulates that the rules may provide for:
>
> > "(i) the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (1) of section 3."
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> The above provision refers to minimum qualifications required of persons employed at registered genetic counselling centres, genetic laboratories or genetic clinics under Section 3(2). Hence, it would be necessary to understand the import of Section 3 which reads thus:
>
> > "3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.- On and from the commencement of this Act,--

> (1) no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques;
> (2) no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall employ or cause to be employed any person who does not possess the prescribed qualifications;
> (3) no medical geneticist, gynaecologist, paediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act."

The expression 'genetic counselling centre' has been defined in Section 2(c) as follows:

> "(c) "Genetic Counselling Centre" means an institute, hospital, nursing home or any place, by whatever name called, which provides for genetic counselling to patients"

The expression 'genetic laboratory' is defined in Section 2(e) as follows:

> (e) "Genetic Laboratory" means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test"

The expression 'genetic clinic' is defined in Section 2(d) as follows:

> "(d) "Genetic Clinic" means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures"

Under Section 2(d), 'genetic clinic' is defined with reference to the place which is used for conducting pre-natal diagnostic procedures. 'Genetic laboratory' in Section 2(e) includes a place where facilities are provided for conducting analysis or

tests of samples received from a genetic clinic for a pre-natal diagnostic test.

The expression ‘pre-natal diagnostic procedures’ is defined in Section 2(i) as follows:

> “(i) "pre-natal diagnostic procedures" means all gynaecological or obstetrical or medical procedures such as ultrasonography foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman for being sent to a Genetic Laboratory or Genetic Clinic for conducting pre-natal diagnostic test”

Both Sections 2(i) and Section 2(k) contain a specific reference to ultrasonography. The expression ‘sonologist or imaging specialist’ is defined in Section 2(p) as follows:

> “(p) sonologist or imaging specialist” means a person who possesses any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (105 of 1956) or who possesses a post-graduate qualification in ultrasonography or imaging techniques or radiology”

Section 4 provides thus:

> “4. Regulation of pre-natal diagnostic techniques.- On and from the commencement of this Act,--
> (1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);
> (2) no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:--
> (i) chromosomal abnormalities;
> (ii) genetic metabolic diseases;
> (iii) haemoglobinopathies;
> (iv) sex-linked genetic diseases;

(v) congenital anomalies;
(vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

[(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied that any of the following conditions are fulfilled, namely:--

(i) age of the pregnant woman is above thirty-five years;
(ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
(iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
(iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
(v) any other condition as may be specified by the Central Supervisory Board;

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

(4) no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purpose specified in clause (2).

(5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both.]"

Section 4(2) specifies exceptional situations in which a pre-natal diagnostic test may be conducted to detect certain specified abnormalities. Section 4(3)provides that no pre-natal diagnostic test shall be used or conducted unless the

person qualified to do so, is satisfied for reasons to be recorded in writing that specific conditions (which have been laid down) are fulfilled. Section 5(2) contains a prohibition on the disclosure to a pregnant woman or to a relative of the sex of the foetus. Section 6 contains a prohibition on the determination of sex and on sex selection.

9 *Prima facie*, these provisions indicate that Parliament has conferred upon the Central government rule making authority to specify minimum qualification for persons to be employed at genetic counselling centres, laboratories and clinics. Specification of qualifications, in our view, should be read in a purposive sense which will fulfil the object of the law. Even on a plain and natural construction of the words used by Parliament, specification of qualifications must necessarily comprehend the power to prescribe training. The rationale for this is that the training would sensitize the person concerned to the salutary object and purpose of the legislation which has been enacted by Parliament to deal with a serious social evil and be conscious of the misuse of sex-selection tests. Pre-natal diagnostic procedures are susceptible to grave misuse.

10 Parliament which has the unquestioned authority and legislative competence to frame the law considered it necessary to empower the Central government to frame rules to govern the qualifications of persons employed ingenetic counselling centres, laboratories and clinics. The wisdom of the legislature in adopting the policy cannot be substituted by the court in the exercise of the power of judicial review. Prima facie the judgment of the Delhi High Court has trenched upon an area of legislative policy. Judicial review cannot extend to reappreciating the efficacy of a legislative

policy adopted in a law which has been enacted by the competent legislature. Both the Indian Medical Council Act, 1956 and the PCPNDT Act are enacted by Parliament. Parliament has the legislative competence to do so. The Training Rules 2014 were made by the Central Government in exercise of the power conferred by Parliament. Prima facie, the rules are neither ultra vires the parent legislation nor do they suffer from manifest arbitrariness.

11 For the reasons that we have indicated, we are of the view that the judgment of the Delhi High Court needs to be stayed during the pendency of these proceedings. The judgment of the High Court squarely impinges upon the directions issued by this Court in **Voluntary Health Association of Punjab**. We direct in consequence that the judgment of this Court in **Voluntary Health Association of Punjab**shall be strictly enforced by all states and union territories untrammelled by any order of any High Court or any other court.

12 Pending final disposal, there shall be a stay of the operation of the judgment and order of the Delhi High Court dated 17 February 2016. The interlocutory applications are disposed of accordingly."

20. The initial Rules i.e. Rule 6 and Rule 9 notified in the year 2014, provided as under:

"Rule 6. Eligibility for training.-

(1) Any registered medical practitioner shall be eligible for undertaking the said six months training.

(2) The existing registered medical practitioners, who are

conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training are exempted from undertaking the said training provided they are able to qualify the competency based assessment specified in Schedule II and in case of failure to clear the said competency based exam, they shall be required to undertake the complete six months training, as provided under these rules, for the purpose of renewal of registrations."

"Rule 9. Changed criteria to be made prospective. - These rules shall come into force with immediate effect in case of new registrations. However, all registered medical practitioners employed in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training and failed to quality the competency based exam as specified in Schedule II shall have to apply and clear six months training on or before 1st of January, 2017."

21. After interim order passed by Supreme Court Rules were amended vide Notification dated 26th of June, 2020 and same read as under:

"**Rule 6(2)** The existing registered medical practitioners, who are conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training are exempted from undertaking the said training provided they are able to qualify the competency based assessment as specified in Schedule II.

Rule 6(3) If a medical practitioner fails to clear the said

competency based examination after three attempts, he shall undertake the complete six months training, as provided under these rules, for the purpose of renewal of registration."

xxxxx

In Rule 9 the words 'on or before 1st of January, 2017' deleted

Rule 9.Changed criteria to be made prospective. - These rules shall come into force with immediate effect in case of new registrations. However, all registered medical practitioners employed in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training and failed to quality the competency based exam as specified in Schedule II shall have to apply and clear six months training [deleted].

Rule 9(1) was inserted

Rule 9(1) The States/Union Territories shall complete the Competency based assessment for already registered medical practitioners within two years of this notification."

22. It is not disputed that the petitioner was granted registration certificate from 2015 to 2020 which was further renewed from 2020 to 2025. The precise issue that arises for consideration before this Court in the afore-stated background is:

"whether the petitioner is required to undergo six months training or can undertake the test prescribed under 2014 Rules without undergoing six months training as

contemplated under 2016 Rules?

23. Comparative reading of amended and unamended Rule 6 and Rule 9 read as under:

Rule as was enacted in the year 2014	**Rule as amended vide notification dated 26th of June, 2020**
6. Eligibility for training.-(1) Any registered medical practitioner shall be eligible for undertaking the said six months training. **(2)** The existing registered medical practitioners, who are conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training are exempted from undertaking the said training provided they are able to qualify the competency based assessment specified in Schedule II and in case of failure to clear the said competency based exam, they shall be required to undertake the complete six months training, as provided under these rules, for the purpose of renewal of registrations."	**6. Eligibility for training.-(1)** xxxx **(2)** The existing registered medical practitioners, who are conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training are exempted from undertaking the said training provided they are able to qualify the competency based assessment as specified in Schedule II. **(3)** If a medical practitioner fails to clear the said competency based examination after three attempts, he shall undertake the complete six months training, as provided under these rules, for the purpose of renewal of registration.
9. Changed criteria to be made	**9. Changed criteria to be made**

prospective. - These rules shall come into force with immediate effect in case of new registrations. However, all registered medical practitioners employed in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training and failed to quality the competency based exam as specified in Schedule II shall have to apply and clear six months training on or before 1st of January, 2017.	**prospective.** - These rules shall come into force with immediate effect in case of new registrations. However, all registered medical practitioners employed in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training and failed to quality the competency based exam as specified in Schedule II shall have to apply and clear six months training [deleted]. **9(1)** The States/Union Territories shall complete the Competency based assessment for already registered medical practitioners within two years of this notification.

24. From the bare perusal of Rule 6, it is evident that an exception has been carved out for the registered medical practitioners conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of his/her one year experience or six months training on the day 2014 Rules came into operation. They stand exempted from undertaking the training as contemplated under Rule 3. However, exemption is subject to a condition. As per which, they are required to qualify competency based assessment specified in Schedule II appended to Rules. The unamended Rule 6 provided that

in case of failure to clear the said competency based exam, the registered medical practitioners falling within the exemption clause will be required to undertake complete six months training for the purpose of renewal of registration. Amended Rule 6 has increased the number of attempts a medical practitioner can avail to qualify the competency based examination. Instead of one now they can attempt thrice to clear competency based examination. Unamended Rule 9 provided that the exemptees were required to clear 6 months training on or before 1st of January, 2017. The amended Rule 9 provides that whosoever fails to qualify the competency based examination shall have to apply and clear six months training. The stipulation of 'on or before 1st of January, 2017' stands deleted. Rule 9(1) further obligates State to complete the competency based assessment for already registered medical practitioners within two years of the Notification dated 26th of June, 2020. Thus, the legal proposition that can be culled out is:

> "(a) 2014 Rules provide for six months training in ultrasonography. The nomenclature as per Rule 3 thereof is "the Fundamentals in Abdomino-Pelvic Ultra Sonography : Level one for M.B.B.S. Doctors".
>
> (b) As per Rule 6(1) any registered medical practitioner is eligible to undertake the said six months training.

(c) The existing registered medical practitioners who are already conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training have been exempted from undertaking the training. For convenience, we call them 'exemptees'.

(d) The exemptees are required to qualify competency based assessment as specified in Schedule II of the Rules.

(e) In case, an exemptee fails to clear the competency based examination he/she is required to undertake complete six months training as provided under 2014 Rules for the purpose of renewal of registration.

(f) As per amended Rule 6 an exemptee is entitled to three attempts to pass competency based examination. In case he fails in three attempts, he/she is required to undergo complete six months training and loses the exemption.

(g) Further, Rule 9 provides that for new registrations the Rules shall come into force with immediate effect.

(h) The exemptees as per unamended Rule 9 after having failed to qualify the competency based examination as specified in Schedule II appended in the Rules were required to apply and clear six months training on or before 1st of January, 2017.

(i) As per amended Rule 9, the time limit i.e., 'on or before 1st of January, 2017' stands deleted. Meaning thereby, an exemptee having failed to pass competency based examination as specified in Rules needs to apply and clear six months training in case he/she wants to renew the registration. Under Rule 9(1) time limit of two years has been granted to the States/Union Territories to complete the competency based assessment for already registered medical practitioners."

25. Applying the aforesaid parameters, there is no dispute that the petitioner being a registered medical practitioner already employed in Imaging Centre on the basis of one year experience, can claim place in class of exemptees. In terms of Rule 6, she was required to pass competency based assessment within three attempts. In case of her failure in the competency based assessment, she would have been

required to undergo the training as provided under the Rules. Admittedly, the petitioner before seeking permission to appear in the competency based examination had never failed in the same. Ergo, she was not required to undergo training before competing for examination as claimed by the respondents.

26. In view thereof, this Court finds that the present writ petition deserves to be allowed. Keeping in view that during the pendency of the present writ petition the petitioner undertook competency based assessment under the interim orders passed by this Court, this Court finds that the respondents cannot take away the right of the petitioner for appearing in the competitive based examination. She having passed the same is entitled for renewal of registration.

27. Petitions bearing CWP No.23773 of 2023 & CWP No.9834 of 2023 are at the behest of Dr. Anup Aggarwal who is also a qualified Doctor being MD Physiology. In CWP No.9834 of 2023 he prays for issuance of writ in the nature of certiorari for declaring the action of the respondent/authorities as illegal, arbitrary, *mala fide* for not permitting the petitioner to appear in the Competency Based Examination held in the month of July 2022. There is no interim order for allowing the petition to appear in the Examination. In CWP No.23773 of 2023 he has prayed for renewal of registration under the 1996 Rules.

28. In view of legal proposition formulated in the preceding paras of this judgment, petitioner Dr. Anup Aggarwal falls within the class of exemptees. He is thus entitled to appear in Competency Based Examination to be held by the State Authorities without insisting upon the statutory training. Till the petitioner appears in the Competency Based Examination to be conducted by the State of Haryana in the year 2024 or 2025, whichever is earlier, State authorities are directed to renew his registration.

29. In view of above, instant Civil Writ Petitions are allowed.

30. It is thus ordered as under :

1. CWP No.25466 of 2022 is allowed in terms of Para 26 *ibid.*
2. CWP No.25468 of 2022 is allowed in terms of Para 26 *ibid.*
3. CWP Nos.9834 & 23773 of 2023 are allowed in terms of Para 28 *ibid.*

31. A copy of this order be placed upon the files of other connected cases.

32. Pending applications, if any, shall also stand disposed off.

July 12, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes
Whether reportable : Yes