



\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11151/2023 & CM APPL. 43348/2023**
DR. TARUN KOTHARIPetitioner

Through: Mr. Praseon Kumar Mishra and Mr.
Prabhu R., Advocates.

versus

**DISTRICT MAGISTRATE / DISTRICT APPROPRIATE
AUTHORITY (WEST), PC & PNDT ACT, GNCT OF DELHI**

.....Respondent

Through: Mr. Shubham Singh, Mr. Rajat Gaba
and Mr. Saurabh Dahiya, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
12.09.2024

%

1. The instant petition assails the orders of the District, State and Central Appropriate Authorities under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection), Act, 1994¹, all of which have rejected the Petitioner's request for renewal of registration of his clinic/ diagnostic centre, on account of inadequate safety and security measures for patients.
2. The primary objection highlighted by the Authorities is with respect to the unavailability of a ramp or lift, as well as the steepness of stairs at the clinic, which poses a risk to patients, including pregnant women and elderly persons. The Petitioner has previously invoked this Court's jurisdiction

¹ 'the PCPNDT Act'



under Article 226 of the Constitution of India, 1950, multiple times regarding this issue. Despite the Court granting conditional and limited relief each time, the Petitioner has failed to implement the requisite infrastructural modifications, citing the practical infeasibility of such changes within the clinic's existing layout. As a result, through the present judgment, the Court must weigh the Respondent's concerns regarding safety and security of the patients against the Petitioner's claim of potential loss of livelihood.

The Factual Backdrop and Petitioner's Contentions

3. The factual background leading to the present petition is briefly summarised as follows:

3.1. The Petitioner, Dr. Tarun Kothari, runs a diagnostic centre/Clinic called Indo-American Health Care at RR13, Miyawali Nagar, Paschim Vihar, New Delhi-110087. The Clinic was initially registered from 19th May, 2010 to 18th May, 2015, with registration No. DL/W/2015/0171. The Clinic was subsequently granted a renewal certificate till 17th May, 2020. Thereafter, the Petitioner made several attempts to renew the registration between the months of March and June in 2020, however the renewal was not granted.

3.2. An inspection of the clinic was conducted by the District Inspection & Monitoring Committee (DIMC), West, which culminated in an inspection report dated 6th October, 2020. Based on the findings of this report, the Respondent issued a show cause notice on 20th October, 2020, to the Petitioner, citing three specific deficiencies as reasons for withholding the renewal of registration. These discrepancies were outlined as follows:

“a. Notice board depicting ban on Prenatal Sex Determination {Rule 17(1)} was not displayed at conspicuous place.



- b. *The centre is in basement and there are 16 stairs which are very steep and there is no ramp or lift. Steepness of the stairs is unsafe and dangerous to the ANC patients.*
- c. *Board displaying name of the centre was in very bad condition and unreadable.”*

3.3 The Petitioner duly replied to the said show cause notice, however, his renewal application was rejected *vide* order dated 22nd January, 2021. This order directed the Petitioner to voluntarily decommission their registered USG Machine. The Petitioner assailed the said order by filing a writ petition bearing No. W.P.(C) 1808/2021,² which was disposed of *vide* order dated 23rd February, 2021, in the following terms:

“6. *This Court has perused the show cause notice dated 20th October, 2020. The discrepancies pointed out in the show cause notice are as under:*

“a. Notice board depicting ban on Prenatal Sex determination [Rule 14(1)] was not displayed at conspicuous place. B. The centre is in basement and there are 16 stairs which are very steep and there is no ramp or lift. Steepness of the stairs is unsafe and dangerous to the ANC patients. c. Board displaying name of the centre was in very bad condition and unreadable.”

7. *A perusal of the said discrepancies shows that the insofar as (a) and (c) are concerned, the same can be rectified easily by the Petitioner. Further insofar as the centre being run from a basement is concerned, since the Petitioner has always been running the centre from the basement, the same cannot be a grievance which is raised afresh by the Petitioner. However, adequate safeguards and safety measures such as installation of proper rails to enable patients to take support while climbing the stairs etc., can be taken by the Petitioner to ensure the safety of the patients who visit the clinic. Accordingly, the Petitioner’s writ petition is transferred to the Appellate Authority and may be considered as an appeal against the order of rejection dated 22nd January, 2021. The appeal shall be taken up next week itself.*

8. *In the meantime, the Petitioner’s clinic shall be desealed and any orders which may be passed by the Appellate Authority even in the interim*

² *Dr. Tarun Kothari v. District Magistrate/ District Appropriate Authority (West) PCPNDT Act, GNCT of Delhi*



for the purpose of removal of discrepancies and to ensure security and safety of the patients, shall be carried out by the Petitioner. Accordingly, the following directions are issued:

i) The Petitioner's clinic be immediately desealed within a period of five days;

ii) The present petition be transferred to the Appellate Authority by the Id. Counsel appearing for the Respondent. The Appellate Authority would afford a hearing to the Petitioner on 1st March, 2021 at 11:30 a.m. The Appellate Authority would consider the interim directions which are to be passed for removal of discrepancies of the Petitioner;

iii) The appeal shall thereafter be heard on merits after affording a proper hearing to the Petitioner and the prayer for renewal shall be adjudicated in accordance with law.

iv) If the prayer for renewal is rejected, the same shall not take effect for a period of two weeks, to enable the Petitioner to avail its legal remedies.

9. The Petition is disposed of in the above terms. All pending applications are also disposed of. ”

3.4 Pursuant to this Court's directions, the State Appropriate Authority heard the Petitioner's appeal and passed an order dated 6th September, 2022, upholding the rejection of the Petitioner's renewal application on account of his failure to execute measures to ensure safety and security of patients. Additionally, the State Appropriate Authority directed the Petitioner to stop the work under the PCPNDT Act within seven working days. Thereafter, the Respondent *vide* order dated 19th September 2022, sealed the Clinic as well as the medical equipment of the Petitioner. The Petitioner then filed an appeal before the State Programme Officer challenging the State Appropriate Authority's order, but this appeal was rejected on 28th November, 2022.



3.5 The Petitioner filed several writ petitions before this Court, including W.P.(C) 16655/2022, wherein it was observed that the order of the State Authority could be challenged before the Central Appellate Authority being the Secretary, (Health and Family Welfare). Accordingly, through order dated 13th December, 2022, this Court granted liberty to the Petitioner to approach the Central Appellate Authority by way of an appeal, specifying that such appeal shall not be barred by limitation.

3.6 In terms of the liberty so granted, the Petitioner preferred an appeal before the Central Appellate Authority under Section 21 of the PCPNDT Act. Considering the factual background of the case, the Central Appellate Authority decided the Petitioner's appeal through order dated 7th June 2023. The relevant portion of the said order is reproduced as follows:

“10. Hence in accordance with the observation made by Hon'ble High Court of Delhi, it is necessary that the appellant should remove discrepancies and take measures to ensure security and safety of the patients.

11. The measures to be taken for the safety and security of the patients at clinical establishments/diagnostic centers have been specified under various guidelines by the concerned authorities, CPWD norms by Ministry of Housing & Urban Affairs, GOI; MPD 2021; Fire Safety Guidelines by NDMA, GOI, 2016; The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. 1995 which provides for the provisions for the safety of the patients.

12. In view of above facts on record the Central Appellate Authority is of the opinion that one last opportunity be given to the centre for making modification in its infrastructure in order to give smooth access to all types of patients alongwith specially abled within 4 months from issuance of this order. During this period of four months, the centre will provide full assistance to the patients visiting the centre in climbing the stairs by providing the services attendants.”

4. In light of the foregoing factual background, Mr. Prasoon Kumar Mishra, counsel for the Petitioner, strongly contests the rejection of the renewal of registration of the Clinic. He emphasises that the Petitioner has adequately addressed the first and third discrepancies highlighted in the



SCN dated 20th October, 2020, by placing a new board at the Clinic, which clearly displays its name and also informs the patients that pre-natal sex determination is illegal and the same is not performed at the Petitioner's clinic. The new board is represented hereinbelow:



5. As for the objection regarding the steepness of the staircase and the absence of a lift or ramp, Mr. Mishra contends that these structural issues cannot be rectified due to the existing infrastructure of the Clinic, which offers no feasible scope for such modifications. He argues that the provisions of the PCPNDT Act do not mandate the installation of a ramp or lift in clinics and ultrasound centres. Therefore, he asserts that the absence of these infrastructural features do not constitute adequate grounds for denying the renewal of the Clinic's registration. Furthermore, he points out that there have been no accidents or untoward incidents related to the steepness of the stairs, undermining any basis for concluding that the staircase poses a risk to patient safety and security.



6. Finally, Mr. Mishra argues that the Petitioner has taken all possible steps to address the objections raised, however, the modifications pertaining to the stairs are impermissible for reasons beyond the control of the Petitioner. Consequently, it would be inequitable to refuse registration solely for this reason, especially since the Clinic serves as a primary source of income for the Petitioner as well as his employees, and cancellation of its registration will have a significant adverse effect on their financial stability and livelihood.

Analysis and Findings

7. The Court has considered the submissions of the Petitioner as well as perused the impugned orders. It is observed that the orders passed by the Appropriate Authorities under the PCPNDT Act primarily aim at ensuring patient safety, especially given the vulnerable categories of patients who frequent the Clinic, including pregnant women and elderly persons. While the Petitioner contends that no untoward incidents have occurred in the last 10-15 years, this fact alone does not mitigate the potential risk of an incident occurring in the future. Safety and security protocols are not meant to be reactive but preventive; they are designed to avoid foreseeable risks before any harm occurs. The safety standards imposed by the Authorities seek to pre-emptively address these concerns, rather than wait for a mishap to justify the implementation of necessary safety measures. Thus, the intent of the show cause notice dated 20th October 2020 and subsequent denial of renewal of the Clinic's registration are premised on the Respondent's legitimate concern towards ensuring safety and security of the patients, which, in the opinion of the Court, cannot be held to be unreasonable.

8. The Petitioner's contention that there is no specific provision under



the PCPNDT Act or the Rules framed thereunder, which mandate installation of a lift/ ramp, is not convincing. While the object of the PCPNDT Act relates to the prohibition of sex selection and regulation of pre-natal diagnostic techniques, nonetheless, the provisions of the Act stipulate certain minimum standards pertaining to space and safety that must be satisfied in order to set up a clinic. As per Section 18(5) of the PCPNDT Act, the registration of a genetic clinic is conditional subject to satisfaction of the appropriate authorities with respect to the facilities, equipment and standards followed by the Clinic. Furthermore, Rule 3(3)(1) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 prescribes “adequate space” as a necessary criterion for setting up a genital/ ultrasound clinic. Moreover, the Respondents have also appropriately relied on other relevant legal frameworks that prescribe certain safety criteria for buildings, which, in the opinion of the Court, would also apply to such clinics. For instance, the Master Plan of Delhi, 2021 incorporates fire safety guidelines established by the National Disaster Management Authority in 2016, which emphasize infrastructure safety requirements. Furthermore, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 mandates the incorporation of ramps in hospitals and health centres to ensure accessibility for all, including differently-abled individuals. These provisions underscore that safety standards in healthcare facilities are governed not solely by the PCPNDT Act but also by broader norms and regulations intended to protect patient safety and accessibility. Hence, the Petitioner cannot bypass his obligation to suitably update the Clinic in line with the appropriate norms and guidelines merely because the PCPNDT Act does not specifically mention such requirements.



9. It is also observed that despite granting ample time and multiple opportunities to incorporate necessary changes in his Clinic, the Petitioner consistently failed to ensure compliance, citing the infeasibility in changing the Clinic's infrastructure. In fact, as noted from Paragraph No. 13 of the order dated 7th June, 2023, the Central Appellate Authority has yet again afforded an opportunity to the Petitioner to make modifications in the infrastructure of the Clinic. However, the Petitioner has maintained that it is impossible to carry out these changes due to the structural limitations of his Clinic. This repeated inability to conform to safety standards highlights the Petitioner's unwillingness or inability to address the legitimate safety concerns raised by the Respondents, thereby justifying the denial of the renewal of the registration.

10. The Court acknowledges that the cancellation of the registration, as per the impugned orders, will impact the Petitioner's income and livelihood. However, in weighing the competing interests at stake, the Petitioner's right to operate his Clinic must be balanced against the paramount concern for the safety of the patients visiting the Clinic, including pregnant women and elderly persons. Given the potential risks involved, the Court finds that the balance of convenience clearly tilts in favour of ensuring patient safety, which outweighs the Petitioner's personal and financial interests.

11. In light of the above, the Court finds no room to interfere with the decision rendered in the aforementioned impugned orders. Accordingly, the present petition is dismissed, along with pending application.

SANJEEV NARULA, J

SEPTEMBER 12, 2024/as