

(2010) 08 DEL CK 0166

In the Delhi High Court

Case No : Writ Petition (C) No. 182 of 2010

Abhilasha Garg and Another

APPELLANT

Vs

The Appropriate Authority (PNDT Act) D.C. (East) and Others

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Medical Termination of Pregnancy Act, 1971 — Section 3, 3(2), 3(4)

Citation : (2010) 08 DEL CK 0166

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Siddharth Singla and Divya Roy, for the Appellant; Najmi Waziri for GNCTD, Shoaib Haider and P. Abhilekh and V.K. Khurana, for R-4, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.

W.P. (C) No. 182 of 2010 & C.M. Nos. 356, 1880 & 8776 of 2010.

1. The validity of an order dated 26th November 2009 passed by the Chief District Medical Officer ("CDMO"), East District, Directorate of Health Services, Government of National Capital Territory of Delhi ("GNCTD") cancelling the registration under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("PNDT Act") in favour of Abhilasha Maternity & Medical Clinic ("AMMC"), (Petitioner No. 2), the owner of which is Petitioner No. 1, has been challenged by way of this writ petition.

2. During the pendency of the writ petition, an order dated 27th January 2010 was passed by the CDMO suspending the registration of Petitioner No. 1 under the Medical Termination of Pregnancy Act, 1971 ("MTP Act"). The Petitioners filed CM No. 1880 of 2010 challenging the said order dated 27th January 2010. By an order dated 11th February 2010, the said order dated 27th January 2010 was directed by this Court to be kept in abeyance.

3. The Petitioner also filed CM No. 8776 of 2010 to bring on record certain facts pertaining to a complaint filed against Respondent No. 4 Beti Bachao Samiti ("BBS") by a medical practitioner running a clinic in Ashok Vihar. Notice was issued in the said application as well on 7th July 2010.

Background facts

4. The facts are that Petitioner No. 1 is a medical practitioner who runs the AMMC, Petitioner No. 2 clinic. The Petitioner No. 4 got a certificate of approval under the MTP Act on 20th March 2002 and was duly certified to conduct medical termination of pregnancy within legal parameters. On 9th January 2008, the Petitioner No. 2 was granted a certificate of registration for a period of five years under the PNDT Act whereby was authorised to carry out ultrasound and other tests. It is stated that thereafter the Petitioners premises was inspected on 16th May 2008 by the officials of Respondent No. 1 and the deficiencies noted were directed to be rectified. Thereafter a fresh certificate was issued on 16th January 2009.

5. The Petitioners state that on 4th February 2009, an inspection team visited the premises of Petitioner No. 2. At that time the Petitioner No. 1 and her husband were out of station and only her ailing mother-in-law and her two young daughters were present. The family of Petitioner No. 1 was informed that there had been a complaint against the Petitioner No. 1 by an NGO, Respondent No. 4 herein.

6. The complaint dated 4th February 2009, copy of which is annexed as Annexure P-2 to the writ petition states as under:

A decoy patient was sent to the clinic who told Dr. (Mrs.) Abhilasha Garg that she has to get a 14 weeks fetus of a female child of her sister aborted, and for this purpose the said doctor knowingly and deliberately not only accepted to do the abortion of the said fetus of 14th weeks but also advised to come as immediately as possible. She suggested the decoy that she will charge a sum of Rs. 4000/- out of which she took a sum of Rs. 500/- in advance but she also told the decoy to come for the abortion of the same who to her knowledge was grown upto 14 weeks. The copy of C.D. showing the sting is annexed herewith for your kind perusal.

7. The complaint was signed by Shri S.K. Sharma describing himself as Secretary of Respondent No. 4. It is stated that a compact disc ("CD") was handed over to the family of Petitioner No. 1 which allegedly contained recording of a "sting operation" carried out by Respondent No. 4 which showed a decoy patient discussing with Petitioner No. 1 about the termination of a 14 weeks" old female foetus of her sister and which shows the Petitioner No. 1 stating that she would charge Rs. 4,000/- for terminating the pregnancy and accepting Rs. 500/- as advance. The Petitioners allege that the said CD was doctored and that the conversation recorded therein contained much more than what actually transpired.

8. The Petitioners allege that the officers of Respondent No. 1 brought along with them 30 odd people who claimed to be members of Respondent No. 4. Other media agencies and news channels were also present. The whole proceedings of inspection were recorded on video by Respondent No. 4 and by the media agencies with no respect for the privacy of the family of Petitioner No. 1, which included her ailing mother-in-law and two young daughters.

9. Thereafter Petitioner No. 1 received a show cause notice dated 9th February 2009 issued by Respondent No. 1 captioned: "Violation of MTP, PC and PNDT Acts at your clinic- Complaint from Beti Bachao Samiti". The show cause notice to stated as under:

On 4/2/2009 your clinic was inspected by the undersigned on the basis of a complaint, dt 4/2/2008, received from "Beti Bachao Samiti", Nazaf Garh, Delhi along with a CD-ROM of a sting operation conducted by them. The member from ""Beti Bachao Samiti" as well as various media agencies & news channel were also accompanied the undersigned. Whole of the proceedings of the inspection & action taken were video recorded by the members of the "Beti Bachao Samiti" & media agencies.

The inspecting team was formed that you were out of station & the inspection should take place only in presence of you & the police were called. The inspecting team was obstructed in carrying out the inspection of the records & premises, however following observations were made during the inspection.

1. In the absence of authorized/competent person the premises/operation was open.
2. The MTP & PNDT registration certificates in r/o the clinic were not displayed.
3. Copies of both the above Acts were not available at the clinic.
4. The conditions at the operation theatre were not hygienic/satisfactory.

Following documents available at the reception were seized but the same were forcefully snatched back in presence of ASI-Delhi Police, Sh. Ravinder Tyagi.

- i. Form C & Form 1 register
- ii. Delivery register w.e.f. April 2006
- iii. OPD register w.e.f. 1/1/2006
- iv MTP register w.e.f. 1/1/2006
- v Consent form register w.e.f. 17/4/2008

As the search was incomplete/not proceeded further due to hassles created by the staff/kin, the evacuated Operation Theatre was sealed as a prima facie action to the complaint.

A copy of the CD handed over by the "Beti Bachao Samiti" was handed over to

your kin present at the clinic. You are hereby directed to submit your explanation regarding the above & the recordings in the CD, mentioned above, within three days.

10. Petitioner No. 1 replied to the above show cause notice on 13th February 2009 maintaining that there had been no violation of either the MTP Act or the PNDT Act. As regards the objections mentioned at Clauses 1 to 4 of the show cause notice, it was stated that repair works were going on in the premises. The registration certificate was not found displayed because the clinic was lying closed since the Petitioner No. 1 was out of station. The original certificate issued by the Government being a valuable document could not have been left hanging on the wall while labourers were working. Likewise, the copies of the MTP and PNDT Acts were kept in safe custody and were not available because the clinic was itself closed. The operation theatre ("OT") was temporarily non-operational since the premises were under renovation/repair. It was denied that the records were forcibly snatched back. Petitioner No. 1 pointed out: "It is impossible for an old diseased widow and two young unmarried girls to do so in the presence of ASI Police, Sh. Ravinder Tyagi and his team of constables". While denying that any hassles were created by the staff of Respondent No. 2, it was stated that "they were intimidated by the crowd of 25-30 unknown persons that was brought by the Appropriate Authority to the clinic at the time of the so called inspection at an unreasonable time". As regards the CD prepared by Respondent No. 4, Petitioner No. 1 pointed out that its quality was poor and it was difficult to make out the conversation at many places.

11. The above reply was followed by a further reply by Petitioner No. 1 on 17th February 2009 after viewing the CD. She stated that the CD was doctored. Petitioner No. 1 pointed out as under:

The agency/media personnel involved in the making of the doctored CD have clear intention to falsely implicate me in a pre-fabricated set-up. It is the design of someone who bears ill-will for me and might as well be one of my competitors.

12. It appears that the Petitioner No. 2 clinic was re-inspected by a team of medical officers on 13th April 2009 following which on 24th April 2009 a further notice was issued regarding "violation of the PC and PNDT Act at your clinic". It was stated that through the inspection report filed, it had come to the notice of the Appropriate Authority under the PNDT Act "that there is no designated Ultrasound room at your clinic which is mandatory under the registration rules of PC & PNDT Act. This is a clear violation of the PNDT Act". Petitioner No. 1 was further informed that she was being granted "this last opportunity to removed the above mentioned deficiency & if you are really interested in continuing the PNDT registration in r/o your clinic, the details regarding the designated USG room along with a layout plan in r/o your clinic must be immediately submitted to the undersigned, failing which it would be presumed that you are not interested in continuing the PNDT registration in r/o your clinic & the same would be cancelled." Petitioner No. 1 replied to the above notice on 27th April 2009

stating as under:

Respected Sir, in ref. to your letter dt. 24/4/09 No. 515, I have to state that since very few USG's were being done, there is no specific designated room and the USG's were being done on a bed kept for patient observation but proper privacy of the patient ensured it is hereby requested to kindly desal my O.T. premises so that I can resume my profession link as my livelihood and patients are suffering.

13. It is submitted that in the meanwhile the premises of the clinic remained sealed. On 29th September 2009, Petitioner No. 1 filed an application before Respondent No. 1 for de-sealing of the OT. It is stated that an earlier application filed before the CDMO on 8th September 2009, was returned. Another application was filed on 4th November 2009. An appeal was also filed before the Respondent No. 2 on 30th October 2009.

14. While the appeal and applications were pending the impugned notice dated 26th November 2009 was sent to the Petitioner intimating her of the cancellation of the registration of Petitioner No. 2 clinic under the PNDDT Act. The impugned notice simply stated that "the registration is cancelled with immediate effect" and required the Petitioner to "surrender the original certificates issued on 21st January 2009 to the CDMO."

15. The Petitioner assails the said cancellation order dated 26th November 2009 as being in violation of Section 20 of the PNDDT Act.

16. On 1st December 2009, the Respondent No. 1 i.e. the Nodal Officer (East), PNDDT wrote to the Chief Medical Officer (PNDDT) stating that as per the sting operation CD prepared by Respondent No. 4, and its complaint, that Petitioner No. 1 "has clearly violated the PC and PNDDT Act 1994". It was stated that a complaint against Respondent No. 1 had been filed with the Station House Officer, Pandav Nagar but no information on the status of the investigation was received. While noting that the PNDDT registration of Petitioner No. 2 clinic has been cancelled it was stated that "a similar action regarding cancellation of the MTP registration has also been proposed by the appropriate authority to the CDMO under the MTP Act".

17. On 3rd December 2009, a letter was written by the Petitioner No. 1 to the Directorate of Family Welfare protesting against the punitive action taken against her on the basis of a bogus complaint and a doctored CD. She also wrote on 14th December 2009 to the CDMO to the same effect.

18. The Petitioners' appeal was listed before the Appellate Authority on 8th December 2009. The Appellate Authority held that it could not consider the prayer with respect to de-sealing of the OT, since they were an authority only under the PNDDT Act whereas the sealing of the OT was for violation of the MTP Act and therefore the Appellant "may approach the right forum/court in this respect".

19. Thereafter the present petition was filed on 7th January 2010. By an order dated 13th January 2010, this Court impleaded the Secretary, Health Department, GNCTD as a party Respondent. The records of the case were asked to be kept ready by the GNCTD for perusal on the next date i.e. 11th February 2010. In the meanwhile the CDMO passed a separate order suspending the registration of Petitioner No. 1 under the MTP Act. This Court by an order dated 11th February 2010 in CM No. 1880 of 2010 directed the CDMO (East) to explain on affidavit the circumstances which led to the passing of the said order even when this Court was seized of the matter. The order dated 27th January 2010 was directed to be kept in abeyance.

Pleadings

20. In the counter affidavit filed by Respondent No. 1 on 11th May 2010, it was pointed that reasons for cancellation were furnished to the Petitioner No. 1 on 19th January 2010 nearly two months after the cancellation order. In the reasons it was noticed first that there was a sting operation carried out by Respondent No. 4, that an inspection was carried out on 4th February 2009, "hassles were created by staff and kin" of Petitioner No. 1 and "records were snatched back from inspecting officials by them in the presence of police", that proper inspection of clinic was not at all allowed, that OT was sealed "looking at the public interest". The replies of the Petitioner No. 1 were considered and not found satisfactory. The appropriate authority decided that till such time the investigation into the complaint filed by Respondent No. 4 was not complete and the case was not concluded before the Court "the registration of the centre is suspended/cancelled without prejudice to any criminal action that may be taken against the centre". It was further observed:

This decision of cancelling the PNDDT registration is being taken in public interest, so that in case complaint is proved right by Court of law, such activities in contravention to provisions of the Act cannot allowed to be continued as it will cause irreparable harm which cannot be corrected later. So such suspension/cancellation is done u/s 20 of the Act.

21. In the counter affidavit of Respondent No. 1 it is stated that since the Petitioner No. 1 was ready to abort a 14 weeks" old female foetus for which she took even advance money, there was a violation of the MTP Act. It is also mentioned that "as per Section 6(c) of the PC and PNDDT Acts no person shall by whatever means cause or allowed to be caused selection of sex before or after conception". As regards the MTP registration it was stated in para 15 as under:

the MTP registration is granted on the condition of fulfilling all the norms laid down under the MTP Act. However the Act does not allow anyone to promote female foeticide which incidentally is shown in the recordings in the CD provided by the Beti Bachao Samiti, the authenticity of which can be verified from the original CD that would be lying with the Beti Bachao Samiti.

22. In her rejoinder, Petitioner No. 1 has explained that there was no Radiologist

working or visiting the Petitioner No. 2 clinic since it was sealed and the PNDT registration being cancelled. It is stated that "the earlier Radiologist would visit the clinic of the petitioners with his portable ultrasound machine and as there is no ultrasound being conducted in the clinic of the Petitioner and there is no new Radiologist visiting the clinic currently, therefore no intimation to the effect was given to the authorities".

23. It must be pointed out that despite several adjournments, Respondent No. 4 has not chosen to file any counter affidavit although it has been represented by Mr. V.K. Khurana, learned Advocate, whose submissions have been heard at length.

Submissions of Counsel.

24. Mr. Siddhartha Singla, Learned Counsel appearing for the Petitioners submitted that so-called sting operation did not contain any material which could constitute the basis of a complaint under the PNDT Act. Referring to the definition of "sex selection" u/s 2(c) of the PNDT Act read with Section 6(c) thereof, it is submitted that there was no pre-diagnostic test conducted during the sting operation which could attract those provisions. He pointed out that in the first place there has to be a conducting of the pre-natal diagnostic procedure u/s 2(k), followed by the taking of the written consent of the pregnant woman u/s 5, followed by the conducting of a pre-natal test u/s 6. If these three acts have been committed then the registration could be suspended or cancelled u/s 20 of the PNDT Act. He pointed out u/s 20 PNDT Act the suspension or cancellation of the registration can be done only after a show cause notice is issued followed by giving a reasonable opportunity of being heard u/s 20(2) followed by the advice of the "Advisory Committee" ("AC"). He pointed out that neither was there any hearing given to the Petitioner No. 1 nor was the impugned order cancelling the registration issued on the advice of the AC. He, therefore, pointed out that the mandatory procedure u/s 20(2) of the PNDT Act has not been complied with. He submits that with the PNDT Act itself not being attracted to the facts of the present case, the entire proceedings were without jurisdiction. Mr. Singla submits that the mere non-provision of a separate ultrasonography chamber could not have invited the extreme penalty of cancellation of registration. The Petitioners could have been afforded an opportunity to set right such deficiency.

25. As regards the MTP Act Mr. Singla submitted that u/s 3(2) thereof a pregnancy could be terminated by a registered medical practitioner where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner was of the opinion, formed in good faith, that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health or there was a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped. It is submitted that the above stage had not been reached and the Petitioner had not committed any act attracting Section 3 of the MTP Act. Consequently, there was no question of the Petitioner being visited the

consequence of her registration under the MTP Act being suspended.

26. Mr. Waziri, learned Standing Counsel appearing for the GNCTD first submitted that the GNCTD could not be helpless in tackling the grave problem of female foeticide in the NCT of Delhi. Therefore it acted bonafide on the basis of information received from Respondent No. 4. He candidly stated that the contents of the complaint made by Respondent No. 4, and the contents of the CD prepared by it, would not attract any offence under the PNDT Act. However, he sought to justify the cancellation of the Petitioner No. 2's PNDT registration with reference to other violations of the PNDT Act and the Rules thereunder, as was mentioned in the show cause notice issued to the Petitioner No. 1 on 9th February 2009 read with the further show cause notice dated 24th April 2009. In other words according to Mr. Waziri, the unhygienic conditions in the OT, the non-display of the certificates of registration under the MTP and the PNDT Acts, the non-availability of the bare Acts of the PNDT Act and the MTP Act at the clinic, the snatching back by the kin and staff of Petitioner No. 1 of the registers required to be maintained under both Acts, the preventing of the officials of Respondent No. 1 from carrying out the search operation and finally the non-provision of a designated USG room at the Petitioner No. 2 clinic were all serious violations of the PNDT Act. He added that non-availability of a Radiologist was also a serious violation of the PNDT Act and that therefore, the order cancelling registration could not be faulted. In particular, he referred to Sections 6(c) and 19(4) of the PNDT Acts and Rules 11(1), 13, 17(2) and 18(5) of the PNDT Rules, 1996 as amended by the Amendment Rules of 2003. As regards the advice of the AC in terms of Section 20(2) of the PC and the PNDT Acts, Mr. Waziri produced the original files containing the minutes of the meeting held on 20th April 2009 in which a recommendation was made that the registration of the Petitioner No. 2 clinic under the PNDT Act should be cancelled.

27. Without prejudice to the above submissions, Mr. Waziri fairly stated that in the event this Court was of the view that the extreme action of cancellation of the registration of Petitioner No. 2 under the PNDT Act was not warranted and that a fresh opportunity should be given, a fresh show cause notice would be issued giving the Petitioner No. 1 sufficient time to rectify the defects subject of course to her fully cooperating in a surprise inspection which would be conducted by a team of Respondent No. 1. If there were any violations detected during such inspection, the Respondent No. 1 would be free to proceed under the PNDT Act.

28. Appearing for Respondent No. 4, Mr. V.K. Khurana Learned Counsel submitted that there were serious violations of the PNDT Act by the Petitioners. He too however fairly conceded that the contents of the CD prepared by Respondent No. 4 during the sting operation conducted by it and the contents of the complaint given by it to Respondent No. 1 did not attract any of the provisions of the PNDT Act. He sought to support the action of the Respondent No. 1 stating that notwithstanding that the sting operation and the complaint of Respondent No. 4 did not attract the violations of the PNDT Act, there were other

violations as stated in the show cause notices issued on 9th February and 24th April 2009 by Respondent No. 1 that justified the cancellation of the registration of Petitioner No. 2. He submitted that as regards the action taken by the Delhi Police against Shri S.K. Sharma who is the Secretary of Respondent No. 4 in relation to an alleged action of his extorting money by carrying out sting operations against doctors conducting PNDT tests, he submitted that this was under investigation and, therefore, should not prejudice this Court.

The Sting operation and complaint did not attract PNDT Act

29. In the first place this Court would like to refer to the provisions of the PNDT Act which have been relied upon by the Respondent No. 1 to justify the impugned order dated 11th May 2009 cancelling the registration granted to the Petitioner No. 2 clinic. Sections 2 (i), (k) and (o) read as under:

(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, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.

(k) "pre-natal diagnostic test" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;]

(o) "sex selection" includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.

30. Section 4(2) states that on and from the commencement of the PNDT Act no pre-natal diagnostic technique shall be conducted except for the purposes of detection of certain abnormalities specified therein. There is a specific bar to conducting pre-natal diagnostic procedures u/s 4(3) of the Act on pregnant women of certain categories. The proviso to Section 4(3) requires the person conducting ultrasonography on a pregnant woman to keep the 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 Sections 5 and 6 of the PNDT Act.

31. u/s 6(c) of the PNDT Act no person shall "by whatever means, cause or allow to be caused selection of sex before or after conception". As already noticed hereinbefore, "sex selection" means "any procedure, technically based or administration or prescription or prevention of anything for the purposes of ensuring or increasing the possibility that an embryo will be of a particular sex."

32. This Court fails to understand how the contents of the complaint of

Respondent No. 4 and the contents of the sting operation recorded by Respondent No. 4 on CD, even if such recording is accepted to be correct, can attract any violation of Section 6(c) of the PNDT Act. Even according to Respondent No. 4, a woman approached Petitioner No. 1 stating that her sister was pregnant with a 14 weeks" old female foetus and wanted to abort it. Therefore this woman had already disclosed the sex of the foetus to Petitioner No. 1. Also the conversation that ensued did not involve the Petitioner No. 1 giving the person who approached her any advice on what the sex of the foetus was since obviously that was disclosed by that person herself to Petitioner No. 1. No test under the PNDT Act was conducted. In other words, looked at from any angle there is absolutely no question of Section 6(c) of the PNDT Act being attracted.

33. It is obvious that the action against the Petitioner No. 1 and her clinic was triggered by the aforementioned sting operation carried out by Respondent No. 4. It is apparent that whatever was found in the CD did not attract any of the provisions of the PNDT Acts and yet the Respondent No. 1 persisted with its inspection. It is only when confronted in this Court with the above facts and asked for the justification for invoking the PNDT Act on the basis of the sting operation that both Learned Counsel for the GNCTD as well as Learned Counsel for the Respondent No. 4 conceded that they did not attract any of the provisions of the PNDT Act.

34. It is unfortunate that this "concession" has come more than a year and a half after the "sting" operation. This Court can only express its displeasure over the manner in which the Respondent No. 1 has proceeded to invoke the PNDT Act on the basis of such a complaint. The following observations of the Supreme Court R.K. Anand Vs. Registrar, Delhi High Court, advising caution in assessing sting operations of the media, are equally relevant in this context:

328. We also find that like almost every other sphere of human activity in the country the electronic news media has a very broad spectrum ranging from very good to unspeakably bad. The better news channels in the country (NDTV being one of them) are second to none in the world in matters of coverage of news, impartiality and objectivity in reporting, reach to the audience and capacity to influence public opinion and are actually better than many foreign TV channels. But that is not to say that they are totally free from biases and prejudices or they do not commit mistakes or gaffes or they sometimes do not tend to trivialise highly serious issues or that there is nothing wanting in their social content and orientation or that they maintain the same standards in all their programmes. In quest of excellence they have still a long way to go.

329. A private TV channel which is also a vast business venture has the inherent dilemma to reconcile its business interests with the higher standards of professionalism/demands of profession. The two may not always converge and then the TV channel would find its professional options getting limited as a result of conflict of priorities. The media trips mostly on TRPs (television rating points),

when commercial considerations assume dominance over higher standards of professionalism.

Conduct of Respondent No. 4.

35. Learned Counsel for the Petitioner earnestly pleaded that this Court should take note of the facts brought forth in CM No. 8776 of 2010. Enclosed with the said application is a news item dated 9th June 2009 published in the "Times of India" under the caption "DU graduate extorted cash from docs, held". The said news item proceeds to say that the accused "Subhash Kumar Sharma, who works for an NGO "Beti Bachao Aandolan" was apprehended following investigation into a complaint filed by Dr. Sunil Fakay, who runs a clinic in Ashok Vihar". The doctor in question alleged that Rs. 18 lakhs were being demanded from him from some people who had conducted a sting operation in his clinic and they threatened to ruin his career if he did not agree to pay. According to the Police a decoy customer had been sent to the doctor for PNDT. This decoy patient used spy cameras to record a video. Investigations led to the NGO and Sharma was arrested. According to the Police Shri S.K. Sharma told that "he has conducted four such sting operations in MP, UP and eight sting operations in Delhi in the last two years".

36. This Court would really not like to comment on the above news report or the fact that the Secretary of Respondent No. 4 Shri S.K. Shamra, who is also the author of the complaint in the present case, has been accused in the manner aforesaid. That would be the subject matter for further investigations by the police. It would not be appropriate for this Court to comment on this aspect any further.

Violation of other provisions of the PNDT Act

37. As regards the other provisions which have been mentioned by Mr. Waziri, Section 19(4) of the PNDT Act requires that the certificate of registration shall be displayed by the clinic "in a conspicuous place at his place of business". The explanation offered by Petitioner No. 1 that the certificates were not displayed since the clinic was closed at the time of inspection is certainly a plausible explanation. The fact remains that the surprise inspection of the Petitioner No. 2 clinic took place on 4th February 2009 when admittedly Petitioner No. 1 was away with her husband at Jaipur. The clinic was closed. Consequently, to immediately conclude that there was a violation of Section 19(4) of the PNDT Act was not appropriate. Moreover, the OT of Petitioner No. 2 was sealed and she was unable to conduct any activity in the clinic, as this was part of her main activity being licenced under the MTP Act. It appears to this Court that a one-time violation of Section 19(4) of the PNDT Act should not visit the doctor concerned with the extreme penalty of cancellation of the registration itself. A warning followed by another chance to rectify such defect would have been appropriate.

38. Rule 13 of the PNDT Rules requires change of employees, place or equipment

to be informed to the appropriate authority within a period of 30 days of such change. If this refers to the Radiologist, then clearly even according to the Respondent, he was only a visiting Radiologist and not an employee. Rule 17(2) mandates making available one copy of the Act and Rules in the premises. Again at the time when the inspection took place and this defect was noticed the clinic was shut down with the Petitioner No. 1 and her husband being away in Jaipur. The non-availability of bare Acts should not entail the extreme penalty of cancellation of the registration itself. If such violation is repeated more than twice or thrice, it should attract a penalty. The person concerned should first be given a warning and told that if this is repeated in future it might entail severe consequences. Ultimately, it is a question of what should be the proportionate measure keeping in view the nature of the violation.

39. Rule 18(5) states that the medical practitioner has to ensure that no provision of the Act and these Rules are violated in any manner". Rule 11(1) of the PNDT Rules requires provision of reasonable facility for inspection of the place to the appropriate authority. The circumstances in which the inspection took place of the premises of Petitioner No. 2 on 6th February 2009 have already been noticed hereinbefore. It is very difficult to imagine that in the absence of Petitioner No. 1 and her husband, her mother-in-law and her two daughters behaved in the way they have been alleged to behave and created hassles in the inspection. Be that as it may, the Respondent No. 1 authority does not appear to have encountered any difficulty at the time of re-inspection on 13th April 2009. In that view of the matter, the action of cancellation of the registration for the infraction of this provision, if at all, was not called for.

40. The non-availability of the Radiologist in the clinic has been explained by the Petitioner as owing to the fact that her clinic was in fact non-operational. It was only at the time of re-inspection of the clinic on 13th April 2009, that this deficiency was pointed out. Again for this kind of a deficiency, a time limit could be given to the Petitioner to rectify, failing which the Petitioner No. 2 would be visited with the consequences.

41. It needs to be noticed at this stage that for violations of the provisions of the PNDT Act, penal actions have been stipulated under Sections 23 and 25 of the PNDT Act. These are separate criminal proceedings independent of the action that can be taken u/s 20 of the PNDT Act. However, this Court is only concerned with the actions taken u/s 20 and not to the criminal proceedings which would be decided by an appropriate court.

Non provision of a separate USG Room

42. We then come to the last objection that the Petitioner's clinic does not have a designated ultrasonography room. In the first place, it requires to be noticed that neither Learned Counsel for the GNCTD nor Respondent No. 4 has been able to point out any provision of the PNDT Act or Rules which mandates that there should be a designated ultrasound room. In a clinic run by medical professionals

holding registration under the PNDT Act, if there is no specific provision requiring the maintenance of a designated ultrasound room then obviously, no action can be taken under the PNDT Act for such failure. This was noticed for the first time during the re-inspection of the premises on 13th April 2009. The show cause notice dated 24th April 2009 issued thereafter makes no reference to the provisions of the Act or the Rules that are stated to have been violated. This Court is, therefore, unable to appreciate how the failure to have a designated ultrasound room will constitute a violation of the PNDT Act or the Rules.

Violation of Section 20, PNDT Act

43. Now turn to Section 20 of the PNDT Act which is unambiguous. The said provision reads as under:

20-Cancellation or suspension of registration

(1) The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in Sub-section (1).

44. While the requirement of Section 20(1) of issuing a show cause notice may have been complied with by the Respondent No. 1 in the instant case, clearly there is no indication that Petitioner No. 1 was given a personal hearing as required by Section 20(2). The words "after giving a reasonable opportunity of being heard", necessarily implies a hearing having to be given to the concerned doctor in-charge of the clinic. This clearly has not been complied with in the instant case. A more serious violation concerns the advice of the AC.

45. Section 17(6), states that the AC should consist of the following:

(6) The Advisory Committee shall consist of-

(a) three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists;

(b)one legal expert;

(c)one officer to represent the department dealing with information and publicity of the State Government or the Union Territory, as the case may be;

(d)three eminent social workers of whom not less than one.

46. In the instant case the records show that the AC met on 28th April 2009 and considered, inter alia, the question of the cancellation of the PNDT registration of Petitioner No. 2. The minutes of the meeting dated 28th April 2009 shows that only four of the AC Members were present. This included three Members of the medical fraternity and one representative of an NGO. The appropriate authority was also present. While the last page of the minutes has been signed by four Members of the AC, the changes made by ink in the minutes have been initialed only by three of the four Members.

47. This Court is not sure that there was a legal Member in the AC as mandated u/s 17(6) of the PNDT Act. From the list of persons to whom a copy of the minutes has been marked, it appears that two further NGO Members on the AC were not present. While not going into the validity of the constitution of the said AC, the fact remains that only four of the Members attended the meeting. Whether this constituted sufficient quorum is also not clear. Be that as it may, the critical portion of the minutes which records the advice of the AC regarding the cancellation of the PNDT registration of Petitioner No. 2 appears to be interpolated. Initially the AC was of the view that the appropriate authority should cancel the PNDT registration if Petitioner No. 1 failed to allocate a designate ultrasound room in her clinic and to de-seal the OT so that she could resume her normal work. Thereafter the words "If Dr. Abhilasha Garg fails to allocate a dedicated USG room in her clinic &" appear to have been deleted in ink and the words "operation theatre" substituted by the word "room" and words "so that she could resume her normal work" have been deleted. These corrections made by ink have been initialed only by three of the four Members of the AC who met. It is, therefore, doubtful whether any validity can be attached to the above advice of the AC, whose composition appears to be not complete in terms of the PNDT Act.

48. Strangely, no reference is made to the above advice of the AC in the impugned order of cancellation or even in the counter affidavit filed by Respondent No. 1. This Court therefore concludes that there was no satisfactory compliance of the mandatory requirement of Section 20(2) of the PNDT Act.

49. This Court would like to emphasise the importance of strict compliance with Section 20(2) of the PNDT Act since the consequence of suspension or cancellation of a registration is indeed severe. If the principles of natural justice which are encapsulated in Section 20, have to be complied with then the person whose registration is proposed to be cancelled has to be provided with all the material gathered against such person and then afforded an opportunity of being heard. In the instant case, for instance, apart from providing Petitioner No. 1

with the copy of two inspection reports dated 4th February 2009 and 13th April 2009, the minutes of the AC should also have been provided. Thereafter, the Petitioner No. 1 should have been afforded an opportunity of being heard. That was simply not done in the present case. Viewed from any angle, therefore, there is a clear violation of Section 20 of the PNDT Act. Consequently, the impugned order dated 26th November 2009 cancelling the registration of Petitioner No. 2 clinic cannot be sustained in law and is hereby quashed.

Violation of the MTP Act

50. As regards the violation of MPT Act clearly, it cannot be sustained in law. As already noticed no attempt was made by Learned Counsel appearing for the GNCTD to defend the order dated 27th January 2010 passed by the CDMO, East suspending the MTP registration of Petitioner No. 1.

Section 3(2) of the MTP Act reads as under:

(2) Subject to the provisions of Sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion formed in good faith, that--

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would be suffer form such physical or mental abnormalities as to be seriously handicapped.

51. There is no provision under the MTP Act which permits cancellation of an MTP registration in the event of any violation of Section 3 of the MTP Act. Be that as it may, there is in fact no violation of Section 3(2) of the Act. The so-called sting operation is supposed to have shown the Petitioner No. 1 agreeing to perform an abortion of a 14 weeks" old female fetus. Clearly, she did not perform the abortion itself. The mere agreement to do an act which may constitute a violation of Section 3(2) is by itself not punishable even under the MTP Act as amended in 2002. There has to be an actual act of terminating of the pregnancy and not an agreement to terminate such pregnancy. In any event, this does not envisage the suspension of the registration per se. The impugned order dated 27th January 2010 therefore cannot be sustained in law and is hereby quashed. The OT will be desealed forthwith.

Consequential directions

52. Learned Counsel for the Petitioners was open to the suggestion put forth by Mr. Waziri, learned Standing Counsel for the GNCTD that a fresh show cause

notice would be issued to the Petitioner No. 1 pointing out the deficiencies in the clinic which are required to be rectified within a specified reasonable time limit.

53. Accordingly, it is directed that within a period of 10 days from today, it would be open to the Respondent No. 1 to issue a fresh show cause notice to the Petitioner No. 1 listing out precisely the deficiencies noticed and the precise provisions of law that have been found to be violated by the Petitioner No. 2 clinic. The Petitioner No. 1 will be given a reasonable time to cure those defects. At any time between 15th September 2010 and 15th October 2010, it will be open to Respondent No. 1 to undertake a surprise inspection of the clinic of Petitioner No. 1 during its working hours. It is assured by Learned Counsel for Petitioner No. 1 that she will fully cooperate in such inspection and provide all necessary details to Respondent No. 1. As regards the provision of a designated ultrasound room, if such requirement is mandated under provisions of the Act or the Rules that will be indicated and a reasonable time limit will be given to Petitioner No. 1 to rectify such defect. Likewise, as regards the availability of a Radiologist to conduct the ultrasound, the precise provision of the PNDDT Act and Rules which mandates it will be indicated, and again a reasonable time for rectifying such defect will be given to the Petitioner No. 1. If after such inspection the Respondent No. 1 finds that there still are defects to be rectified, then it will be open to Respondent No. 1 to take further steps in accordance with the PNDDT Act.

54. With the above directions, the writ petition is allowed with costs of Rs. 5,000/- which will be paid by Respondent No. 1 to the Petitioner No. 1 within a period of four weeks. The applications are disposed of.

55. Order dasti.