

(2019) 01 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 3372 Of 2018

Down Town Hospitals Ltd. And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 17-01-2019

Acts Referred:

Pre Conception And Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Rules, 1996 — Rule 8(3), 8(6), 18A, 18A(4)(ii)
Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act, 1994 — Section 28
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 GAU CK 0030

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : N. Deka, D.K. Bhattacharya, M. Gogoi, D.P. Bora

Final Decision : Partly Allowed

Judgement

Kalyan Rai Surana

1. Heard Mr. N. Deka, learned counsel for the writ petitioner and also Mr. D.P. Bora, learned Standing counsel, Department of Health appearing for the respondents herein.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of letter No. DF WB/Kamrup (M)/PC&PNDT/87/2018 dated 18.05.2018. By virtue of the said communication, the Chief Medical & Health Officer (C.D.), Kamrup (M)- cum- District Appropriate Authority PNDT (Respondent No. 2) had returned the application submitted on 04.10.2017 by the petitioner for renewal of registration of ultrasound machines ('USG Machine' for short), having not been approved by the DAC meeting on 13.10.2017, on the ground that there was a case pending in court against the petitioner for violation of the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Rule 18-A (4)

(ii) framed thereunder.

3. In this writ petition it is projected that pursuant to the allegations of violation of the aforesaid Act and Rules, the respondent No.2 had filed a complaint case against the petitioner and another, being CR Case No. 5275C /2017 under Section 28 of the aforesaid 1994 Act, as such, this Court is not inclined to adjudicate upon the merit of the case projected by the petitioner as it may prejudice the parties in course of trial of the said complaint case. In this writ petition it is projected that on 20.09.2017 at about 8.30 pm., the Competent Authority had confiscated the second copy of incomplete Form- F from the petitioner in respect of eight patients whose names are reflected in the confiscation list dated 20.09.2017. Thereafter, on 22.09.2017, the authorities had seized (i) one USG Machine, (ii) PC PNDT registration certificate valid up to 01.11.2017, (iii) incomplete Form- F in respect of six patients, and (iv) ultrasound images of six women patients as produced by the management of the petitioner.

4. Aggrieved by the continued seizure of the USG machine since 22.09.2019, the petitioner had approached this Court by filing a writ petition, being WP(C) 8050/2017 and this Court by order dated 21.12.2017, directed the Competent Authority to dispose of the representation of the petitioner for releasing of the seized USG machine by directing the authorities to pass necessary orders on merit within two weeks of receipt of intimation. Accordingly, the respondent No.2 had informed the petitioner by letter dated 02.01.2018 that owing to the case instituted in the Court of Chief Judicial Magistrate, Kamrup (M), Guwahati, the release order of the seized USG machine cannot be considered at the said stage. The said intimation was served on the petitioner on 03.01.2018.

5. Aggrieved by not permitting the petitioner to use the USG machine, the petitioner had approached this Court by filing another writ petition, being WP(C) 760/2018 and this Court by order dated 20.02.2018, by recording the stand of the departmental counsel, granted liberty to the petitioner to use the USG machine in question without alienating the same without the approval of the respondent No.2, further permitting the petitioner to agitate in respect of other grievances before the appropriate forum in accordance with law. In the meanwhile, the petitioner had applied for renewal of the licence of its USG machine on 04.10.2017 but the respondent No.2 had returned the said application by the above referred impugned letter dated 18.05.2018.

6. The learned counsel for the petitioner by referring to Rule 8(3) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 has projected that the authorities could have rejected their application only after providing an opportunity of hearing and in its absence, the provisions of Rule 8(6) of the said Rules provided for deemed renewal of the license to operate USG machine. It is further submitted that although Rule 18-A (4)(ii) of the said Rules provide for non-acceptance of the prayer for renewal of the license to operate USG machine if any court case is pending. In the said

regard, it is submitted that as the said provision does not contain any non-obstante clause, the Rule 18-A must be read in consonance with Rule 8(3) of the aforesaid Rules which provided for giving an opportunity to the petitioner of being heard.

7. Opposing the present writ petition, the learned standing counsel for the Health Department has referred to the provisions of Rule 18-A (4)(ii) of 1996 Rules to project that the authorities had acted in consonance with the said provisions for refusing renewal of the license to operate USG machine. Accordingly, the learned standing counsel for the Health Department has opposed the prayer made by the petitioner in this writ petition.

8. On consideration of the materials available on record, this Court deem it fit to reproduce the relevant extract of the order dated 20.02.2018, passed by this Court in WP(C) 760/2018.

"Today when the matter is called up, Mr. Bora, learned standing counsel, Health Department submits, on instruction from his client, that the Department would have no objection if this Court permits the writ petitioner to use the USG machine. He, however, submits that no order interfering with the pending criminal case, as prayed for by the petitioner, be passed by this Court in this case.

Responding to the same Mr. Deka submits that if his client is allowed to use the USG machine then he would not press for the other reliefs in the writ petition at this stage but would seek liberty to raise the grievance before the appropriate forum as may be permissible under the law. Taking note of the submissions advanced by the learned counsel for the parties, this writ petition stands disposed of at the motion stage by clarifying that the petitioner would be at liberty to use the USG machine in question but shall not in any way alienate the same without the approval of the respondent No. 2. As regards the other grievances are concerned, it would be open for the petitioner to agitate the same before the appropriate forum in accordance with law.

Writ petition stands closed."

9. Therefore, taking note of the fact that this Court had permitted the petitioner the liberty to use the USG machine with a mandate not to alienate the same without approval of respondent No.2, this Court is of the considered view that awaiting the result of the prosecution while CR Case No. 5275C /2017, it would be appropriate to direct the Chief Medical and Health Officer (C.D.) -cum- District Appropriate Authority, Kamrup (M) (respondent No.2) to provisionally renew the licence of the petitioner to operate the ultrasonography (USG) machine of the following description, Make-GE Model-voluson-730 Pro serial No. 83037601032910 for period w.e.f. 01.11.2017 to 31.10.2018 and for the current period w.e.f. 01.11.2018 to 31.10.2019, which would be subject to the outcome of the proceedings of CR Case No. 5275C /2017. It would be open to the said Competent Authority to make the said qualified remark while renewing the license to operate USG machine in terms of this order. The respondent No.2 is

further directed to examine that in view of no allegations in respect of three other machine covered by the registration certificate bearing No. ASK MR (M) 00174/2012, whether the remaining machines covered by the said registration can be regularly renewed instead of renewing such licence provisionally.

10. It is made clear that the use of USG machine would be in accordance with the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Rules framed thereafter and the operation of the said USG machine shall be subject to the observations made by this Court in the order dated 20.02.2018, passed in WP(C) 760/2018.

11. As indicated earlier, the learned counsel for the for the petitioner pressed other points involved in this writ petition, but in view of the pendency of the criminal complaint case, this Court is of the considered opinion that any observation in respect of those points raised by the learned counsel for the petitioner, the same would have some impact on the trial of the said complaint case and, as such, this Court has refrained from entering into any other points raised in the present writ petition. Hence, this order shall not prejudice any of the parties in course of the trial of CR Case No. 5275C /2017.

12. This writ petition stands partly allowed.