

(2019) 01 DEL CK 0291

In the Delhi High Court

Case No : Civil Writ Petition No. 13422 Of 2018, Civil Miscellaneous Application No. 52290 Of 2018, 54276 Of 2018

Dr. Anil Grover Ultrasound Clinic And Anr

APPELLANT

Vs

District Appropriate Authority (Pc And Pndt), North-District,
Alipur, Delhi

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Rules, 1996 — Rule 8(6), 18A(4), 18A(4)(ii)

Citation : (2019) 01 DEL CK 0291

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Rajesh Banati, Tarun Walia, Abhijeet Yadav

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioners have filed the present petition, inter alia, praying that a writ of mandamus or any other appropriate writ be issued directing the respondents to renew the registration of petitioner no.1 under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereafter "the Act").

2. Dr Abhijeet Yadav, the Nodal Officer is present in Court and he submits that the petitioner"s application for renewal of registration has not been accepted as there is a case pending against petitioner no.2 (Dr Anil Grover) for violation of the provisions of the Act. He drew the attention of this Court to Rule 18A (4) (ii) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 ("the said Rules") which reads as under:-

18A. Code of Conduct to be observed by Appropriate Authorities.

(1) xxxxxxxxx

(2) xxxxxxxxx

(3) xxxxxxxxx

(4) All the Appropriate Authorities including the state, District and sub-district notified under the Act, inter alia, shall observe the following conduct for registration and renewal of applications under the Act, namely:-

(i) xxxxxxxx

(ii) ensure that no application for fresh registration or renewal of registration is accepted if any case is pending in any court against the applicant for violation of any provision of the Act and the rules made thereunder."

3. He submits that in view of the aforesaid Rules, the petitioner"s application for renewal of registration under the Act could not be accepted.

4. The learned counsel appearing for the petitioners contends that there is no case or offence pending against petitioner no.1. He submits that a case was pending against another hospital where petitioner no.2 was a visiting doctor. He submits that, essentially, the said case is regarding violations committed by that hospital and petitioner no.1 is not concerned with such violations. He further submits that since, petitioner no.2 did not receive any response to their application for renewal, the same ought to be treated deemed to have been granted in terms of Rule 8(6) of the said Rules.

5. At the outset, it is relevant to note that there is only one petitioner in the present petition. Admittedly, petitioner no.1 (Dr Anil Grover Ultrasound Clinic) is the sole proprietorship concern of petitioner no. 2, Dr Anil Grover. Thus, there are no two entities involved in the present petition. It is settled law that an identity of a sole proprietorship concern is not different from that of a sole proprietor. Strictly speaking the present petition ought to have been filed by Dr Anil Grover in his own name as Dr Anil Grover Ultrasound Clinic is not a separate entity.

6. Admittedly, a charge has been framed against Dr Anil Grover for violations of the provisions of the Act. Thus, the decision of the Appropriate Authority not to accept the application for renewal of the registration of the ultrasound clinic is in accordance with the said Rules.

7. The contention that in terms of Rule 8 (6) of the said Rules, the registration of the petitioner"s application ought to be deemed to have been granted, is unpersuasive. First of all, the petitioner has filed the present petition seeking directions for renewal of registration under the Act; no such prayer would have been made if the renewal was already granted. Secondly, the question of grant of registration would arise only once an application for such registration is accepted. As is apparent from the plain reading of Rule 18A(4) (ii) of the said Rules, the Appropriate Authority cannot accept an application for renewal of registration under the Act, if a case pending for violation of the said Rules is pending against

the applicant. In the present case, the petitioner had applied for renewal of the registration on 08.08.2018. The said application was not processed and the petitioner was called upon to submit an affidavit in the prescribed form. The petitioner had, thereafter, submitted an affidavit dated 11.08.2018, inter alia, affirming as under:-

"6. There is no case pending against this clinic in any court of law under PC/PNDT Act. However, I (Dr. Anil Grover) am a co-accused in the case (Dr. Aruna Jain VS Dr. V.K. Sehdev) which is currently in final stages of trial in Tis Hazari court, Delhi for non-maintenance of records under PC & PNDT Act."

8. In view of the aforesaid disclosure, the Appropriate Authority did not take any further steps with regard to the petitioner's application in terms of Rule 18A(4) (ii) of the said Rules. It is relevant to note that the said Rules are not impugned in the present petition. Clearly, in view of Rule 18A (4) of the said Rules, no relief can be granted to the petitioner.

9. The learned counsel appearing for the petitioner had also submitted that the matter should be remanded to the concerned authority to afford the petitioner an opportunity to be heard. The contention is also unpersuasive. There is no dispute that a case is pending against the petitioner as has been disclosed by him in his affidavit. Admittedly, a specific charge in respect of the violation of the provisions of the Act has been framed against the petitioner in the aforesaid case. Thus, no purpose would be served by remanding the matter to the Appropriate Authority. The petitioner, of course, would be at liberty to approach the concerned Court for early disposal of the case or to seek discharge, if so warranted.

10. The petition is dismissed with aforesaid observation. The pending applications are also disposed of.