

(2011) 11 P&H CK 0085
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 18698 of 2009

Dr. Jatinder Gambhir

APPELLANT

Vs

State Appellate Authority and others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 17(1), 17(2), 17(3), 20(1), 20(2)

Citation : (2012) 166 PLR 163

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kantian, J.—The writ petition challenges the order passed by the appropriate authority deciding an appeal against suspension of licence for installation of a sonogram in the petitioner's premises under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("P.N.D.T. Act" for short). The impugned order came to be passed by the State Appellate Authority acting through one of its members Sh. Ram Lal Gupta. The facts giving rise to the appeal in the present writ petition are as follows. Dr. Jatinder Gambhir, the petitioner, was the sole proprietor of Angad Scan and Diagnostic and she had a nursing home attached to the Diagnostic Centre in the same building at 23-C, Saheed Bhagat Singh Nagar, Pakhowal Road, Ludhiana. The petitioner had registered the ultrasound clinic on 04.07.2001 and the registration had been renewed from time to time and valid at the relevant time of inspection on 30.06.2006. The contention was that on a raid conducted by a team from the Civil Hospital, Ludhiana comprising of Dr. Gurbinder Kaur, Medical Officer and Smt. Darshana Sharma, Staff Nurse on 31.07.2008, it was found that a patient, who was profusely bleeding was interrogated, who said that she had already two daughters and she was being admitted for termination of pregnancy. At that time when the inspecting team had bolted the door from inside for taking history of the patient, there was knocking from the outside and suddenly, the petitioner

broke a glass door and opened it and that on seeing the inspecting team, she tried to flee from the place. It was reported that the other higher authorities namely Dr. Reena Sandhu and Dr. Y.P.Mehta had arrived and carried out further investigation. The police had been informed and when the patient had been taken to the hospital elsewhere, it was found that she was bleeding profusely per vagina and the uterus was bulky about 12 to 14 wks in size. That was according to the prosecution agency that the termination of pregnancy had been originally attempted after taking sex determination, which was suggestive of violation of PNDT Act.

2. An application had been given by the District Family Welfare Officer to the SHO, Police Station, Sarabha Nagar for registering a FIR against the petitioner and her husband APS Gambhir and upon receipt of the complaint and after registration of the FIR, the petitioner's husband was arrested. A show cause notice had been issued subsequently u/s 20(1) of the PNDT Act to the effect that the patient herself had admitted that she had undergone ultrasound scan test in the hospital and she had been informed that it was a female and therefore, subsequently she got herself admitted to have the female fetus aborted. It also records the fact that the patient had been subsequently shifted to the Civil Hospital, Ludhiana for further clinical management where only the placenta was lying in the cervical canal and that was removed along with the piece of cord attached. It had been contended before the Appellate Authority that the show cause notice had not been given and the Appellate Authority has observed that the petitioner had been given an option of either be given an opportunity to file an objection to the show cause notice for a fresh consideration by the District Authority or whether the petitioner wanted the prosecution of the appeal on the given material. The impugned order states that the petitioner after consulting with her husband and her counsel had invited the Appellate Authority to decide the appeal on merits after considering the material on record. The objection before the Appellate Authority had been that by the first order dated 17.09.2008, the registration of the ultra scanning centre had been cancelled u/s 20(2) and the show cause notice, which had been issued u/s 20(1) caused suspension of the registration. The order of suspension of registration passed on 04.08.2008 and the subsequent order canceling the registration on 17.09.2008 amounted to double jeopardy.

3. The Appellate Court has reasoned that the order passed on 04.08.2008 u/s 29(3) after show cause notice was interim in nature and the order passed suspending registration cannot take away the power of the appropriate Authority to cancel the licence itself. Taking up the objection that the procedure prescribed u/s 20(1) had also been breached by the fact that the suspension of registration was done on 04.08.2008 itself without giving any opportunity to reply to the show cause notice, the Appellate Authority has reasoned that Section 20(3) specifically provided for suspension of licence for the reasons to be recorded in writing and that in public interest to pass the order without issuing any notice. To the show cause notice itself, there had been no objection filed by the petitioner.

To the extent to which the facts are recorded by the Appellate Authority, I would take it that the petitioner had not filed the objection to the show cause notice and she was only pressing for the consideration of the appeal on merits before the Appellate Authority.

4. The order of the Appellate Authority also records the fact that the appropriate Authority acting through the Member has observed in his order that on 10.07.2009, Dr. J.P.Singh, who was the Chairman of the Authority had phoned out that he was out of station due to some personal difficulties and expressed his inability to attend the Court and that he had asked the member to hear the appeal. The other member Mrs. Saroj Malhotra was also said to have intimated the Member for not attending the hearing today. The Appellate Authority has, however, observed that no quorum is prescribed under the Act and no objection was also being raised for hearing the appeal by either of the parties.

5. Learned counsel for the petitioner placed at the forefront of his argument that there is no valid quorum and the Appellate Authority had no power to function with just one Member. Learned counsel would refer to the provisions of Section 17(3) of the PNDT Act, which prescribes the composition of the appropriate Authority as under:-

17(3). The officers appointed as Appropriate Authorities under sub-section (1) or subsection (2) Shall be,-

(a) When appointed for the whole of the State or the Union territory, consisting of the following three members, i) An officer of or above the rank of the Joint Director of Health and Family Welfare-Chairperson; ii) An eminent woman representing women's organization; and iii) An officer of Law Department of the State or the Union territory concerned: and the proviso u/s 17(3) reads as under-Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:

Provided further that any vacancy occurring therein shall be filled within three months of that occurrence.

(b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

6. According to the learned counsel, appropriate Authority consists of the Chairperson, an eminent woman representing a women's organization and an officer of the Law Department and the proviso to Section 17(3) makes it clear that the duty of the State to constitute a multi-member State level appropriate Authority within three months coming into force of the Amendment Act, 2002 clearly contemplates that any one member cannot represent the authority individually and it is only through a joint composition of three members that the

authority will have a legal status. I find the objection tenable and I cannot support the order of the Appellate Authority either on its observation that the petitioner had not stated any objection in the hearing of the appeal or by observation of Member that the Act did not prescribe a quorum. On the other hand, the Act sets out clearly the appropriate Authority to mean a body composed of three members and the State Government's duty u/s 17(3) itself is to constitute a multi-member State level appropriate Authority.

7. Section 17(3)(b) allows for appointment for any part of the State or Union Territory of any other rank. The relevant rules relating to appeal and Section 21 of the Act are also relevant.

19. Appeals. -

1. Anybody aggrieved by the decision of the Appropriate Authority at sub-district level may appeal to the Appropriate Authority at district level within 30 days of the order of the sub-district level Appropriate Authority.

2. Anybody aggrieved by the decision of the Appropriate Authority at district level may appeal to the Appropriate Authority at State/UT level within 30 days of the order of the District level Appropriate Authority.

3. Each appeal shall be disposed of by the District Appropriate Authority or by the State/Union Territory Appropriate Authority, as the case may be, within 60 days of its receipt.

4. If an appeal is not made within the time as prescribed under sub-rule (1), (2) or (3), the Appropriate Authority under that sub-rule may condone the delay in case he/she is satisfied that appellant was prevented for sufficient cause from making such appeal.

8. While for a part of the State, which could be a district, the appropriate authority could be an officer as appointed for the purpose u/s 17(3)(b) for the whole State, the Appropriate Authority shall be a multi-member body as set out in Section 17(3)(a). The Rule provides for an appeal from the District level Appropriate Authority to the State Level Appropriate Authority and it ought to be the member body.

9. The composition with just one member was clearly bad and the authority did not have a right to pass the order. The order suffers from the fundamental vice of lack of competence of the single Member to act and represent the appropriate Authority. The impugned order is set aside but having regard to the gravity of the charges, the matter is remitted to the appropriate Authority at the State level for a fresh consideration of all the contentions that could be urged by the petitioner afresh. Any observations made on the merits of the contentions of the petitioner shall not be taken into consideration and the extent to which it is still relevant is only the fact that the petitioner was not asking a fresh consideration before the District Authority and that the petitioner was only interested in pressing for the merits of her contentions before the Appellate Authority. Under the

circumstances, there is no scope for affording a de novo enquiry at the District Authority level and the matter shall stay confined only to addressing the issues on merits at the District Forum. The impugned order passed at the appellate stage is set aside and the writ petition is allowed. It is subject to the duly constituted Appellate Authority affording to the petitioner by notice of appearance for hearing of the appeal and for disposal in accordance with law.