

(2011) 09 GUJ CK 0139
In the Gujarat High Court

Case No : Special Civil Application No's. 6625 and 7234 of 2011

Dr. Kalpesh J. Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 210, 210(1), 213
Constitution of India, 1950 — Article 14, 19(1), 226, 227, 309
Criminal Procedure Code, 1973 (CrPC) — Section 482
Gujarat Municipalities Act, 1963 — Section 258
Industrial Disputes Act, 1947 — Section 10
Marine Products Export Development Authority Act, 1972 — Section 33
Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 2 , 20(1), 20(2) , 21, 21
Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 — Rule 10(1), 10(1A), 11, 12, 18(1)

Citation : (2011) 09 GUJ CK 0139

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : M.B. Gandhi and Chinmay M. Gandhi, in both SCAs, for the Appellant; Rashesh Rindani, Asstt. Government Pleader for Respondent No. 1 and Nikhilesh J. Shah for Respondent No. 2 in both SCAs, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—As the parties to these petitions and the factual matrix are the same and the issues involved in both petitions are overlapping, it is found appropriate to decide the petitions, which were heard together, by a common judgment.

Special Civil Application No. 6625/2011:

2. By preferring this petition under Article 226 of the Constitution of India, the Petitioner has challenged the communication dated 13.05.2011, whereby the explanation dated 01.05.2011 offered by the Petitioner to the notice dated 24.04.2011, issued by the Appropriate Authority (District Ahmedabad), for

contraventions of the provisions of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("the PNDT Act" for short) has not been accepted. The action of the Appropriate Authority of sealing two Sonography machines in the Clinic of the Petitioner, as per Panchnama dated 13.05.2011, is also the subject-matter of challenge.

3. Briefly stated, the facts, as stated in the petition, and discernible from the material on record, are as follows. The Petitioner is a Radiologist, holding an M.D., D.M.R.E. Degree. It is stated that the Petitioner had been to France and Germany for about five years and had worked as a Radiologist in the King Khalid Hospital at Saudi Arabia. Thereafter, he had served in a Government department for five years and had later started his own independent Clinic in the year 2003. The Petitioner, at one point of time, had a Sonography machine in a mobile van and his registration number was 478. On 12.05.2006, the Respondent authority had seized certain documents leading to the sealing of the Sonography machines of the Petitioner. This led to the filing of a petition by the Petitioner, being Special Civil Application No. 14495 of 2006, which was disposed of, by order dated 03.08.2006 of this Court, subject to furnishing of an Undertaking by the Petitioner. The Petitioner filed Miscellaneous Civil Application No. 68 of 2007, seeking to withdraw the Undertaking, which was permitted, by order dated 05.02.2007. At that point of time, the Petitioner had his Radiology Clinic at another place. Thereafter, the Petitioner shifted to the present Clinic, which is being run under the name and style of "Dr.Kalpesh Patel's Imaging House". The Petitioner applied, afresh, for registration of the said Clinic, which was granted on 08.04.2009, as Registration No. 813. The Certificate of Registration has been issued for five years and is valid upto 07.04.2014, subject to the provisions of the PNDT Act and Rules framed thereunder. It is stipulated therein, that any contravention of the PNDT Act and Rules will result in suspension, or cancellation, of the Certificate of Registration, before the expiry of five years, apart from prosecution.

4. On 13.02.2010, the Appropriate Authority under the PNDT Act visited the Clinic of the Petitioner and carried out an inspection. Certain contraventions of the provisions of the PNDT Act were found, inasmuch as Form-F was not being filled up by the Petitioner, though, as per the Respondents, the PNDT Act requires that it should be filled up and signed by the concerned Radiologist or Gynaecologist, who conducts the Ultrasound procedure on pregnant women. The Appropriate Authority found that Form-F was being filled up by the staff of the Petitioner which, as stated in the said notice, is a serious contravention. The Petitioner replied to the notice on 19.02.2010, offering his explanation, and undertaking that he will take care in future, and that Form-F shall be filled in by him. The explanation of the Petitioner was accepted by the Appropriate Authority, as communicated to the Petitioner on 20.05.2010. The Petitioner was directed to ensure strict compliance of the provisions of the PNDT Act. A second inspection of the Clinic of the Petitioner took place on 23.09.2010, and five contraventions of the PNDT Act and Rules, in respect of filling up Form-F were found, as detailed

in the said notice. The Petitioner, once again, furnished his reply and explanation to this notice, on 24.09.2010, stating therein that he would rectify the lapses. The explanation of the Petitioner was accepted by the District PNDT Advisory Committee and this was communicated to the Petitioner by the Appropriate Authority, vide letter dated 01.12.2010. Once again, the Petitioner was directed to ensure that no contraventions of the PNDT Act take place at his Clinic in future, and the provisions of the statute are strictly complied with.

5. The Clinic of the Petitioner was inspected for the third time on 28.04.2011, during which the following contraventions of the PNDT Act were found by the District Appropriate Authority:

1) Register to be maintained with details of women (ANC) undergoing USG is not fill up to date of today. It is filled upto date 23-2-2011.

2) On inspection of form `F' of period January" 11 to April 2011, in one form there is no sign of doctor doing sonography and its doctor's declaration part. In eight form `F", there is no sign of the pregnant woman in declaration of the woman part of the form `F". Totally nine form `F" were filled with deficiency or inaccuracy.

6. The following documents/ materials also came to be seized:

(1) The deficiently filled nine form `F" as mentioned above with a referral letter in eight of them.

(2) The PNDT Register's last page xerox copy.

7. The Petitioner gave his explanation by letter dated 01.05.2011. The said explanation was considered by the District PNDT Advisory Committee, but was not found to be satisfactory as, by communications dated 20.05.2010 and 01.12.2010, the Petitioner had been cautioned to ensure strict compliance of the provisions of the PNDT Act, despite which, further contraventions were committed by him. The Appropriate Authority informed the Petitioner regarding the rejection of his explanation, by the impugned communication dated 13.05.2011. It is stated in the said communication that, during the inspection conducted on 28.04.2011, the Petitioner was found to have violated the provisions of Sections 4(3), 5(1)(b) of the PNDT Act and Rule 9(1), 9(4) and 10(1A) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 ("the Rules" for short). On 13.05.2011, a detailed Panchnama was drawn at the Clinic of the Petitioner, and two Sonography machines that were in use by the Petitioner, came to be sealed. Aggrieved by this action of the District Appropriate Authority, the Petitioner has assailed the same by way of this petition.

Special Civil Application No. 7234/2011:

8. Pursuant to the search and seizure operation conducted at the Clinic of the Petitioner on 28.04.2011, during which two Sonography machines came to be

sealed, notice dated 28.04.2011 (the extract of which is reproduced hereinabove) was issued to the Petitioner, to which he replied vide letter dated 01.05.2011. As already stated above, The explanation of the Petitioner was not found to be satisfactory by the District Appropriate Authority, resulting in the issuance of the impugned order dated 13.05.2011. It is stated in the said order that the Petitioner has contravened the provisions of Sections 4(3), 5(1)(b) of the PNDT Act and Rules 9(1), 9(4), and 10(1A) of the PNDT Rules, therefore, in exercise of powers conferred under Sections 20(1) and 20(2) of the PNDT Act, and with regard to Resolution No. 3 of the District PNDT Advisory Committee issued on 09.05.2011, the PNDT Registration No. 813 allotted to the Clinic of the Petitioner shall stand suspended, till further orders. Being aggrieved by the suspension of the registration of his Clinic by the above-mentioned order, the Petitioner has challenged the same, by way of this petition.

9. With regard to the action of sealing of the Sonography machines, Mr. M.B. Gandhi, learned advocate for the Petitioner, has made the following submissions:

(I) Though an alternative remedy is provided under Rule 19 of the Rules, the Petitioner is invoking the jurisdiction of this Court as the principles of natural justice have been violated by the Respondents, inasmuch as the Petitioner has not been given prior notice before sealing the machines. Further, the Petitioner has not been made aware of the contraventions of the provisions of the PNDT Act, for which the action of sealing has been resorted to. As such, he has been deprived of an opportunity of hearing and of offering an explanation. In these circumstances, the Court may entertain the petition, instead of relegating the Petitioner to the alternative remedy.

(II) No notice has been issued to the Petitioner before the Panchnama was drawn on 13.05.2011. On 28.04.2011, the record was seized from the Clinic of the Petitioner. Sealing of the machines can only be done for the purpose mentioned in Section 30 of the Act, read with Rule 12 of the Rules, in order to detect material that provides evidence of a breach of the provisions of the Act. No breach of the provisions of the Act have been mentioned in the impugned order, so as to justify the action of sealing of the Sonography machines.

(III) Although there is no specific provision in the PNDT Act for issuance of notice before sealing the machines, however, it is a settled principle of law that where an action, directly and adversely, affects the fundamental rights of an individual, the principles of natural justice are required to be read into the provisions of law. The Petitioner has been deprived of carrying on his profession, which constitutes a violation of his fundamental rights under Article 19(1)(g) of the Constitution of India, therefore, the action of sealing the machines without following the principles of natural justice is bad in law.

(IV) No specific order has been passed for sealing the Sonography machines and no reasons have been recorded why such an action has been taken. The action of sealing has no reasonable basis, therefore may be set aside.

10. With regard to the suspension of registration, the submissions made by the learned advocate for the Petitioner are as below:

(i) Though an alternative remedy is provided u/s 21 of the PNDT Act, the Petitioner is invoking the jurisdiction of this Court, as the principles of natural justice have been violated by the Respondents while passing the impugned order, suspending the registration of the Clinic of the Petitioner. In these circumstances, the Court may entertain the petition, instead of relegating the Petitioner to the alternative remedy.

(ii) The notice dated 28.04.2011 issued to the Petitioner under the provisions of Section 20(1) of the Act is not a proper notice as it has not been issued in accordance with the mandate of the Section. Section 20(1) contemplates that the person concerned should be put to notice and asked to show cause, why the registration should not be suspended, or cancelled. Section 20(2) provides for a reasonable opportunity to be given to the person, to show cause. No opportunity of hearing, in terms of this provision of law has been provided to the Petitioner and the impugned order of suspension has been passed straightaway.

(iii) The impugned order does not mention the period for which the suspension is to be in force, as provided in Section 20(2) of the Act.

(iv) The impugned order is an unreasoned and non-speaking order. There are no reasons in support of the conclusion arrived at, therefore, the said order is bad in law.

(v) The Advisory Committee is required to be consulted before taking action, as mandated in Section 20(2), however, in the case of the Petitioner, there is no recommendation of the Advisory Committee to suspend the registration of the Petitioner.

11. In support of his submissions, the learned advocate for the Petitioner has placed reliance upon the following judgments:

(1) Naynaben Shantilal Pandya Vs. State of Gujarat and Others,

(2) Harbhajan Singh and Others Vs. Nawanshahar Central Co-operative Bank Ltd. and Others,

(3) Ins Laljibhai Malhotra through Power of Attorney Holder v. Harit Shukla - LPA No. 1566 of 2009 in SCA No. 8678 of 2009 and cognate matters decided on 26.08.2009.

(4) M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan,

(5) ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others,

(6) Lifecare Institute of Medical Science and Research Pvt. Ltd. v. United India Insurance Company Ltd. and Ors. 2010 (2) GLH 512 .

(7) Satwati Deswal Vs. State of Haryana and Others,

(8) Kilol v. Shelat v. Municipal Corporation of City of Ahmedabad and Anr. -2009

(1) GLH 13

(9) Sudesh Kumar v. State of Haryana - (2005) 11 SCC 525.

(10) State of Mysore Vs. K. Manche Gowda,

(11) Cantonment Board Dinapore v. Taramani Devi - AIR 1992 SC 61

12. On the strength of the above submissions, it is urged by the learned advocate for the Petitioner that the seals applied on the Sonography machines be directed to be removed, and the impugned order suspending the registration of the Clinic of the Petitioner, be quashed and set aside.

13. The petitions have been strongly opposed by Mr. Nikhilesh J. Shah, learned advocate for Respondent No. 2. Regarding the action of sealing, Mr. Shah has made the following submissions:

(A) The Petitioner has an alternative statutory remedy available under the Rules, as he can file an appeal, if aggrieved by the order of the District Appellate Authority, to the State Appellate Authority, as provided under Rule 19 of the Rules, therefore, the petition may not be entertained.

(B) The Petitioner was found to have contravened the provisions of the PNDT Act and Rules twice, before the machines were sealed. Though the explanations rendered by him on those occasions were accepted, the Petitioner had been directed by the District Appropriate Authority to strictly ensure that no further contraventions take place, and had given assurances to that effect. However, on 28.04.2011, when the team visited the Clinic of the Petitioner, it was found that the Petitioner had made several contraventions, and it was thought necessary to seal the Sonography machines of the Petitioner, in accordance with Section 30 of the PNDT Act, read with Rule 12 of the Rules, as there is reason to believe that the machines may furnish evidence of the commission of an offence punishable under the Act. A criminal case has already been registered against the Petitioner for offences under the PNDT Act.

(C) The object of the PNDT Act is to prevent female foeticide, and it is to achieve that end that all contraventions of the Act are to be curbed. The object of sealing the machines is to provide evidence of the contraventions of the PNDT Act. If the seals are directed to be removed, important evidence may be lost that may be crucial in the criminal case filed against the Petitioner. The action of sealing the machines is in accordance with law and if aggrieved, the Petitioner may avail of the alternative remedy.

(D) There is no provision in the PNDT Act mandating that notice be given before drawing the Panchnama or sealing the machines. Without prejudice to the above contention, notice u/s 20(1) of the PNDT Act was already given to the Petitioner on 28.04.2011, to which the Petitioner has replied, therefore, the Petitioner was

well aware of the contraventions of the PNDT Act and Rules pointed out to him. Considering the purpose for which sealing of machines is resorted to, if prior notice of sealing is given, it would frustrate the very purpose of the Act and render Rule 12 nugatory.

(E) The submission of the Petitioner that his fundamental rights under Article 19(1)(g) have been violated by sealing of the Sonography machines is unfounded and untenable as he has committed repeated contraventions of the PNDT Act and Rules. The right to carry on a profession means that it should be carried on lawfully. The Petitioner has stated in his reply that he is carrying on a 'business', which discloses the mindset of the Petitioner.

14. Regarding the suspension of registration of the Petitioner, the learned advocate for Respondent No. 2 has submitted that:

(a) The Petitioner has an alternative statutory remedy available u/s 21 of the PNDT Act, which he can avail of, if aggrieved by the suspension of registration of his Clinic, therefore, the petition may not be entertained. There is no violation of the principles of natural justice in suspending the registration, as he has been served with a notice u/s 20(1) of the PNDT Act, to which he has replied on 01.05.2011. It is stated in the notice that it has been issued u/s 20(1) and (2) of the Act, therefore, it is obvious that it has been issued asking the Petitioner to show cause why the registration should not be suspended or cancelled, as the said provisions deal with these two contingencies only. The reply of the Petitioner has been considered by the District Advisory Committee and found to be unsatisfactory. The said Committee has recommended suitable action be taken against the Petitioner, therefore, the District Appropriate Authority has suspended the licence of the Petitioner, in accordance with the provisions of the PNDT Act, after affording him an opportunity of hearing that has been availed by him. The suspension of registration is till further orders. If aggrieved, the Petitioner can file an appeal u/s 21 of the PNDT Act, as provided therein. The judgments cited by the learned advocate for the Petitioner will not be applicable in the facts of the present case as the principles of natural justice have not been violated and the action of Respondent No. 2 is in accordance with the provisions of the Act.

15. The learned advocate for Respondent No. 2 has placed reliance upon the following judgments:

- 1) U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another,
- 2) Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others,
- 3) Seth Chand Ratan Vs. Pandit Durga Prasad (D) by Lrs. and Others,
- 4) Karnataka Chemical Industries and Others Vs. Union of India and Others,
- 5) District Panchayat and Anr. v. Dr. Kaushik Babulal Shah - Letters Patent Appeal

No. 1371 of 2009 and cognate matters in Special Civil Application No. 5830 of 2009, decided on 07.12.2009

6) Appropriate Authority v. H.G. Thakkar Hari X-Rays, Colour, Doppler Sonography and Ors. -Civil Appeal No. 8269 of 2009 arising out of SLP (C) No. 23358 of 2008, decided on 09.12.2009

7) Union of India and Anr. v. Deoki Nandan Aggarwal AIR 1992 SC 96

8) Asmita R. Patel v. State of Gujarat and Anr. - 2009 (1) GLH 584

16. Mr. Rashesh Rindani, learned Assistant Government Pleader, has adopted the arguments made by the learned advocate for Respondent No. 2.

17. It is not disputed by the learned advocate for the Petitioner that an alternative remedy is available, as provided under Rule 19 of the Rules against the action of the District Appropriate Authority in sealing the Sonography machines of the Petitioner and u/s 21 of the PNDT Act regarding suspension of the registration of the Clinic of the Petitioner. However, it has been submitted by the learned advocate for the Petitioner that the action of sealing the Sonography machines has been taken without issuing a show cause notice or granting the Petitioner an opportunity of hearing, and that the notice issued u/s 20(1) and (2) of the PNDT Act before suspending the registration of the Clinic of the Petitioner, is not in conformity with the said provision of law. In this context, it would be appropriate to examine the judgments relied upon by the learned advocates for the respective parties.

18. The judgments cited by the learned advocate for the Petitioner may now be discussed:

(1) In *Naynaben Shantilal Pandya v. State of Gujarat* (supra), the challenge was to the order of the Collector suspending the Resolution of the Palanpur Nagarpalika, granting two advance increments to the Petitioner therein, in suo-motu proceedings and to the order of the Deputy Secretary (Appeals), confirming the order of the Collector. Notice had been issued to the Nagarpalika but not to the Petitioner. The Court came to the conclusion that the impugned order u/s 258 of the Gujarat Municipalities Act, 1963, passed by the Collector, deserved to be quashed and set aside, as no notice or opportunity of hearing was given to the Petitioner, who was the adversely affected party.

(2) In *Harbhajan Singh v. Nawanshahar Central Co-Operative Bank Ltd.* (supra), the appointments of the Appellants therein in the Respondent-Bank were challenged on the ground that the selection process was vitiated by irregularities and malpractices. The Respondent-Bank stated before the Court that certain irregularities were noticed, and the Bank would take steps to remove the Appellants. The writ petition came to be disposed of, as infructuous. The Appellants were served with notices for inquiry and obtained a stay order from the Registrar of Cooperative Societies. A contempt petition was filed for non-compliance of the order of the High Court. In this background, the High Court

directed removal of the Appellants from service. The Supreme Court held that the High Court, in contempt jurisdiction, should not have passed the order of removal of the Appellants in the absence of a proper inquiry. It was held that as the Appellants were not given a reasonable opportunity of being heard, the principles of natural justice had been violated and the Bank was directed to conduct a fresh inquiry and pass appropriate orders.

(3) In *Laljibhai Malhotra Through Power of Attorney Holder v. Harit Shukla* (supra), the Division Bench set aside the impugned order cancelling the licence of the Petitioner for running the Cinema and exhibiting uncertified films in the theater on the ground that the Petitioner had not been given an opportunity for showing cause. The authorities were directed to pass appropriate orders.

(4) In *M.P. State Agro Industries Development Corporation Ltd. v. Jahan Khan* (supra), the issue arose whether the petition was maintainable, despite an alternative remedy being available, on the ground of violation of the principles of natural justice. The Supreme Court held as below:

10. Before parting with the case, we may also deal with the submission of learned Counsel for the Appellants that a remedy by way of an appeal being available to the Respondent, the High Court ought not to have entertained his petition filed under Arts. 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See: *Whirpool Corporation v. Registrar of Trade Marks*, *Harbanslal Sahnia and Anr. v. Indian Oil Corporation Ltd. and Ors.*, *State of H.P. v. Gujarat Ambuja Cement Ltd.* and *Sanjana M. Wig v. Hindustan Petroleum Corporation Ltd.*).

(5) In *Oryx Fisheries Private Limited v. Union of India* (supra), the show cause notice was quashed and the cancellation of the registration certificate of the Appellant was set aside on the ground that no reasons were given in the original order, and that the show cause notice had been issued with a pre-determined mind. The Supreme Court held as below:

24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the

proposed charges indicated in the notice.

25. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes.

26. A Constitution Bench of this Court in *Khem Chand Vs. The Union of India (UOI)and Others*, , of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

27. Chief Justice S.R. Das speaking for the unanimous Constitution Bench in *Khem Chand (supra)* held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned Chief Justice, is:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;

28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the chargesheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

29. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against. In the instant case from the underlined portion of the show cause notice it is clear that the third Respondent has demonstrated a totally closed mind at the stage of show cause notice itself. Such a closed mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid rule has been framed in exercise of the power conferred u/s 33 of The Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.

(6) In *Lifecare Institute of Medical Science and Research Pvt. Ltd. v. United India Insurance Company Ltd. and Ors. (supra)*, a Division Bench of this Court was dealing with a situation where the Petitioner-hospital, which was recognized by the Respondents-Insurance Companies for cashless and reimbursement claims, was debarred, without issuance of a show cause notice, or giving any form of hearing, before taking the said decision. In this context, it was held that:

10. There is nothing on record to suggest that the Respondents had issued any notice or disclosed any adverse materials to the Petitioners before taking the final decision. The details of the materials in possession of the Respondents are

also not clearly forthcoming. In fact, as already noted, in the previous meeting, there was a view that notice should be issued. However, to avoid issuance of such notices, instead of depaneling the hospitals concerned, they were put "on declined list of hospitals". In effect, however, the result remains the same. Treatment that the patients would take in these hospitals would not qualify either for cashless policy or for reimbursement of the expenses. There is no outer time limit for which this order would operate. The effect, therefore, will be that by the impugned order, the Respondents have virtually, black-listed the Petitioners hospitals and such blacklisting would continue for an indefinite period. Such an action cannot be upheld in absence of any hearing whatsoever.

11. In the case of *M/s. Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and another*, , the Apex Court observed as under:

The deletion of the Appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after the compliance of the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the Appellant was not justified. In our opinion, the High Court was not justified in dismissing the writ petition.

In the case of *Raghunath Thakur Vs. State of Bihar and Others*, , the Apex Court observed as under:

Indisputably, no notice had been given to the Appellant of the proposal of blacklisting the Appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. In so far as the contention that there is no requirement specifically of giving any notice is concerned, the Respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order in so far as it directs blacklisting of the Appellant in respect of future contracts, cannot be sustained in law.

(7) In *Satwati Deswal v. State of Haryana* (supra), the Supreme Court set aside the impugned order of the High Court rejecting the petition on the ground that the order of termination of the Appellant therein had been passed without issuing a show cause notice, without initiating any disciplinary proceedings by the authorities and without affording an opportunity of hearing. The relevant extract of the judgment is reproduced herein below:

5. In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed

without issuing any show-cause notice to the Appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy is available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the act were in question.

(8) In *Kilol V. Shelat v. Municipal Corporation of City of Ahmedabad and Anr.* (supra), a Division Bench of this Court was dealing with a challenge to the prescription of "road line" by the Commissioner of Ahmedabad Municipal Corporation, and to the eviction notices issued u/s 213 of the Bombay Provincial Municipal Corporations Act, 1949 (BPMC Act). The vires of Section 210(1)(a) of the BPMC Act were also the subject matter of challenge. While upholding Section 210(1)(a) of the BPMC Act, the Division Bench held as below:

29. It goes without saying that a citizen who is being deprived of his valuable right to property which though may not be fundamental right continuous to be a Constitutional right and which, is by now recognized as a human right has at least the minimum right of hearing before such a result is brought about. In a given case, he may be able to point out to the authority that proposed prescription of the street line is either arbitrary or unjust or wholly malafide. Depriving the citizen of his right to property without even the minimum right of hearing cannot be countenanced. In case of *P.T. Munichikkanna Reddy and Others Vs. Revamma and Others*, , the Apex Court observed that the right of property is now considered to be not only a Constitutional or statutory right but also a human right. Similar observations were also made in case of *Lachhman Dass Vs. Jagat Ram and Others*, .

30. It is by now well settled that without affording opportunity of being heard, no order adverse to a person can be passed. Principles of natural justice require that before taking action against the citizen, he must have a right to be heard. Such requirement of principles of natural justice can be abridged or even totally shut out. However, same can be done only by specific statutory provisions or by necessary implications. In other words, when the statute is silent, principles of natural justice can be read into it and unless a statutory provision specifically or by necessary implications dispenses with the principles of natural justice, hearing must be given before passing any adverse orders. In case of *State Govt. Houseless Harijan Employees" Association v. State of Karnataka and Ors.* reported in (2001) 1 SCC 610, the Apex Court observed that the requirements of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication.

(9) In *Sudesh Kumar v. State of Haryana* (supra), the Supreme Court held as below:

6. A reasonable opportunity of hearing enshrined in Article 311(2) of the

Constitution would include an opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate of Article 311(2) of the Constitution has been violated depriving reasonable opportunity of being heard to the Appellant.

(10) In *State of Mysore v. K. Manche Gowda* (supra), the issue for determination was whether the Respondent had been granted reasonable opportunity of hearing as per the mandate of Article 311(2) of the Constitution of India. The Supreme Court held that:

7. Under Article 311(2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the *State of Assam and Another Vs. Bimal Kumar Pandit*, . If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive...

(11) In *Cantonment Board Dinapore v. Taramani Devi* (supra), the Supreme Court considered the scope of Article 14 of the Constitution of India and upheld the decision of the High Court, holding that no order which is prejudicial in nature to him should be passed behind the back of a person, especially when it entails civil consequences.

19. The submissions made by the learned advocate for Respondent No. 2 are to the effect that the petitions may not be entertained, as alternative statutory remedies are available to the Petitioner. The judgments cited on this point are as under:

1) In *U.P. State Spinning Company Ltd. v. R.S. Pandey and Anr.* (supra), the Supreme Court held as below:

20. In a catena of decisions it has been held that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

21. In *U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh*, , it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out

for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To same effect are the decisions in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, , *Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another*, and in *Scooters India and Others Vs. Vijai E.V. Eldred*, .

22. In *Rajasthan SRTC v. Krishna Kant* (Supra) it was observed as follows:

A speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill-afford. The procedure followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlement, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them.

23. In *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, the Constitution Bench of this Court observed as follows:

It is true that the powers conferred on the High Courts under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the Appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act, or seek relief, if possible, under Sections 74 and 75 of the Act.

The above position was recently highlighted in *Hindustan Steel Works*

Construction Ltd. v. Employees Union (2005) 6 SCALE 430.

24. Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition. Usually when writ petition is entertained notwithstanding availability of alternative remedy and issues are decided on merits, this Court is slow to interfere merely on the ground of availability of alternative remedy. But the facts of the present case have special features, which warrant interference.

2) In *Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors.* (supra), the Supreme Court has held as under:

44. In the instant case, the workmen have not made out any exceptional circumstances to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Disputes Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute. The High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure. There are several decisions to the same effect. The Respondents have not made out any strong case for making a departure. Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition.

45. We are, therefore, of the opinion that the writ Petitioners (respondents herein) who have not invoked the jurisdiction of the Tribunal are not entitled to any relief in the writ petitions. They are not entitled for any benefits of reinstatement, back-wages and continuity of service.

3) In *Seth Chand Ratan v. Pandit Durga Prasad (D) by LRS and Ors.* (supra), the Supreme Court has held:

13. Even otherwise, the view taken by the Division Bench of the High Court for repelling the objection of the Appellant regarding the maintainability of the writ petition that an alternative remedy does not divest the High Court of its powers to entertain petitions under Articles 226 and 227 of the Constitution, has hardly any application on the facts of the present case. It has been settled by a long catena of decisions that when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is no doubt a rule of policy, convenience and discretion and the Court may in exceptional cases issue a discretionary writ of certiorari. Where there is complete lack of jurisdiction for the officer or authority or Tribunal to take action or there has been a contravention of fundamental rights or there has been a violation of rules of natural justice or where the Tribunal acted under a provision of law, which is ultra vires, then notwithstanding the existence of an alternative remedy, the High Court can exercise its jurisdiction to grant relief. In the present case, the alternative remedy of challenging the judgment of the Court was not

before some other forum or Tribunal. On the contrary, by virtue of Sub-section (3) of Section 27 of the Act, the order passed by the Court amounted to a decree against which an appeal lay to the High Court. When the party had statutory remedy of assailing the order passed by the District Court by filing an appeal to the High Court itself, he could not bypass the said remedy and take recourse to proceedings under Articles 226 and 227 of the Constitution. Such a course of action may enable a litigant to defeat the provisions of the Statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fee or deposit of some amount or fulfilment of some other conditions for entertaining the appeal.

14. For the reasons stated, we are clearly of the opinion that the High Court committed manifest error of law in entertaining and allowing the writ petition filed by Pandit Durga Prasad and, therefore, orders passed by the learned Single Judge on 2.9.1994 and by the Division Bench in letters patent appeal on 7.3.1995 are liable to be set aside.

4) In *Karnataka Chemical Industries and Ors. v. Union of India and Ors.* (supra), it was held that the Petitioner ought to have resorted to the statutory remedy as provided under the statute and the appeal was dismissed on this short ground alone.

5) Regarding the issue of sealing of Sonography machines, the learned advocate for Respondent No. 2 has relied upon *District Panchayat and Anr. v. Dr. Kaushik Babulal Shah* (supra), wherein the Division Bench, declined to accept the contention raised on behalf of Respondent that no specific reason is recorded, and that the authority has reason to believe that the Sonography machine may furnish evidence of commission of an offence punishable under the PNDDT Act.

6) In *Appropriate Authority v. H.G. Thakkar Hari X-Rays, Colour, Doppler Sonography and Ors.* (supra), the Supreme Court, by order dated 09.12.2009, set aside the orders of the High Court, permitting the Sonography machines to be sold by making the following observations:

In this matter, it was clearly the exclusive jurisdiction of the concerned Magistrate since the question pertained to the custody of the property seized in a criminal offence investigation. There does not appear to be any observations by the High Court regarding its jurisdiction and the only reason why the high Court seems to have passed the order, that it did, is that on earlier two occasions similar orders were passed. We do not think that the High Court had jurisdiction to pass any orders under Article 226 as there appears to be a criminal offence registered against the writ Petitioner under Sections 4(1), 5(2), 6(a) and Rule 9(4), 10(1), 18(1), 23(1), and 9(6) of the Act. It is also reported that a charge-sheet has been filed on the basis of investigations made by the Police as well as the Appropriate Authority. Therefore, it was a question of the custody, interim or otherwise by the Appropriate Authority involved in the Commission of the offence then the exclusive jurisdiction would be that of the concerned Magistrate. The

exercise of powers under Article 226 would be out of question. We, therefore, quash the Appellate Order of the High Court which has not considered the question of jurisdiction and further hold that the writ petition is not maintainable. The same is accordingly disposed of, however, in the circumstances, without any costs.

7) The learned advocate for Respondent No. 2 has also relied upon judgment in the case of Union of India and Anr. v. Deoki Nandan Aggarwal (supra), wherein, it has been held as below:

It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. (Para 14)

8) Reference has also been made to a judgment of this Court in Asmita R. Patel v. State of Gujarat and Anr. (supra) wherein the Court rejected the applications for quashing the complaints made against the Petitioner therein, under the provisions of Section 482 of the Code of Criminal Procedure. The relevant extract of the judgment is reproduced herein below:

14. In the complaint it is provided to punish the accused so as to restrict the contravention of the provisions of the PNDT Act/ Rules and ensure the compliance thereof to meet the noble cause as envisaged by the PNDT Act. It was sought to be argued on behalf of the Petitioners that alleged breaches are technical one. It is true that it might be that alleged breaches may be seen to be technical one but provisions of the Act and Rules which are mandatory are required to be complied with strictly so as to achieve ultimate goal of the Act. As stated hereinabove, certain duties are cast upon the persons conducting ultrasonography / image scanning on a pregnant women so as to check female foeticide.

20. It is, by now, a settled position of law that the rule of exclusion of writ jurisdiction under Article 226 of the Constitution of India, due to availability of an alternative remedy, is more a rule of discretion, rather than that of compulsion. Normally, the Court would be slow in entertaining a petition where an alternative remedy is available. However, the restriction is a self imposed one and in certain contingencies, a writ Court may still exercise its discretionary jurisdiction, in spite of availability of an alternative remedy.

21. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, the Supreme Court has held as below:

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

22. In the present cases, the Petitioner claims that the principles of natural justice have been violated by the Respondents, both while sealing the Sonography machines, and in suspending the PNDT registration of his Clinic. On this ground, it has been urged that this Court may exercise its discretionary jurisdiction, in spite of availability of alternative remedies under Rule 19 of the Rules regarding sealing, and Section 21 of the PNDT Act, regarding suspension of registration.

23. The issue that arises for consideration by this Court is whether there has been a violation of the principles of natural justice while sealing the Sonography machines of the Petitioner, and while suspending the registration of his Clinic, and whether this Court should exercise its discretionary jurisdiction on this ground despite the availability of alternative remedies.

24. It would be appropriate to first deal with contention regarding violation of the principles of natural justice, in the context of sealing of the Sonography machines. To this end, it would be necessary to examine the Scheme of the PNDT Act.

25. The Preamble of the PNDT Act states that it is:

An Act to provide for the prohibition of sex selection, before or after conception, and for Regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal

abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

The Statement of Objects and Reasons reads as below:

It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.

In order to provide for:

- (i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
- (ii) prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex;
- (iii) permission and Regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;
- (iv) permitting the use of such techniques only under certain conditions by the registered institutions; and
- (v) punishment for violation of the provisions of the proposed legislation;

The PNDT Act came into force on 01.01.1996. A few relevant definitions may be referred to.

"Genetic Clinic" has been defined in Section 2(d), as under:

"Genetic Clinic" means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures;

Explanation-For the purposes of this clause, "Genetic Clinic" includes a vehicle, where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used.

Section 2(i) reads thus:

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.

Section 2(j) states that:

pre-natal diagnostic techniques" includes all pre-natal diagnostic procedures and pre-natal diagnostic tests.

Section 2(k) defines "pre-natal diagnostic test" as below:

"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;

Section 3 of the PNDT Act provides for Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics, and reads as below:

3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.-On and from the commencement of this Act,-

(1) no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques;

(2) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess the qualifications as may be prescribed;

(3) no medical geneticist, gynaecologist paediatrician registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.

Section 3A prohibits sex selection and states thus:

3A. Prohibition of sex-selection.-No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

Section 4 is one of the most important provisions in the PNDT Act, and reads as below:

4. Regulation of pre-natal diagnostic techniques.-On and from the commencement of this Act,--

(1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in Clause (2) and after satisfying any of the conditions specified in Clause (3);

(2) No pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:

- (i) Chromosomal abnormalities;
- (ii) Genetic metabolic diseases;
- (iii) Haemoglobinopathies;
- (iv) Sex-linked genetic diseases;
- (v) Congenital anomalies;
- (vi) Any other abnormalities or diseases as may be specified by the Central Supervisory Board;

(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:

- (i) Age of the pregnant woman is above thirty-five years;
- (ii) The pregnant woman has undergone of two or more spontaneous abortions or foetal loss;
- (iii) The pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- (iv) The pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
- (v) Any other condition as may be specified by the Board; Provided that the person conducting ultrasonography on a pregnant woman shall keep 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 provisions of Section 5 or Section 6 unless contrary is proved by the person conducting such ultrasonography;

(4) No person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in Clause (2);

(5) No person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both.

(Emphasis supplied)

Section 5 is relevant in the context of the issues arising in the petition and is reproduced below:

5. Written consent of pregnant woman and prohibition of communicating the sex of foetus.-(1) No person referred to in Clause (2) of Section 3 shall conduct the pre-natal diagnostic procedures unless-

(a) He has explained all known side and after effects of such procedures to the pregnant woman concerned;

(b) He has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and

(c) A copy of her written consent obtained under Clause (b) is given to the pregnant woman.

(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.

Section 6 provides that no pre-natal diagnostic techniques, including Sonography, can be conducted for the purpose of determining the sex of the foetus and that no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

Section 17 provides for appointment of Appropriate Authority and the Advisory Committee for the State and the Central Government and Section 17A delineates the powers of the Appropriate Authorities in the State. Section 18 pertains to registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics and Sub-section (1) of Section 18, which is relevant, is reproduced herein below:

18. Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics.-(1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or center having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection, or render services to any of them, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such Centre, Laboratory or Clinic is duly registered under the Act.

Section 19 provides for grant of Certificate of registration by the Appropriate Authority after holding an inquiry and satisfying itself that the applicant has complied with the requirements of the PNDT Act and the Rules.

Section 20 pertains to the cancellation or suspension of registration and reads as below:

20. Cancellation or suspension of registration.-(1) The Appropriate Authority may suo-motu, 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).

Section 21 provides for an alternative remedy of appeal in case of suspension or cancellation of registration and reads as below:

21. Appeal. The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority u/s 20, prefer an appeal against such order to-

(i) The Central Government, where the appeal is against the order of the Central Appropriate Authority; and

(ii) the State Government, where the appeal is against the order of the State Appropriate Authority, in the prescribed manner.

Section 23 provides for offences and penalties and is reproduced herein below:

23. Offences and penalties.-(1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

(2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of a Genetic Counselling Centre, Genetic

Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting prenatal diagnostic techniques on any pregnant women for the purposes other than those specified in Sub-section (2) of Section 4, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

(4) For the removal of doubts, it is hereby provided, that the provisions of Sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.

Section 29 mandates that all records, charts, forms, reports, consent letters and all the documents required to be maintained under the PNDT Act and Rules shall be preserved for a period of two years or for such period as may be prescribed. In case of criminal or other proceedings, the records and other documents shall be preserved till the final disposal of such proceedings.

Section 30 confers power to search and seize records. It states thus:

30. Power to search and seize records, etc. - (1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place, such Authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act."

(Emphasis supplied)

Section 32 confers upon the State Government, powers to make rules for carrying out the provisions of the Act, including "the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody such documents, records or objects were seized under Sub-section (1) of Section 30".

25. In exercise of the aforesaid powers u/s 32, the Central Government has framed the Rules. Rule 9 provides for maintenance and preservation of records

and is extracted herein below:

9. Maintenance and preservation of records.-(1) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counseling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouses or fathers and the date on which they first reported for such counseling, procedure or test.

(2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counselled shall be as specified in Form D.

(3) The record to be maintained by every Genetic Laboratory, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form E.

(4) The record to be maintained by every Genetic Clinic, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.

(5) The Appropriate Authority shall maintain a permanent record of applications for grant or renewal of certificate of registration as specified in Form H. Letters of intimation of every change of employee, place, address and equipment installed shall also be preserved as permanent records.

(6) All case related records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre for a period of two years from the date of completion of counseling, prenatal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records shall be preserved till the final disposal of legal proceedings, or till the expiry of the said period of two years, whichever is later.

(7) In case the Genetic Counselling Centre or Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.

(8) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall send a complete report in respect of all pre-conception or pregnancy related procedures/techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority.

Sub-rule (1) of Rule 11 provides that every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic, Ultrasound Clinic, Imaging Centre, nursing home, hospital, institute or any other place where any of the machines or equipments capable of performing any procedure, technique or pre-natal determination of

sex or selection of sex before or after conception is used, shall afford all reasonable facilities for inspection of the place, equipment and records to the Appropriate Authority or to any other person authorized by the Appropriate Authority in this behalf.

Sub-rule (2) of Rule 11 states as below:

11(2) The Appropriate Authority or the officer authorized by it may seal and seize any ultrasound machine, scanner or any other equipment, capable of detecting sex of foetus, used by any organization if the organization has not got itself registered under the Act. These machines of the organizations may be released if such organization pays penalty equal to five times of the registration fee to the Appropriate Authority concerned and give an undertaking that it shall not undertake detection of sex of foetus or selection of sex before or after conception.

Rule 12 lays down the procedure for search and seizure as under:

12. Procedure for search and seizure.-(1) The Appropriate Authority or any officer authorized in this behalf may enter and search at all reasonable times any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or more independent witnesses for the purposes of search and examination of any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seal and seize the same if there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act.

Explanation: In these Rules-

(1) "Genetic Laboratory/Genetic Clinic/Genetic Counselling Centre" would include an ultrasound center/ imaging center / nursing home/ hospital /institute or any other place, by whatever name called, where any of the machines or equipments capable of selection of sex before or after conception or performing any procedure, technique or test for pre-natal detection of sex of foetus is used;

(2) "material object" would include records, machines and equipments; and

(3) "seize" and "seizure" would include "seal" and "sealing" respectively.

(Emphasis supplied)

Rule 19 provides for the remedy of appeal and reads as below:

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.

26. A perusal of the Scheme of the PNDT Act and the Rules framed thereunder makes it clear that no pre-natal diagnostic techniques shall be conducted, except for the purpose of detection of abnormalities as mentioned in Sub-section (2) of Section 4 of the PNDT Act. A pre-natal diagnostic technique includes all pre-natal diagnostic procedures and pre-natal diagnostic tests as per Section 2(j) of the Act and a pre-natal diagnostic test would include an ultra-sonography test as per Section 2(k). The power of search and seizure is conferred by Section 30 and the procedure to be followed during search and seizure is delineated in Rule 12 of the Rules. Section 30 provides that if the Appropriate Authority has reason to believe that an offence under the Act has been, or is being committed, at any Genetic Counselling Center, Genetic Laboratory, Genetic Clinic or any other place, such authority or any officer authorized in this behalf may, subject to the Rules, enter and search at all reasonable times, such Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under the Act. Explanation (1) to Rule 12 states that "material object" would include records, machines and equipments and explanation (3) to Rule 12 states that "seize" and "seizure" would include "seal" and "sealing" respectively. A combined reading of Section 30 of the Act and Rule 12 of the Rules makes it clear that the machine and equipment found at the Clinic that is being searched can be seized and sealed if the Appropriate Authority has reason to believe that it may furnish evidence of the commission of an offence punishable under the PNDT Act. The purpose behind seizure and sealing of a machine or equipment (in the present case, Sonography machines of the Petitioner) is to furnish evidence of commission of an offence punishable under the Act. As per Section 23, any person mentioned therein, who contravenes any of the provisions of the PNDT Act or Rules, shall be punishable with imprisonment for a term which may extend to three years and with fine, as provided in the Act. There is no specific provision in the PNDT Act contemplating the issuance of a show cause notice before seizure or sealing of document and other equipment from the Genetic Clinic, Genetic Laboratory or Genetic Counselling Centre, as the case may be. The power of sealing of the Sonography machine is conferred upon the Appropriate Authority and is to be exercised if it believes that the machine may furnish evidence of the commission of an offence. Sealing is not stated to be a penalty for contravention of any provision of the PNDT Act or Rules though it may be a consequential action. There is no express provision in the Act or Rules

that provides for issuance of a show cause notice before drawing the Panchnama or sealing the machines. A contention has been raised by the learned advocate for the Petitioner that the principles of natural justice should be read into the provisions of the Act and Rules, and it would be obligatory on the part of the Appropriate Authority to issue a show cause notice to the Petitioner and grant him an opportunity of hearing, before sealing the Sonography machines.

27. At this stage, reference may fruitfully be made to certain decisions of the Supreme Court with regard to the plea of violation of the principles of natural justice.

(1) In Union of India (UOI) Vs. Col. J.N. Sinha and Another, , the issue before the Supreme Court involved the compulsory retirement of the Petitioner therein under Fundamental Rule (F.R.) 56(j) which, in terms, does not require that any opportunity should be given to the concerned Government servant, to show cause against his compulsory retirement. Admittedly, no opportunity was granted to the said Government servant to show cause against his compulsory retirement. The High Court held that this amounted to a contravention of the principles of natural justice. In this context, the Supreme Court held that:

8. Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the, concerned government servant "to show cause against his compulsory retirement. A government -servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

(Emphasis supplied)

(2) The above position of law has been reiterated by the Supreme Court in its

recent judgment in the case of Automotive Tyre Manufacturers Association Vs. The Designated Authority and Others, .

80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application.

81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. (See: Union of India (UOI) Vs. Col. J.N. Sinha and Another,

(3) It is well-settled that the principles of natural justice cannot be put in a straitjacket, and their applicability would depend upon the context and facts and circumstances of each case. In this regard, the Supreme Court has held, in Bar Council of India Vs. High Court of Kerala, , thus:

45. Principles of natural justice are required to be observed by a court or tribunal before a decision is rendered involving civil consequences. They may only in certain situations be read into Article 14 of the Constitution of India when an order is made in violation of the rules of natural justice. Principles of natural justice, however, cannot be stretched too far. Their application may be subject to the provisions of a statute or statutory rule.

(Emphasis supplied)

(4) In Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others, , the Supreme Court has held as below:

17. The principles of natural justice cannot be put in a strait-jacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regard compliance of the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. [See Bar Council of India Vs. High Court of Kerala, .

18. The Presiding Officer, Labour Court, as noticed hereinbefore, committed a manifest error in invoking Article 311 of the Constitution of India in the instant

case.

19. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, this Court has clearly held that the employee must show sufferance of prejudice by non obtaining a copy of the enquiry report.

20. This Court in *Canara Bank and Others Vs. Shri Debasis Das and Others*, while following *Karunakar (supra)* held: (SCC p.572, para 19)

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

(Emphasis supplied)

(5) In *Ganesh Santa Ram Sirur Vs. State Bank of India and Another*, the Supreme Court has held as below:

31. Mr. Salve invited our attention to Para 17 of the judgment in *State Bank of Patiala and others Vs. S.K. Sharma*, which deals with the opinion of the House of Lords in the United Kingdom. He also drew our attention to *S.L. Kapoor Vs. Jagmohan and Others*, and *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, in SCC para 25, 26 and 28. The decisions relied on and cited above make one thing clear, namely, principles of natural justice cannot be reduced to any hard and fast formulae and as said in *Russel v. Duke of Norfolk* (1949) 1 All ER 109 (CA), these principles cannot be put in a strait jacket. Their applicability depends upon the context and the facts and circumstances of each case. The objective is to ensure a fair hearing, a fair deal to a person whose rights are going to be affected. In our opinion, the approach and test adopted in *Karunakar* case should govern all cases where the complaint is not that there was no hearing, no notice, no opportunity and no hearing but one of not affording a proper hearing that is adequate or a full hearing or violation of a procedural rule or requirement governing the enquiry.

28. From the above decisions, it emerges that where there is no express provision for grant of an opportunity of hearing, the applicability of the principles of natural justice would depend upon the express language of the statute, its basic scheme, nature of power, the purpose for which the power is conferred and

the effect of the exercise of such power. The language of the statute may expressly or, by necessary implication, bar the applicability of the principles of natural justice. In short, the principles of natural justice cannot be stretched too far, and their application may be subject to the particular provisions of the statute and the object for which the statute has been enacted.

29. As has been discussed hereinabove, there is no express provision in the PNDT Act or the Rules for issuance of a show cause notice before making a Panchnama and sealing the Sonography machines or seizing documents or other equipment from the Genetic Clinic concerned. Section 30 makes it clear that the power to seize any document, record, register, book, pamphlet, advertisement or any other material object which has been found (including machines) is to be exercised if the Appropriate Authority has a reason to believe that it may furnish evidence of a commission of an offence under the PNDT Act. The Sonography machines of the Petitioner have been sealed, and a criminal case has been registered against him. It would, therefore, mean that the Appropriate Authority had reason to believe that the said machines may furnish evidence of commission of an offence under the PNDT Act. In such circumstances, when the sealing of the machines has been carried out with a view to collect evidence, the submission made by the learned advocate for the Petitioner that an opportunity to show cause should have been afforded to the Petitioner before drawing the Panchnama or sealing the machines, is not acceptable.

30. Sub-section (2) of Section 30 stipulates that the provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures shall apply to every search and seizure made under the PNDT Act. The object and scope of Section 100 of the Code is that it provides for the right of free ingress in case of closed premises, on production of a warrant of search by the Police officer and it seeks to ensure that searches are conducted fairly. For the said purpose, two independent and respectable witnesses of the locality should be present. When a search is conducted under this provision, evidence can be given regarding the thing seized in the course of the search. The same principles would apply to the power to search and seizure of records, vested upon the Appropriate Authority u/s 30 of the PNDT Act, and Rule 12 of the Rules. Taking into consideration the object and scope of Section 30 of the Act read with Rule 12 of the Rules, which is to exercise the power of sealing and seizure in order to furnish evidence of commission of an offence, it cannot be said that a prior show cause notice should be given before conducting such search and seizure in order to comply with the principles of natural justice, as to do so would not be in consonance with the object and purpose for which the said provisions have been enacted. It was open to the Legislature to have provided for an opportunity of hearing before sealing the machines or seizing documents and other equipment, had this been the intention. There is a provision for issuance of a show cause notice u/s 20(1) and (2) of the Act before suspending or cancellation of the registration of the Clinic, but there is no such provision regarding sealing of machines. The omission appears to be a conscious legislative intention, considering that sealing of

machines is to be carried out if the Appropriate Authority considers that it may furnish evidence of the commission of an offence. Keeping in view the Scheme of the PNDDT Act, the purpose for which the Sonography machines are sealed and the fact that there is no express provision contemplating the issuance of a prior show cause notice, it is clear that the applicability of principles of natural justice has been barred by necessary implication. In view of the above, in my considered view, there has been no violation of the principles of natural justice while drawing the Panchnama and sealing the Sonography machines of the Petitioner.

31. Insofar as the submission regarding violation of the fundamental rights of the Petitioner under Article 19(1)(g) of the Constitution is concerned, it has to be kept in mind that the Sonography machines have been sealed in order to furnish evidence in the criminal case filed against the Petitioner. It, therefore, cannot be said that the Petitioner has been deprived of his right to carry on his profession, as the Petitioner is bound to conduct his profession in accordance with the provisions of the PNDDT Act. Any consequences arising out of the alleged violations of the said statute would not amount to violation of the fundamental rights of the Petitioner under Article 19(1)(g) of the Constitution.

32. Regarding the submission that no reasoned order has been passed before sealing the Sonography machines, it can only be said, at the cost of repetition, that it has been resorted to in order to furnish evidence of commission of an offence in the criminal case filed against the Petitioner. There is no requirement of passing a reasoned order before taking such action, in the context of the provisions of Section 30 of the PNDDT Act and Rule 12 of the Rules.

33. It is not disputed that an alternative remedy is available to the Petitioner, to agitate his grievance regarding sealing of the machines, as provided under Rule 19 of the Rules. Sub-rule (4) of Rule 19 empowers the Appropriate Authority to condone the delay in case he/ she is satisfied that the Appellant was prevented by sufficient cause from making such appeal within time.

34. As already noted hereinabove, in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.* (supra), the Supreme Court has considered three contingencies which would not operate as a bar in the exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in spite of availability of an alternative remedy. The relevant extract of the judgment has already been reproduced earlier.

35. In view of the detailed discussion and conclusion arrived at by this Court that there is no provision in the PNDDT Act requiring prior issuance of a show cause notice before sealing the Sonography machines in exercise of power conferred u/s 30 of the PNDDT Act read with Rule 12 of the Rules, and that the application of the principles of natural justice is impliedly barred, considering the object and purpose of the Act, and nature of power and intention of the Legislature, as reflected in the Scheme of the Act, in my considered view, the contingency

regarding violation of the principles of natural justice does not arise, as stated in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.* (supra), so as to persuade this Court to exercise jurisdiction in spite of availability of an alternative remedy.

36. It is relevant to note that the nature and object of exercise of power u/s 30 and Rule 12 is for furnishing evidence of commission of an offence under the PNDT Act. Keeping this purpose in view, the prior issuance of a show cause notice would defeat the very purpose for which the power is to be exercised, and may result in prejudice in the criminal proceedings.

37. In this regard, reference may be made to the observations of the Supreme Court in *Appropriate Authority v. H.G. Thakkar Hari X-Rays, Colour, Doppler Sonography and Ors.* (supra) that have been reproduced hereinabove, regarding custody of the property seized in a criminal offence, wherein it has been held by the Supreme Court that the High Court ought not to have exercised jurisdiction under Article 226 of the Constitution of India as a criminal offence under the PNDT Act had been registered against the Petitioner therein, regarding the Sonography machines seized therein. A criminal case has been registered against the Petitioner and the above observations would have a bearing on the present case.

38. As a result of the above discussion, the prayer made by the Petitioner to direct the Respondents to remove the seals from the Sonography machines of the Petitioner cannot be granted.

39. With regard to suspension of the certificate of registration of the Clinic of the Petitioner, the record reveals that the "Imaging House" of the Petitioner has been granted a certificate of registration for a period of five years, ending on 07.04.2014. The registration has been granted subject to the PNDT Act and Rules. It is clearly stated in the Certificate that any contravention of the PNDT Act and Rules shall result in suspension, or cancellation, of the Certificate of Registration, before the expiry of the period of five years, apart from inviting prosecution.

40. It is not in dispute that on 13.02.2010, the Appropriate authority under the PNDT Act visited the Clinic of the Petitioner and carried out an inspection. It was found that Form-F is not being filled up by the Petitioner though, as per the case of the Respondent - Authority, the PNDT Act requires that Form-F should be filled up and signed by the concerned Radiologist / Gynaecologist, who has conducted the ultrasound test on the pregnant woman. The Appropriate Authority found that Form-F was being filled up by the staff of the Petitioner which, as per the said notice, amounts to a serious contravention of the provisions of the PNDT Act. The Petitioner replied to the said notice on 19.02.2010, undertaking that he shall personally fill up Form-F in future, and take care. This explanation was accepted by the Appropriate Authority. By communication dated 20.05.2010, the Appropriate Authority, while informing the Petitioner regarding acceptance of his

explanation, directed him to ensure strict compliance of the provisions of the PNDDT Act. A second inspection of the Clinic of the Petitioner took place on 23.09.2010, and five contraventions of the PNDDT Act and Rules, as detailed in the notice, regarding filling up of Form-F were found. The Petitioner gave his explanation vide reply dated 24.09.2010, stating that he would rectify the said lapses. This explanation was also accepted by the District PNDDT Advisory Committee and the Petitioner was so informed, by communication dated 01.12.2010. Once again, the Petitioner was directed to ensure that no contraventions of the provisions of the PNDDT Act and the Rules take place at his Clinic, in future. The Clinic of the Petitioner was inspected for the third time on 28.04.2011, and two contraventions of the PNDDT Act were found. The contents of the notice dated 28.04.2011, have already been reproduced hereinabove. The explanation rendered by the Petitioner, vide letter dated 01.05.2011, was not found to be satisfactory by the District PNDDT Advisory Committee. The Petitioner was so informed, by communication dated 20.05.2010, stating that in spite of earlier warnings, contraventions of the provisions of the PNDDT Act have continued to be made in the Clinic of the Petitioner. Resultantly, the impugned order dated 13.05.2011 came to be passed, suspending the registration of the Petitioner's Clinic, till further orders.

41. The main contention raised by the learned advocate for the Petitioner is that the notice dated 28.04.2011, is stated to be issued u/s 20(1) and (2) of the PNDDT Act, but is not in consonance with the said provisions of law, as it is not stated that it is a show cause notice, or why the registration of the Petitioner should be suspended or cancelled. It has also been contended that the period for which the registration has been suspended is not mentioned, as stated in Sub-section (2) of Section 20 of the PNDDT Act, and no proper opportunity of hearing has been afforded to the Petitioner. In short, the contention is that due to the above-mentioned shortcomings in the notice dated 28.04.2011, there has been a violation of the principles of natural justice.

42. It is not disputed that an alternative, statutory remedy is available to the Petitioner u/s 21 of the PNDDT Act against suspension of the registration. The said remedy has not been availed, and the jurisdiction of this Court under Article 226 of the Constitution has been invoked, on the ground of violation of the principles of natural justice.

43. In order to examine the above contentions, it would be pertinent to revert to the contents of the notice dated 28.04.2011, which is reproduced herein below:

OFFICE of THE DISTRICT APPROPRIATE AUTHORITY (UNDER PNDDT ACT 1994)

The premises of Dr. Kalpesh Patel's Imaging House, has been inspected by the A.A. and CDHO Ahmedabad Dr. N.J. Patel today i.e. on 28.04.2011 and found the following deficiencies:

1) Register to be maintained with details of women (ANC) undergoing USG is not fill up to date of today. It is filled up to dated 23.02.2011.

2) on inspection of form "F" of period January 11 to April, 2011, in one form there is no sign doctor doing sonography and its doctors declaration part. In eight form "F" there is no sign. of the pregnant women in declaration of the woman part of the form "F" Totally nine form "F" were filled with deficiency of inaccuracy.

In view of above contraventions of the also under PC and PNDT Act, 1994 it is the public interest that in exercise of the provision u/s 20(1) and (2) of the PC and PNDT Act, I also order for issuing show cause notice for complying the aforesaid contravention within three days. The following documents/ materials are also being seized.

1) The deficiently filled nine form "F" as mentioned above with a referral letter in eight of them.

The PNDT Register's last page Xerox copy.

Sd/- (District Appropriate Authority) 28.04.2011 Appropriate Authority, Pre-natal Diagnostic Technique Act, 1994 of Ahmedabad District And C.D.H.O.

44. The said notice may not be very happily worded but it is evident from a perusal thereof that it has been issued under Sub-sections (1) and (2) of Section 20 of the PNDT Act, and that the Petitioner has been given three days in which to reply. Though the word 'reply' has not been specifically stated, and the language used is "for complying the above said contravention within three days", it has been understood by the Petitioner that he is to reply within three days. The Petitioner has, in fact, furnished a reply within the specified period of time, on 01.05.2011. The earlier notices issued to the Petitioner on 13.02.2010 and 23.09.2010, are similarly worded, and on both occasions, the Petitioner has rendered his explanations within the period of time stipulated therein. Those explanations have been accepted by the Appropriate Authority. The Petitioner has not raised any such contention as is being raised regarding the impugned notice. So far as those two notices are concerned, it has not been stated by him that those notices were not in consonance with the provisions of Section 20(1) and (2) of the PNDT Act. The Petitioner is well aware of the fact that the notice dated 28.04.2011 has been issued u/s 20(1) and (2) of the PNDT Act and has, accordingly, rendered his explanation, which has not been accepted.

45. An opportunity of hearing and putting up his defence has been afforded to the Petitioner and he has availed of the same by offering his explanation. It, therefore, cannot be said that as the impugned notice has not been properly worded, the Petitioner has been deprived of a proper opportunity of hearing. Such a contention has never been raised by the Petitioner in the reply dated 01.05.2011, while furnishing his explanation pursuant to the said notice.

46. The object of the principles of natural justice which is now understood as being synonymous with the obligation to provide a fair hearing, is to ensure that there is no failure of justice and that justice is done equally between the parties.

47. In this regard, the observations of the Supreme Court in *State Bank of Patiala and Ors. v. S.K. Sharma* (supra), are pertinent:

32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of Sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.

(Emphasis supplied)

48. As stated by the Supreme Court in the above-quoted judgment, technicalities and irregularities which do not occasion a failure of justice should not be allowed to defeat the ends of justice. The Petitioner has been afforded a reasonable opportunity of hearing, which he has availed, by offering his explanation. The Petitioner was aware that he was required to meet the allegations levelled against him in the impugned notice, and has given his reply. It should be borne in mind that this is not the first notice u/s 20(1) and (2) received by the Petitioner, but the third one. The Petitioner has replied to all the notices which are similarly worded, each time, and it is only when his explanation to the last notice has not been accepted that a grievance has been raised regarding violation of the principles of natural justice. In these circumstances, the contention that the principles of natural justice have been violated on the technical ground that the impugned notice is not properly worded, as envisaged in Sub-section (1) of Section 20, is neither plausible nor convincing. What is necessary is that a reasonable opportunity of hearing should be granted, which has been done in the present case. In the reply dated 01.05.2011, the Petitioner has not complained that he has not been granted an adequate opportunity of hearing, or that he would like to offer a further explanation. On the contrary, the Petitioner has given an assurance that he would rectify the contraventions of the PNDDT Act, alleged to have been committed by him.

49. The cumulative effect of the above discussion is that, keeping in mind the Scheme, object and purpose of the PNDDT Act, and the Rules framed thereunder, and considering that there is no specific provision requiring a show cause notice to be issued before sealing the Sonography machines u/s 30 of the PNDDT Act read with Rule 12 of the Rules, there has been no violation of the principles of natural justice at the hands of the Respondent - Appropriate Authority while sealing the machines. The nature of power vested u/s 30 of the PNDDT Act read with Rule 12 of the Rules, which empowers the Appropriate Authority to exercise the power for the purposes of search, seizure or sealing, if it has reason to believe that such action is necessary in order to furnish evidence of commission

of an offence under the PNDD Act, makes the intention of the Legislature abundantly clear. The very purpose and object for which the Section and Rule have been enacted would be defeated if prior notice of sealing is given. To do so may result in important evidence being lost. It can, therefore, be said that the intention of the Legislature that can be gathered from the Scheme of the Act is to bar the applicability of the principles of natural justice by necessary implication with regard to the provisions of Section 30 of the PNDD Act, read with Rule 12 of the Rules. The judgments relied upon by the learned advocate for the Petitioner would, therefore, not be applicable in the context of the object, purpose, and Scheme of the PNDD Act with regard to sealing of the Sonography machines. Reference can be made to *Kilol v. Shelat v. Municipal Corporation of City of Ahmedabad and Anr.* (supra), relied upon by the learned advocate for the Petitioner, wherein a Division Bench of this Court has held that the principles of natural justice would have to be read into the provisions of Section 210 of the BPMC Act. There, the Court was dealing with the right to property, which is quite distinct and distinguishable obligation of the Petitioner to conduct his profession in accordance with the provisions of the PNDD Act. In the present case, the Sonography machines have been sealed so as to furnish evidence of the commission of an offence under the PNDD Act. The BPMC Act cannot be equated with the PNDD Act and the circumstances and factual matrix, as obtaining in the judgment of the Division Bench and in the present case, are entirely on a different premise, therefore, the principle of law enunciated in the said judgment would not be applicable to the present case. 51. As already discussed hereinabove, there has been no violation of the principles of natural justice insofar as the suspension of the registration of the Clinic of the Petitioner is concerned. The impugned notice dated 28.04.2011 cannot be said to be bad merely on technical considerations as there has been a substantial compliance with the provisions of Section 20(1) and (2) of the PNDD Act. An opportunity of hearing has been granted to the Petitioner, which has been availed of, by rendering his explanation.

51. In my considered view, as alternative statutory remedies are available to the Petitioner under Rule 19 of the Rules and Section 21 of the PNDD Act, with regard to sealing of Sonography machines and suspension of registration of his Clinic, no such contingency exists justifying the invocation of the jurisdiction of this Court under Article 226 of the Constitution of India, by by-passing the statutory remedies.

52. Resultantly, both Special Civil Application No. 6625 of 2011, and Special Civil Application No. 7234 of 2011, stand rejected.

53. It is clarified that the Court has not entered into the merits of both petitions, and it is open to the Petitioner to invoke the alternative remedies as provided under the PNDD Act and Rules, if so desired. In that event, the Appellate Authority may not be influenced by any observation made in this judgment.

54. Rule is discharged in both the petitions. There shall be no orders as to costs.