

(2010) 07 DEL CK 0299

In the Delhi High Court

Case No : Writ Petition (C) 6654 and 6826 of 2007

Dr. K.L. Sehgal

APPELLANT

Vs

Office of District Appropriate Authority
 Dr. Sonal
Randhawa Vs Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 19(2), 2, 20, 33
Postgraduate Medical Education Regulations, 2000 — Regulation 10

Citation : (2010) 07 DEL CK 0299

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

Bench : Single Bench

Advocate : Praveen Khattar, in W.P.C 6654/2007, Ravi P. Mehrotra, M.L. Mehra and Vibhu Tiwari, in W.P.C 6826/2007, for the Appellant; Zubeda Begum, A.S.C. and Sana Ansari, in W.P.(C) 6654/2007, Amiet Andlay, for R-2, Maninder Singh Gaurav Sharma and J.P. Karunakaran for MCI in W.P.(C) 6826/2007, for the Respondent

Judgement

S. Muralidhar, J.—These two writ petitions raise important questions of law concerning interpretation of Section 2(p) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [hereafter "the PNDT Act"] which defines "sonologist or imaging specialist".

2. First, the brief facts in each of the writ petitions may be noticed.

W.P. (C) 6654 of 2007 - Dr. K.L. Sehgal

3. The Petitioner in Writ Petition (C) No. 6654 of 2007 is Dr. K.L. Sehgal who runs the Dr. Sehgal's Polyclinic & Diagnostics Imaging Clinic in New Delhi. He obtained an MBBS degree from the Ranchi University in 1977. He got registered from the Delhi Medical Council (DMC) in 2001. The registration has been renewed from time to time and is currently valid till 4th December 2011. Dr. Sehgal states that he is a registered medical practitioner within the meaning of

Section 2(m) of the PNDT Act. Dr. Sehgal claims that he is also a sonologist within the meaning of Section 2(p) of the PNDT Act. He claims that he has undergone a six months training course in Sonography between 14th February 2002 to 2nd September 2002 at the Institute of Ultrasound Training which is a training centre for ultrasound training recognised by the Indian Medical Association-Academy of Medical Specialties (IMA?AMS) and the Federation of Obstetric & Gynaecological Societies of India (FOGSI). He states that during the course of training he had gained experience of handling more than 100 cases of Ultrasonography under the supervision of Dr. J.S. Randhawa, M.D. (Radiology). The certificate issued by the said Institute has been annexed to the petition.

4. In April 2002, Dr. Sehgal applied for grant of PNDT registration for setting up an ultrasound clinic under the name of "Dr. Sehgal's Clinic". He was granted a certificate on 1st May 2002 with registration No. 348. The certificate was valid for a period of five years up to 30th April 2007. By a letter dated 21st February 2007 from Respondent No. 1, i.e., the Office of District Appropriate Authority (hereafter "the Authority") under the PNDT Act, Dr. Sehgal was asked to submit the necessary documents for renewal of the PNDT registration. In response to the said notice on 28th February 2007 Dr. Sehgal submitted an application for renewal enclosing the certificate of his six months training. He stated that he had been regularly performing sonography tests for the last five years.

5. Dr. Sehgal states that he did not receive any response till the expiry of 90 days thereafter i.e. 29th May 2007. According to him, in terms of Rule 8 (6) of the PNDT Rules, the registration should be deemed to have been renewed on the expiry of 90 days. Rule 8 (6) of the PNDT Rules reads as under:

In the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed.

6. It is submitted that on 22nd June 2007, Dr. Sehgal received a letter dated 25th May 2007, which according to him was posted on 21st June 2007, by which he was informed that his application for renewal of registration had been rejected on the ground of "non-submission of documents from a qualified Radiologist." Dr. Sehgal protested stating that in terms of Section 3(1)(b) of the PNDT Act, any person who was registered as a medical practitioner and had one year's experience in sonography, was eligible to run an ultrasound clinic.

7. Dr. Sehgal claims to have submitted an application dated 11th July 2007 under the Right to Information Act, 2005 ("RTI Act") seeking the precise reasons for the rejection of his application. By a letter dated 3rd August 2007, the Authority provided the following information to him:

2. Now, in Feb. 2007, you had submitted application for renewal of PNDT registration. The file had been sent to higher authorities for guidelines (copy of

file noting is attached as Annexure I-3). Guidelines were received from the Directorate of Family Welfare in minutes of meeting (attached as Annexure-4). On the above mentioned basis your application for renewal has been rejected.

3. You have also stated that you have been regularly doing ultrasonography from last 5 years (again ref. your letter No. nil dated 28.02.2007). It will be counted towards "Self Experience" & in the PNDT Act & Rules there are no guidelines regarding the registration of registered medical practitioner on the basis of Self Experience: as because any experience without the supervision of any competent authority is not counted, i.e. treats only as "Self Experience".

8. The rejection of Dr. Sehgal's application is assailed on the following grounds:

(a) that with the rejection not having been communicated to Dr. Sehgal within a period of 90 days from the date of his application, i.e., 28th February 2007, there was a deemed renewal under Rule 8 (6) of the PNDT Rules.

(b) that under Rule 3(1) (b) an ultrasound clinic can be run by a registered medical practitioner having six months training or one year experience in sonography. Since Dr. Sehgal satisfies this requirement, he was eligible to set up an ultrasound clinic. In any event, Dr. Sehgal submitted a certificate from a qualified radiologist that he had undergone training in sonography and therefore, the ground for non-renewal was contrary to the record.

(c) The rejection of the application on the ground that five years? experience by Dr. Sehgal's ultrasound would be a "self-experience" and therefore would not be counted towards the experience under the PNDT Act, was clearly arbitrary. The guidelines of the Directorate of Family Welfare do not indicate that in a similar situation the certificate of registration should not be renewed. It only indicated that the issue was still under consideration and till such time the PNDT Act was to be strictly followed.

9. The response of the Authority under the PNDT Act is that the Institute, in which Dr. Shekel claims to have undergone training, is not recognised by the Government of India or any competent authority. The Institute was recognised only by private institutions which could be termed as "NGOs" and the experience gained was no experience because anybody could approach private institutes and get certificates without satisfying the basic criteria of being trained to use the ultrasound apparatus. A radiologist has to be one from an institute recognised by the Government of India. It is submitted that since the PNDT Act and Rules framed thereunder do not specify the institutes and individuals from where the training/experience had to be undergone, the application was placed before an Advisory Committee comprising of technical experts. It is submitted that the grant of registration as sonologist under the PNDT Act is a matter of policy. The absence of clear-cut guidelines is acknowledged. It is stated that a response is awaited to the letter written to the Government of India in this regard on 20th November 2007. It is pointed out that Dr. Sehgal not being a Sonologist or an Imaging Specialist/Radiologist could not be qualified to run an ultrasound clinic.

On behalf of Dr. Sehgal, it is pointed out that unless there is a requirement in the PNDT Act or the Rules that the training should be obtained from a recognised institute, the rejection of Dr. Sehgal's application was ultra vires the PNDT Act and Rules.

W.P. (Civil) 6826/2007 - Dr. Sonal Randhawa

10. The facts in Writ Petition (C) No. 6826 of 2007 are that the Petitioner, Dr. Sonal Randhawa, holds an MBBS degree from the University of Agra and has been registered under the DMC since 18th September 2006. It is stated that in 2007 she completed American Registry for Diagnostic Medical Sonography (ARDMS) certifying examinations as Specialist in Obstetrics and Gynecology. As far her experience in Sonography is concerned, it is stated that she has worked as a registered Sonologist under PNDT in Rohini (North-West Dist.) for three years. She has training and worked under Dr. J.S. Randhawa MD (Radio diagnosis) who is a qualified and experienced Radiologist and Ultrasonologist from 1998-2001. She claims to have completed a Visiting Fellowship in Diagnostic Ultrasound and Echocardiography from 26th March 2007 in the Department of Radiology, Thomas Jefferson University Hospital and Jefferson Medical College, Philadelphia in USA. It is stated that in February 2003 Dr. Randhawa completed the two year course on ultrasound training under the IMA (AMS) from 4th January 2001 to 10th February 2003. She also worked as a Consultant Ultrasonologist at the government approved Gupta Hospital in Delhi from 16th July 2001 to 31st March 2005.

11. On 5th April 2006 Dr. Randhawa applied for registration as a sonologist under the PNDT Act in the West District of the National Capital Territory of Delhi. Dr. Randhawa had already been recognized and registered as a Sonologist with the Rohini (North-West Zone) and Dwarka (South-West Zone) under the PNDT Act since the last seven years. On 10th July 2006 Dr. Randhawa submitted all necessary documents as directed by the Appropriate Authority in support of her application. Since no reply was forthcoming, Dr. Randhawa filed an application on 14th July 2006 under the RTI Act. On 2nd August 2006 the District Appropriate Authority under the PNDT Act (West District) sent a communication to the Director, Directorate of Family Welfare, GNCTD stating that Dr. Randhawa did not submit documents in support of her application to be registered as an ultrasonologist and therefore her application could not be considered. Dr. Randhawa preferred an appeal on 21st August 2006 with the Director, PNDT, Ministry of Health and Family Welfare with reference to her application dated 14th July 2006 under the RTI Act. In response to this, a letter was written by the Ministry of Health and Family Welfare, PNDT Division on 15th September 2006 stating that the PNDT Act or Rules do not categorically specify the institutions/ individuals from where the training or experience has to be acquired. At the meeting of the State Level Multi-Member Appropriate Authority under the PNDT Act held on 6th December 2006 Dr. Randhawa's case was discussed and her request for registration was not acceded to. Dr. Randhawa applied to the Ministry

of Health and Family Welfare on 19th December 2006. However, she did not hear any response to the said letter. In the meanwhile she kept pursuing her request for information under the RTI Act. By an order dated 19th June 2007 the Central Information Commission (CIC) directed the Directorate of Family Welfare to provide information to Dr. Randhawa within ten days. The Directorate of Family Welfare sent a letter dated 5th July 2007 to the Petitioner stating that her request for registration as a sonologist could not be acceded by the State Advisory Committee under the PNDT Act and that "training in Ultrasound needs to be examined and recognized by the competent authority."

12. Dr. Randhawa has assailed the refusal of registration on the ground that the reasons therefore were arbitrary and unreasonable. The observation that training in ultrasound needed to be examined and recognized by the competent authority, was a bald one. Even though the PNDT Act and Rules do not provide the procedure for undergoing training/experience or identify persons eligible to provide such registration, there was no justification in simply rejecting the request for registration.

Stand of the Medical Council of India

13. In the present cases, the counter affidavit filed by the Respondent is more or less similar. However, in addition to the reply of the Respondent Appropriate Authority, an affidavit has been filed on behalf of Respondent No. 6 Medical Council of India (MCI). Referring to the decisions in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, *State of Punjab Vs. Dayanand Medical College and Hospital and Others*, and *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, it is submitted that the MCI Regulations made under the Indian Medical Council Act, 1956 ("IMC Act") are binding and mandatory. It is stated that a "recognized medical qualification" as defined u/s 2(h) of the IMC Act means any of those medical qualifications included in the Schedules to the IMC Act.

14. u/s 33 read with Section 20 of the IMC Act after obtaining prior approval from the Central Government, the MCI framed the Postgraduate Medical Education Regulations, 2000. As per Regulation 10, the period of training for the award of a degree of Doctor of Medicine (M.D.)/Master of Surgery (M.S.) shall consist of three completed years including the period of examination. For the award of a postgraduate diploma there shall be two completed years of training including the period of examination. The specialties in which postgraduate degrees/diplomas can be awarded are prescribed in the schedule to the said Regulations. At serial No. 24 under A i.e., qualification for M.D. specializations of the Schedule is Radio Diagnosis and under F i.e., for diplomas at serial Nos. 21 to 23 are Radio Diagnosis, Radio Therapy and Radiological Physics. It is submitted that Dr. Randhawa Diagnostics where Dr. Sonal Randhawa is purported to have conducted ultrasounds regularly under the supervision of Dr. J.S. Randhawa is not a recognized medical institute under the IMC Act, and is not included in the Schedule to the IMC Act. The said Institute of ultrasound training is also not

included in the list of institutes recognized/permitted by the MCI to conduct any postgraduate courses in Radio-Diagnosis or Ultrasound. The course offered on ultrasound by the said Institute is not a recognized medical qualification for the purposes of the IMC Act.

Subsequent Developments

15. After the filing of this petition a meeting was held in the Directorate of Family Welfare on 9th January 2008 in which the following decisions were taken:

i) Now onwards registration should be allowed to only the persons qualified in Radiology (ii) Specialists may be allowed Ultrasound in their own specialty. For example a Gynecologist with Post Graduate qualification can do level 1 scan for gross anomalies and monitoring of pregnancy. (iii) Registration of existing clinics registered on basis of training/experience from private place should not be cancelled. At the same time they should be given show cause notice regarding non MCI qualification/experience and a stricture should be written on their registration certificate. (iv) Renewal of such clinics should be allowed till court judgment regarding qualification/experience or any other clarification in this regard from Govt. of India. (v) No new registration should be given on basis of non MCI recognized qualification. (vi) practice of giving training/experience by one Doctor to other fellow Doctor should be stopped. (vii) Directions issued by Hon"ble Court should be followed further in this regard. (viii) A file may be sent to the legal department and legal opinion on this matter be obtained.

16. It is submitted that once the above decisions came to be published, it met with a stiff opposition and an agitation among the fraternity of doctors. The State Advisory Committee which thereafter met on 22nd July 2008 decided to discard the earlier changes. This happened while it considered an appeal of Dr. Rahul Kumar in which it passed the following order:

Instant appeal has been filed by Dr. Rahul u/s 19(2) of the act against rejection of application for registration vide order dated 13.06.08 passed by the CDMO, North West District. The sole reason for rejection of application is consequent upon the issuance of certain instructions from State Advisory Committee, according to which the kind of training as was being given by private Post Graduate Doctors was termed as not valid as per Medical Council of India norms and it was considered that practice of giving training/experience by one Doctor to other fellow Doctor should be stopped. Considering the above said the case of the Appellant was rejected for the reason that he had obtained the Post Graduate Diploma in Sonography from the Global Open University which was not listed as recognized Institute for awarding Medical qualification as required. However, it is informed that in the subsequent meeting of the Advisory Committee dated 22.07.08 it was considered that registration of new Centers under PC & PNDT Act may be resumed on the basis of qualification as prescribed under the provision of Act on the basis of Experience/Training as laid down in the Act as per practice prior to 9.1.08. Since now the previous restrictions as imposed have been done

away, as stated above, in the meeting of State Advisory Committee. It is agreed by both the parties that the case of the Appellant may be reconsidered if his case is otherwise found fit on the basis of merits. The matter is accordingly remanded back to the District Authority for reconsideration in terms of the above." (emphasis supplied)

17. It is pointed out by Dr. Randhawa that pursuant to the above decision Dr. Rahul Kumar was granted registration as was evident in the reply given under the RTI Act on 24th October 2008. Accordingly, it is submitted that Dr. Randhawa has been meted out a differential treatment which is unwarranted.

18. Learned Counsel appearing for Dr. Randhawa pointed out to the stand of the MCI in a reply dated 3rd March 2008 to an application made under the RTI Act by one Sagar Saxena that "courses like IVF, Laparoscopy, Lasik Surgery, Ultrasound, Bariatric surgery, do not come within the purview of MCI." In a reply given to one Dr. Diwan Singh on 14th August 2008 in response to a query as to "who is a sonologist as defined in the PNDDT Act as per the MCI guidelines," it was stated that the matter is "outside the purview of Medical Council of India."

Submissions of counsel

19. This Court has heard the submissions of Mr. Ravi P. Mehrotra, the learned Counsel for Dr. Sonal Randhawa and Mr. Praveen Khattar learned Counsel appearing for Dr. K.L. Sehgal, Ms. Zubeda Begum and Mr. Amiet Andley learned Counsel appearing for Respondent No. 2 Appropriate Authority, GNCTD and Mr. Maninder Singh, learned Senior counsel appearing for the MCI.

20. While counsel for Appropriate Authority GNCTD reiterated the submissions noticed hereinbefore, Mr. Maninder Singh learned Senior counsel for the MCI urged that the provisions of the PNDDT Act have to be interpreted in such a manner that the word "or" appearing in Section 2(p) has to be read as "and". He relied upon the judgment of the Supreme Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, , and in particular para 40 thereof. He pointed out to the growing menace of female foeticide and the apparent failure of the PNDDT Act to check the alarming sex ratio which is directly traceable to the indiscriminate use of the pre-natal diagnostic tests and unethical practices of the registered medical practitioners. He submitted that unless the PNDDT Act is interpreted to require a sonologist to be a qualified specialist with experience in a recognized institute, the unchecked unethical practices adopted by diagnostic clinics cannot possibly be stopped. He urged this Court to take a proactive approach in the matter and adopt an interpretation that would advance the purpose of the legislation. Reliance is also placed on the decisions in Dr. A.K. Sabhapathy Vs. State of Kerala and others, ; Gopinder Singh Vs. The Forest Department of Himachal Pradesh and others, ; and Entertainment Network (India) Ltd. Vs. Super Cassette Industries Ltd., .

Meaning of "sonologist" u/s 2(p) PNDDT Act

21. The question that arises for consideration is the meaning that should be given to the expression "sonologist" as defined u/s 2(p) PNDT Act

of the PNDT Act. Section 2(p) PNDT Act reads as under: 2(p) "Sonologist or Imaging Specialist" means a person who possesses any one of the medical qualifications recognized under the Indian Medical Council Act, 1956 or who possesses a post-graduate qualification in ultrasonography or imaging techniques or radiology.

22. The definition of the word "sonologist" does support the submission of the learned Counsel for the Petitioners that as long as the person concerned possesses "one of the medical qualifications recognized under the Indian Medical Council", he could be a sonologist. The word "or" only makes the possessing of "a post-graduate qualification in ultrasonography or imaging techniques or radiology" an alternative qualification. It appears that prior to the insertion of Section 2(p) PNDT Act

in the PNDT Act certain amendments were proposed. The suggested definition of "sonologist" as proposed reads as under: "Sonologist/Imaging Specialist" means a person who possesses any one of the medical qualifications recognized under the Indian Medical Council Act 1956, and/or a post graduate qualification in ultrasonography/ imaging technique/radiology and who is certified for performing sonography

(emphasis supplied)

23. Despite the above suggestion, when the amendment was ultimately enacted the word "and" appears to have been dropped. The present definition requires a post-graduate qualification only in the alternative.

24. How the definition u/s 2(p) PNDT Act

has been understood is reflected in Rule 3 of the PNDT Rules which reads as under: The qualifications of the employees, the requirement of equipment etc. for a Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall be as under:

xxxxx

(3)(1): Any person having adequate space and being or employing

xxxxx

(b) a Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner having Post Graduate degree or diploma or six months training or one year experience in sonography or image scanning,

xxxxx

may set up a genetic clinic/ultrasound clinic/imaging centre.

25. In Prof. Yashpal v. State of Chhattisgarh, the Supreme Court, in the context of recognition of institutions for the purposes of affiliation to a university, observed that the word "or" can sometimes be read as "and" when the literal meaning of the word would produce "unintelligible or absurd" results. However, the same cannot be said of the present definition. This is because if one were to read the word "or" as "and", then the following words which indicate that the person should be possessing any one of the medical qualifications recognized under the IMC Act are rendered redundant. If the submission of the MCI is to be accepted, the definition ought to mean that a sonologist or an imaging specialist could be a person who is

(a) an MBBS or possessing any one of the "other" medical qualifications, for e.g. an Ophthalmologist, an ENT specialist or a Cardiologist who possess qualifications recognized by the IMC Act, together with

(b) a post-graduate qualification in "ultrasonography or imaging techniques or radiology".

The post-graduate qualification in "ultrasonography or imaging techniques or radiology" would also have to be a qualification recognized by the IMC Act. However, that is not how Section 2(p) PNDDT Act

reads. To accept the argument of the MCI would be reading too many words into Section 2(p) PNDDT Act which is simply not permissible for this Court to do. In this connection a reference may be made to the decision in Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, , where Justice Bhagwati speaking for the Court in the context of the old Section 71 vis-?-vis Section 90 of the U.P. District Boards Act, observed (AI R @ p. 365): it was unfortunate that when the Legislature came to amend the old Section 71 of the Act it forgot to amend Section 90 in conformity with the amendment of Section 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon the expression "orders of any authority whose sanction is necessary". No doubt, it is the duty of the Court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the word used by the Legislature to fill in gaps or omissions in the provisions of an Act.

26. There are other difficulties in reading the definition in Section 2(p) PNDDT Act

as suggested by the MCI. The MCI itself has, in a letter dated 4th May 2009 written to the Petitioner in Writ Petition (Civil) No. 6654 of 2007, clarified as under: Sir, With reference to your letter dated nil received on 1.09.2008, I am directed to state that the above mentioned matter was considered by the Executive Committee at its meeting held on 27.04.2009 and it was decided as under:

The Executive Committee of the Council perused the report of the Sub-Committee and the decision of the Ethics Committee and decided as under:

The Ultrasonography can be undertaken by a specialist who possesses postgraduate qualification in the specialty of Radio-Diagnosis. However, specialist doctor in their specialty can also undertake Ultrasonography for the purpose of certification subject to the condition that he/she has undergone orientation training in the Ultrasonography in the department of Radio-Diagnosis in a recognized medical institution under recognized medical teacher for a minimum period of 6 months wherein he has not only observed the procedure of Ultrasonography but also has undergone hands on training to enable him to practice in the field of ultrasonography for the diagnostic purposes pertaining to his/her specialty.

27. The above reply would indicate that a person who is a specialist who either has an MBBS degree or a further specialization qualification would be able to run an ultrasound clinic provided he or she undergoes six months' training in ultrasonography. The MCI is therefore, unclear as to what will satisfy the definition of "sonologist" u/s 2(p) PNDT Act

of the PNDT Act. It is inconceivable how a request for registration can be refused on the ground of non-compliance with the above requirement when the decision in that regard appears to have been taken only on 27th April 2009 by the MCI. 28. On 11th May 2009 Dr. Sonal Randhawa asked the MCI to provide her with:

1. List of recognized Medical Colleges which are providing six months training in Diagnostic Ultrasound including hands-on to specialist doctors of subjects other than radio diagnosis in the department of radio diagnosis.
2. Application procedure, eligibility criteria, course curriculum and fee for the same.

29. In reply thereto, on 6th June 2009 the MCI informed her as under:

With reference to your application dated 11.5.2009, on the subject noted above, the point-wise reply is as under:

1. No such list of Medical Colleges providing training in Ultrasound is available with Medical Council of India.
2. This is not related to Medical Council of India, you may contact to individual Medical Institutions for the same.

Therefore, it is plain that MCI itself is not aware of medical colleges which provide training in ultrasonography and diagnostic ultrasound.

Uncertainty in applying the PNDT Act and Rules

30. At this stage a reference should also be made to the deliberations of State Advisory Committee which considered Dr. Sehgal's application for renewal of registration. The recording of the minutes of the meeting of the Committee held on 27th April 2007 under Agenda Item No. 2 read as under:

Agenda 2

Qualifications/experience required by Registered Medical Practitioners who are employed by/in a Genetic Clinic. Details: Grant of Registration/renewal of registration of genetic clinic on the basis of (a) Training with Doctor J.S. Randhawa, Institute of USG Training, D-364, Tagore Garden Extn., N. Delhi-27; and (b) Many centres in 2002 were registered based on (a) above, now requesting renewal on the basis of Self Experience.

In this context, a letter from Govt. of India, dated 15-9-06 was quoted. It was brought to the notice of all present that the issue is under consideration of Central Supervisory Board and there is proposal to accredit only larger Govt. Hospitals and Medical Council of India recognized, post-graduate Institutes, teaching & Radiology for the purpose of training, to be recognized ultrasonologist as per PC & PNDT Act.

The issue was discussed at large by all members of Advisory Committee and it was concluded that we may seek guidance from Govt. of India on above agenda. Till such time PC & PNDT Act should be followed, strictly.

(emphasis supplied)

31. The above minutes were enclosed with the reply dated 3rd August 2007 given by the District Appropriate Authority to Dr. K.L. Sehgal stating that his application had been rejected on the above basis. What is not clear is the basis for rejection when the Committee was still seeking "guidance" from the Government of India and the matter was still under the consideration of the Central Supervisory Board. The other reason given in the rejection order dated 25th May 2007 in respect of Dr. Sehgal's application is "non-submission of documents of qualified radiologist". No such criterion was earlier prescribed and it is not understood how such a requirement could suddenly be insisted upon.

32. Even in the reply filed by the GNCTD it is stated in para 8 as under:

That the list of the Hospitals/Institutes recognized by the Govt. of India for the purpose of training/experience in Ultrasonologist under the PC & PNDT Act is received from the Govt. of India, no private institute or Ultrasound Diagnostic Centre can be accredited by the Govt. of Delhi for the purpose of training/experience in Ultrasonologist under the PC & PNDT Act. The question of the grant of registration as sinologist to the Petitioner under the PC & PNDT Act is policy matter which can be decided after clear-cut guidelines of Govt. of India. A letter dated 20/11/2007 has been written in this regard by the answering respondent and response thereto is awaited.

33. The above letter dated 20th November 2007 by the Director, Family Welfare suggested that a committee of technical experts be constituted to examine the following issues:

1. What shall Appropriate Authorities do with the Doctors who were provided registration on the basis of 100 cases experience and now applying for renewal?

2. Is the training/experience provided by private Radiologist to MBBS Doctors valid for purpose of registration of under PNDT Act?

3. What is the kind of training/experience valid for registration under PNDT Act?

4. Ultrasounds are used in other specialties also. Can the other Doctors of different specialties use u/s for respective specialties? Do Doctors from different specialties not doing Pre-conception or Pre-natal work require registration under PNDT Act?

5. Are Gynecologist/others specialist/registered Medical Practitioner allowed to perform u/s on their patients?

34. The above documents reflect an uncertain state of affairs. None of the authorities were clear what should be the minimum criteria regarding training, where the training should be provided, whether the criteria should be made prospective and so on. Also, it is plain that neither the PNDT Act nor the PNDT Rules provided any guidance on these aspects. It is in this background that the plea of the learned Senior counsel for the MCI that the court has to read the requirements of training and special qualification into the definition of "sonologist" in Section 2(p) PNDT Act

of the PNDT Act has to be examined. 35. In cases such as the present ones, the issues raised involve consideration of technical aspects on which the views of the experts rather than courts are relevant. In determining who should be recognized as being qualified to undertake ultrasound tests, what should be the minimum qualification and experience, the inputs of experienced medical fraternity become critical for. This Court, exercising jurisdiction under Article 226 of the Constitution, lacks the competence to determine such technical issues.

Rejection of Petitioners' applications unsustainable in law

36. Nevertheless, it appears to this Court that the reasons for rejection of the Petitioners' applications were not based on rational grounds and on the basis of reasonable criteria made known to each of them in advance. The Petitioners appear to have satisfied the requirements of the PNDT Act and the extant PNDT Rules which do not specify that the training to be undergone has to be in a recognized institute. As already noticed, even the MCI is unclear where such "recognised" institutes that offer such training and qualification exist. Also, without such criterion being made known in advance, it would be unfair to reject an application for renewal on that basis as was done in the case of Dr. Sehgal and for registration as in the case of Dr. Randhawa. Further, in the case of Dr. Sonal Randhawa there is no convincing explanation forthcoming for the apparent inconsistency in dealing with her applications for registration in the different districts in Delhi. It is not disputed that she has been granted registration under the PNDT Act in two districts but has been refused in the third. Also, if in Dr. Rahul's case, the Advisory Committee on 22nd July 2008 resumed the registering of new centres under the PNDT Act "as per practice prior to 9.1.08"

there is no valid explanation for meting out a different treatment to these two petitioners. It was not denied by counsel for the GNCTD that others similarly placed as the Petitioners were not being denied renewal of their registrations/licences to run clinics under the PN DT Act. It was explained that the GNCTD is waiting the decision in these cases before deciding on the future course of action. Clearly therefore, there is no consistency in the GNCTD applying the PN DT Act and the PN DT Rules for the purpose of grant of or renewal of registration. A selective application of an undisclosed criterion is a sure recipe for the decision being rendered arbitrary. Consequently, this Court holds that the rejection of Dr. K.L. Sehgal's application for renewal of registration by the impugned order dated 25th May 2007 and the rejection of Dr. Sonal Randhawa's application for registration as sonologist by the communication dated 5th July 2007 are unsustainable in law.

Need to plug the loopholes in the PN DT Act

37. These two petitions reflect a disconcerting state of affairs. As a result of the weak definition of the term "sonologist" under the PN DT Act, the mushrooming growth of diagnostic clinics is unable to be effectively regulated. The absence of clear rules and guidelines spelling out unambiguously the qualification, training and experience required for operating a diagnostic clinic offering ultrasound tests has resulted in unethical practices being adopted in many such clinics in violation of the PN DT Act going unchecked. These cases underscore the need to amend the PN DT Act to plug the loopholes and reflect the view of the MCI as indicated in its reply dated 4th May 2009 to one of the Petitioners where it suggested that person seeking to run a diagnostic clinic should either possess a post-graduate degree in Radio Diagnosis or should be a specialist who has undergone orientation training in ultrasonography in a recognized medical institution for a minimum period of six months. To avoid any confusion, the requirements in terms of qualification, training and experience to recognised and registered as a "sonologist" should be incorporated in the PN DT Act and further explicated under the PN DT Rules. In determining the criteria the best available international practices should be adapted to suit Indian conditions. Secondly, the names of the institutions state-wise which are recognized for that purpose will have to be notified. Thirdly, the changed criteria must be made not only prospective but sufficient time given to enable those seeking registration or renewal to fulfill the changed criteria. Fresh registrations can be postponed to enable the arrangements envisaged by the new criteria to be put in place. These steps will require a comprehensive survey to be undertaken by the Respondents followed by consultations with experts in the medical fraternity and education. The resultant amendment to the definition of "sonologist" u/s 2(p) PN DT Act

of the PN DT Act and the corresponding amendment to the PN DT Rules must be given wide publicity so that there is increased public awareness about the minimum standards one should expect in diagnostic clinics. Conclusion

38. For the aforementioned reasons, the rejection of Dr. K.L. Sehgal's application

for renewal of registration by the impugned order dated 25th May 2007 and the rejection of Dr. Sonal Randhawa's application for registration as sonologist by the communication dated 5th July 2007 are held unsustainable in law and are set aside as such. The two writ petitions are allowed in the above terms. The respective applications of both the Petitioners will again be placed before the Appropriate Authority for consideration in accordance with law within a period of two weeks from today. It would be open to the Appropriate Authority to require any further clarification from the Petitioners and if any or both the Petitioners so request, they should be given a personal hearing. The decision on the two applications should be taken by the Appropriate Authority within a period of four weeks thereafter and communicated to each of the Petitioners within a further period of two weeks thereafter.

39. The two writ petitions are disposed of with the above directions.