
(2011) 06 BOM CK 0140

In the Bombay High Court

Case No : Writ Petition No. 7896 of 2010 and Civil Application No. 512 of 2011

Dr. (Mrs.) Suhasini Umesh Karanjkar, through her Constituted Attorney Dr. Umesh Murlidhar Karanjkar APPELLANT

Vs

Kolhapur Municipal Corporation and The District Collector RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Citation : (2011) 4 ALLMR 804 : (2011) 4 BomCR 293 : (2011) 113 BOMLR 2373 : (2011) 4 CHN 101

Hon'ble Judges : Mohit S. Shah, C.J.; D.Y. Chandrachud, J.; D.G. Karnik, J

Bench : Full Bench

Advocate : Sagar A. Mane, instructed, N.V. Bandiwadkar, for the Appellant; S.R. Nargolkar, Additional Government Pleader for Respondent No. 2 and Uday Warunjkar, for intervenors in C.A. No. 512 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

Mohit S. Shah, C.J.—This reference made by an order dated 23 December, 2010 of a Division Bench of this Court raises the following questions:

1) Whether the power to search, seize and seal "any other material object" conferred by Section 30 of the Pre-conception and pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 includes the power to search, seize and seal an ultrasound machine or any other machine or equipment, if the Appropriate Authority or Authorized Officer has reason to believe that it may furnish evidence of the commission of an offence punishable under the Act?

2) Whether the decision of a Division Bench of this Court at Aurangabad Bench in Dadasaheb (Dr.) S/o Popatrao Tarte v. State of Maharashtra and Ors. 2010 (2) Mah. L.J. 110 taking the view that Section 30 does not confer such power in respect of an ultrasound machine lays down the correct law?

2. The brief facts leading to filing of this writ petition are not in dispute. The Petitioner is a Gynecologist running a Maternity and Surgical Hospital at Kolhapur

with an ultrasound machine. The hospital has been registered as a Genetic clinic/ Ultrasound Clinic under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques Act, 1994 "(the Act)" and the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 "(the Rules)". Registration was granted by the competent authority on 3 September 2003 and has been extended from time to time till 31 March 2013. On 22 January 2009, the Appropriate Authority at Kolhapur along with his officers went to the Petitioner's clinic in view of a complaint that the Petitioner was using the ultra sound machine for conducting sonography on pregnant women for determination of sex of foetus. The Appropriate Authority seized the record of the hospital and the ultrasound machine and put his seal on the record and the ultrasound machine after drawing a panchanama in presence of the Petitioner's husband, who is also a Gynecologist.

On 17 February 2009, the Appropriate Authority issued a notice to the Petitioner to show cause why the registration granted in her favour should not be suspended. The Petitioner sent a reply dated 5 March 2009. The Appropriate Authority passed order on 7 March 2009 suspending the registration granted to the Petitioner under the provisions of the Act and the rules. Aggrieved by the order the Petitioner preferred an appeal before the District Collector, Kolhapur u/s 27 of the Act, on 31 August 2009.

3. In the present petition filed on 14 September 2010, the Petitioner has challenged the action of the Appropriate Authority seizing and sealing the ultrasound machine on the ground that the Appropriate Authority and the Authorized Officer does not have any power to seize and seal an ultrasound machine. At the time of the preliminary hearing of this petition, counsel for the Petitioner placed reliance on the decision of a Division Bench of this Court in *Dadasaheb v. State of Maharashtra* 2010 (2) Mah.L.J. 110 in support of the contention that the Appropriate Authority has no power to seize or seal an ultrasound sonography machine. The following observations are contained in paragraph 12 of the judgment:

On clear reading of the provisions u/s 30 of the Act of 1994 as well as the provisions under Rules of 1996 make it clear that the Appropriate Authority is empowered to seize the documents, record, register, book, pamphlet, advertisement or any other material object found in the Genetic Clinic, Genetic Centre, or the General Laboratory. But on clear and bare reading of the provision under the Act as well as the rules it nowhere provides that the authority is empowered to seize the machinery/the machine used in the Genetic Clinic. If it is so, the authority is not empowered to seize the Ultra Sonography Machine under the provisions of Law. In the premise, the case of the Petitioner is covered under the citation as the Rule given by the Principal Bench of this Court in Writ Petition No. 7973/2008 is applicable to the present case. In the premises, we set aside the order of the seizure of the ultra sonography machine and direct to return the seized ultra sonography machine to the Petitioner.

(Emphasis supplied)

4. While prima facie disagreeing with the above view, the Division Bench making the reference has expressed a tentative opinion that the provisions of Section 30 of the Act and Rule 12 of the Rules are widely worded in order to provide for the power to seize and seal not only registers and documents but also "any other material object" found in a Genetic Counselling Centre, Genetic Laboratory/ Genetic clinic or any other place where an offence under the Act has been or is being committed. Hence, the present reference which involves determination of the questions set out in the opening paragraph of this judgment.

While making this reference, the Division Bench had also directed the District Collector i.e. Appellate Authority to hear and decide the Petitioner's appeal expeditiously.

5. The learned Counsel for the Petitioner placed reliance upon the aforesaid decision of this Court and submitted that Section-30 of the Act does not define "any other material object" and therefore, the definition of "material object" in Explanation (2) to Rule 12 laying down the procedure for search and seizure as "including machines and equipments" cannot empower the Appropriate Authority u/s 30 to seize and seal an ultrasound machine. It was submitted that the substantive power conferred by Section 30 of the Act cannot be enlarged by a definition in the Rules made under the Act.

6. On the other hand, Mr. Nargolkar, learned Additional Government Pleader has submitted that Explanation (2) to Rule 12 expressly defines "material object" as including "machines and equipments" and therefore, there is no scope whatsoever for any controversy. It is further submitted that the Rules of 1996 were framed by the Central Government under the provisions of Section 32 read with Section 30 and were laid before each House of Parliament u/s 34. In absence of any modification made by Parliament in Rule 12, the definition of "material object" as including machines and equipments must be treated as having received legislative acceptance by Parliament. It is further submitted that even otherwise, on an examination of the scheme of the Act and the Rules, the Appropriate Authority and the Authorized Officer do have the power or authority to search, seize and seal ultrasound machines or other equipments used in criminal acts of sex determination for sex selection in contravention of the Act.

7. Before dealing with the rival submissions, it is necessary to refer to the relevant provisions of the Act and the Rules and also to the Statement of Objects & Reasons particularly, for Amendment Act 14 of 2003.

8. The Act and the Rules framed there under came into force on 1 January 1996. The Preamble to the Act provides that it is an Act to provide for the prohibition of sex selection, before or after conception and regulation of the use of pre-natal diagnostic techniques for the purpose 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 herewith or incidental thereto.

(Emphasis supplied)

9. Section 3 of the Act provides for regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic clinics through the requirement of registration under the Act. Section 4 provides that no such place shall be used for conducting pre-natal diagnostic techniques except for the purposes specified in Clause (2) of the said section and requires a person conducting such techniques such as ultrasound sonography on pregnant women to keep a complete record in the manner prescribed in the Rules..

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

10. The Act came to be amended by Amendment Act 14 of 2003. The Statement of Objects and Reasons to the Amendment Act, *inter alia*, read as under:

Amendment Act 14 of 2003 - Statement of Objects and Reasons.-The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.

2. The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child, if found to be female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of women.

3. The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe in the form of severe imbalance in male female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to enact and implement in letter and spirit a legislation to ban the pre conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex selective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the society.

4. Accordingly, it is proposed to amend the aforesaid Act with a view to banning

the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended.

(Emphasis supplied)

11. Some important amendments made by the said Amendment Act 14 of 2003, have a bearing on the questions under consideration. Having realized that ultrasonography on a pregnant woman with an ultrasound machine is an very important part of the sex determination test and procedure, which is being misused, Parliament has made a specific reference to sonography and ultrasound machine and other machines in some of the newly inserted sections and also by amendments to existing provisions.

12. The term "genetic clinic" is defined in Section 2(d) as "any clinic or place by whatsoever may be called which is used for conducting pre natal diagnostic procedures". The Explanation thereto provides that genetic clinic even includes a vehicle, where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus is used. Genetic laboratory is defined by Section 2(e) as including a place where facilities are provided for conducting analysis or test samples received from a genetic clinic or pre natal diagnostic tests. Explanation thereto provides that "genetic laboratory" includes a place where an ultrasound machine capable of determining sex of foetus, is used. Both these explanations provide that the definitions would even include a portable equipment with a potential for detection of sex during pregnancy or selection of sex before conception.

A pre natal diagnostic test is defined in Section 2(k) as "ultrasonography or any test or analysis of amniotic fluid..... or fluid of pregnant woman or conception or analysis....blood or any other tissue or blood of the pregnant woman or concepts conducted to detect genetic or sex linked disease".

Section 2(i) defines "pre-natal diagnostic procedures as "all gynecological or obstetrical or medical procedures such as ultra sonography, of a woman before or after conception for being sent to 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) defines "pre-natal diagnostic techniques" as including all pre natal diagnostic procedures and pre natal diagnostic tests.

13. Section 3B provides as follows:

3-B-Prohibition on sale of ultrasound machine, etc., to persons, laboratories, clinics, etc., not registered under the Act-No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

14. Amended Section 4 now specifically provides that the person conducting ultra sonography on a pregnant woman has to maintain the complete record thereof in the manner prescribed in the Rules and any deficiency or inaccuracy found therein amounts to contravention of Section 5 and 6, unless contrary is proved by the person conducting such ultra sonography.

Section 6 also specifically prohibits "any genetic clinic.... or any person" from conducting any pre natal diagnostic techniques including ultra sonography for the purpose of detecting sex of foetus.

15. Sub-section (1) of Section 18 prior to amendment by Act 14 of 2003 read as under:

(1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic after the commencement of this Act unless such Centre, Laboratory or Clinic is duly registered separately or jointly under this Act.

After amendment in 2003, the provision reads as under:

No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre 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.

(Emphasis supplied)

16. Section 22 provides for prohibition of advertisement relating pre conception and pre natal determination of sex and punishment for contravention and Section 23 provides that any medical geneticist, gynecologist, registered medical practitioner or any person who owning a Genetic Centre, etc., or is employed to render his professional or technical services to or at such a centre, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a period upto three years and with fine which may extend to ten thousand rupees, which may extend to five years and with fine which may extend to fifty thousand rupees, in case of subsequent conviction.

Sub-section (2) of Section 23 even provides that the name of the errant registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action.

17. Section 17(4) of the Act, even prior to the Amendment Act of 2003, provided that the Appropriate Authority shall perform various functions including the following:

(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;" and

(d) any other matter which may be prescribed.

Section 17-A inserted by the Amendment Act, 2003 confers additional powers on the Appropriate Authority including the power in respect of:

(c) issuing search warrant for any place suspected to be indulging in sex selection techniques or prenatal sex determination ; and

(d) any other matter which may be prescribed.

18. Section 29 provides for maintenance of records and preservation of such record for a period of two years till the final disposal of proceeding under the Act. Section 30 of the Act confers power to search and seize records. Prior to its amendment in 2003, Section 30 did not provide for any power to seal, though explanation (3) to Rule 12 of the Rules provides that "seize" would include "seal", Section 30 as amended by Act 14 of 2003 with effect from 14 February 2003 specifically confers power not only to seize but also "to seal" any record, register documents, books, pamphlet, advertisement or "any other material object" found therein at any Genetic Centre etc., in the following words:

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 thereof 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)

(Emphasis supplied)

Section 32 confers upon the Central Government powers to make rules for carrying out the provisions of the Act, including;

(xiii) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seized 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.

19. Section 34 provides that every rule and every regulation made under the Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days and if both houses agree in making any modification in the rule or regulation or both Houses agree that the

rule and regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be.

20. In exercise of the aforesaid powers u/s 32 read with Section 30 the Central Government has made the Pre conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996.

21. Rule 9 provides for maintenance and preservation of records and Sub-rule (6) provides for particulars of the manner in which the records are to be maintained and also provides that all case related records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by Genetic Centre etc., for a period of two years from the date of completion of counseling, pre-natal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records etc., shall be preserved till final disposal of the legal proceedings.

Rule 9(7) further provides that in case the Genetic Clinic etc. 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 and further that such centre is required to 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 fifth day of the following month to the concerned Appropriate Authority.

22. Sub rule (1) of Rule 11 provides that Every Genetic Centre, Ultrasound Clinic etc., or any other place where any of the machines or equipments capable or performing any procedure, techniques or test capable of 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.

Sub rule (2) of Section 11 reads as under:

(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 gives an understanding that it shall not undertake detection of sex of foetus or selection of sex before or after conception.

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

12. 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 centre/imaging centre/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)

24. A bare perusal of the aforesaid statutory provisions, both in the Act and in the Rules framed thereunder, makes it abundantly clear that an ultra sonography test on a pregnant woman is considered to be an important part of a pre-natal diagnostic test or pre-natal diagnostic procedure, which cannot be conducted except for the purpose of Section 4(2). The person conducting ultra sonography on a pregnant woman has to maintain a complete record thereof in the manner prescribed in the Rules and a deficiency or inaccuracy in maintaining such records would amount to an offence, unless the person conducting such sonography is able to show that there was no deficiency or inaccuracy. The fact that Section 3-B inserted by Amendment Act 14 of 2003 specifically prohibits even sale of an ultra sound machine or other machines capable of detecting sex of foetus to any genetic clinic or any other place or to any person not registered under the Act, itself should be sufficient to hold that in the scheme of the Act, Parliament has considered an ultrasound machine as a "material object" because it is capable of detecting sex of a foetus.

25. While Section 17-A(c) empowers the appropriate authority to issue search warrant for any place suspected to be indulging in pre natal sex determination with an ultra sonography test on a pregnant woman, apart from Section 30, there is no other section in the Act which confers powers upon the appropriate authority or authorised officer to seize or seal a "material object" like an ultrasound machine at any place suspected to be indulging in pre-natal diagnostic techniques such as an ultra sonography test on a pregnant woman for determination of sex.

26. Now, if the Petitioner's contentions were to be accepted, the appropriate authority or the authorised officer will not have any power to seize or seal such an ultra sound machine sold by a person to an unregistered clinic. The Legislature which has condemned misuse of pre-natal diagnostic technique (such as ultra sonography on a pregnant woman) for sex determination of foetus

leading to female foeticide, and made it a criminal offence punishable with imprisonment upto three years, could not have intended that while a seller of an ultra sound machine to an unregistered clinic should be prosecuted u/s 23 for contravention of Section 3-B of the Act, the ultra sound machine should be allowed to be continued to be used by or on behalf of an unregistered purchaser. But for Section 30 of the Act, no action can be taken by the appropriate authority or authorised officer in respect of the ultra sound machine being used for sonography on a pregnant woman for the purpose of determination of sex of the foetus, which may ultimately result into termination of pregnancy of unborn child, if found to be female-as stated in so many words in the Statement of Objects and Reasons to the Amendment Act 14 of 2003. That is why Parliament, which had already conferred on the appropriate authority/ authorised officer the power to "search and seize" any material object, also conferred the further power to "seal" such a material object.

27. In our opinion, the above analysis of the provisions of the Act is sufficient to hold that the expression "material object" for which the power to seize and seal is conferred upon the appropriate authority/ authorised officer, includes ultra sound machines, other machines and equipment which are used for pre-natal diagnostic techniques or sex selection techniques.

28. Further, the provisions of Rule 11, particularly Sub-rule (2) thereof, conferring power to seal and seize ultra sound machines or other machines or equipments capable of detecting sex of foetus, sold to unregistered purchasers and explanation (2) to Rule 12 (material object would include records, machines and equipments) make it more than clear that the expression "any other material object" in Section 30 includes ultrasound machines, other machines and equipment capable of detecting sex of foetus or capable of use for sex selection.

29. It is necessary to note that the Rules made u/s 32 of the Act are required by Section 34 to be laid before each House of Parliament and if no modification is made within a period of 30 days while Parliament is in session, the rules continue to have effect as made. If any modification is made, then the Rules continue to have effect subject to the modification. If both the Houses agree that a rule should not be made, the rule shall be of no effect from the date of annulment.

It is nobody's case that the Rules have not been laid before Parliament or after having been laid before Parliament, Parliament resolved to delete or modify explanation (2) to Rule 12.

It must therefore, be held that the Rules have been accepted by Parliament without any modification of explanation (2) to Rule 12.

30. In a catena of decisions (The Tata Engineering and Locomotive Company Ltd. Vs. Gram Panchayat, Pimpri Waghere, , P. Kasilingam and others Vs. P.S.G. College of Technology and others, , Pali Devi and others Vs. Chairman, Managing Committee and another, , Gujarat Pradesh Panchayat Parishad and Others Vs. State of Gujarat and Others, the Supreme Court has held that "rules made under

a statute are a legitimate aid to construction of the statute as contemporanea expositio.". This is particularly so when Section 34 of the Act requires Rules made u/s 32 of the Act to be laid before each House of Parliament within a period of 30 days while Parliament is in session.

31. We may also refer to the rule of "ejusdem generis" invoked by the learned Counsel for the Petitioner in support of the contention that "any other material object" in Section 30 must take colour from the preceding words. It is submitted that since all the preceding words pertain to paper such as record, register, document, books, pamphlet and advertisement the words "any other material object" must be construed in light of the preceding words.

32. In *Lilavati Bai Vs. The State of Bombay*, , the Apex Court laid down the following principle:

The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning.

(Emphasis supplied)

33. As already discussed, on analysis of the scheme of the Act, and having regard to the legislative object and the mischief sought to be avoided, as referred to in the preamble to the Act and also in the Statement of Objects and Reasons to the Amendment Act 14 of 2003, we have no manner of doubt in holding that the power u/s 30 to seize and seal "any material object" includes power to seize and seal ultrasound machines and other machines and equipments, capable of selection of sex or capable of performing any procedure, technique or test for pre natal detection of sex of foetus.

34. As regards the decision in *Dadasaheb v. State of Maharashtra* (supra), we note that the Division Bench did not refer to explanation (2) to Rule 12 of the PC and PNDT Rules, 1996, much less to the legislative object and scheme of the Act discussed above. Otherwise also, independently of reference to the said Rules, we are of the view that on an analysis of the provisions of the Act, if any ultrasound machine is used for conducting sonography on a pregnant woman for a sex determination test or sex selection procedure in contravention of the provisions of the Act, the power to seize and seal any other material object, besides the record and documents, would include the power to seize and seal ultrasound machines and other machinery and equipment.

35. We may also refer to the interim order in Writ Petition No. 7973 of 2008 referred to in Paragraph 12 of the judgment in Dadasaheb's case. (Lata Mangeshkar Medical Foundation v. The Dy. Medical Officer of Health Pune Municipal Corporation and Ors.). That interim order was passed in an all together different set of facts and circumstances. In that case, 8 ultrasound machines were seized from a charitable hospital with 650 beds and 70 ICU beds and it was in that background that a Division Bench of this Court (without holding that the authority does not have the power to seize or seal ultra sound machines) by an interim order, directed the authorities to return ultrasound machines seized by the authorities on an allegation that "certain formalities were not fulfilled whilst sonography on patients was conducted which raises the suspicion that sonography might have been performed for detecting sex of the foetus."

An interim order cannot be treated as a precedent while interpreting the provisions of a statue, and that too when the Division Bench did not refer to Section 30 of the Act.

36. In view of the above discussion, our answers to the questions framed for determination are as under:

(i) The expression "any other material object" in Section 30 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 includes ultrasound machines, other machines and equipment capable of aiding or assisting in selection of sex, or capable of performing any procedure, technique or test for pre natal detection of sex of foetus.

(ii) The decision of the Division Bench of this Court in Dadasaheb v. State of Maharashtra 2010 (2) Mah. L.J. 110, taking the contrary view does not lay down the correct law and is hereby overruled.

37. Since the only controversy raised in this petition was about interpretation of the expression "any other material object" in Section 30 of the Act, we may not be treated to have expressed any opinion on the question as regards the circumstances in which the power u/s 30 is to be exercised.

38. As the seizure and sealing of the Petitioner's ultrasound machine was challenged only on the ground that the Appropriate Authority or Authorized Officer does not have power or authority to take such action u/s 30 of the Act read with Rule 12 and the Petitioner's contention has been repelled, we see no merit in this petition. The petition is accordingly dismissed.

39. We place on record our appreciation for the valuable assistance rendered by Mr. Sagar A. Mane, learned Counsel for the Petitioner, Mr. S.R. Nargolkar, learned Additional Government Pleader for Respondent No. 2 and Mr. Uday Warunjikar, learned Counsel for the intervenors.

40. Before parting with the matter, we may refer to the disturbing figures of the declining National child sex ratio over the last five decades, to which our attention has been invited by the learned Additional Government Pleader:

Year

No.of girls per 1000 boys (in the age group 0-6 years)

1961

976

1971

965

1981

962

1991

945

2001

927

2011

914

In the State of Maharashtra also, the child sex ratio has gone down from 913 in 2001 to 883 in 2011. It has gone down to as low as 801 in Beed District. In Kolhapur District, where the offence in question is registered, it is 839.

41. We are also distressed by the fact that a number of cases for trial of offences registered under the Act are pending in Courts of the Judicial Magistrate First Class for a long period, sometimes upto 6 years and in a few cases as long as 6 to 8 years. It is, therefore, directed that all cases under the Act shall be taken up on top priority basis and the Metropolitan Magistrates, Mumbai and the J.M.F. Cs. in other Districts shall try and decide such cases with utmost priority and preferably within one year. Criminal Cases instituted in the year 2010 and prior thereto shall be tried and decided by 31 December 2011.

42. A copy of this judgment shall be circulated to the Principal District Judges in all the districts of State of Maharashtra and State of Goa and to the Chief Metropolitan Magistrate, Mumbai, who shall in turn circulate a copy of this judgment to the Metropolitan Magistrates, Mumbai and all the Judicial Magistrates First Class in their respective districts for timely compliance with the above direction.