

**(2012) 08 BOM CK 0175**

**In the Bombay High Court**

**Case No : Writ Petition No. 6161 of 2012**

Dr. Prakash Chaudhari

APPELLANT

Vs

The State of Maharashtra and The Appropriate Authority and  
Health Officer, Municipal Corporation, Dhule, Dist. Dhule

RESPONDENT

**Date of Decision : 21-08-2012**

**Acts Referred:**

Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection)  
(Amendment) Act, 2003 — Section 20(2)

**Citation : (2013) 2 ABR 396 : (2013) 2 ALLMR 69**

**Hon'ble Judges : S.V. Gangapurwala, J**

**Bench : Single Bench**

**Advocate : N.L. Choudhari, for the Appellant; S.B. Pulkundwar, A.G.P. for State,  
for the Respondent**

## Judgement

S.V. Gangapurwala, J.—Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing. The petitioner is a medical practitioner. The clinic of the petitioner possess the certificate of registration under the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act. The same is for the purpose of Genetic Counselling Centre, Ultrasound Clinic, etc. as is detailed in the certificate of registration.

2. The respondent authorities on 18.06.2011 visited the said centre of the petitioner and found certain discrepancies. On the very same day, the respondent authorities cancelled the registration of the sonography centre of the petitioner. After cancelling the same, the respondent authorities have asked for the reply from the petitioner within seven days. The same is assailed in the present writ petition.

3. Shri Choudhari, the learned counsel for the petitioner states that, the registration of the sonography centre of the petitioner has been cancelled without hearing the petitioner and without following the procedure as is prescribed under Sub Section 1 and 2 of Sec. 20 of the Pre-Conception and Pre-Natal Diagnostic

Techniques (Prohibition of Sex Selection) Act 2003 (hereinafter referred as to the "Act of 2003" for the sake of brevity). According to the learned counsel the said order is without jurisdiction. The learned counsel relies on the judgment of the Division Bench of this Court in a case of Dashrath Shamrao Shinde (Dr.) Vs. State of Maharashtra and others, to buttress his submissions that, if the notice U/ Sec. 20(1) was not issued and an opportunity of hearing as required U/Sec. 20(2) of the Act of 2003 is not afforded, the order is unsustainable.

4. Shri Pulkundwar, the learned Assistant Government Pleader supports the order and submits that in public interest the said action is legal and proper. The learned A. G. P. further submits that an appeal is provided U/Sec. 21 of the Act of 2003 and as the alternate remedy is available, the present writ petition may not be entertained.

5. Before adverting to the arguments canvassed by the respective counsel, it would be appropriate to refer to the relevant provisions.

The Section 20 of the Act of 2003 reads as under :

The Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 2003

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

6. If a statute prescribes a particular thing to be done in particular manner, it is to be done in that manner only. The action is purported to have been taken under the provisions of Sec. 20 of the Act of 2003. The authorities are duty bound to follow the said provisions while contemplating action. The action of cancellation of registration of the sonography centre is punitive in nature. When such a harsh action is undertaken, the procedure laid down therein has to be scrupulously followed.

7. Perusal of the Sec. 20 of Act of 2003, it is manifest that the authority can even *suomotu* take action if some irregularity or illegality is found at the centre. The first step to be undertaken is issuance of show cause notice seeking explanation from the delinquent as to why his registration should not be cancelled or suspended. Sub Section 2 of Sec. 20 requires an opportunity of hearing to be given to the said party. An exception is carved out by way of Sub Section 3, wherein if in the opinion of the Appropriate Authority, it is necessary and expedient in the public interest, then for reasons to be recorded in writing, suspend the registration of Genetic Counselling Centre. If an action under Sub Section 3 of Section 20 of the Act of 2003 is undertaken the procedure of issuance of show cause notice and opportunity of hearing is exempted. However, said Section 20(3) of the Act of 2003 is to be invoked in exceptional circumstances i.e. if the appropriate authority is convinced that, it is in public interest to suspend the registration. Moreover, sub section 3 of Sec. 20 of the Act of 2003 authorizes the authority only to suspend the registration, but does not authorize the authorities to cancel the registration.

8. In the present case, the registration of the Sonography Centre of the petitioner has been cancelled without issuing show cause notice and affording an opportunity of hearing. Such a step is not contemplated under any of the provisions of the statute. The authorities are empowered to cancel the registration only after issuance of show cause notice and affording an opportunity of hearing to the petitioner.

9. One of the important component of rule of natural justice is issuance of notice to the person against whom a penal or punitive action is sought to be taken. Therefore, the statute also contemplates opportunity of hearing. In the case in hand, the authorities have visited the centre of the petitioner on 18.06.2011 and on that day itself, has cancelled the registration. Upon cancelling the registration, it is said that show cause notice is been issued and explanation is called within seven days. It cannot be comprehended that after the registration is cancelled, explanation is called from the petitioner. Principles of natural justice nowhere contemplate such a procedure. In fact, by adopting such a procedure principles of natural justice are rendered illusory. In fact, it ought to be other way round. After the show cause notice is issued and the explanation is received from the petitioner and after affording an opportunity of hearing to the petitioner, the authorities are not satisfied with the explanation, the authorities can take further step. But in the present matter first the registration is cancelled and then the show cause notice is issued. It would be putting the cart before the horse.

10. The procedure adopted in cancelling the registration of the petitioner's centre is not warranted under any of the provisions of the statute, nor it satisfies the test of reasonableness and the principles of natural justice.

11. In normal course, this Court would not have entertained the petition on the count of alternate remedy. However, as action in the present case is such which is not in consonance with any of the provisions of the statute. As the action taken

by the authorities is against the statute, the same cannot be sustained and deserves to be set aside.

12. In the light of the above, the impugned order dated 18.06.2011 (Exhibit-A) is quashed and set aside. It is clarified that, if the exigency exists, the authorities can take appropriate steps in accordance with the provisions of Act and Rules.

Rule is made absolute in above terms, however, with no order as to costs.