

(2018) 01 OHC CK 0039

In the Orissa High Court

Case No : 19733 of 2017

Dr. Rajesh Kumar Agarwal

APPELLANT

Vs

State of Odisha & others

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

[Pre-Conception & Pre-Natal Diagnostic Techniques \(Regulation and Prevention of Misuse\) Act, 1994](#), Section 25, Section 23, Section 92, Section 20(1), Section 19(2)

Citation : (2018) 01 OHC CK 0039

Hon'ble Judges : Vineet Saran, B.R. Sarangi

Bench : Division Bench

Advocate : Sandipani Mishra, B. Das, A. Kejriwal, B.P. Pradhan

Final Decision : Allowed

Judgement

1. The petitioner possesses Master Degree (M.D.) in Radio Diagnosis from S.C.B. Medical College and Hospital under Utkal University and has

got himself registered under the Orissa Council of Medical Registration having registration certificate No.13540 dated 04.05.2009. Being a

registered practitioner, he obtained a registration certificate dated 10.10.2012 for a period of 5 years and started his own Diagnostic Centre and

Ultrasound Clinic in the name and style ""New Ommshanti Diagnostic Centre"" at Bhadrak. The petitioner's registered licence dated 10.10.2012

was valid for a period of 5 years i.e. from 10.10.2012 to 09.10.2017, meaning thereby the validity of registration was to expire on 09.10.2017.

On 17.11.2015, the petitioner was informed by opposite party no.4 to furnish certain documents and registration fees under the Orissa Clinical

Establishment (Control and Regulation) Act, 1990 on or before 31.12.2015. But, all on a sudden, on 23.11.2015 the Additional Tahasildar

accompanied with opposite parties no.5 and 6 conducted a surprise raid on the clinic of the petitioner and seized certain documents and sealed the

same without affording opportunity of hearing. Against such arbitrary seizure of clinic, the petitioner approached this Court by filing W.P.(C)

No.22434 of 2015 on 14.12.2015. By interim order dated 17.02.2016, this Court directed the opposite parties to hand over the clinic to the

petitioner and allow him to continue his profession in accordance with law in terms of his licence. For the self-same cause, 2(C) CC No.1 of 2016

was initiated on 15.01.2015 against the petitioner by opposite party no.6, without affording any opportunity of hearing and issuing even a

showcause notice. Learned S.D.J.M., Bhadrak took cognizance of the offences punishable under Sections 23 and 25 of Pre-Conception & Pre-

Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short ""PC and PNDT Act, 1994"") vide order dated

16.01.2016. Opposite party no.3 then issued show-cause notice dated 25.01.2016 to the petitioner under Section 20(1) of the PC and PNDT

Act, 1994 alleging some irregularities in functioning of the clinic, to which the petitioner filed show-cause reply. But the same has nothing to do with

the present petition.

2. In compliance of the interim order dated 17.02.2016 passed by this Court in W.P.(C) No.22434 of 2015 though the petitioner was permitted

to open the clinic, but immediately a second inspection was done on 23.02.2016 and the clinic was closed by the Additional Tahasildar, Bhadrak-

cum-Authorised Officer of the District Appropriate Authority and opposite party no.6. Then opposite party no.3 issued show-cause notice on

21.04.2016 to the petitioner to furnish his reply within 10 days. Notwithstanding the pendency of W.P.(C) No.22434 of 2015, the petitioner

submitted his reply on 30.04.2016 to the show-cause notice refuting all the allegations made against him. Without considering the same in proper

perspective, opposite party no.3 vide letter dated 27.09.2016, communicated the order of suspension of the clinic assessed by the District

Advisory Committee (DAC). Therefore, the petitioner on 04.10.2016 filed a Misc. Case in W.P.(C) No.22434 of 2015, which was allowed vide

order dated 07.10.2016 and directed to file a consolidated writ petition, which was filed on 09.11.2016. 2(C)CC No.1 of 2016, which was

initiated against the petitioner, the same was quashed in CRLMC No.2904 of 2016 vide judgment dated 02.05.2017 opining that the entire

inspection was carried out without authority and thus void-ab-initio. When the matter was thus stood, vide communication dated 08.08.2017 in

prescribed Form- C, the renewal application dated 29.05.2017 filed by the petitioner was rejected under Section 19(2) of the PC and PNDT

Act, 1994 by a cryptic order, hence this application.

3. Mr. Biswajit Das, learned counsel for the petitioner contended that the said order has been passed allegedly on the ground of gross violation of

the provisions of the PC and PNDT Act, 1994 and also for under reporting of pregnancy cases to the authority with mala fide intention. In the said

order, it has further been stated that the order was being passed as per the instructions of the Director of Family Welfare-cum-State Appropriate

Authority, PC and PNDT Act, Odisha, vide letter dated 10.08.2017. It is contended that no details of any violation having been committed by the

petitioner have been given or assigned in the impugned order and the same has been passed merely on the instructions of the Director-opposite

party no.2 issued on 10.08.2017.

4. Mr. B.P. Pradhan, learned Additional government Advocate for the State-opposite parties could not justify the passing of the impugned order

dated 22.08.2017 whereby the renewal application of the petitioner has been rejected under Section 92 of the PC and PNDT Act without

assigning any cogent reason and only on the direction of the superior authority.

5. We have heard Mr. Biswajit Das, learned counsel for the petitioner and Mr. B.P. Pradhan, learned Additional Government Advocate.

Pleadings having been exchanged, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of

admission.

6. A perusal of the letter of the Director dated 10.08.2017 filed as Annexure-15 to the writ petition would go to show that the Director has issued

a direction to the Collector-opposite party no.3 not to consider the renewal application of the petitioner. The said letter relates to seeking

instructions for filing of appeal against the judgment/order dated 02.05.2017 passed by this Court in CRLMC No.2904 of 2016 whereby the

prosecution against the petitioner had been quashed and while dealing with such

issue, the direction has been issued by the Director on 10.08.2017.

7. In our view, firstly, there was no occasion for the Director to issue instructions for not considering the renewal application of the petitioner as the subject matter of the letter was with regard to filing of appeal against the judgment/order of the High Court in the criminal proceedings, and, secondly, no higher authority can issue instructions to the competent authority to do something in a manner as the higher authority desires, as it is for the competent authority to take independent decision, which, in the present case, is to decide as to whether the licence of the petitioner has to be renewed or not and the same having been decided on the basis of the instructions issued by the higher authority cannot be justified in law.

8. In *State of Punjab v. Hari Kishan Sharma*, AIR 1966 SC 1081, while considering the provision contained in Punjab Cinemas (Regulation) Act (11 of 1952), the apex Court pleased to observe that what the State of Punjab (appellant no.1) in the case has done is to require licencing authority to forward all the applications received for licence and it has assumed power and authority to deal with the said applications on the merits for itself in the first instance. While answering the said question, it states as follows:

The scheme of the statute is that when an application for licence is made, it has to be considered by the licencing authority and dealt with under

S.5(1) and (2) of the Act. Section 5(3) provides for an appeal to appellant No.1 where the licensing authority has refused to grant a licence; and

this provision clearly shows that appellant NO.1 is constituted into an appellate authority in cases where an application for licence is rejected by the

licensing authority. The course adopted by appellant No.1 in requiring all applications for licences to be forwarded to it for disposal, has really

converted the appellate authority into the original authority itself, because S.5(3) clearly allows an appeal to be preferred by a person who is

aggrieved by the rejection of his application for a licence by the licensing authority.

The aforesaid view of the Constitution Bench has been reiterated by the apex Court subsequently in *Purtabpore Co. Ltd. v. Cane Commissioner*

of Bihar and others, AIR 1970 SC 1896, *Ramchandra Keshav Adke v. A. Govind*

Joti Chavare, AIR 1975 SC 915 and Chandrika Jha v. State of Bihar, AIR 1984 SC 322.

9. In *M/s. Rashmi Cement Ltd. v. State of Orissa*, 113 (2012) CLT 177, considering the ratio decided by the apex Court in judgments mentioned supra, this Court has also taken similar view stating inter alia that the impugned order, having been passed by the Deputy Director Mines as per the instructions of Director of Mines, is totally impermissible in law and for that reason the impugned order is liable to be quashed and is accordingly quashed.

Applying the ratio discussed above to the present context, the impugned order dated 22.08.2017, having been passed as per the instructions of the Director, Family Welfare Department of the State, i.e, appropriate authority, vide communication dated 10.08.2017, the same cannot sustain in the eye of law.

10. In view of the aforesaid, we allow this writ petition and quash the impugned order dated 22.08.2017 passed by the Appropriate Authority, viz., the Collector-opposite party no.3 and further direct that the application for renewal submitted by the petitioner on 29.05.2017 shall be considered afresh by the Appropriate Authority, viz., Collector-opposite party no.3, in accordance with law, as expeditiously as possible but not later than three weeks from the date of filing of certified copy of this order.

11. The writ petition is allowed to the extent indicated above. No order as to cost.