
(2013) 06 BOM CK 0132
In the Bombay High Court
Case No : Writ Petition No. 683 of 2013

Dr. Sadanand M. Ingle

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 17(2), 2(d), 20, 20(3), 21

Citation : (2013) 5 ABR 285 : AIR 2013 Bom 148 : (2013) 4 MhLj 660

Hon'ble Judges : S.B. Shukre, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : P.C. Madkholkar, for the Appellant; Bharti Dangre, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J.—By this writ petition, the petitioner assails legality and validity of order dated 21/12/2012 passed by the Civil Surgeon, Buldana thereby rejecting application dated 03/8/2012 of the petitioner for renewal of the registration of his sonography centre at Khamgaon. This Court, by order dated 14/5/2013, has listed the matter for final hearing at the stage of admission. Accordingly, Rule, returnable forthwith. Heard.

2. Shri Madkholkar, learned Counsel for the petitioner has submitted that the impugned order dated 21/12/2012 has been passed by the Civil Surgeon, Buldana in complete disregard of the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "the Act, 1994"). He points out that the petitioner, who runs a sonography centre at Khamgaon, was issued registration for the same in the year 2007 and it was due to expire on 08/01/2012. He submits that on 19/11/2011 the petitioner made an application for renewal of the registration of his sonography centre and before any decision was taken on it, the registration of the sonography centre was suspended on 21/12/2012 following seizure of

sonography machine in a raid on the centre on 17/12/2011. He has further submitted that the order dated 21/12/2011 was challenged by the petitioner in Writ Petition No. 163 of 2012 and this Court by its judgment and order dated 07/3/2012 was pleased to allow the petition and set aside the order dated 21/12/2011. The learned Counsel has further submitted that in spite of this order, the respondents rejected the application of the petitioner for renewal of registration of sonography centre on 21/12/2012 stating that the sonography machine was sealed on 17/12/2011 and that the matter was sub judice. According to him, the order of this Court dated 07/3/2012, setting aside the suspension order dated 21/12/2011, nullified the sealing action that took place on 17/12/2011 as the order dated 21/12/2011 is founded on it. Therefore, the learned Counsel submits that the impugned order smacks of mala fides and is arbitrary.

3. The learned Counsel for the petitioner has further argued that the impugned order cannot be sustained in law for the reason that it is not passed by an appropriate authority. He has drawn attention of this Court to the provisions of Section 17(2) and Section 20 of the Act, 1994. He has submitted that u/s 17(2) of the Act, 1994, the State Government has been empowered to appoint by notification in the official gazette one or more appropriate authorities for the purposes of the Act and sub-sections (1) and (3) of Section 20 mandate that cancellation or suspension of a sonography centre must be for reasons recorded in writing and also be in the public interest. He has further submitted that none of these requirements of law is met by the impugned order.

4. Learned Counsel for the petitioner has further submitted that under rule 8(6) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as "Rules, 1996"), there is a deemed renewal of registration of the sonography centre, and, in this case, there was indeed such renewal as after making of the application on 03/8/2012, the petitioner was not communicated any rejection of the application within the stipulated period of 90 days from the date of receipt of the application. This is another reason put forth by the learned Counsel for the petitioner to term the impugned order as violative of provisions of the Act, 1994.

5. Learned Counsel for the petitioner has further argued that even the action of raiding sonography centre of the petitioner by respondent Nos. 3 and 4 is illegal and actuated by malice arising out of professional rivalry. He submits that unless there is an order of suspension of the sonography centre passed in terms of the provisions of Section 20 of the Act, 1994, sealing of the machine is not permissible under the law. He has referred to a document titled "Pawati Supurdnama" dated 30/12/2012, whereby the sonography machine, that was sealed in the action of search and seizure carried out at the centre on 28/12/2012 and 29/12/2012, has been released in sealed condition into the custody of the petitioner. This document, he has pointed out, has been signed by the Medical Superintendent, Rural Hospital, Khamgaon. The learned Counsel has

submitted that this document is not supported by any order u/s 20 of the Act, 1994 and that it is not signed by the appropriate authority. He has also argued that the Medical Superintendent of Rural Hospital, Khamgaon cannot be appropriate authority because the Rural Hospital for Khamgaon area is situated at village Lakhanwada.

6. Learned Counsel for the petitioner further submits that the impugned order dated 21/12/2012 is violative of principles of natural justice as it neither records any reasons nor indicates that it is in public interest. Rather, according to the learned Counsel for the petitioner, the impugned order has been passed by a Government Officer, who considers himself as an authority above the law and who has set himself out to manipulate the law to serve his own interest. In support, he has referred to the law laid down by the Hon''ble Apex Court as regards recording of reasons in the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, and also the observations of the Hon''ble Apex Court on the nature of law being science of what is good and just and being protective of a civilized society recorded in para 1 of the judgment rendered in the case of Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh and Others, .

7. Learned Counsel for the petitioner also argues that passing of the impugned order by the respondents constitutes contempt of this Court as it has been passed in total disregard of the order dated 07/3/2012 of this Court.

8. Learned Counsel for the petitioner has lastly submitted that the impugned order having been passed without authority and jurisdiction, the petitioner has directly approached this Court and for this submission he seeks support from the observations of the learned Single Judge in paragraph 19 of the judgment delivered in the case of Sukhda w/o Dilip Mulay Vs. State of Maharashtra & others, reported in 2013 (1) Mh.L.J.-638.

9. The petition is strongly opposed by the respondents. Smt. Dangre, Additional Government Pleader argues that the petition is misconceived in law. She submits that in compliance with the order dated 07/3/2012 passed by this Court in Writ Petition No. 163 of 2012, the respondents removed the seal of the sonography machine on 15/6/2012. She has further submitted that the application for renewal of registration dated 03/8/2012 has been rejected by the appropriate authority duly appointed under the provisions of the Act, 1994, and that its basis has been the criminal cases initiated against the petitioner in the Court of Judicial Magistrate, First Class, Khamgaon (for short, J.M.F.C., Khamgaon) and not the search and seizure action carried out on 17/11/2011. She has further submitted that although, the order of suspension of registration of sonography centre of the petitioner dated 21/12/2011 has been set aside by this Court on 07/3/2012, it has been made clear in the order itself that the respondents are free to take such further action in the matter as may be considered advisable under the law. She has further submitted that the criminal cases, which followed search and seizure action dated 17/12/2011 are still pending in the Court of J.M.F.C., Khamgaon and, therefore, there is nothing wrong to make a reference to them and reject

the renewal application on the ground of pendency of these cases. She also submits that with the liberty given by this Court to take further appropriate steps and withdrawal of Contempt Petition by the petitioner on 11/10/2012, the contention that answering respondents have committed contempt of this Court loses steam.

10. Learned Additional Government Pleader has further submitted that a document referred to by the learned Counsel for the petitioner vide Annexure-D (page No. 49 of the petition) dated 28/12/2012 is not a document, which can be termed as renewal certificate because this document is in Form-F. The renewal certificate has to be in Form-C prescribed under Rule 8(3) of Rules, 1996. She has invited attention of the Court to Form-F prescribed under the Rules, 1996 to show that this form is actually used for maintenance of record in respect of pregnant women and not for issuing renewal certificate. She has further argued that the registration number mentioned at Sl. No. 2 of Annexure-D is not the registration number of sonography centre of the petitioner.

11. The learned Additional Government Pleader has taken us through the various provisions of the Act, 1994 and also Rules, 1996 to show that the impugned order is legal and not violative of any principles of natural justice and that it has been passed in the public interest. She has further submitted that the first order dated 07/01/2012, rejecting the first application dated 19/11/2011 made by the petitioner for renewal of his sonography centre, was never challenged by the petitioner and, therefore, if his another application for renewal of registration of sonography centre was rejected by the respondents, it would be not open to him to put up any challenge to the subsequent order, which is impugned herein.

12. Learned Additional Government Pleader has further submitted that the power to search and seizure of record, etc. at the sonography centre emanates from Section 30(2) of the Act, 1994 and is independent of the provisions contained in Section 20 of the Act, 1994. According to her, for exercise of power to search and seizure, etc. u/s 30, it is not necessary to first proceed to suspend the registration u/s 20(3) of the Act, 1994. She argues that Section 30 power comes into play when appropriate authority acts on the basis of some inputs received and reasonably believed by him to prima facie indicate that an offence under the Act, 1994 has been or is being committed at the sonography centre and on the other hand, Section 20(3) power would be invariably exercised if action u/s 30(2) is first taken.

13. Learned Additional Government Pleader has referred to us the Government notifications dated 11/9/1997 and 06/11/2001 showing that the Civil Surgeon at every district and Medical Superintendent at every taluka of the State of Maharashtra has been appointed to be the appropriate authority for the respective areas under his jurisdiction for the purposes of the Act, 1994. Relying on these notifications, she has submitted that the impugned order has been passed by a competent authority. She has also submitted that the document titled, "Pavti Supurdnama" is not an order passed u/s 20(3) of the Act, 1994 as

sought to be canvassed on behalf of the petitioner. According to her, it is only a receipt obtained from the petitioner in acknowledgment of the petitioner receiving custody of sealed sonography machine after the action of search and seizure was taken at his hospital on 28/12/2012 and 29/12/2012. She has further submitted that even if it is to be construed as some kind of order, still it cannot be termed as illegal because it has been admittedly signed by the Medical Superintendent of Rural Hospital, Khamgaon, who is a competent authority as per notification dated 06/11/2001. She has also submitted that Rural Hospital, Lakhanwada is a different hospital than Rural Hospital, Khamgaon and the latter has jurisdiction over Khamgaon taluka.

14. Learned Additional Government Pleader has further submitted that the alternate remedy in the nature of appeal u/s 21 of the Act, 1994 was available to the petitioner and he, not having exhausted that remedy, could not approach this Court in its writ jurisdiction for redressal of his grievances. She has further submitted that there has been no malice in law and facts in the entire action and, therefore, the petition is liable to be rejected.

15. On the rival submissions raised, the points arise for our determination are as follows.:

(1) Whether the impugned order dated 21/11/2012 is unsustainable under law and, if so, whether the seal of the sonography machine is liable to be removed?

(2) Whether there was any deemed renewal of registration of sonography centre of the petitioner?

(3) Whether passing of order u/s 20(3) of the Act, 1994 is a condition precedent for sealing of a sonography machine?

(4) Whether any contempt of this Court has been committed by the respondent?

16. In order to answer these points, it would be necessary for us to consider the important legal and factual aspects of the case.

The Act, 1994 has been enacted with some definite objectives, they being prohibition of sex selection, regulation of modern diagnostic techniques involved in the detection of genetic or metabolic disorders and to prevent the incidence of female foeticide triggered by misuse of sex determination test. For achieving these objects, the Act, 1994 lays down a detailed scheme for regulating and monitoring genetic counselling centres, genetic laboratories and clinics, pre-natal diagnostic techniques, etc. The Act, 1994 also provides for appointing various supervisory and competent authorities and creates certain offences by prohibiting certain acts and lays down penal consequences for the acts prohibited. The objects and scheme of the Act, 1994 being as they are, it would be necessary for the various authorities thereunder to strictly follow the procedural requirements of the Act.

17. On going through the provisions of the Act, 1994, one does not come across

such expression as "sonography centre", though there is reference to such words as, "genetic clinic" or "ultra sound clinic" or "imaging clinic". The impugned order and some other documents filed in this petition, however, use the expression, "sonography centre". This expression has to be construed as "genetic clinic" within the meaning of Section 2(d) of the Act, 1994 for the reason that the sonography centre of the petitioner is being admittedly used for conducting pre-natal diagnostic procedures.

18. The State Government has power u/s 17(2) of the Act, 1994 to appoint appropriate authorities for the purposes of this Act and in exercise of this power, the State Government has issued notifications dated 11/9/1997 and 06/11/2001 appointing Civil Surgeons/Deans of Medical Colleges and Medical Superintendents of Rural Hospitals at district and taluka levels as appropriate authorities, respectively to exercise their jurisdiction in the areas under their control.

19. Important factual aspects arising from the facts admitted on record are stated thus. Initially, the registration for sonography centre of the petitioner was granted in the year 2007 for a period of five years, which was to expire on 08/01/2012. Before expiry of the registration centre, the petitioner moved an application before the appropriate authority on 19/11/2011 for renewal of the registration and this application was rejected on 07/01/2012 on the grounds that the renewal proposal had certain deficiencies, registration of the centre was already suspended and that the proceedings before the Court of J.M.F.C., Khamgaon against the centre were pending. This rejection order signed by the Civil Surgeon, Buldana, an appropriate authority under the Act, 1994 in view of notification dated 11/9/1997, was not brought to the notice of this Court when it set aside the order of suspension of registration of the centre dated 21/12/2011 on 07/3/2012 in Writ Petition No. 163/2012. The order of suspension of registration dated 21/12/2011 was passed as a sequel to the sealing of sonography machine in a raid on the centre on 17/12/2011. After sealing of the machine, a Criminal Complaint Case No. 119/2011 was filed against the petitioner before J.M.F.C., Khamgaon. It was based upon a complaint lodged by one Sarla Ravindra Khotare about alleged disclosure of sex of foetus by the petitioner at his sonography centre. There have been two more criminal cases filed later on against the petitioner by the respondents namely, Criminal Case Nos. 2/2012 and 7/2013.

20. There has been one letter issued on 14/12/2012 by the Civil Surgeon, Buldana to the petitioner whereby the petitioner has been called upon to submit his M.B.B.S. degree certificate. In this letter, there is a specific mention about grant of registration to the sonography centre of the petitioner. There is also one document, which is in form-F, the form prescribed for maintenance of record in respect of pregnant women by genetic clinic, filed by the petitioner. In this form, registration number of sonography centre of the petitioner has been mentioned as "New: Buldana/44 Old: 19" and the document is dated 28/12/2012.

21. Now, if we take a look at the impugned order dated 21/12/2012, some startling facts come to the fore. Although, it cannot be said that the impugned order specifies no reason at all, that the reasons mentioned therein are extremely cryptic and incongruous to the own action of respondent Nos. 3 and 4 in opening the seal of the sonography machine on 15/6/2012 in compliance with the order of this Court passed in Writ Petition No. 163/2012 on 07/3/2012. This Court, on 07/3/2012, had quashed and set aside the order of suspension of registration dated 21/12/2011, which was based upon the action of sealing of the machine taken precisely on 17/12/2011. As a consequence thereof, the authorities had to remove the seal and they indeed removed it on 15/6/2012. The impugned order, however, refers to sealing of the machine on 17/12/2011 and pendency of judicial proceedings in respect thereof which form very basis of the order. Thus, the reasons stated in just one line take us back to the position as it obtained on 21/12/2011, which position changed in favour of the petitioner after the order dated 21/12/2011 was set aside by this Court on 07/3/2012 and seals were removed on 15/6/2012 in compliance with the order. No doubt, the impugned order has been passed by duly appointed appropriate authority, i.e. Civil Surgeon, Buldana, but, fact remains that its foundation and tenor are inconsistent with the order of this Court passed on 07/3/2012 and own actions of respondent Nos. 3 and 4 that followed thereafter.

22. Learned Additional Government Pleader submits that a general reference to pending judicial proceedings in the impugned order envisages pendency of not just one Criminal Case No. 119/2011 filed after sealing of the machine on 17/12/2011, but also second Criminal Case No. 2/12, which was filed against the petitioner. She also submits that order dated 07/3/2012 passed by this Court does make it clear that the respondents may take any such further action in the matter as they may be advised, in accordance with law and, therefore, the respondents pursued these criminal cases. Therefore, according to her, the pendency of two criminal cases should be considered as additional reason apart from the reason of sealing of the machine, for refusal to grant renewal of registration of sonography centre of the petitioner.

23. While there is no doubt about the liberty granted to the respondents to take further appropriate action in the matter, the argument that reference to the judicial proceedings made in the impugned order has to be construed as reference to not just one criminal case but also another criminal case, cannot be accepted. The impugned order clearly shows that reference of judicial proceedings made thereunder is only in the context of 17/12/2011 sealing action and nothing more. If the consideration of pendency of second criminal case lay at the back of the mind of the appropriate authority while passing the impugned order, nothing had prevented the appropriate authority from making a specific reference to the second criminal case. This, not having been done, it has to be held that the impugned order is inconsistent with the order of this Court passed on 07/3/2012 in Writ Petition No. 163/2012 and the own action of respondent Nos. 3 and 4 in removing the seal of the machine on 15/6/2012. There was no

reason for the appropriate authority to have made any reference to sealing of the machine in the inspection taken on 17/12/2011 and filing of a criminal case following sealing of the machine, when this Court had on 07/3/2012 already found the action of suspension of registration upon sealing of the machine on 17/12/2011 as unsustainable in law and the respondent Nos. 3 and 4 too, on their part, had complied with the order of this Court by removing the seal of the machine.

24. The impugned order is of 21/12/2012 and there is one letter dated 14/12/2012 issued by Civil Surgeon, Buldana to the petitioner, wherein it is stated in no uncertain terms that the sonography centre of the petitioner has been granted registration. This letter finds no reference in the impugned order. We do not understand as to why the impugned order does not make any reference to the letter of 14/12/2012. No explanation in this regard nor any clarification in respect of issuance of this letter itself has been provided by the respondent to the Court. Similarly, no explanation has been given by the respondents in respect of registration No. Buldana/44, as mentioned in Form-F (Annexure-D filed at page No. 49 of the petition). It is pertinent to note here that this document, Form-F, is of 28/12/2012, i.e. seven days after refusal of grant of renewal of registration of the centre on 21/12/2012. In absence of any explanation having been submitted by the respondents, it has to be found that the impugned order is not only contrary to what is stated in the letter dated 14/12/2012 but also unfair in law. Having regard to penal consequences provided under the Act, 1994, any action of the appropriate authorities thereunder must be seen as answering the requirements of fair play and proper compliance with procedure prescribed thereunder. It must be stated here that Respondent Nos. 3 and 4 are appropriate authorities under the Act, 1994 and are entrusted with onerous responsibility of ensuring that genetic clinics or centres are kept within the bounds of law and no one covered under the Act, 1994 violates or misuses the provisions of the Act and whosoever does that, is brought to book. Therefore, it was expected that the action of these authorities would be consistent with the provisions of the Act, 1994 and fair in law. That being not the position here, we agree with the submissions of the learned Counsel for the petitioner made in this regard and find that the impugned order cannot be sustained in law.

25. At this stage, it is necessary to advert to the law laid down by the Hon'ble Apex Court as regards necessity of recording of reasons in the case of Ravi Bhoiar (*supra*). When the law requires recording of reasons for taking a decision, law also demands that reasons recorded are adequate and show application of mind so that anyone aggrieved by the decision, gets sufficient notice of material used against him and can adopt appropriate course of action to redress his grievance. If the recorded reasons exhibit non-application of mind or are insufficient, there would be no reasons in law. In this case, as already discussed above, there have been some reasons recorded in the impugned order, but, the reasons so recorded do not seem to be showing any application of mind to the facts and circumstances of the case by respondent Nos. 3 and 4 and, therefore,

applying ratio of the law so laid down, we find that in the instant case also there have been virtually no cogent reasons recorded for passing of the impugned order and as such, the impugned order is unfair and arbitrary on this count also. The Apex Court has, in judgment reported at Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , declared that the reasons recorded in the order, cannot be supplemented later on.

26. Renewal of registration is dealt with by rule 8 of Rules, 1996 and the provisions relating to deeming effect for and renewal of the registration are to be found in sub rule (6), which 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.

27. It is clear from the above provision that upon failure of the appropriate authority to either renew the certificate of registration or communicate its rejection within a period of ninety days from the date of application, the certificate of registration is deemed to have been renewed. For giving deeming effect to the renewal of registration, fulfillment of either of two conditions namely; failure to renew the registration or failure to communicate rejection of application for renewal is necessary. In this case, there is no dispute about making of an application for renewal of registration by the petitioner second time in the month of August, 2012 and also about it's being made on the advise of respondent Nos. 3 and 4. According to the petitioner, the application was made on 03/8/2012 and according to the impugned order dated 21/12/2012, the date of renewal application is 06/8/2012. There is one letter dated 23/8/2012 addressed to the appropriate authority/Medical Superintendent, General Hospital, Khamgaon by the Civil Surgeon, Buldana on the subject of renewal of registration of sonography centre of the petitioner filed on record by the petitioner at page 48 of the petition. This letter mentions date of renewal application as 03/8/2012. The petitioner has not filed on record a copy of his second renewal application filed in the month of August, 2012. However, there being no dispute about the second renewal application and variation in the dates of application, as mentioned in two documents above referred to, being marginal, not much difference would eventually be caused in computing the period of ninety days for the purposes of rule 8(6) of the Rules, 1996. If we take the date 06/8/2012 as mentioned in the impugned order as the date of receipt of the renewal application, the prescribed period of 90 days would be over on 04/11/2012. So, from this date, deeming provision under rule 8(6) would be applicable and as such it would have to be held that the registration of the centre was deemed to be renewed w.e.f. 04/11/2012.

28. The above referred conclusion also receives support from the documents dated 14/12/2012 and 28/12/2012 about which we have already made a detailed

discussion in the earlier paragraphs. Accordingly, we find that in this case there was a deemed renewal of registration of the sonography centre of the petitioner.

29. Thus, the impugned order can be seen to be not only unfair and arbitrary but also inconsistent with the provisions of the Act, 1994 in the sense that deeming effect of renewal of the registration in view of the provisions of Rule 8(6) has been completely ignored by the appropriate authority when it passed the impugned order on 21/12/2012. It appears that the appropriate authority has forgotten that there is a rule providing for deemed renewal of registration of a genetic or sonography centre. While we refrain from commenting on what could be the possible reasons for the appropriate authority to ignore the provisions of rule 8(6) in passing of the impugned order, we would like to draw support from the observations of the Hon'ble Apex Court in the case of *Mehmood Nayyar Azam vs. State of Chhatisgarh* (supra) made in paragraph 1, page 6; "...law is the science of what is good and just and, in the very nature of things, protective of civilized society..", referred to us by learned Counsel for the petitioner in saying that the concerned authorities should have been more mindful of the provisions of the Act, 1994 in passing of the impugned order. For this reason also, we find that the impugned order is unsustainable and liable to be quashed and set aside. Consequently, we further hold that seal of the sonography machine is liable to be removed.

The first two questions are answered accordingly.

30. Section 20 of the Act, 1994 deals with cancellation or suspension of registration. We are concerned in this case with Section 20(3), which reads thus:

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).

The above referred provision requires appropriate authority to form an opinion based on some objective material that it is necessary or expedient in the public interest to suspend registration of a genetic clinic or centre. The provision also mandates the appropriate authority to record reasons in writing. This provision begins with non-obstante clause and, therefore, the sub-section stands on its own footing empowering the appropriate authority to suspend registration for a temporary period or cancel it without even issuing show cause notice and giving a reasonable opportunity of hearing to the genetic clinic or centre. This sub-section and also sub-sections (1) and (2), it may be stressed, do not refer to seal or seizure of the sonography machine.

31. Section 30 confers power upon the appropriate authority or other authorized officer to carry out search and seizure at the genetic clinic or centre where the appropriate authority has a reason to believe that some offence under the Act, 1994 has been or is being committed. It also authorizes the appropriate

authority or other authorized officer to seize and seal any record or material object found at the centre. In the explanation to rule 12 of Rules, 1996, the terms, "seize" and "seizure" have been explained to include, "seal" and "sealing", respectively. The explanation reads thus:

- (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 prenatal 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.

So, Section 30 of the Act, 1994 read with rule 12 of the Rules, 1996 makes it abundantly clear that the appropriate authority can carry out not only the search at the genetic clinic or centre but also seal the relevant record and material objects with a view to use them as evidence of the commission of offence punishable under the provisions of the Act, 1994. The power under this Section comes alive only when the appropriate authority reasonably believes that an offence under the Act, 1994 has been or is being committed. This is the only condition precedent prescribed u/s 30 for exercise of power under it. But, there is no reference therein, whatsoever, for suspension of the registration of genetic clinic or centre. Moreover, in the present facts, the act of putting seal is under the impression that as renewal was refused on 21/12/2012, use of the machine for genetic procedures by present petitioner thereafter was not legal.

32. From the characteristic features of Section 20(3) and Section 30, as discussed above, it would be clear that both are independent sections and do not require action to be taken under another section as a prelude to taking of action under one section. There can be suspension of registration u/s 20(3) and it may or may not necessarily follow sealing of the machine thereafter and there can be sealing of the machine without suspension of the registration u/s 20(3) of the Act, 1994. The third question is answered accordingly.

33. Learned Counsel for the petitioner has urged before us that there has been a contempt of this Court committed by the respondents as they have in willful disobedience of the directions given by this Court on 07/3/2012 in Writ Petition No. 163/2012 passed the impugned order. We are not inclined to accept this argument for the reason that no material has been brought on record to show us that there has been a willful disobedience of the order dated 07/3/2012 passed by this Court or that it was out of some mala fides on the part of the respondents. The order dated 07/3/2012 only sets aside the order dated 21/12/2012 and gives liberty to the respondents to take such further action in the matter as may be advised in accordance with law. Accordingly, respondent Nos. 3 and 4 proceeded with the prosecution of criminal cases against the petitioner in the Court of J.M.F.C., Khamgaon. But, it appears that respondent

Nos. 3 and 4 were ill advised in referring to sealing of the machine and pendency of criminal case relating to it in the impugned order. At the most, such reference could only be described as erroneous in law and facts and nothing more. For initiating contempt action, it is absolutely necessary to show that there is either willful disobedience of the order of the Court or some mala fide intention on the part of the contemnor in committing the act complained of and which resulted in lowering down of the dignity or esteem of the Court or amounted to interference with administration of justice. No material having been brought on record to enable this Court to draw such an inference, we find that no case is made out for taking any action for contempt of the Court as urged by the petitioner. The question is answered accordingly.

34. Before parting with the judgment, we would like to address the point of availability of alternate remedy to the petitioner u/s 21 of the Act, 1994 put forth by the learned A.G.P. In this case, there has been complete ignorance by the respondents of quashing of the order of suspension of the registration of the sonography centre dated 21/11/2011 by this Court on 07/3/2012 and own admissions of respondent Nos. 3 and 4 as mentioned in the letter dated 14/12/2012, while passing the impugned order. Similarly, they missed the important legal aspect of deemed renewal of the registration of the sonography centre. These factors would make the impugned order as one without authority of law and jurisdiction. The objection about availability of an alternate remedy also needs to be rejected because of earlier judgment of this Court dated 07/3/2012 and cognizance taken therein. Here, it is apparent that though the registration stood renewed for next five years, on 21/12/2012 under erroneous impression, the renewal of registration has been refused. Said order or the affidavit filed in support thereof, nowhere refers to the recommendation or opinion, if any, expressed by the State Advisory Committee. The facts noticed by us, as above, also indicate that alternate remedy is not made out to be efficacious. In the result, the petition is allowed. Impugned order dated 21/12/2012 is set aside. The respondents are directed to remove the seal of sonography machine, forthwith. However, it is made clear that the respondents would be at liberty to take such further action in the matter as may be advised to them, in accordance with law.

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