

(2009) 07 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 6594 of 2009

Manish Agrawal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 226
Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 —
Section 26

Citation : (2010) 51 GLR 977 : (2010) 3 RCR(Civil) 429 : (2010) 5
RCR(Criminal) 286

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : Samir J. Dave, for the Appellant; Manisha Narsinghani, A.G.P. for
Respondent Nos. 1 and 2 and Nikhilesh J. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The petitioner one Dr. Manish Agrawal is before this Court. It is stated in Para 1 as under:

The petitioner is a citizen and national of India and is entitled to all the rights including fundamental rights guaranteed under the Constitution of India, more particularly, contained in Part III of the Constitution of India. The petitioner is entitled to invoke the jurisdiction of this Hon''ble Court under Article 226 of the Constitution of India.

2. The petition is filed against an act of suspending registration of the petitioner with immediate effect. These facts are set out in Para 2 of the petition, which is produced for ready perusal.

The petitioner by way of the present petition under Article 226 of the Constitution of India seeks to challenge the order dated 2-12-2008 passed by the respondent No. 3 suspending the registration of the petitioner with immediate

effect as well as the order dated 17-1-2009 passed by the State Appropriate Authority (P.C. & P.N.D.T.), Gandhinagar, in Appeal No. 9 of 2008 partly allowing the appeal and directing the respondent No. 3 to pass necessary orders in terms of the provisions of Section 20(2) of the P.N.D.T. Act, in the facts and circumstances and on the grounds and/or submissions urged hereinbelow and those that may be urged at the time of hearing of the present petition and prays that this Hon''ble Court be pleased to quash and set aside the same and be further pleased to direct the respondent authorities to permit the petitioner to continue to perform sonography under the registration certificate dated 2-9-2004, which is valid upto 2-9-2009.

3. The facts of the present case are that the authorities under the P.N.D.T. Act visited the hospital of the petitioner and after having noticed certain irregularities, issued notice dated 19-6-2008. A copy of that notice is produced at (page 24) Annexure-B.

4. It will be appropriate to note that the irregularities, which were noticed by P.N.D.T. authority during its visit to the hospital of the petitioner, are reproduced hereunder:

On my visit to your hospital for the same purpose on 18-6-2008, following points were noticed:

(1) Dr. Harshad Thakkar, M.D. (Radiology) is working as Radiologist at your hospital since last 8 to 10 months, even though his P.N.D.T Registration is suspended before 1 year and a Court case is pending against him. Also, it is mandatory for the clinic to intimate to the appropriate authority any change in the employee within 30 days of such change as per Rule 13 of the P.N.D.T. Act, 1994. You have not intimated any change in employee (Radiologists) since your P.N.D.T. Registration No. 535 on date 3-9-2004, as per your statement.

2. ...

So, there are clear contravention of Section 4(3) and Rule Nos. 9, 11(1) and 13 of the P.C. P.N.D.T. Act, 1994 as specified above at your hospital for which you are liable as per Section 26 of the P.C. P.N.D.T. Act. So, please show the cause within 7 (seven) days of receipt of this notice, why the P.N.D.T. Registration of your hospital may not be suspended in view of these contraventions and a legal proceeding be started against you.

5. The petitioner has produced a panchnama at (pages 26, 27 and 28) - Annexure-B. The relevant part of this panchnama is at page No. 27, which reads as under:

Further, the officer inquired from the Manager, Shri Soham Desai and the partner of the hospital Smt. Shilpaben Agrawal as to since Dr. Harshad Thakkar is practicing and how he practicing. In the statement, they informed that Dr. Thakkar is working as visiting consultant (Radiologist) in this hospital for last 8 to 10 months. Dr. Thakkar informed us that he has his own consulting place and his

two sonography machines are sealed by the Government. He is not able to perform sonography at his consulting room. As informed by Dr. Thakkar, he on the basis of his qualification as Radiologist can practice sonography and X-Ray reporting at other place. Therefore, at this Medilink Hospital, he has accepted his service as Radiologist and the remuneration is paid to him on the basis of per patient. That Dr. Thakkar is not paid salary on monthly basis.

6. It will be appropriate to refer to the reply filed to the show- cause notice, which is produced at (page 30) - Annexure-C collectively. This reply of the petitioner clinches the issue against the petitioner and the hospital. The reply reads as under:

1. Your above captioned reply to your show-cause notice has been received on 20-6-2008.

2. Before giving para-wise reply to your show-cause notice, I beg to state that:

Our hospital has addressed two letters dated 21-6-2008 to the Collector and copy is forwarded to C.D.H.O. and District Magistrate, Ahmedabad, wherein in one letter we are informed this with effect from 21-6-2008 our hospital will not be doing O.B.G.Y. (pregnancy related) sonography and the second letter is forwarding letter wherein details of doctors visiting our Hospital (Medilink Diagnostic) is given along with 12 enclosures of their respective degree certificates, Council registration and Form - B, as per P.C. P.N.D.T. Act, 1994. Thus, this shortcoming stands complied now.

3. Our hospital did not have knowing of P.C.P.N.D.T, Act, 1994, its mandates and provisions so there are resultant irregularity and details are not completely filled in. The hospital neither intends to commit any breach nor contravene any provision of the Act. We respect every law of the land, and hence, the shortcoming found during your visit are solely due to our bona fide ignorance for which we seek your pardon and kindly excuse us for the same.

(Emphasis supplied)

4. For point No. 1.

Dr. Harshad Thakkar misrepresented before us that his recognition is suspended till next order and that he cannot practice till then at his Hari X-ray and Colour Doppler Sonography clinic at Gold Coin Complex (A) at Satellite, but he is entitled and at liberty to do so at any other clinic, our hospital bona fide believed the statement of Dr. Thakkar to be true and he was allowed only as a visiting Radiologist on call at Medilink Diagnostic. In our Hospital, not a single sonography is done for the purpose of sex selection which please note. It is for the first time on 16-6-2008, the hospital came to the knowledge of true fact that Dr. Harshad's registration is cancelled and not suspended. Immediately from 16-6-2008 Dr. Harshad has been discontinued as visiting Radiologist and he is no more with our Hospital. Hence, Dr. Harshad had deliberately misrepresented his case, whereby believing him to be true, we had allowed, thus kindly pardon us

for the same. We have intimated to the Collector with letter dated 21-6-2008 names of Doctor and their respective documents are also enclosed. This shortcoming which was unintentional and was due to lack of knowledge of the Act, stands now complied....

(Emphasis supplied)

7. The Court is of the opinion that only on the basis of the reply to the show-cause notice, the authorities must cancel the registration of the entire hospital. The hospital cannot be heard of saying that, "the hospital did not know about the P.C. & P.N.D.T. Act".

(Emphasis supplied)

8. In the reply, it is stated that:

"Our hospital did not have knowledge of P.C. & P.N.D.T. Act, 1994, its mandates and provisions so there are resultant irregularities and details are not completely filled in." (Emphasis supplied). The hospital came forward and filed a reply to the show-cause notice saying that "it did not know about the Act", is something very serious.

9. If at all, as it is the case of the hospital that, "Dr. Thakkar misrepresented before it", then the hospital must take recourse to the remedy available to it under the Civil law, like filing of suit for damages. If the hospital believes that it is on account of misrepresentation of Dr. Thakkar, the Registration of the hospital is suspended, as per the legal advice available to the hospital, the hospital may file appropriate proceedings for recovering damages from Mr. Thakkar. But the authorities cannot be held to be at fault for suspending Registration of the hospital.

10. Learned Advocate for petitioner vehemently submitted that, "no order is passed by the authority-respondent No. 3, even though, by an order in appeal filed by the petitioner, which was partly allowed, the authority - respondent No. 3 was directed to lift the suspension of registration", is found without any substance because the appropriate authority under P.N.D.T. Act passed an order on 21-7-2009. The order reads as under:

The decision taken during advisory committee meeting with respect to cancellation of suspension of registration was to the effect that until the Criminal Case No. 12613 of 2009 is decided, finally the Registration No. 535 remains in suspension.

11. Sub-section (2) of Section 20 warrants the authorities to prescribe the period. Such "period" can also be prescribed by saying that, "till the particular criminal case is over", and therefore, the Court is of the opinion that the provision of Sub-section (2) of Section 20 stands complied with.

12. Learned Advocate for the petitioner heavily relied upon an order passed by this Court in Special Civil Application No. 12366 of 2006 dated 4-7-2006. A copy

of which is produced at (page Nos. 54 to 56) Annexure-F.

13. That order is of no help to the petitioner because that order is an interim order and is passed in light of facts of the particular case. In the present case, as set out hereinabove, the facts are glaring. In this case, the hospital has come forward to say that, "it has no knowledge of P.C. & P.N.D.T. Act". The Court is yet to come across such a gross case, wherein the hospital pleads ignorance of the entire law. Besides, in this particular case, it is the case of the hospital that Dr. Thakkar misrepresented before the hospital about his registration and the hospital relying upon the representation made by Dr. Thakkar allowed him to work as a visiting consultant (Radiologist).

14. The Court finds that this plea is also not well-based. In fact, the law provides that any change in employee is required to be reported to the appropriate authority within 30 days of such change. Dr. Thakkar was working as visiting consultant (Radiologist) for last 8 to 10 months. This became possible because the hospital did not comply with the requirements of intimating to the appropriate authority about the change of employee (Radiologist).

15. But then this "non-reporting of change" is very insignificant against the "ignorance about the law". If the "ignorance of the law is a valid excuse" then this petition must be allowed, and person like the petitioner and the hospital of the petitioner must be given free hand to deal with the life and health of the people.

16. Learned Advocate for the petitioner invited attention of the Court to the object of the Act. He submitted that in the opening part of the Act, the statement of object and reasons of Act No. 57 of 1994, is set out which reads as under :

It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.

17. The Court is not able to understand as to how a party who claims total ignorance of the Act, can "advance" the object of the Act. This object does not help the petitioner in any manner whatsoever. The Court can understand if there was some bona fide error on the part of the petitioner in practicing the sonography and the same being misused by some unscrupulous person. But here the facts are otherwise. It is the case of the hospital that it did not have any knowledge about the law (P.N.D.T. Act), and it is also case of the petitioner that Dr. Thakkar represented certain facts before the hospital and the hospital in good faith believed whatsoever was represented by Dr. Thakkar. In the opinion of the Court, it is well settled law that if one is misled by misrepresentation and by such misrepresentation, any damage is caused to such person, the affected person can take recourse to remedy available to it under civil law. The Court is not able to accept the contention raised by the learned Advocate for the petitioner that

only because the hospital did not have any knowledge of the Act and that Dr. Thakkar misrepresented about his licence, the authority under the P.N.D.T. Act should be restrained from acting in accordance with law.

18. Learned Advocate for the petitioner also relied upon a decision of the Hon'ble the Apex Court in the case of P.P. Enterprises and Others Vs. Union of India (UOI) and Others, The learned Advocate placed heavy reliance on Paras 8 and 10 of the said judgment. The said Paras are reproduced for ready perusal:

8. A person has a right to carry on any occupation, trade or business and the only restriction on this unfettered right is the authority of the State to make a law imposing reasonable restrictions under Clause (6). The expression "reasonable restrictions" signifies that the limitation imposed on a person in enjoyment of that right should not be arbitrary or of an excessive nature beyond what is required in the interest of public. No cut and dry test can be applied to each individual statute impugned, nor an abstract standard or general pattern of reasonableness can be laid down as applicable in all cases. The Court in each case has to strike a proper balance between the freedom guaranteed by Article 19(1)(g) and the social control permitted by Clause (6) of Article 19. By the impugned order the Central Government has only put an embargo on the dealers on keeping sugar in excess of the quantity specified, it was passed only with a view to prevent hoarding and black-marketing, and to ensure equitable distribution and availability of sugar at fair prices in the open market.

10. In Laxmi Khandsari and Others Vs. State of U.P. and Others, this Court made the following observations about reasonable restrictions on the right conferred by Article 19(1)(g) of the Constitution in the following terms:

As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restrictions place on the rights of the citizen. It is difficult to lay down any hard and fast rule of universal application, but in imposing such restrictions, the State must adopt an objective standard amounting to a social control by restricting the right of the citizens where the necessities of the situation demand. The restrictions must be in public interest and are imposed by striking a just balance between the deprivation of right and the danger or evil sought to be avoided. If the restrictions imposed appear to be consistent with the directive principles of State policy they would be upheld as the same would be in public interest and manifestly reasonable. Further, restrictions may be partial complete, permanent or temporary, but they must bear a close nexus with the object in the interest of which they are imposed. Another important test is that restriction should not be excessive or arbitrary. The Court must examine the direct and immediate import of the restrictions on the rights of the citizens and determine if the restrictions are in larger public interest while deciding the question that they contain the quality of reasonableness. In such cases, a doctrinaire approach should not be made but

care should be taken to see that the real purpose which is sought to be achieved by restricting the rights of the citizens is subserved. At the same time, the possibility of an alternative scheme which might have been, but has not been enforced would not expose the restrictions to challenge on the ground that they are not reasonable.

Judged in that light and on an overall, consideration of the various aspects of the matter, restrictions put by the impugned order can by no means be said to be unreasonable. It is only regulatory and not prohibitory.

19. In the considered opinion of the Court, the said case has no application to the facts of the present case because P.N.D.T. Act does not prohibit the use of Pre-Natal Diagnostic Techniques but does not permit the use of the same for determination of sex of foetus. Therefore, restrictions imposed by this Act on use of Pre-Natal Diagnostic Techniques is only with a definite object to achieve. The Act does not prohibit the use of Pre-Natal Diagnostic Techniques for other purpose like finding out the health and growth of the foetus. On the contrary, Pre-Natal Diagnostic Techniques are used to keep track of the growth of the foetus and about its health.

20. The Court is conscious of its role and discretionary jurisdiction available to it under Article 226 of the Constitution of India, and therefore, in light of the aforesaid facts, refuses to exercise discretionary jurisdiction. The petition is dismissed with exemplary costs of Rs. 25,000/- (Rupees Twenty-five thousand only) because the hospital cannot be allowed to play with the life and health of the people by pleading ignorance of the P.C & P.N.D.T. Act. Such a hospital is nothing but a grave danger to the health and life of the people.