
(2015) 11 OHC CK 0001
In the Orissa High Court
Case No : W.P.(C) No. 2070 of 2015

M/s. Care Diagnostic

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Clinical Establishment Act, 1990 — Section 3
Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act,
1994 — Section 21

Citation : (2016) 121 CutLT 912

Hon'ble Judges : S. Panda, J.

Bench : Single Bench

Advocate : M/s. D.P. Nanda, R.K. Kanungo, B.P. Panda, S.B. Sahoo and P.K. Kar,
Advocates, for the Petitioner; Addl. Government Advocate, for the Opposite
Parties

Final Decision : Disposed off

Judgement

S. Panda, J. - Petitioner in this application has challenged the order dated 21.1.2015 passed by opposite party No.2-District Magistrate & Collector-cum-District Appropriate Authority, PCPNDT Act, Nayagarh rejecting the renewal application of Care Diagnostic Khandapada Road, Nayagarh as per 8(3) of PCPNDT (Prohibition of Sex Selection) rules, 1996 as well as the forwarding letter dated 22.1.2015 issued by opposite party No.3-Chief District Medical Officer, Nayagarh vide Annexure-1 series.

2. The facts leading to the present case are as follows :

The petitioner is a proprietorship firm namely, Care Diagnostic at Khandapada Road in the district of Nayagarh. Pursuant to certificate of registration dated 12.2.2009 petitioner was permitted to set up a Ultrasound unit As per PCPNDT Act 1994 and Rules thereto license was granted for a period of five years i.e. till 11.2.2014. Hence as the certificate of Registration was valid up to 11.2.2014 as per Rule 8(1) of PCPDNT Rules, 1996 petitioner filed an application on 3.1.2014

for renewal of Registration. The said application was received by opposite party No.2 on 6.1.2014. It is contended that the concerned authority neither passed any order on the application of renewal within the stipulated period nor made any communication regarding rejection of the same. The application of renewal was deemed to have been accepted and continued with effect from 6.1.2014 as per Rule-8(6) of PCPDNT Rules, 1996. The petitioner has carried out its ultrasound unit as usual.

3. While the matter stood thus on 28.10.2014 the Assistant District Medical Officer (FW) cum-Chairperson, Sub-Committee, PCPNDT Act, Nayagarh communicated a common circular for compliance as per letter dated 18.7.2014 issued by Directorate of Family Welfare, Odisha. The said communication was received by the petitioner on 31.10.2014. Petitioner has not submitted any reply to the said communication with a view that since the petitioner is confined to ultrasound, Orissa Clinical Establishment has no application to it. Petitioner has received the communication dated 22.1.2015 made by opposite party NO.3 along with order of rejection dated 21.1.2015 for renewal of application. The said communication has made on the ground of non-registration of petitioner's establishment under Section 3 of Clinical Establishment Act, 1990 and communication dated 18.7.2014 made by the Directorate of Family Welfare, Odisha.

4. Learned counsel for the petitioner contended that Orissa Clinical Establishments (Control and Regulation) Act. 1990 (hereinafter referred to as the Act. 1990) is not applicable to the petitioner's establishment In view of Section 1(4)(c) the Act. 1990 and as per the definition of clinical establishment. The said provision which clearly stipulates that clinical establishment having four or less numbers of beds or a clinical laboratory established and maintained, in any area not included within any municipal or notified area, by a qualified Medical Practitioner for treatment of emergency patients or for diagnosis of disease of his own patients The petitioner unit IS not coming within those criteria and petitioner's establishment having not violated any of the provision of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996 the impugned order dated 21.1.2015 passed by OM & Collector-cum-District Appropriate Authority, PCPNDT Act, Nayagarh which was communicated by the Chief District Medical Officer by letter dated 22.1.2015 rejecting the petitioner's application for renewal of the registration as per Section 3 of the Clinical Establishment Act as provided under Section 8(3) of the Preconception and" Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 without giving an opportunity of hearing IS illegal and liable to be quashed.

5. The learned Addl. Government Advocate while supporting the impugned order submits that the petitioner's establishment situated at Khandapada Road in the district of Nayagarh. The doctor who is attached to the said diagnostic center is a Government doctor whose posting at District Headquarters Hospital, Sambalpur which is 240 kilometers away from Khandapada road. In view of the instruction

from Director of Family Welfare-cum-State Appropriate Authority, PC & PNOT Act letter dated 18.7.2014 regarding registration/renewal under the PC & PN DT Act and Rules prohibit a Government doctor to perform the ultrasound test outside the headquarters. The establishment was not registered under the Orissa Clinical Establishments (Control and Regulation) Act, 1990. It is functioning since February, 2009. As the establishment is functioning since 2009 it is to be registered after the Orissa Clinical Establishments (Control and Regulation) Act came into force In view of Section 3(1) of the Act which clearly stipulates that a clinical establishment not to be established or maintained Without registration after commencement of the said Act and without a valid certificate of registration. The clinical establishment defines under Section 2(b) of the said Act. As per the said definition since a diagnostic center is conducting Radio-logical examination it is to be registered under the said Act. Taking into consideration non-compliance of the aforesaid provision rightly the impugned order was passed hence interference with the same does not warrant. He further submits that a show cause notice was issued to the petitioner on 30.4.2014. Petitioner has also submitted his reply on 24.5.2014 admitting that he has violated the provisions of the aforesaid Act and he has not been aware about the law. Though the establishment was registered under the PCPNDT Act the same has not been registered under the Orissa Clinical Establishments (Control and Regulation) Act, 1990 therefore the allegation regarding non-compliance of natural justice is baseless and the writ petition liable to be dismissed. The interim order dated 25.2.2015 is liable to be vacated.

6. The record reveals that the conducting doctor of the petitioner's establishment is the son of the petitioner Dr. Ram Goenka who has also filed an affidavit dated 23.5.2012 to the effect that he is a full-time consultant Radiologist in Bhilai Scan & Research Limited (BSR Diagnostic Center), Cuttack reporting in the said center from 8 AM. to 8 P.M. or as per the case appointment as such being a full-time consultant Radiologist of a diagnostic center at Cuttack. He is available to render service at Nayagarh in the working days i.e. Wednesday, Friday and Sunday from 7 A.M. to 1 PM every week. As such the affidavit furnished by the petitioner establishment is doubtful regarding engagement of qualified doctor.

7. Considering the above rival submission of the learned counsel for the parties and taking into consideration the facts stated hereinabove the disputed facts are to be proved by the parties. The rejection order is appealable one as provided under the provision of Section 21 of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 as well as Section 19 of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. As the disputed questions of fact involved this Court disposes of the writ petition by giving liberty to the petitioner to file an appeal. In case the petitioner files an appeal within a period of three weeks from the date of disposal of the writ petition in such event the appellate authority shall condone the delay in filing the appeal and hear the appeal on merit after giving opportunity of

hearing to the petitioner.