

(2010) 02 GUJ CK 0148

In the Gujarat High Court

Case No : Special Civil Application No's. 10224, 10707, 13361, 13433 and 9495 of 2006 in Special Civil Application No. 13433 of 2006 with Special Civil Application No's. 11533 and 10721 of 2006

Nautamba Parmar

APPELLANT

Vs

District Health Officer and Appropriate Authority and Another

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 —
Section 20

Citation : (2010) 2 GLH 12

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : A.D. Oza, for the Appellant; Bhaskar P. Tanna with Mr. Pinakin M. Raval for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.

All these petitions involve common questions on law and facts and therefore, they are disposed of by this common judgment.

1. The petitioners herein are the medical practitioners, having specialized knowledge in the field of "Gynaecology". The petitioners have been running their own hospitals/ nursing homes/clinics and for certain treatments/operations, they use certain ultra-modern machines. One such machine is the Sonography machine. Diagnostic sonography is an ultrasound based diagnostic imaging technique used to visualize subcutaneous body structures, including tendons, muscles, joints, vessels and internal organs for possible pathology or lesions. Obstetric sonography is commonly used during pregnancy and is widely recognized by the public. It is mainly used for ascertaining the development, abnormality or otherwise of the foetus, various diseases related to pregnancy, etc. Under the relevant provisions of law, a Clinic having facility of sonography is

required to get a Certificate of Registration issued in its favour by the competent authority. The petitioners herein also applied before the Competent Authority for the issuance of the said Certificate of Registration in the prescribed form. In pursuance thereof, the competent authority issued the Certificate of Registration in their favour and the petitioners have been using the sonography machines in their clinics since then. However, on the premise that the said machines were being allegedly used by the petitioners for determining the sex of the foetus, the respondent-authority inspected their clinics and applied seals on the examination rooms where the sonography machines were kept so as to ensure that the said machines could not be put to any use. The petitioners made representations to the respondent-authority requesting to open the seals. However, the same were rejected.

2. Being aggrieved by the aforesaid action of the respondent-Authorities, the petitioners have approached this Court by way of the present petitions.

3. It is the case of the petitioners that they have not committed any breach of the provisions of The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short, "the PNDT Act") and the Rules framed thereunder and that the alleged breaches if at all considered, are only of a technical nature. It is the further case of the petitioners that before taking the impugned action of sealing the examination rooms where the sonography machines are kept, the respondent-Authorities have not followed the procedure, as prescribed under the provisions of the PNDT Act and that their reputation has been adversely affected and they have been incurring huge monetary losses, on account of the high-handed action of the respondent-Authorities.

4. On the other hand, it is the case of the respondent-Authorities that they have taken the impugned action in pursuance of the powers conferred u/ S. 20 of the PNDT Act and that since the petitioners had committed breach of the Undertaking filed by them to the effect that they would strictly abide by the provisions of the PNDT Act, at the time of granting the Certificate of Registration, the respondent-Authority has taken the impugned action.

5. During the pendency of these petitions, the respondent-Authority has renewed the Certificate of Registration issued in favour of the petitioners. Therefore, the issue has now become academic.

6. However, before parting with the matter, the Court would like to take a note of caution to the rising incidents of female foeticides reported from different parts of the country and particularly, from the State of Gujarat. Though our country is surging ahead to become an economic super-power, it still has to witness the sinister face of the demon known as female foeticide. The statistics of deaths caused due to female foeticide is very alarming. The Legislature has enacted several Acts for the overall empowerment of women. Our Parliament is also in the process of passing the long-awaited Bill granting reservation to women to the extent of 33% in the Parliament and if political will prevails, then the day would

not be too far when the country would be witnessing a historical moment after the coming into force of the Constitution. However, it is a pity situation that a girl child is still not preferred in many households, particularly, in the rural and semi-urban areas of the country.

7. In recent times, there has been a spurt in female foeticide pursuant to the onset of the sonography machine. Clinics having sonography machines illegally take benefit of the technology by disclosing the sex of the foetus and in some cases, if the sex of the foetus is found to be that of a female, then the foetus is aborted before it could breathe the life of the outside world.

8. The PNDT Act was enacted and brought into operation from 1st January, 1996, in order to check female foeticide. Rules have also been framed under the Act. The Act expressly prohibits determination and disclosure of the sex of foetus. It also prohibits any advertisements relating to pre-natal determination of sex and prescribes punishment for its contravention. Recently, the PNDT Act and Rules have been amended keeping in view the emerging technologies for selection of sex, before and after conception and the problems faced in the working of implementation of the PNDT Act. In spite of that the desired results have not been reaped so far. There have been several complaints that under the pretext of conducting pregnancy related tests, the nursing homes/clinics are actually conducting tests for determining the sex of the foetus, thereby, leading to a rise in the incidents of female foeticide. The PNDT Act has not been able to completely achieve the aim and object for which it has been enacted.

9. In order to curb the practice or in other words, to keep a check on the rising incidents of female foeticide, it is expedient that the authorities concerned take all necessary steps to ensure that the private nursing homes/clinics, where the sonography machines are used in the diagnosis of pregnancy related issues, function in accordance with the provisions of the PNDT Act and the Rules framed thereunder and at the same time, to keep a check that no illegal act is done in such private nursing homes/clinics under the blanket of medical tests/diagnosis. Therefore, necessary directions deserve to be issued to the concerned authorities in order to ensure that the aim and object of the PNDT Act are achieved. However, the Court is aware of the fact that the directions should be such, which could be implemented in its true form, subject to the limitation as regards the availability of resources and that it could keep a check on the authorities concerned that the powers conferred on them are not misused, in any manner. Therefore, the Court had invited suggestions from the respective parties.

10. After hearing both the sides and after having gone through the suggestions made by the respective parties, the following directions are issued so as to see that the purpose and object for which the PNDT Act was enacted is not frustrated;

(I) The Health and Family Welfare Department of the State of Gujarat shall make all necessary efforts to see that the "Mamta Card" issued by it is duly "registered" and that the records pertaining to the said Card are properly

maintained by the concerned authorities. The said Department shall also make concerted efforts to see that the aforesaid "scheme" of the Government is widely publicized, particularly, in the rural and backward areas of the State and also in the Primary Health Centres, Government Hospitals as also the private/trust owned Hospitals.

(II) Every pregnant woman must get herself registered with the concerned District Health Officer, latest by two months of the pregnancy, with a unique code.

(III) No Doctor shall conduct any diagnostic sonography, on any pregnant lady, unless and until such pregnant lady has a duly registered "Mamta Card" issued in her name by the State Government.

(IV) If diagnostic sonography is done on a pregnant lady, having a duly registered "Mamta Card", the concerned Doctor will immediately inform the authority concerned about the same, as required under the provisions of the PNMT Act and not later than ten days.

(V) If, after conducting diagnostic sonography, the pregnant lady is advised to terminate her pregnancy, on any ground whatsoever, no further treatment/operation should be performed on such pregnant lady, without the prior express permission of the concerned District Health Officer to terminate such pregnancy.

(VI) The Doctors running the private hospitals/nursing homes/clinics shall duly fill in the "Form No. F" and thereafter, sent it to the authority concerned, as provided under the provisions of the PNMT Act.

(a) It is observed that the Doctors will make necessary efforts, say within a period of one year from now, to ensure that the duly filled in "Form No. F" is sent to the concerned health authority, both physically as also "Online".

(b) However, while doing so, care should be taken that details, if any, which may fall under the category of "privacy" of the patient concerned, are not disclosed while transferring the data "On-line" but, at the same time, such details should, in any case, be reflected in the "Form No. F", which shall be filled in physically.

(c) The concerned Department, in collaboration with other Departments/Agencies, shall work for developing a computer software, which would help in achieving the object of transferring the data pertaining to "Form No. F" "On-line" safely and speedily in future.

(VII) The health authorities at the Taluka/Districts levels shall initiate Awareness Programmes to educate the public at large on the subject matter.

(VIII) If any Doctor is found guilty of committing any offence punishable under the provisions of the PNMT Act, then necessary proceedings may be initiated against such Doctor, as provided under the PNMT Act. However, while doing so, necessary care should be taken by the Department that the action proposed to be initiated is on the basis of cogent reasons/ evidence, otherwise, the same shall have the tendency to disrepute the image and/or affect the practice of the

Doctor concerned.

11. The Secretary, Health and Family Welfare Department will issue necessary directions, in line of the aforesaid directions issued by this Court, to every District Health Officer, within the State of Gujarat so as to ensure that the same are followed by the concerned authorities diligently.

12. Consequently, the impugned orders passed by the respondent-Authorities are quashed and set aside. The respondent-Authorities are directed to remove the seals applied on the examination rooms of the respective nursing homes/clinics, where the sonography machines have been kept, if the same have not been removed so far. The petitions are, accordingly, allowed. Rule is made absolute to the above extent. Parties to bear their own costs.