

(2017) 01 PAT CK 0104

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11197 of 2014

Pankaj Kumar Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act,
1994 — Section 20

Citation : (2017) AIR(Patna) 43

Hon'ble Judges : Mr. Ahsanuddin Amanullah, J.

Bench : Single Bench

Advocate : Mr. Ansul, Mr. Anuj Kumar, Mr. Archit Rajpal, Mr. Shreyanshu Kumar and Mr. Navneet Kumar, Advocates, for the Petitioners; Mr. J. P. Sinha, A.A.G. 7 Mr. Shankar Kumar, A.C. to A.A.G. 7, for the State

Final Decision : Dismissed

Judgement

Mr. Ahsanuddin Amanullah, J.(Oral)—Heard learned counsel for the parties.

2. The petitioner has moved the Court for quashing of the order contained in Memo No. 20 (P.N.D.T.) dated 23.05.2013 directing for closing of the Ultra Sound Centre being run by the petitioner in the name of "Radio Diagnostic Point"

3. Learned counsel for the petitioner submitted that the order has been passed in contravention of the legal requirement as no show cause was given prior to such direction to close the Ultra Sound Centre. Learned counsel submitted that under Rule 3 of The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Rules, 2003, the qualification of the employees has been given. He submitted that after grant of licence, he has been fulfilling all the requirement under law like maintaining register etc.

4. Learned counsel for the State on the basis of the averments made in the counter affidavit filed on behalf of the respondent no. 2 submitted that under The

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 there is a provision of appeal under Section 21. He further submitted that the petitioner has also not fulfilled all the requirements of the guidelines issued by the Health Society for removal/suspension/closure. It was submitted that specifically as per Clause-4 of the guidelines, the doctor who operates such centre has to submit report in Form F, but the writ petitioner has not submitted the same. He further submitted that the scrutiny of the case reveals that the petitioner does not possess the requisite qualification for running the centre and had violated the regulation of submitting Form-F.

5. Having considered the rival contentions, the Court does not find any merit in the writ application. The petitioner being a holder of B.A.M.S. degree, is not a person qualified to make a report of an Ultra Sound test. The same can be done only through a person who is qualified to give such a report. Thus, the very initial grant of licence to the petitioner clearly was illegal and could not have been without connivance of the officers concerned. Further, from the admission of learned counsel for the petitioner that the required persons were not available, coupled with the fact that nothing has been shown with regard to a person having B.A.M.S. degree being entitled to run such a clinic without employing a person who is qualified to report on the ultra sound tests conducted, the Court finds no occasion to interfere in the matter.

6. Accordingly, the writ petition stands dismissed.

7. In view of the facts which have been brought on record, the present is a clear case where illegally a licence for running an Ultra Sound Centre has been granted to the petitioner.

8. In view of the same, the Principal Secretary, Department of Health, Government of Bihar, Patna is directed to take appropriate action against the person(s) responsible for issuance of such licence and also to take appropriate steps so that such grave illegality, which directly affects the citizens at large, does not recur. Such action be taken within two months.

9. Learned counsel for the State shall communicate the order to the officer concerned for compliance.