
(2014) 10 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 647 of 2013

Preet Nursing Home

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2015) 177 PLR 667 : (2015) 2 RCR(Civil) 482 : (2015) 2 RCR(Criminal) 348

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Ajit Singh Sodhi, Advocates for the Appellant; Ranbir Singh Pathania, D.A.G, Advocates for the Respondent

Judgement

K. Kannan, J.—The petitioner Nursing Home through its proprietor Harjinder Singh, a surgeon, had an ultrasound clinic and installed a sonogram for which registration had been obtained on 19.04.2002. It was issued for a period of five years which was renewed in the year 2007 on 19.04.2007 that was to expire on 18.04.2012. As per the provisions of the Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, there is a statutory mandate for registration of genetic clinic and any person or clinic, which has an ultrasound machine or imaging machine without registration, is liable to be proceeded against for offences and penalties prescribed under Chapter VII of the Act. As per the provisions of the Act, the petitioner should have applied for renewal of licence some time prior to the expiry of the period namely on 17.03.2012 but he failed to do so. The licence had expired on 18.04.2012 and he applied for renewal on 27.04.2012 before the appropriate authorities. He submitted the requisite registration fee of Rs. 2000/- and on a penalty being assessed which was ten times the registration fee, he paid the same as well. The application was rejected by the appropriate District Authority on 01.06.2012 stating that it was delayed. He preferred an appeal before the State Appellate Authority, Chandigarh which was also rejected on 05.10.2012 which is the subject of challenge before this Court. The impugned order sets out two reasons. One, that it was delayed

and two, that Rule 8 which provided renewal of registration did not contemplate an application for renewal beyond the last date. The Authority, therefore, observed that after the day when the licence expired after 17.04.2012, the possession of the ultrasound machine without registration constituted an offence and if he had committed an offence, there was no scope for either allowing for a fresh application for registration or renewal made.

2. The Act and the Rules cannot be understood in such a way that if a person had failed to renew the licence within time, an application for renewal cannot be entertained at all. On the other hand, the manner of looking at such a situation could be in such a way as to promote the object of the Act. The Act is to bring a control regime of use of ultrasound and imaging techniques which are significant scientific advancements to detect abnormalities in foetus and other related issues for genetic counselling. The imaging included also a scope for detection of sex which became a serious aberration of sex selection and causing feticide for avoiding birth of a female child. It was, therefore, appropriate that there is a prohibition and stringent punishment for maintaining such technical equipments without registration. If a person does not apply for renewal within time, the possession of the machine and putting it to use without such registration surely invites punishment. There would always be a scope for the Authorities to initiate appropriate action contemplated in Chapter VII and the attendant Rules, if there had been use of an equipment without licence. There surely could be also instances of lapse of renewal for genuine reasons. In this case, the reason stated was that the hospital remained closed and the doctor, who was running the same was suffering from illness. We cannot treat a person who is guilty of a criminal offence of keeping an unregistered machine and doing an act which was a regulated act at par with another person who had no past history of any offence under the Act who held the machine under due licence for more than a decade and an application for renewal was made beyond 10 days from the stipulated time on account of illness. The possession of the machine without registration could have, therefore, surely invited criminal prosecution. If the Authorities, therefore, slapped a penalty of Rs. 22,000/- and did not choose to prosecute him independently, it must be taken as resulting in a situation where appropriate punishment had been meted out for the breach of the provisions. There is no warrant for allowing such a penalty to remain for the rest of his life and deny to him the prayer for renewal. Even if a renewal were to be taken as not possible since the Rules do not specifically provide for the same, it should still be possible for a person to apply for a fresh licence after being subjected to appropriate penalty for retention of a machine without registration. So long as there was no charge or proof that the petitioner had used the machine during the period of failure of renewal of registration and when the clinic had remained closed, it would be appropriate that the application which he had filed for renewal was granted favourably, if not as a renewal but as a plea for a fresh registration. I quash the impugned order and direct the licence to be issued. If any statutory compliance is necessary for undertaking a fresh inspection of the equipment and

the location of the machine, the same be undertaken and the licence be issued in accordance with law within a period of 8 weeks. The writ petition is allowed on the above terms.