

(2013) 01 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) 1811 of 2012

Radha Nirmal (Dr.)

APPELLANT

Vs

District Appropriate Authority (South West) and Others

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 198 DLT 183

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Sunil Narula and Ms. Isha Jhakur, for the Appellant; Anjum Javed, Advocate for the Respondent Nos. 1 and 2 and Mr. Neeraj Chaudhari, CGSC with Mr. Ravjyot Singh, Advocate for the UOI, for the Respondent

Judgement

Rajiv Shakdher, J.—After hearing learned Counsel for the parties, the limited challenge, raised in the writ petition is that: before passing the order dated 17.11.2011 neither was a show cause notice issued nor was the petitioner given an opportunity of being heard. It is pertinent to note that order dated 17.11.2001 was passed by the District Appropriate Authority. This order was carried in appeal, which was dismissed by the State Appropriate Authority vide order dated 15.3.2012. Both orders are impugned in the present writ petition. It may be noted that respondent No. 1 in paragraphs 6 and 7 of its counter affidavit has adverted to the fact that a show cause notice was issued to the petitioner at Rural Health Centre, which is owned and managed by the petitioner on 14.10.2011, followed by a personal hearing on 18.10.2011 and 4.11.2011.

2. Therefore, the challenge to the impugned order arises in the context of the aforesaid assertions of the petitioner. Briefly, the challenge is laid in the background of the following facts:

3. On 1.5.2002, the petitioner was issued a certificate of registration bearing No. 909 for a period of five (5) years ending on 30.4.2007 under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as PNDT Act).

4. Consequently, the petitioner's clinic, which goes by the name of Rural Health Centre, was authorized to carry out ultrasound tests.

5. It is the claim of the petitioner that on 15.5.2007, the registration certificate was renewed for a further period of five (5) years.

6. Apparently, on 14.10.2011, a surprise inspection carried out at the petitioner's premises, which revealed several discrepancies pertaining to the record. Evidently, a statement was also recorded of the petitioner, i.e. Dr. Radha Nirmal. The statement of the petitioner revealed that one Dr. Sandeep Sharma used to visit her clinic for the purpose of carrying out ultrasound tests.

7. Admittedly, copy of the Inspection Report dated 14.10.2011 was supplied to the petitioner. In response to the same, within three days i.e., on 17.10.2011, the petitioner filed a representation with the respondent as, pursuant to the inspection the clinic was sealed.

8. The aforesaid representation was followed by yet another representation dated 3.11.2011, wherein the stand taken by the petitioner was that, there was no contravention of the PNDT Act. In this background, a request was made that the clinic be de-sealed.

9. It appears that the District Appropriate Authority, however, passed the impugned order dated 17.11.2011 whereby, while de-sealing the clinic, they ordered cancellation of the registration certified issued to the petitioner, with immediate effect. The de-sealing was, however, made conditional on no ultrasound machines being installed therein and subject to the petitioner paying a sum of Rs. 20,000/- to District Appropriate Authority.

10. I am informed by learned counsel for the petitioner that a sum of Rs. 20,000/- was paid, as directed and the clinic today stands de-sealed.

11. The petitioner, being aggrieved, preferred an appeal with the State Appropriate Authority in accordance with the provisions of section 21 of the PNDT Act. The State Appropriate Authority, by order dated 15.3.2012, dismissed the appeal of the petitioner and sustained the order of the District Appropriate Authority; as indicated at the very outset.

12. It may be pertinent to note that the State Appropriate Authority, which is the appellate authority, is a three-member Bench comprising of one Member, who is a person instructed in law. I am told, in this case, the decision by the State Appropriate Authority was rendered by majority of 2:1. The dissenting opinion was that of the legal Member.

13. On perusal of the order passed by the State Appropriate Authority, I notice that this very point with regard to the issuance of the show cause notice u/s 20 of the PNDT Act has been raised by the petitioner. The State Appropriate Authority has adverted to this in paragraphs 7 to 9 of its order. The sum and substance of the discussion in the said paragraphs is that, the State Appropriate

Authority appears to have been persuaded by the explanation offered by the respondents that the requirement of issuing a show cause notice under Sub-section (1) of Section 20 and of according a hearing to the petitioner under Sub-section (2) of Section 20, stood complied with, as the copy of the inspection report had been furnished to the petitioner and representation filed by her came to be considered.

14. I am afraid, the conclusion reached by the State Appropriate Authority is erroneous. The State Appropriate Authority has mis-directed itself in law. The provisions of Sub-section (1) of Section 20 of the PNDT Act clearly require issuance of a show cause notice to the delinquent person.

15. There are two courses open to the appropriate authority at this stage: The first one being to suspend the registration certificate; the second to cancel the registration certificate. The show cause notice if issued to the petitioner would delineate, which course of action the appropriate authority is intending to adopt. Secondly, Sub-section (2) requires that the delinquent be given a "reasonable" opportunity of being heard. The action which the District Appropriate Authority may take recourse to, after complying the aforesaid mandatory provisions contained in Sub-Sections (1) and (2) of Section 20 of the PNDT Act would involve necessary inputs, by way of advice rendered by the Advisory Committee.

16. In this particular case, not only was no show cause notice issued detailing out the exact charge which the petitioner was required to meet, no opportunity of hearing was granted to the petitioner as well.

17. As noticed above, even though in the affidavit, the respondents have detailed out that the hearing was given to the petitioners on 18.10.2011 and 4.11.2011, there is no discussion with regard to this aspect in the order of the Appellate Authority. There are no records filed to establish this aspect.

18. As a matter of fact, the State Appropriate Authority has come to the conclusion that since a representation was made which was considered by the District Appropriate Authority, met with the required standard laid down in Section 20(2) of PNDT Act; which required an opportunity of being heard to be given.

19. I am afraid, the approach adopted by the District Appropriate Authority cannot be countenanced in view of the mandate of the Sections 20(1) and 20(2) of the PNDT Act.

20. Admittedly, the advice of the Advisory Committee was not sought and therefore, even on this score, the impugned orders cannot be sustained.

21. I may only record that it is not as if this Court is oblivious of the fact that one of the prime objectives "of the PNDT Act is to prevent sex determination of fetus. While this is a laudable object, the statutory provisions of the PNDT Act cannot be given a go-by. It is, precisely for this purpose, that Sub-section(3) of Section 20 has armed the respondents with the power to suspend the licence

even without giving notice and opportunity of being heard, provided it is deemed necessary and expedient in the public interest. This power is, however, rightly available only for suspension. In this case, respondents have proceeded to cancel the registration certificates, which cannot be done, without following the provisions of Sub-sections (1) and (2) of Section 20 of the PNDDT Act.

22. Accordingly, the order of the District Appropriate Authority is set aside as also the State Appropriate Authority, which sustained the order of the District Appropriate Authority.

23. Notwithstanding the above, the District Appropriate Authority would be at liberty to issue a show cause notice to the petitioner in accordance with law, to which petitioner would be at liberty to reply. The respondents shall also give an opportunity to the petitioner of being heard, as required under Sub-section (2) of Section 20 of the PNDDT Act, if a show cause notice is issued hereafter.

24. The other requirement of seeking input of the Advisory Committee shall also be adhered to.

25. Needless to say, I have not examined the merits of the case. Any observations made hereinabove would not come in the way of the respondents taking action in accordance with law. At this stage, learned counsel for the petitioner says that a sum of Rs. 20,000/- was recovered from the petitioner without the authority of law. Since the orders have been set aside, the said sum be refunded to the petitioner within four weeks from today.

With the aforesaid observations in place, the writ petition is disposed of.

Dasti.