

(2013) 12 DEL CK 0151
In the Delhi High Court
Case No : Writ Petition (C) 4482 of 2013

Rahul Yadav

APPELLANT

Vs

The Govt. of NCT and Others

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2013) 12 DEL CK 0151

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rajesh Tyagi, for the Appellant; Rajiv Nanda, Additional Standing Counsel along with Dr. Shalley Kamra, State Prog. Officer, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—An inspection of the Ultrasound Clinic being run by the petitioner at 64, D/1, First Floor, Om Shanti Complex, Laxmi

Market, Munirka, Delhi, was carried by the officials of the District Authority under the Pre-Conception and Pre-Natal Diagnostic Technique

(Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as ""PC & PNDT Act"")) and a show-cause notice was issued to the petitioner on

the spot in respect of Item No. 6 and 7 of the said notice. Items No. 6 and 7 of the notice read as under:-

6. Register containing the information, as specified in Rule 9(1) of the Act, was not being maintained.

7. Record in Form F, as prescribed under Rule 9(4), was not being properly maintained.

The petitioner submitted a reply to the said notice on 27.01.2012, stating therein that necessary corrections and implementation had been done by

him pertaining to some cases with "self-referrals" and indication of foetal well being in cases. He also undertook that all the guidelines of PC &

PNDT Act would be implemented by him in future. Vide order dated 23.03.2012, the appropriate authority suspended the licence of the petitioner

and issued a further show cause notice to him to show cause why PNDT Registration of his diagnostic centre be not cancelled and why

prosecution should not be launched against him for violation of the provisions of the said Act and Rules. The petitioner responded to the said notice

on 02.03.2012. Vide order dated 12.03.2012, the Appropriate Authority directed cancellation of PNDT registration certificate issued to M/s.

Urolife Stone & Diagnostic Centre and also ordered sealing of the ultrasound machine (Doppler Machine) of the said Centre. CDMO

(SW)/Nodal Officer was simultaneously advised to take action for launching prosecution against M/s. Urolife Stone & Diagnostic Centre. The

aforesaid order dated 12.03.2012 was challenged by the petitioner before the Appellate Authority under PC & PNDT Act. The appeal was

disposed of vide order dated 14.05.2012, whereby the case was remanded back to the District Appropriate Authority for further view and

decision. Vide order dated 12.12.2012, the Appropriate Authority, in exercise of the powers conferred by Section 20(2) of the PC & PNDT Act,

ordered for cancellation of PNDT Registration of the petitioner and continuing the sealing of his ultrasound machine. The petitioner again filed an

appeal before the prescribed Appellate Authority. The appeal came to be disposed of vide order dated 13.02.2013, whereby the appeal was

rejected. Vide order dated 08.04.2013, the Appellate Authority also permitted shifting of the ultrasound machine to 62-A, Urolife Stone &

Diagnostic Centre, Laxmi Market, Munirka, Delhi, though shifting to the aforesaid place was never sought by the petitioner. Being aggrieved from

the aforesaid orders, the petitioner is before this Court seeking the following relief:-

i. Quash the order dated 13.2.2013 and 12.12.2012, passed by the Respondent No. 2&3 respectively.

ii. Pass any other or further order or direction which the Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

2. As regards the ultrasound machine, this Court, accepting the undertaking furnished by the petitioner, directed its de-sealing and its being kept in

the same clinic, where it was earlier kept. The petitioner was also permitted to keep the said machine at an appropriate place in the safe custody,

subject to his complying with an undertaking given to the Court.

Vide order dated 11.10.2013, the petitioner was permitted to sell off/lease out the aforesaid machine subject to the conditions, stipulated in the

said order. However, the machine has not been sold by the petitioner and the same continues to be in his possession.

3. Section 20 of the Act, to the extent it is relevant, provides that an Appropriate Authority may suo motu, or on complaint, issue a notice to the

Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show-cause why its registration should not be suspended or cancelled for the

reasons mentioned in the notice.

It would thus be notice that the show-cause notice in terms of sub-section (1) of Section 20 is required to be issued by the Appellate Authority

alone. However, in the case before this Court, the show-cause notice dated 24.01.2012, though purporting to be issued by the Appropriate

Authority was in fact not signed by the said Authority and was signed only by the SDM, who carried out inspection of the premises of the

petitioner. There is no material before the Court to show that and in fact this is not even the case of the respondents that the Appellate Authority

had delegated its power to issue show-cause notice u/s 20(1) of the Act to the concerned SDM. Therefore, the issue of notice by the SDM was

clearly without jurisdiction.

4. The learned counsel for the petitioner has also contended that even the notice issued by the SDM did not indicate what precisely was the

deficiency in the record in Form "F" which was alleged to be improperly maintained. The learned counsel for the respondents, however, submits

that the deficiency was clearly understood by the petitioner, as would be evident from the plea taken by him before the Appellate Authority.

However, since the notice has not been issued by the competent person, I need not go into this aspect of the matter. As the show-cause notice

was issued by a person, who was not competent to do so, the consequent proceedings become null and void. The orders impugned in the writ

petition as well as the show-cause notice dated 24.01.201 are hereby quashed. It is, however, made clear that it would be open to the

Appropriate Authority to issue a fresh show-cause notice in terms of Section 20(1) of the Act to the petitioner, within a period of two weeks from

today. On such a notice being issued, the petitioner shall respond within two weeks thereafter and an appropriate decision by the Appellate

Authority would be taken within eight weeks thereafter after giving opportunity of personal hearing to the petitioner.

The writ petition stands disposed of.

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