

(2021) 03 RAJ CK 0036
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13360 Of 2019

Ram Lal Krishak	Vs	APPELLANT
Ram Lal Krishak And Ors		RESPONDENT

Date of Decision : 09-03-2021

Acts Referred:

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Rules, 1996 — Rule 18A, 18A(4)(ii)
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 RAJ CK 0036

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Singal Bench

Advocate : Jitendra Singh Bhaleria, Vikram Singh Bhawla, Rishi Soni, Pankaj Sharma

Final Decision : Allowed

Judgement

1. In wake of onslaught of COVID-19, abundant caution is being taken while hearing the matters in Court.

2. The petitioner has preferred this writ petition under Article 226 of the Constitution of India claiming the following reliefs:

"A. The impugned order dated 11.01.2016 (Annex.P/6) and order dated 08.07.2019 (Annex.P/7) may kindly be quashed and set aside.

B. The respondents may kindly be directed to allow the renewal application of the petitioner filed on 24.01.2014 for renewal of the registration certificate Annex.P/2 with all consequential benefits.

C. The respondents may kindly be directed to decide the renewal application afresh by ignoring the facts of pending appeal No.337/2016 against the order of acquittal, within the stipulated period."

3. Learned counsel for the petitioner submits that the short question involved in

this case is that the petitioner was facing criminal trial, and therefore, his renewal application was not being considered but now once the acquittal has been done by the competent court, the renewal application shall have to be considered by the respondents as the bar under Rule 18-A of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short 'the Rules of 1996) would not apply.

4. Learned counsel for the petitioner has relied upon the order rendered by Division Bench of this Hon'ble Court on 13.08.2019 in Prachi Medical Care Vs. State of Rajasthan (D.B. Civil Writ Petition No.13411/2018). The relevant portion of the judgment reads as under:

"In these circumstances, the ratio in the case of Sonological & Imaging Society (supra) would apply.

In the event of any applicant (including a doctor applicant) having been acquitted during the pendency of these proceedings, the bar under Rule 18A of the Rules of 1996, would obviously not apply. If an application is made, that would be considered on its merits and appropriate orders be made by the State.

The writ petition and appeals are dismissed - subject to the above condition."

5. Learned counsel for the respondents has taken this Court to Rule 18-A of the Rules of 1996, and particularly sub rule (4) (ii). Rule 18-A, in extenso, reads as follows:

"[18A. Code of Conduct to be observed by Appropriate Authorities. - (1) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following general code of conduct, namely:-] [(i) maintain dignity, and integrity at all times] [(ii) observe and implement the provisions of the Act and Rules in a balanced and standardised manner in the course of their work] [(iii) conduct their work in a just manner without any bias or a perceived presumption of guilt] [(iv) refrain from making any comments which demean individuals on the basis of gender, race, religion] [(v) delegate his or her powers by administrative order to any authorised officer in his or her absence and preserve the order of authorisation as documentary proof for further action] [(2) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following Conduct for Advisory Committees, namely:-] [(i) ensure that the re-constitution, functions and other relevant matters related to advisory committee shall be in accordance with the provisions of the Advisory Committee Rules, 1996] [(ii) ensure that a person who is the part of investigating machinery in cases under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994), shall not be nominated or appointed as a member of the Advisory Committee] [(iii) ensure that the process of filling up of vacancies in Advisory Committee shall start at least ninety days before the probable date of the occurrence of vacancy] [(iv) ensure that no person shall participate as a member or a legal expert of the Advisory Committee if he or she

has conflict of interest] [(v) conduct frequent meetings of the Advisory Committee to expedite the decisions regarding renewal, cancellation and suspension of registration] [(3) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following conduct for processing of complaint and investigation, namely:-] [(i) maintain appropriate diaries in support of registration of each of the complaint or case under the Act] [(ii) attend to all complaints and maintain transparency in the follow- up action of the complaints] [(iii) investigate all the complaints within twenty four hours of receipt of the complaint and complete the investigation within forty-eight hours of receipt of such complaint] [(iv) as far as possible, not involve police for investigating cases under the Act as the cases under the Act are tried as complaint cases under the Code of Criminal Procedure, 1973 (2 of 1974)] [(4) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following conduct for registration and renewal of applications under the Act, namely:-] [(i) dispose of the application for renewal and new registration within a period of seventy days from the date of receipt of application] [(ii) ensure that no application for fresh registration or renewal of registration is accepted if any case is pending in any court against the applicant for violation of any provision of the act and the rules made thereunder.]"

6. Learned counsel for the respondents thus, submits that an appeal against the acquittal is pending before the competent court, and thus, it comes within the purview of prohibition of renewal, if any, case is pending, and thus, the present writ petition deserves to be dismissed.

7. Learned counsel for the respondents also submits that the Hon'ble Division Bench has not dealt with the issue of appeal against the acquittal.

8. Thus, the acquittal has been dealt with by the Hon'ble Division Bench of this Court and this is a clear case of acquittal and any pendency of the appeal shall have no bar upon prohibiting consideration of such application.

9. This Court, on considering the rival submissions as well as on perusing the order passed by Hon'ble Division Bench of this Court, is of the firm opinion that the purport of the judgment was that if any acquittal takes place, the bar under Rule 18-A of the Rules of 1996 would obviously not apply. The appeal, particularly, when there is no interim order staying the acquittal or final order reversing the acquittal cannot be said to be falling in the criteria of prohibition as laid down under the Rule 18-A Sub-rule (4)(ii) as the acquittal of the petitioner is holding the field on this date. The Hon'ble Division Bench has categorically laid down the law that after acquittal, the bar under Rule 18-A of the Rules of 1996 would not apply.

10. In view of the above, the present petition is allowed and while quashing and setting aside the orders dated 11.01.2016 and 08.07.2019, the respondents are directed to consider the application of the petitioner for renewal on its own

merits and appropriate orders be passed by the State without dismissing the same as having falling under the Rule 18-A of the Rules of 1996. Such application shall be decided within a period of three months from today, strictly in accordance with law. Stay petition stands disposed of accordingly.