
(2014) 08 SHI CK 0120
In the High Court Of Himachal Pradesh
Case No : CWP No. 2477 of 2014

Sunil Fakay

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Himachal Pradesh Medical Council Act, 2003 — Section 15(7)

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 18(1), 19(3), 20

Citation : (2014) 08 SHI CK 0120

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : K.S. Kanwar, Advocate for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan, Additional Advocate General and Rajneesh K. Lall, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner used to run a diagnostic centre under the name and style of "Dr. Sunil Fakay Imaging Centre" at Delhi. It was duly registered under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the "Act" for brevity sake), vide registration No. DL/NWD/0111(R). An FIR No. 228/2010 was registered against the petitioner. The machinery of the petitioner was also seized. The petitioner applied for renewal of the registration of his Centre. However, the same was declined vide letter, dated 01.03.2013, on the basis of FIR No. 228/2010 and pendency of the case before the Court of Metropolitan Magistrate, Rohini, Delhi. Petitioner's father applied for registration of Genetic Counseling Centre/Genetic Laboratory/Genetic Clinic/Ultrasound Clinic/Imaging Centre in the name and style of "Himalayan Imaging Centre" to the competent authority on 13.03.2012. Petitioner's father sought permission from the Chief Medical Officer-Cum-District Appropriate Authority under the Act, 1994 for transporting two Ultrasound

Machines from Delhi to Kullu, i.e., Sonoace PICO (portable Color Doppler) and Sonoace X8 (4D Ultrasound Color Doppler). According to him, the machines have been purchased in the name of Radiologist Dr. Sunil Fakay. The Chief Medical Officer-Cum-District Appropriate Authority granted the permission to the father of the petitioner to transport two Ultrasound Machines vide letter, dated 31.08.2012. Petitioner's father intimated the Chief Medical Officer-Cum-District Appropriate Authority that the machines have arrived in the premises on 01.11.2012. Thereafter, the petitioner's wife also moved an application for registration of Genetic/Ultrasound Clinic to the competent authority on 27.11.2012 in the name and style of "Fourth Dimension-An Ultrasound Clinic". The application is at page No. 196 of the paper-book. It is without any date. The petitioner's wife submitted an application to the Chief Medical Officer-Cum-District Appropriate Authority on 03.12.2012 for inspection of Ultrasound Clinic. The premises were inspected on 15.12.2012. Petitioner's wife was permitted to install the machine which was transported from Delhi. Petitioner's wife again requested the Chief Medical Officer-Cum-District Appropriate Authority on 20.12.2012 to conduct the final inspection. She was informed by the Chief Medical Officer-Cum-District Appropriate Authority on 19.03.2013 that neither she has produced the NOC nor she has produced the renewal certificate from 26.02.2012 on wards as per Rule 8(1) & Section 19(3) of Act, 1994. She was also informed that her machine SONAC-PICO-PORTABLE was registered at Delhi vide Registration No. DL/NWD/O111(R), 27.02.2007 up to 26.02.2012. She was directed to deposit these documents as early as possible for taking further action.

2. Petitioner submitted an application to the Deputy Commissioner (Revenue) (The appropriate authority, under the Act) for grant of NOC to transport the Colour Doppler Ultrasound Machines out of Delhi on 10.01.2013. The CDMO (NW) informed the petitioner vide intimation, dated 01.03.2013 that due to pendency of the case before the Hon'ble Metropolitan Magistrate, Rohini, Delhi, the request could not be considered. The intimation was also sent by the CDMO (NW) to the Chief Medical Officer-Cum-District Appropriate Authority, Kullu under Act on 22.5.2013. Petitioner informed the Deputy Commissioner (Revenue) (The Appropriate Authority under the PC & PNTD Act), Distt. N/W at Kanjhawala, Delhi on 04.05.2013 that the ultrasound machine registered under the name and style of "Dr. Sunil Fakay Imaging Centre" was transferred to Kullu under the permission granted by CMO, Kullu, vide letter, dated 31.08.2012. The Chief Metropolitan Magistrate, Rohini Courts, Delhi, permitted to transport the machines out of Delhi vide order, dated 8th April, 2013. The meeting of the District Advisory Committee under Act was held on 07.05.2013 in the office of Chief Medical Officer-Cum-District Appropriate Authority, Kullu. The relevant extract of the discussion qua Fourth Dimension-An Ultrasound Clinic, is as under:

"....3. The application for the registration of Fourth Dimension-An Ultrasound Clinic, Bhagirath Shopping Complex, Near Saba Guest House, Dhalpur, Kullu (H.P.), was put up in the meeting. The management of the clinic was given the opportunity of hearing in DAC meeting, as their case was discussed in both of

previous two DAC meetings and the registration was withheld because of non-production of NOC by the management from DAA Rohini, Delhi, where the machines were in use and also as per the information from CDMO (NW), Directorate of Health Services (Govt. of NCT of Delhi) vide its letter No. F.1(8)/01/DHS/NW/PNDT/2177 dated 1/3/13 indicating that the case is sub-judicial in the Honourable Court of Metropolitan Magistrate, Rohini Delhi. As per the documents produced by the management the machine at Delhi was sealed by DAA Delhi u/s 20A under PC & PNDT Act and the said machine was under Superdari. During investigations the owner of machine filed an application in the Court for release of the machine. This was allowed by the Hon''ble Court furnishing the Superdari Bond. Later on another application was filed by the owner in the Honourable District Judge Rohini Delhi, for cancellation of Superdari Bond. This application was allowed by the District Judge and allowed the sale & repair of the machine. This order was passed by Honourable Court on dated 27.4.2012. Later on applicant Urvashi Fakay filed an application for NOC for transportation of machine & registration of machine bearing number A9650830003369 out of Delhi, in the Honourable MM, Delhi. In the aforesaid application, Honourable Court granted the NOC for registration & transportation of the machine out of Delhi on dated 08.04.2013. These documents has been produced by the applicant today in the DAC meeting (were not accompanied with registration file). Considering all the documents from Hon''ble Court produced by the applicant all the members of DAC hereby advice the DAA Kullu to grant the registration of the said clinic with instructions to finalise the number of machines to be allowed in the clinic as per the application.

4. The fine of the sealed machine of Life-Line Hospital Dhalpur was put up in DAC and DAA informed that the sealed machine has been inspected recently on dated 24.4.2013 and found the sealed intact. The DAC instructed DAA to follow the inspections as per ACT.

Meeting ended with thanks from DAA."

3. On the basis of the meeting held on 07.05.2013, the permission was accorded to petitioner''s wife to run the Clinic on 13.05.2013. The office of the Chief District Medical Officer (North West) sent an intimation to the District Appropriate Authority, under PC & PNDT Act-cum CMO, Kullu District on 17.06.2013, bringing to his notice that no NOC was issued by the District Appropriate Authority, District Magistrate, North West District, Khanjhwala, Delhi to District Appropriate Authority under PC & PNDT Act-cum-CMO, Kullu to transport USG machines in Kullu District and this was clear violation of the Act. It also showed connivance of the office of DAA Kullu with the applicant, i.e., the petitioner in giving permission to him, whose case was already subjudice in the Court of Metropolitan Magistrate, Rohini, Delhi. The matter was thereafter discussed by the State Appropriate Authority with State Advisory Committee on 27.06.2013. The comments of Chief Medical Officer-Cum-District Appropriate Authority were sought on the following points:

"...The reasons as to why and under which clause of the Act, the registration certificate was issued to the said clinic even though no intimation was given by Dr. Fakay to concerned DAA Delhi, regarding the transportation of the USG machines outside the premises of the registered clinic as required under Rule 13 of the PC & PNDT Act. Also since it had been conveyed earlier by DAA Delhi, that the case of Dr. Fakey was subjudiced in the Court at Delhi and he was absconding in this case, at least an NOC from DAA Delhi should have been awaited before issuing registration certificate.

The verdict issued by Metropolitan Magistrate, Dharmender Singh on dated 08.04.2013, is just a simple computer generated print-out and not bearing any signature and seal. Hence authenticity of the Court order should have been verified before issue of registration certificate.

Also the unauthenticated copy of court order clearly stated that the competent authority was at liberty to take decision as per rules without being influenced by the no objection given by the Court, which clearly indicated that the final approval of concerned DAA still needed to be sought before issuing a registration certificate.

In view of the above facts, the DAA Kullu is hereby directed to give point wise comments and also to review his decision regarding issue of registration certification."

4. The reminders were sent to the Chief Medical Officer, Kullu, District Kullu, Himachal Pradesh by the Director, Health Safety & Regulation, H.P., Shimla on 14.8.2013, 05.09.2013 and 05.10.2013.

5. A notice was issued to petitioner's wife on 24.08.2013 by the Chief Medical Officer-Cum-District Appropriate Authority, Kullu District, H.P., to which the reply was file by her on 30.08.2013. Thereafter, notice was issued to petitioner's wife u/s 20 of the PC & PNDT Act on 11.10.2013. She was directed to furnish the reply within seven days. Reply to the notice was sent by the petitioner's wife on 21.10.2013. Thereafter, a notice was issued to petitioner's wife on 14.11.2013. The Director, Health Safety & Regulation, Shimla, H.P. sent a letter to the Chief Medical Officer-Cum-District Appropriate Authority, Kullu on 02.11.2013, bringing to his notice that shifting of Ultrasound machines from Delhi to Kullu, was first allowed by the DAA, Kullu and registration to the clinic granted later on, which was violation of Rule 3A(1) and Section 18(1) of the Act. Petitioner's wife sent reply to the same on 21.11.2013. The Chief Medical Officer-Cum-District Appropriate Authority, Kullu sent a notice to petitioner's wife on 20.01.2014, bringing to her notice that all the doctors, who were handling the Ultrasound Machine in her Clinic and whose name appear in registration certificate of Ultrasound Clinic, their registration may be revised with a fresh registration with State Medical Council of H.P., as per Chapter-III, Section 15(7) of the Himachal Pradesh Medical Council Act, 2003.

6. Petitioner's wife was issued notice of suspension of Ultrasound Clinic

Registration on 06.03.2014. The competent authority has also brought to the notice of petitioner's wife the irregularities in maintaining the record vide letters, dated 27.08.2013 and 14.09.2013, including filing of incomplete form. Reply to letter, dated 14.09.2013, was submitted on 04.11.2013. The Director, Health Safety & Regulation, Shimla, H.P. sent a letter to the Chief Medical Officer-Cum-District Appropriate Authority, Kullu on 17.12.2013, asking him to deal with the points raised in this intimation para-wise. The Director, Sri Harihar Hospital & Research Centre Hathithan, P.O. Bhunter, Kullu was informed on 11.03.2014 that the registration of USG centre in the name of Dr. Sunil Fakay stood suspended temporarily. In sequel to this intimation, the services of the petitioner as Consultant Radiologist were terminated by respondent No. 4, i.e., Sri Harihar Hospitals Pvt. Ltd., Hathithan, Bhuntar, District Kullu w.e.f. 11.03.2014.

7. What emerges from the facts enumerated hereinabove, is that the petitioner has got his Ultrasound Clinic registered at Delhi on 27.02.2007 under the PC & PNDT Act, 1994 vide registration No. DL/NWD/0111(R). It was valid up to 26.02.2012. An FIR No. 228/2010 was registered against the petitioner. The machinery of the petitioner was also seized. The said registration was not renewed. Petitioner's father submitted an application for registration of Ultrasound Clinic on 13.03.2012 and sought permission to transfer the machinery 23.08.2012. He was fully aware being a doctor himself that this could not be done and the Chief Medical Officer-Cum-District Appropriate Authority, Kullu, without verifying the facts granted the permission to transport the machinery from Delhi to Kullu on 31.08.2012. Thereafter, the petitioner's wife also submitted an application, which is at page No. 194 of the paper-book, seeking permission to run "Fourth Dimension-An Ultrasound Clinic". The premises were inspected by the Chief Medical Officer-Cum-District Appropriate Authority, Kullu on 15.12.2012. The Chief Medical Officer-Cum-District Appropriate Authority, Kullu sent an intimation to petitioner's wife on 15.12.2012. The text of the letter, dated 15.12.2012, reads as under:

"....Your purposed site for Ultrasound Clinic at the abovementioned address was inspected today on 15/12/2012 at 12:30 p.m.

As per your floor plan it is found adequate as per Schedule-I Rule 3(I) point A.

So you are hereby permitted to install the machine which has been transported from Delhi as per your letter of dated 06/11/2012.

However during inspection of your application record it was observed that you had applied for transport of two machines which were being purchased on 25/April/2006 and 19/02/2009, 21/09/2009.

This means that these machines were already in use somewhere in Delhi. So registration of both machines at the place of its previous installation site may be furnished to this office. Also NOC of previous Appropriate Authority, under PC PNDT Act, of Delhi regarding transfer of machines out of Delhi may also be attached with the application.

The above formality may be completed and intimated to this office so that your installed machine can be inspected for further registration at Kullu."

8. It is evident from the text noticed hereinabove that the Chief Medical Officer-Cum-District Appropriate Authority, Kullu found that petitioner's wife had applied for transport of two machines which were being purchased on 25.04.2006, 19.02.2009 and 21.09.2009. In fact, the petitioner's father submitted an application for registration of Ultrasound Clinic on 13.03.2012 and sought permission to transfer the machinery on 23.08.2012. The petitioner's wife submitted an application to the Chief Medical Officer-Cum-District Appropriate Authority on 03.12.2012 for inspection of Ultrasound Clinic. The premises were inspected on 15.12.2012. Petitioner's wife was permitted to install the machine which was transported from Delhi. Petitioner's wife again requested the Chief Medical Officer-Cum-District Appropriate Authority on 20.12.2012 to conduct the final inspection. The final inspection was carried on 20.12.2012. Though the machinery, as a matter of fact, had already been transported from Delhi to Kullu, the petitioner submitted an application for grant of NOC to transport the Colour Doppler Ultrasound Machines out of Delhi on 10.01.2013. The CDMO(NW) has rightly informed the petitioner vide intimation, dated 01.03.2013, that in view of the pendency of case against him in the Court of Metropolitan Magistrate, Rohini, Delhi., the permission could not be granted. The intimation was also sent by the CDMO (NW) to the Chief Medical Officer-Cum-District Appropriate Authority, under the Act on 22.5.2013. Petitioner has informed the Deputy Commissioner (Revenue) (The Appropriate Authority under the PC & PNTD Act), Distt. N/W at Kanjhawala, Delhi on 04.05.2013 that the ultrasound machine registered under the name and style of Dr. Sunil Fakay Imaging Centre was transferred to Kullu under the permission granted by CMO, Kullu, vide letter, dated 31.08.2012. By concealing all the facts from the authorities concerned, he obtained an order from the Court of Chief Metropolitan Magistrate, Rohini Courts, Delhi on 08.04.2013 to transport the machinery out of Delhi. The machinery was transferred in a very clandestine manner by the petitioner and his family. The machinery had already been installed at Kullu when the order was obtained by the petitioner from the Court of Chief Metropolitan Magistrate, Rohini Courts, Delhi on 08.04.2013.

9. The District Advisory Committee has accorded the permission in its meeting held on 07.05.2013 without due application of mind. It has not ascertained the true position before permitting the petitioner's wife to run the Clinic. There was absolute dereliction of duties by all the functionaries, who attended the District Advisory Committee held on 07.05.2013. The State Government was informed vide letter dated 17.06.2013. It led to holding of meeting of State Appropriate Authority with State Advisory Committee on 27.06.2013. The Director, Health Safety & Regulation, H.P., Shimla, has taken a serious view of the matter and was construed to call upon the Chief Medical Officer, Kullu, District Kullu, H.P. to explain the position, under which the machinery has been permitted to be transported out of Delhi and also the granting of permission to run the Clinic at

Kullu by the wife of the petitioner. The conduct of the Chief Medical Officer, Kullu, District Kullu, H.P. was of defiance. He did not take care to address the queries raised to him by the Director, Health Safety & Regulation, H.P., Shimla in right spirit, which resulted in running of the illegal Clinic of the petitioner's wife in utter violation of the mandatory provisions of the Act. The Director, Health Safety & Regulation, H.P. Shimla has sent an intimation to the Chief Medical Officer, Kullu, District Kullu on 02.07.2013, followed by reminders, dated 14.08.2013, 05.09.2013 and 05.10.2013. It is only after the intervention of the Director, Health Safety & Regulation, Himachal Pradesh, Shimla that notices were issued to petitioner's wife on 20.08.2013 and 24.08.2013. Ultimately, the notice was issued to petitioner's wife u/s 20 of the Act on 11.10.2013. She was also issued notice on 14.11.2013, including notice suspension of Ultrasound Clinic Registration, dated 06.03.2014 and ultimate suspension on 11.03.2014. It is only after the intervention of the Director, Health Safety & Regulation, H.P., Shimla that notices were issued to the petitioner's wife for violation of mandatory provision of the Act on 27.08.2013 and 14.09.2013. It is only due to the sincere efforts made by the Director, Health Safety & Regulation, H.P., Shimla, which led to the issuance of letter, dated 11.03.2014, whereby the licence of Harihar Hospitals Pvt. Ltd., Hathithan, Bhuntar, District Kullu, was suspended temporarily and the petitioner was terminated from the post of Consultant Radiologist w.e.f. 11.03.2014, vide letter, dated 11.03.2014. There is no illegality in the impugned orders, whereby the licence of respondent No. 4-Hospital, is temporarily suspended and the petitioner has been restrained from working as Consultant Radiologist w.e.f. 11.03.2014. It is not the petitioner alone, who has violated the mandatory provisions of the Act, but the same have been violated with impunity by his father and wife.

10. There is no merit in the contention of Mr. K.S. Kanwar, learned counsel for the petitioner that the petitioner's right to livelihood under Article 21 of the Constitution of India has been affected.

11. Petitioner has violated various provisions of the Act. As is evident from the records, his licence was not renewed by the competent authority at Delhi to run the Clinic. He has in very stealthily and clandestine manner transferred the machinery from Delhi to Kullu. A case has been registered against him, which is still pending in the Court of Metropolitan Magistrate, Rohini, Delhi. Merely, that the petitioner's name has been registered with the Delhi Medical Council, will not absolve him from the criminal consequences under the Act. The Act is social welfare legislation. Its provisions are to be enforced strictly and there cannot be any compromise on the same by the individual or any competent authority. It is reiterated that the action of the Chief Medical Officer, Kullu, District Kullu, H.P. to allow the transferring of machinery from Delhi to Kullu on 31.08.2012 and registration of clinic was wholly without authority of law. The Chief Medical Officer, Kullu, District Kullu, H.P. has unduly favoured the petitioner's family by permitting the registration of the Clinic and thereafter permitting to transfer of the machinery from Delhi to Kullu. He was remiss in taking the action of his own.

It is only after intervention of Director, Health Safety & Regulation, H.P., Shimla that he was forced to take action against these persons. He discharges very important duties under the Act and could not be oblivious to the implications of non-enforcement of the Act. He must have known that there is a procedure, the manner in which the machinery could be transferred from Delhi to Kullu. He was supposed to be aware of the provisions of the Act and action warranted. The decision taken by the Chief Medical Officer, Kullu, District Kullu, Himachal Pradesh are very casual. The competent authorities have not in any manner contravened the provisions of the Himachal Pradesh Medical Council Act, 2003 and Delhi Medical Council Act, 1997 and for that matter the Medical Council Act, 1956. The action has been taken strictly as per the Act.

12. Accordingly, there is no merit in this petition and the same is dismissed. The Principal Secretary (Health), Government of Himachal Pradesh, is directed to hold disciplinary proceedings into the entire episode, the manner in which the Clinic of petitioner's wife, i.e., "Fourth Dimension-An Ultrasound Clinic" was granted permission in violation of the mandatory provisions of the Act, including the manner in which the permission was granted by the Chief Medical Officer, Kullu, H.P. to transfer the machinery from Delhi to Kullu vide order, dated 31.08.2012. The disciplinary proceedings shall be concluded within a period of four months from today. The petition stands disposed of, so also the pending application(s), if any. No costs.