

(2012) 03 BOM CK 0220

In the Bombay High Court

Case No : Writ Petition No. 9573 of 2011

Tirupati Diagnostic Center

APPELLANT

Vs

The District Appropriate Authority @ Civil Surgeo, General
Hospital Jalna and Others

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Citation : (2012) 6 ALLMR 272

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : V.J. Dixit, instructed by Mr. V.V. Deshmukh, for the Appellant; K.S. Patil, AGP, for the Respondent

Judgement

R.M. Borde, J.—Heard. Rule made returnable forthwith. With the consent of parties, petition is taken up for final disposal at admission stage.

2. Petitioner is a Medical Practitioner possessing qualification of M. B. B. S., M. D., D. M. R. D. and D. M. R. E. Petitioner runs a diagnostic center at Jalna and also conducts ultra sonography examination with the help of diagnostic machine. In the year 2004, the District Appropriate Authority granted permission to the petitioner to carry out tests. It is the case of the petitioner that the District Appropriate Authority visited and inspected the diagnostic center run by the petitioner on 5-7-2011 and found that at some places in the forms maintained by the petitioner, date has not been mentioned and such other minor defects in respect of maintenance of record. The Appropriate Authority, after inspection, without affording an opportunity of being heard to the petitioner and without specifying any reason for dispensing with the permission, proceeded to suspend registration of the diagnostic center run by petitioner. Petitioner preferred appeal against the order of Appropriate Authority under the provisions of Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. However, appeal came to be dismissed by appellate authority in view of order passed on 9-11-2011.

3. Mr. Dixit, learned Senior Counsel, appearing on behalf of petitioner contends that the order passed by the Appropriate Authority as well as the appellate authority is violative of provisions of the Act and as such deserves to be set aside. It is also contended that considering the merits of the contentions and the nature of allegations, action of suspension of registration is too harsh and ought not to have been invoked. It is also pointed out that the Appropriate Authority in the matter of non-observance of rules has proceeded to file criminal complaint against petitioner which is pending. Upon consideration of the application tendered by petitioner, the Chief Judicial Magistrate, Jalna, in view of order passed on 16-11-2011, directed to release the Ultra Sonography machine which was seized.

4. Section 17(2) of the Pre-Conception And Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 provides that the State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female feticide. Composition of the Appropriate Authority is as provided in sub-section (3) of section 17. Section 17(5) provides that the Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman. Composition of Advisory Committee is as provided u/s 17(6) of the Act. Section 20 of the Act provides for cancellation or suspension of registration which reads thus :

20. Cancellation or suspension of registration: (1) The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counseling 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.

(2) If, after giving a reasonable opportunity of being heard to the Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may for reasons to be recorded in writing, suspend the registration of any Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

5. Powers in respect of cancellation or suspension of registration are exercisable by the Appropriate Authority and section 17(5) of the Act makes provision for

constitution of Advisory Committee for rendering advice for performing functions as laid down u/s 17(8) of the Act. In the, instant matter, the Appropriate Authority has not proceeded to issue any show cause notice to the petitioner calling upon him to show cause as to why registration granted in his favour shall not be suspended or cancelled nor the Appropriate Authority has followed the procedure prescribed u/s 20 of the Act The Appropriate Authority is entrusted with the power to suspend or cancel registration of Genetic Laboratory or Genetic Clinic by issuing notice, however, section 17(3) of the Act provides for requirement of recording reasons for dispensing with such notice and the action is required to be taken in the public interest. In the instant matter, there are no reasons recorded by the Appropriate Authority for dispensing with the notice as contemplated by section 17(1) of the Act nor it has been recorded that the action will be taken in the public interest and for specified reason. The action of suspension of registration of diagnostic center run by petitioner is not in observance of provisions of section 20 of the Act. Order passed by the Appropriate Authority therefore deserves to be quashed and set aside. Appellate Court also has dismissed the appeal without recording any reason. Appellate Authority has not tested legality of the order on the basis of provisions of the enactment. Thus, order passed by the Appropriate Authority dated 5-7-2011 deserves to be quashed and set aside and the same is accordingly quashed and set aside. As a consequence of quashment of order passed by the Appropriate Authority, order passed by the appellate forum i.e. State Appropriate Authority is quashed and set aside and the matter is remitted back to the District Appropriate Authority for re-consideration. The District Appropriate Authority shall, after extending an opportunity of hearing to the petitioner, proceed to decide the matter as expeditiously as possible preferably within a period of six weeks from today, in accordance with provisions of law. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs. Pending civil application, if any, does not survive and stands disposed of.