

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4009/2012

INDIAN RADIOLOGICAL AND IMAGING

ASSOCIATION (IRIA) and ANR. Petitioners

Through: Mr. Vikas Singh, Sr. Adv. with Ms. Amrita, Mr. Nanda and Mr. Sanket, Advs.

versus

UNION OF INDIA and ANR. Respondents

Through: Mr. Rajeev Mehra, ASG with Mr. Sumeet Pushkarna, Ms. Richa Tiwari, Advs. for UOI.

Mr. Ashish Kumar and Mr. Rajeev Aggarwal, Advs. for MCI.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

23.07.2012

CM No.8402/2012 (of the petitioners for interim relief)

1. The notice of the writ petition impugning Section 2(p) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PNDT Act) and the Notification dated 04.06.2012 amending the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 has already been issued.

2. The petitioners seek stay of the Notification dated 04.06.2012 amending the Rules as under:

2. In the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as the said rules), after Rule 3, the following shall be inserted, before Rule 3A, namely:-

(3) Each medical practitioner qualified under the Act to conduct ultrasonography in a genetic clinic / ultrasound clinic / imaging centre shall be permitted to be registered with a maximum of two such clinics / centres within a district. The consulting hours for such medical practitioner, shall be clearly specified by each clinic / centre.?

3. In the said Rules, in Rule 5 in sub-rule (1), the following sub-rule:-

(a) In item (a) for the letters and figure ?`3,000.00?, the words rupees twenty five thousand? shall be substituted.

(b) In item (b) for the letters and figure ?`4,000.00?, the words rupees thirty five thousand? shall be substituted.

4. In the said Rules, in Rule 13, for the words ?within a period of thirty days of such change?, the words ?at least thirty days in advance of the expected date of such change and seek re-issuance of certificate of registration from the Appropriate Authority, with the changes duly incorporated? shall be substituted?.

The senior counsel for the petitioners has however at this stage not pressed for stay of the amendment aforesaid insofar as pertaining to Rule 5(1), enhancing the application fee.

3. The respondents in their reply to the application for interim relief have contended that the amendments aforesaid are intended to curb the steep

decline in child sex ratio attributable to rampant misuse of ultrasound machines for determination of sex of the foetus in the womb.

4. There can possibly be no challenge to the intent aforesaid.

5. However the challenge by the petitioners is on the ground that the amendments aforesaid limiting the clinics in which the medical practitioner qualified to conduct ultrasonography can be registered and conduct ultrasonography to maximum of two will, rather than serving the intent aforesaid, limit the availability of ultrasonography as a diagnostic technique used for wide range of other purposes and will thus be detrimental to the public interest. It is yet further argued that such qualified medical practitioners visit a number of clinics, as per requirement and their consulting hours in the clinic also cannot be put in a straight jacket formula, making them unavailable at other hours even in case of need.

6. We are prima facie of the opinion that the enactment of Rule 3(3)(3) supra, rather than serving the intent with which it has been enacted, will harm the public at large. We are informed that the High Court of judicature at Bombay has vide order dated 20.07.2012 in Writ Petition Lodging No.1829/2012 has already stayed the operation of Rule 3(3)(3) supra to the extent it limits such qualified medical practitioners to be registered with two ultrasound clinics; qua the second part of Rule 3(3)(3) requiring the ultrasound clinics to specify the consulting hours of the medical practitioners, it has been directed that such specification shall not prohibit such medical practitioners from, when the medical exigencies require, attending the concerned ultrasound clinic at other times also. We follow the said order and direct accordingly.

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7. Insofar as the amendment to Rule 13 is concerned, the un-amended Rule required ultrasound clinics to intimate the Appropriate Authority of

every change of employee, place, address and equipment installed within a period of 30 days of such change. The senior counsel for the petitioners has challenged the amended provision requiring intimation in advance by 30 days of such change and seeking reissuance of Certificate of Registration with the changes duly incorporated by contending that the same will make the working of the clinics impractical; that most of the time, the employees do not give notice of change and new employees have to be hired immediately; that incorporation of such change in the Certificate of Registration also takes time and is dependent on the

functioning of the Appropriate Authority; if the Appropriate Authority delays the incorporation of the change, the ultrasound clinic will have to shut down its business till the Certificate of Registration with changes incorporated is issued. On inquiry, it is informed that the Rules do not prescribe any time limit from the date of the application within which the Appropriate Authority is to affect such change.

8. Learned ASG has contended that the said amendment was brought because it was found that many ultrasound clinics were not giving intimation of the change even within 30 days, as per the un-amended Rule. He under instructions states that if advance intimation of such change is given, the ultrasound clinic will not be deemed to be in breach / violation, even if the Certificate of Registration with the change incorporated is not issued.

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9. We are prima facie of the opinion that the condition of 30 days advance notice of change particularly qua employees is onerous. It further defies logic as to why, non compliance, even if, of the un-amended Rule, rather than enforcement thereof should invite such amendment.

10. We are in the circumstances of the opinion that insofar as the amendment to Rule 13 is concerned, the interim arrangement directing seven days advance notice for change of employees with a further condition that the delay on the part of the Appropriate Authority in incorporating such change in the Certificate of Registration would not stop the concerned ultrasound clinics from continuing their activities, would serve the purpose. As far as the change of place, address and equipment installed is concerned, we do not feel the need to grant stay or make any other interim arrangement inasmuch as knowledge of such change is generally available in advance and thus notice as per the amended Rule can always be given. However, we clarify that if 30 days advance notice of change of place, address and equipment installed is given, the concerned ultrasound clinic shall not be required to stop its activities even if the Appropriate Authority has not incorporated the change in the Certificate of Registration. This interim arrangement shall continue during the pendency of the petition.

The application is disposed of.

Copy of this order be given dasti to the counsels for the parties.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JULY 23, 2012/?gsr?

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