

SIGG
25/2/15



Order Dated 26/3/15

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH JAIPUR

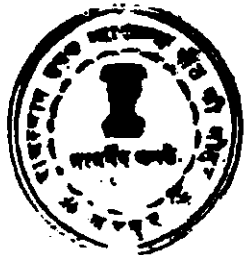
S.B. Cr. Misc. Petition No. 970 /2015

1. Dr. Ramesh Chand Gupta s/o Late Shri Surajbhan r/o 246 Vaishali Hospital, Anasagar Circular Road, Ajmer
2. Dr. Tejveer Singh Dahiya s/o Shri Mahavir Prasad Dahiya, r/o House No.10, Sagar Vihar Colony, Vaishali Nagar, Jaipur

...Accused Petitioners

Versus

State of Rajasthan through PE ...Respondent



S.B. Criminal Misc. Petition under Section 482 Cr. P.C. against the Order dated 21.2.2015 passed by Shri Chakorworthy Mahedha RHJS, Additional District and Session Judge No.4 Ajmer in Cr. Revision Petition No.2/2015 (350/2014) and the Order dated 12.12.2014 passed by Shri Amar Verma RJS,

श्री - श्री
25/2/15
जायसिंह चौधरी
अधिवक्ता एवं सहायक पी.ए.
जायसिंह चौधरी

25/3/15

P

Special Additional Chief
Judicial Magistrate PCPNDT Act
Cases, Ajmer Division Ajmer in
Cr. Regular Case No.1043/11
(05/12) whereby charge for the
offence under section 23
PCPNDT Act has been framed
against the petitioners

To



कावे - प्रतिलिपि
2
प्रमाणित निकासी कार्यालय
राजस्थान उच्च न्यायालय पीठ,
जयपुर

1

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR

ORDER

SB Cr Misc Petition No.970/2015

Dr Ramesh Chand Gupta & anr versus State of Rajasthan

26.3.2015

HON'BLE MR. JUSTICE MN BHANDARI

Mr Peush Nag – for petitioners

Mr SK Gupta – Amicus Curiae

Mr GS Gill, Additional Advocate General with Mr Harish C

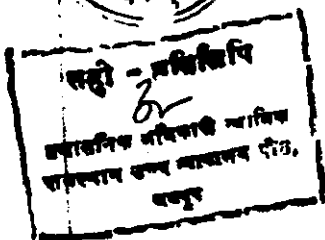
Kandpal – for the State

BY THE COURT:

REPORTABLE

By this criminal misc. petition, a challenge is made to the order dated 12.12.2014, whereby, charge for the offence under section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'the PCPNDT Act') has been framed against the petitioners. The revision petition challenging the said order has also been dismissed. A further challenge is made to the Notification dated 09.03.2009 at annexure-2.

Learned counsel submits that the Notification for



AN

appointment of Appropriate Authority is contrary to section 17 of the PCPNDT Act, as amended. As per section 17 of the PCPNDT Act, the Appropriate Authority should consist of three members, however, impugned Notification provides for an officer of the level of Sub Divisional Officer as appropriate authority at the district level. In view of above, impugned Notification deserves to be quashed along with subsequent proceedings. A reference of the judgment of the Madras High Court in the case of *Dr Manimegalai versus State*, [2014(4) Crim 483 (Mad.)] has been given.

A further challenge is made to the order at annexure-3, issued by the Collector & District Magistrate, Ajmer, wherein, he has further authorised an officer for filing the complaint under section 28 of the PCPNDT Act. Further delegation is not permissible under the law.

Mr GS Gill, Additional Advocate General, appearing for the State and Mr SK Gupta, Amicus Curiae, appointed by the court, submit that proper interpretation to section 17 of the PCPNDT Act has not been taken while challenging the Notification at annexure-2. Section 17 is divided in two parts for appointment of Appropriate Authority. The petitioners have considered only one part which refers to the appointment of the



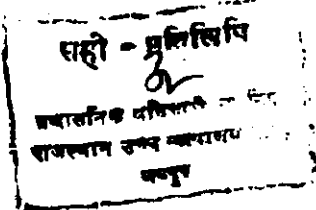
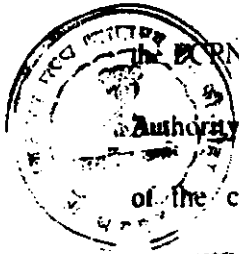
सही - प्रतिलिपि
 अध्यात्मिक अधिकारी कार्यालय
 राजस्थान राज्य सरकार
 जयपुर

412

Appropriate Authority at the State level. Same composition is not provided for the Appropriate Authority at different level which would be for the part of the State. As per section 17 of the PCPNDT Act, whenever Appropriate Authority is to be appointed at the State level, it should be with the composition of 3 members as given under sub-section (3) of section 17. In case it is for the part of the State, the appointment of the Appropriate Authority would be as provided under sub-section (3) (b) of section 17. The aforesaid provision does not provide for composition of 3 members, rather, it refers about the rank of the officer.

The State Government had issued notification in consonance to it while nominating desired rank officer as Appointing Authority for the part of the State. The District Collector has been nominated as Appropriate Authority at the District level whereas, at the Sub Division level, other officers have been appointed. The Notification is thus not in violation of section 17 but is in consonance thereto.

They further submit that as per sections 28 and 30 of the PCPNDT Act, authorisation can be given by the Appropriate Authority, State Government or the Central Government for filing of the complaint and for search and seizure. The order at



4/2

annexure-3 has been issued in consonance to the aforesaid provision read with rule 12 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996.

The prayer is made to dismiss the petition.

I have considered rival submissions of the parties and perused the record.

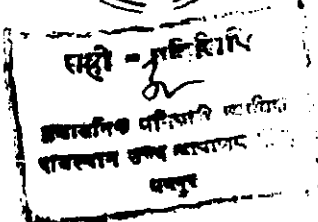
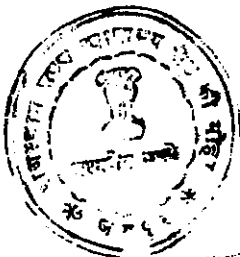
A challenge to the Notification at annexure-2 has been made in reference to section 17 of the PCPNDT Act thus it would be relevant to quote the said provision thus -

"17. Appropriate Authority and Advisory Committee.- (1). The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.

2. 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 foeticide.

(3) The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,—

(a) when appointed for the whole of the State or the Union territory, consisting of the following three



AL

members-

i) an officer of or above the rank of the Joint Director of Health and Family Welfare-Chairperson;

ii) an eminent woman representing women's organization; and

iii) an officer of Law Department of the State or the Union territory concerned:

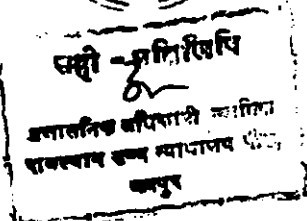
Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:

Provided further that any vacancy occurring therein shall be filled within three months of that occurrence;]

(b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

4. The Appropriate Authority shall have the following functions, namely:-

(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;



Handwritten signature or initials.

(b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;

(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;

(d) to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;

(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;

(f) to create public awareness against the practice of sex selection or pre-natal determination of sex;

(g) to supervise the implementation of the provisions of the Act and rules;

(h) to recommend to the CSB and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

5: The Central Government or the State

AM



सद्वी - सुनिश्चित
प्रशासनिक अधिकारी
राजस्थान राज्य स्वास्थ्य विभाग
जयपुर

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.

(6) The Advisory Committee shall consist of—

(a) three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists;

(b) one legal expert;

(c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be;

(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

7. No person who has been associated with the use or promotion of pre-natal diagnostic technique for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.

8. The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon:

Provided that the period intervening between any two meetings shall not exceed the prescribed period.



सही - प्रमाणित
 स्वास्थ्य विभाग
 दिल्ली

AP

9. The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed."

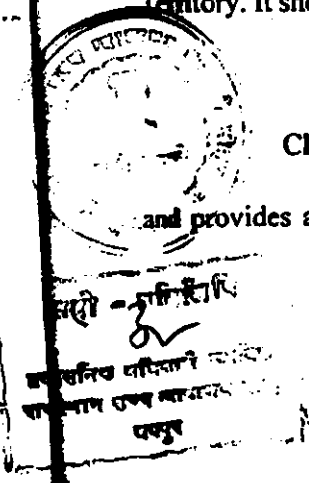
The perusal of sub-section (1) of section 17 of the PCPNDT Act reveals that the Central Government can appoint one or more Appropriate Authorities for the Union Territories. The case in hand is not of Union Territories, thus aforesaid sub-section is not relevant for this case.

Sub-section (2) of section 17 provides about the appointment of one or more Appropriate Authority by the State Government for whole or part of the State. In the instant case, Appropriate Authority has been appointed for part of the State.

Sub-section (3) of section 17 refers as to how the Appropriate Authority would be appointed under sub-section (1) and sub-section (2). Clause (a) to sub-section (3) of section 17 provides for appointment for whole of the State or Union Territory. It should consist of three members referred therein.

Clause (b) of sub-section (3) of section 17 is relevant and provides about appointment of appropriate authority for any

4/12



part of the State or the UT. It is such rank as the State Government or the Central Government deem fit. The present case is covered by clause (b) of sub-section (3) of section 17 of PCPNDT Act. According to the petitioner, it has to be read along with sub-section (3) (a), which provides about appointment under sub-section (1) and (2). Under clause (a) of the said sub-section, nomination should be of three members and, according to him, same composition should exist for the part of the State.

The argument aforesaid cannot be accepted for the reason that if same composition would have been required i.e. an Appropriate Authority for the part of the State with three members, it would have been specified under clause (b) of sub-section (3) of section 17. The Legislature, under their wisdom, only referred such rank as the State Government or the Central Government deem fit. It clearly shows composition to be different than of the State level. If the composition of three members would have been required, necessary provision could have been inserted as to who would be other two members. It is more so when at the State level, composition has been specifically given and, according to it, one eminent woman representing women's Organisation is to be part of the Appropriate Authority. If it is to be repeated for every Appropriate Authority and even for the part of

13
 15
 4/11
 श्री - जतिराम
 जतिराम
 श्री - जतिराम
 श्री - जतिराम
 श्री - जतिराम

the State, indication aforesaid would have been specific, which does not exist herein. Thus, I am unable to take the interpretation as has been given by learned counsel for the petitioners.

A provision, which has not been provided by the Legislature, cannot be inserted by the court. In view of above, first argument of the learned counsel for petitioners cannot be accepted.

A further challenge to the order at annexure-3 has also been made. It is submitted that further delegation has been made by the Appropriate Authority for filing of the complaint and even for search and seizure. The order shows not to be further delegation but authorisation under sections 28 and 30 of PCFNDT Act. Section 28 provides for filing of complaint, whereas, section 30 provides about search and seizure. Both the provisions are quoted hereunder for ready reference -

"28. Cognizance of offences. (1) No court shall take cognizance of an offence under this Act except on a complaint made by-- (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or (b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate



Handwritten signature and official stamp in Hindi, including the text 'जुदी' and 'पञ्जाब'.

Handwritten initials 'AN'.

Authority, of the alleged offence and of his intention to make a complaint to the court. Explanation.--For the purpose of this clause, "person" includes a social organisation. (2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. (3) Where a complaint has been made under clause (b) of subsection (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

"30. Power to search and seize records, etc.

- (1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place, such Authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act. (2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act."

The perusal of section 28 of the Act shows as to who



एनडी - १०११११
भारतीय नवजात शिशु स्वास्थ्य संस्थान
एनडी - १०११११
एनडी

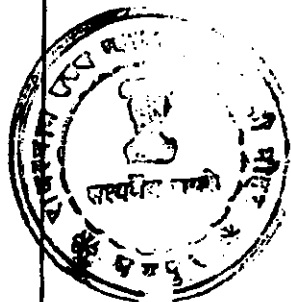
Handwritten signature or initials.

is competent to file complaint. It is the State Government, Central Government, Appropriate Authority or any person authorized by them. Same is the provision under section 30 of the Act. The order at annexure-3 is nothing but authorisation by none else but by the Appropriate Authority. It is as per the provisions of sections 28 and 30 of the Act read with rule 12 of the Rules of 1996. I do not find any illegality in issuance of order at annexure-3.

In view of the discussion made above, I do not find any merit in this criminal misc. petition. Hence, it is dismissed.


(MN BHANDARI), J.

bnsharma



श्री भादारी
2015
अपराध विभाग
राजस्थान उच्च न्यायालय, जयपुर

~~कृष्ण २५/३~~

391

29078	शिव प्रताप
27315	शिव प्रताप
30322	शिव प्रताप
-	
-	
13419	
13415	
28	