

District Appropriate Authority Under ... vs Jashmina Dilip Devda on 4 March, 2024

Author: J.K. Maheshwari

Bench: J.K. Maheshwari

REPORTABLE

2024 INSC 173

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
[Arising out of SLP (C) No. 17973 of 2015]

DISTRICT APPROPRIATE AUTHORITY
UNDER THE PNDDT ACT AND
CHIEF DISTRICT HEALTH OFFICER

.... APPELLANT

VERSUS

JASHMINA DILIP DEVDA & ANR.

.... RESPONDENTS

JUDGMENT

J.K. Maheshwari J.

1. Leave Granted

2. In the present appeal, the issue concerns the interpretation of power of Section 20(1) & (2) and Section 20(3) of the Preconception and Prenatal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994 (hereinafter to be referred to as the “PC&PNDT Act”) for cancellation, suspension or suspension in public interest respectively by the appropriate authority specified in Section 17 of the PC&PNDT Act.

3. The brief facts are that the respondent no.1 is running a hospital at Ahmedabad by the name of “Dev Hospital” which is a type of polyclinic having doctors from multiple branches like gynecology, general physician and general surgeon treating patients in the said hospital. The hospital was registered under the PC&PNDT Act and the said registration was valid up to 23.05.2015. On the basis of one complaint made by Shilpa Punani of Wadhwan District Surendranagar, an inspection of the hospital was conducted on 21.10.2010. During inspection, the appropriate authority and its team found some lapses contravening the provisions of PC&PNDT Act. Consequently, the sonography machine operated in the hospital was seized. On 25.10.2010, the appropriate authority without giving any notice passed an order suspending the registration of the hospital in exercise of the power

under Section 20(1) & (2) of the PC&PNDT Act. On filing appeal by respondent no.1, the appellate authority vide order dated 21.12.2010 directed the appropriate authority to pass a suitable order within 15 days and to clarify whether the order dated 25.10.2020, was passed in exercise of the power under Section 20(1) & (2) or under Section 20(3) of PC&PNDT Act. The appropriate authority taking cue from the order of the appellate authority, passed a fresh order on 29.12.2010 that there is a breach of mandatory provisions and accordingly suspended the registration purportedly under Section 20(3) of PC&PNDT Act in public interest till finalization of the criminal proceedings.

4. An appeal preferred against the subsequent order dated 29.12.2010 by respondent no.1 was dismissed on 17.03.2011 by the appellate authority. Being aggrieved, by the order of suspension dated 29.12.2010 and the order passed in appeal dated 17.03.2011, writ application being SCA No. 6215/2011 was filed by respondent no.1 before the High Court of Gujarat (hereinafter referred to as "High Court") to set aside the said orders and to revoke the suspension of registration of the hospital. Prayer was also made to release the sonography machine seized by the appropriate authority.

5. Learned Single Judge vide order dated 05.08.2013 was pleased to allow the writ application inter alia observing that looking to the condition of foetus in the womb, once the patient has consented for abortion, she cannot make a complaint for alleged violation of provisions of PC&PNDT Act. The Court found that neither any notice was issued nor an opportunity of hearing was afforded prior to passing the order suspending the registration. It was further held that while passing the first order of suspension on 25.10.2010, powers were exercised by appropriate authority under Sections 20(1) & (2) of PC&PNDT Act without affording an opportunity of hearing, which was contrary to the spirit of the said provisions and wholly unjustified. The Learned Single Judge was of the view that appellate authority was not justified to remit the matter in appeal against the order of suspension to the appropriate authority suggesting clarification whether such powers were exercised by him under Section 20(1) & (2) or under Section 20(3) of the PC&PNDT Act and how far the reasons for exercising such power are justified. The Court further held that the reason as assigned in the subsequent order, if accepted as valid, then each and every case of suspension would fall within the purview of Section 20(3) of PC&PNDT Act and the provisions of Section 20(1) & (2) will be rendered redundant.

6. Being aggrieved by the order of Learned Single Judge, appropriate authority challenged the same by filing the Letters Patent Appeal which was dismissed by the order impugned by the Division Bench, putting a stamp of approval to reasonings of the Learned Single Judge. The Division Bench was of the opinion that all the cases of suspension would not automatically fall within the purview of Section 20(3) of the PC&PNDT Act. It was observed that the reasons assigned in subsequent order of suspension by the appropriate authority are not valid to exercise such power in public interest. Therefore, the Letters Patent Appeal filed by the appropriate authority was dismissed.

7. Learned counsel for the appellant authority submits that on the scope of Sections 20(1), (2) & (3) of PC&PNDT Act, there is no judgment of this Court, so the question involved in the case is of general public interest. He has placed reliance on the judgment of Malpani Infertility Clinic Pvt. Ltd. vs. Appropriate Authority, 2004 SC Online Bom 834 to urge that if power is exercised by

appropriate authority to suspend the registration due to pendency of the prosecution, such power may be exercised in public interest under Section 20(3) of PC&PNDT Act. It is contended that looking to the object of PC&PNDT Act, if the appropriate authority considers that the activity of the licensed entity is affecting the public at large, the power to suspend the registration or license is permissible. However, it is fairly stated that the High Court of Bombay has given a conflicting judgment in the case of J. Sadanand M. Ingle (Dr) vs. State of Maharashtra, 2013 SCC online Bom 697 which lays down that sub-section (3) starts with non-obstante clause and empowers the appropriate authority to suspend the registration temporarily. Dealing with the scope of Sections 20(3) and 30 of the PC&PNDT Act, it was observed that, both Sections are independent and action can be taken independent to each other. It is also urged that issuance of the order dated 25.10.2010 referring to the wrong provisions, would not itself render the said order illegal. The power under Section 20(3) is of interim nature which can be exercised in public interest in a time bound manner. Thus, by the subsequent order dated 29.12.2010, suspension of the registration as directed by the appellant authority was justified and prayed for to allow this appeal and to set aside the orders of the High Court.

8. Per contra, learned counsel for the respondent No. 1 submits that considering the tenor of the order passed by the appropriate authority and the reasons so stated, it cannot be said to be an order suspending the registration in public interest. Relying upon the judgment of High Court of Gujarat passed on 16.4.2018 in Special Civil Application No. 9424 of 2014 in the case of Priyankant Mokhal Kapadia vs. State of Gujarat, it is urged that the power of Section 20(3) of the PC&PNDT Act is exceptional in nature and can be exercised only in public interest after forming opinion and recording the reasons in this regard, otherwise, such power ought not to be exercised. In support of the said contention, reliance has also been placed on a judgment of the Bombay High Court in the case of Sujit Govind Dange vs. State of Maharashtra and others, 2012(6) Mh.L.J. 289 to urge that the powers under Section 20(3) of PC&PNDT Act are extraordinary and the appropriate authority ought to have exercised such power in larger public interest and in exceptional circumstances, in particular when the said authority is of the opinion that it is necessary or expedient to do so in public interest by recording such reasons, otherwise such power should not be exercised.

9. We have heard learned counsel for both the parties at length and to appreciate the scope of powers as specified under Section 20(1), (2) & (3) of PC&PNDT Act, it is necessary to refer the said provisions. For ready reference, Section 20(1), (2) & (3) of PC&PNDT Act are being quoted hereinbelow:

20. Cancellation or suspension of registration.— (1) The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counselling 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 Counselling 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 Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

10. Bare reading of the aforesaid provisions makes it clear that Section 20(1) & (2) deals with both suspension or cancellation as the case may be, while Section 20(3) only deals with suspension in public interest. The authority, while exercising power under sub-sections (1) & (2) of Section 20 of PC&PNDT Act, may act suo moto or on a complaint and after notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic for the reasons to show cause why its registration should not be suspended or cancelled, and affording reasonable opportunity of hearing and having regard to the advice of the Advisory Committee and on being satisfied that there was a breach of the provisions of the PC&PNDT Act or the Rules, without prejudice to any criminal action, may suspend or cancel its registration as the case maybe. Meaning thereby that for breach of the provisions of the PC&PNDT Act and the Rules, power of suspension for such period as may deem fit or of cancellation may be exercised parallelly by the appropriate authority.

11. Sub-section (3) of Section 20 only deals with suspension and confers independent power to the appropriate authority irrespective and notwithstanding the power under sub-sections (1) or (2) of Section 20. The said power may only be exercised by the appropriate authority if the said authority is of the opinion that exercise of such power is necessary or expedient in public interest. Meaning thereby that the exercise of such power of suspension by appropriate authority is in a contingency where it is expedient or necessary to take immediate action in public interest. While exercising such power, it is incumbent on the authority to form an opinion for reasons to be recorded in writing to indicate the said public interest. The said power is not akin to the power as specified in sub-section 2 of Section 20 of PC&PNDT Act and the Rules thereto.

12. In the light of the discussion of the above provisions, it is required to be seen whether the order of suspension passed on 25.10.2010 is really an order under sub-section (2) or under sub-section (3) of Section 20 of the PC&PNDT Act. To understand the real intent of the order, it would be proper to reproduce the order dated 25.10.2010 as under :

“No. DP/H/PNDT/Regn. Susp/Dr. Jasmina Devda/315/10 O/O Appropriate Authority, PNDT Act, 1994 & CDHO, District Panchayat, Health Branch, Ahmedabad
Date: 25.10.2010 Read:

1. The facts of the observations by Appropriate Authority during the visit & the search & Seizure operation at clinic of Dr. Jasmina D. Devda, Dev Hospital, Vasna, Ahmedabad on 21 st October, 2010.

2. Advice of the PNDT Advisory Committee meeting held on 22/10/2010.

3. Powers conferred under Section 20(1) & (2) of PC&PNDT Act, Office Order: □As per the points read above, a search & seizure operation was conducted at the clinic of Dr. Jasmina D. Devda, Dev Hospital, Kesariyaji Bus Stop, Dr. Jivraj Mehta Hospital Road, Vasna, Ahmedabad on 21st October, 2010.

Dr. Jasmina D. Devda, Dev Hospital, Vasna, Ahmedabad has convincingly contravened the Sections 4(3), 5(2), 5(a) & Rules 9(1), 9(4), 9(8), 10(1A) and 13 of the PC&PNDT Act, 1994. As per powers conferred under Section No. 21(1) & 20(2) of PC&PNDT Act, 1994, the PNDT registration No. 564 allotted to the clinic of the same at the above address is hereby suspended till the next order TV undersigned.

Appropriate Authority PNDT Act, 1994 & CDHO, District Panchayat, Ahmedabad.

To Dr. Jasmina D. Devda, Dev Seva Trust, Kesariyaji Bus Stop Dr. Jivraj Mehta Hospital Road, Vasna, Ahmedabad.”

13. Having gone through the order and the provisions of sub□section (2) of Section 20 of the PC&PNDT Act, in our view, the order dated 25.10.2010 cannot be said to be an order under sub□section (3) of Section 20 of PC&PNDT Act. In fact, it is simplicitor an order passed under sub□section (2) of Section 20 alleging contraventions of the provisions of PC&PNDT Act and the Rules. Therefore, we have no hesitation to say that the appellate authority, while remanding the matter vide order dated 21.12.2010, was not required to ask the appropriate authority to clarify whether the order of suspension was under sub□section (3) or under sub□sections (1) & (2) of Section 20 of PC&PNDT Act.

14. After remand, the subsequent order of suspension dated 29.12.2010 passed in public interest was assailed before the appellate authority and the writ court. To appreciate the contents of the said order and the provisions of sub□Sections (1), (2) & (3) of Section 20 of PC&PNDT Act, it is necessary to reproduce the order dated 29.12.2010 which is as under:

“OW No. DP/H/PNDT/Regn. Susp/Dr. Jasmina Devda/852/100/o Appropriate Authority, PNDT Act, 1994 & CDHO, District Panchayat, Health Branch, Ahmedabad Date: 29.12.2010 Read: □(1) The facts of the observation by Appropriate Authority during the visit 1 the search and seizure operation at clinic of Dr. Jasmina D. Devda, Dev Hospital, Vasna, Ahmedabad on 21st October, 2010.

(2) Power conferred under Section 20(3) of PC&PNDT Act, 1994.

(3) Order dated 21/12/2010 passed in Appeal No. 5/2010 by State Appropriate Authority, PC & PNDT Act.

OFFICE ORDER As per the points read above, a search & seizure operation was conducted at the clinic of Dr. Jasmina D. Devda, Dev Hospital, Kesariyaji Bus Stop, Dr. Jivraj Mehta Hospital Road, Vasna, Ahmedabad on 21 st October, 2010.

Dr. Jasmina D. Devda, Dev Hospital, Vasna, Ahmedabad has convincingly contravened the Sections 4(3), 5(2), 6(a) & Rules 9(1), 9(4), 9(5), 10(1A) & 13 of the PNDT Act, 1994. As per power conferred under Section No. 20(3) of PC&PNDT Act, 1994, the PNDT Registration No. 564 allotted to the clinic of the same at the above address is hereby suspended, for following reason till finalization of criminal proceedings.

There is clear breach of mandatory provisions as mentioned in the order dated 25/10/2010 viz. Section 4(3), 5(2), 6(a) & Rules 9(1), 9(4), 9(8), 10(1A) & 13. This defeats the basic purpose of the Act & hence contrary to the public interest. Thus in public interest it is required to check the activity of yours as you are not acting as per statutory provisions of Act & hence, suspension of the PNDT registration is desirable.

Appropriate Authority, PNDT Act 1994 & CDHO, District Panchayat, Ahmedabad.”

15. Perusal of the above order reveals that the appropriate authority while passing the order sought to exercise power under sub-section (3) of Section 20 of PC&PNDT Act and directed suspension of the registration of the clinic till finalization of the criminal proceedings because of the contraventions of the provisions of the PC&PNDT Act and the Rules. Therefore, it is said to be contrary to the public interest and such activity is required to be curbed.

16. As per the discussion made hereinabove, in our view, the power of sub-section (3) of Section 20 of PC&PNDT Act is notwithstanding the power of sub-sections (1) & (2) of Section 20. The said power can only be exercised when the appropriate authority forms an opinion that it is necessary or expedient in public interest to do so. It is incumbent upon the appropriate authority to form its opinion based on reasons expedient or necessary to exercise the power of suspension. The contents of the suspension order dated 29.12.2010 does not contain reasons as required to form an opinion that it is necessitated or expedient in public interest to exercise the power of suspension. Therefore, in our view, it does not fulfill the requirement of sub-section (3) of Section 20 of PC&PNDT Act. As per the above discussions, neither the first order of suspension dated 25.10.2010 nor the second order of suspension dated 29.12.2010 qualifies the requirement of sub-section (3) of Section 20 of the PC&PNDT Act. The said view is fortified by the reasoning recorded by the learned Single Judge and Division Bench which we find just and concur by its reasoning. Therefore, we are not inclined to interfere in this appeal.

17. In the above context, it is necessary to refer to the intendment of Section 20(2) and Section 20(3) of PC&PNDT Act. At the cost of reiteration, we clarify that if the appropriate authority finds breach of provisions of PC&PNDT Act or the Rules it may, after issuing notice and giving a reasonable opportunity of being heard, without prejudice to any criminal action against the licensed entity, suspend its registration for such period as it may think fit or cancel the same as the case maybe. The appropriate authority has also been conferred with a power under sub-section (3) of Section 20 notwithstanding the power under sub-section (1) & (2) of Section 20. In the said situation in case, the authority forms an opinion that it is necessary or expedient in public interest, then after recording reasons in writing, it may suspend the registration of the licensed entity without notice as specified in sub-section (1) of Section 20. Thus, the power of sub-section (3) is intermittent and in

addition to the power of sub-section (2) but it may be exercised sparingly, in exceptional circumstances in public interest. In our view, the power of suspension, if any exercised, by the appropriate authority deeming it necessary or expedient in public interest for the reasons so specified, it should be for interim period and not for an inordinate duration.

18. As per above discussion of the legal position, in the facts of the present case as is apparent, the inspection was made on 21.10.2010, and the order of suspension was passed on 25.10.2010 without any notice or affording any opportunity of hearing as per sub-section (2) of Section 20. On filing appeal, the appellate authority remitted it to the appropriate authority which passed the subsequent order of suspension dated 29.12.2010 exercising the power under sub-section (3) of Section 20, which in our view is not justified and has rightly been set aside by Learned Single Judge and confirmed by the Division Bench. Therefore, the appeal filed by the appropriate authority is hereby dismissed and the order passed by Learned Single Judge and the Division Bench are hereby upheld. Since the order under challenge has been implemented and the hospital is operational, therefore no further consequential orders are required to be passed directing to revive the registration. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. (J.K. MAHESHWARI)J. (K.V. VISWANATHAN) NEW
DELHI;

04.03.2024