

a * **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 5th January, 2018*
Decided on: 12th October, 2018

b + **W.P.(CRL) 2721/2017 & CrI.M.As. 15610-15611/2017**

c NARESH GUPTA

..... Petitioner

Represented by: Ms. Sujatha Balachander, Mr.
Shreyak Gupta, Advs.

versus

d STATE OF NCT OF DELHI & ORS

..... Respondent

Represented by: Ms. Nandita Rao, ASC for
State/R-1 with SI Bhawani
Shankar PS Mianwali Nagar.
Mr. Naushad Ahmed Khan,
ASC for R-2&3.

e **CORAM:**

HON'BLE MS. JUSTICE MUKTA GUPTA

f 1. By the present petition, the petitioner inter-alia seeks declaration of the Circular dated 27th May, 2015 bearing F.No.9(10)65/PNDT/DFW/14/4308 (in short the Circular) as void, ultra-vires and illegal, quashing of FIR No.323/2017 registered at PS Mianwali Nagar and the proceedings pursuant thereto and directions to the respondent No.1 to return the seized documents and permit the petitioner to recommence its business operation of repair and sale of MRI machines at the workshop located at M-208, Guru Harkishan Marg, Paschim Vihar, Delhi.

g 2. Case of the petitioner is that he is the owner of a Magnetic Resonance Imaging (MRI) Equipment Service and Repair Centre and on 12th July, 2017
h when the petitioner came in contact with the officials of the respondent No.2

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at their department he was advised to get his workshop registered under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short the PCPNDT Act) as per an internal departmental Circular dated 27th May, 2015. The petitioner filled up all the forms for registration on 14th July, 2017, however after the submission of forms for registration the workshop of the petitioner was raided by the officials of respondent No.3 claiming that the petitioner has violated the provisions of the PCPNDT Act.

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3. FIR No.323/2017 was also registered against the petitioner alleging that the workshop had not been registered under the Act. It is the case of the petitioner that the FIR did not allege that the petitioner committed any offence under the PCPNDT Act or the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (in short the Rules). The workshop of the petitioner was sealed on 14th July, 2017 and certain documents seized vide seizure memo dated 14th July, 2017.

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4. On 1st August, 2017 the petitioner filed an application before the learned Metropolitan Magistrate for return of the seized documents and de-sealing of the sealed workshop which was dismissed on 4th August, 2017. Challenging the order dated 4th August, 2017 the petitioner filed a revision petition before the learned ASJ which allowed the application noting that the appropriate authority had failed to explain the object of sealing the workshop, and has behaved in a completely non-transparent manner and passed the following order modifying the order of the learned Metropolitan Magistrate as under:

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“(i) *The District Appropriate Authority is directed to desearl the premises of the revisionist/accused bearing No.M-208, Guru*

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Harkishan Marg, Paschim Vihar, Delhi, within 48 hours from the time of receipt of this order.

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(ii) The District Appropriate Authority shall prepare a list/seizure memo/Panchnama of the articles and take it in their possessions (if required), otherwise, they shall have no right to raise the objection for release of the said articles to the applicant/ accused.

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(iii) The request for release of the documents seized on 14.07.2017 is declined. However, the revisionist/ accused is at liberty to move an application before the District Appropriate Authority detailing the documents required by him to be produced before the concerned Authorities.

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(iv) The request for grant of permission to recommence the operation at the workshop at premises bearing No.M-208, Guru Harkishan Marg, Paschim Vihar, Delhi by the revisionist/ accused is not considered.”

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5. In the present petition the case of the petitioner is that Rule 18A Sub-Rule 7 provides only in respect of ultrasound machines and the competent authority by way of a Circular cannot override the Rules and apply the same to other imaging machines. According to the petitioner admittedly the petitioner does not and cannot install an imaging machine at his workshop which requires ample space and he is only a dealer purchasing the machine from the manufacturers to be transmitted to the users and the machine is directly installed at the clinic and not at the petitioner's workshop. At the petitioner's workshop only some spare parts were recovered which are incapable of imaging and determining the sex of the child, prohibition whereof is the very purpose of the PCPNDT Act. It is further stated that the power to make Rules under Section 32 vests in the Central Government and the power to make Regulation as per Section 33 of the PCPNDT Act vests with the Board. Thus, no power has been vested in the appropriate authority

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to issue Circulars beyond the Rules and Regulations and add up imaging machines with the ultrasound machines. Further, State Boards as constituted have only recommendatory powers. Reliance is placed on the decisions reported as Liyakat Ali Vs. Govt. of NCT of Delhi (2008) SCC Online CAT 1667; Punjab Water Supply & Sewerage Board Vs. Ranjodh Singh & Ors. (2007) 2 SCC 491; Dr. Tejinder Pal Singh Multani Vs. State of Punjab & Anr. (2014) SCC Online P&H 17641; Dr. Anita Gupta Vs. State of Haryana & Anr. (2016) SCC Online P&H 10398; Dr. Sai Vs. State of Maharashtra & Anr. (2016) SCC Online Bom 8812; Medscan Diagnostic Imaging Centre Vs. State Appropriate Authority Panchkula & Anr. (2014) SCC Online P&H 23987.

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6. Learned Additional Standing Counsel for the State countering the arguments of learned counsel for the petitioner submits that the FIR No.323/2017 not only alleges violation of Section 3A of the PCPNDT Act but also Section 3B which prohibits the sale of imaging machines to unregistered consumers. On checking the documents of the petitioner it was found that he had sold MRI machines to gynecologist out of which one of the gynecological clinic was unregistered. Hence, no case for quashing of the FIR has been made out. Further the appropriate authority is competent to pass circulars for the guidance of the public at large which is subordinate legislation and liable to be adhered with.

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7. Before proceeding further it would be appropriate to note certain provisions of the PCPNDT Act and Rules as under:

“PCPNDT Act

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3A. Prohibition of sex-selection.- No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by

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himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

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3B. *Prohibition on sale of ultrasound machine, etc., to persons, laboratories, clinics, etc. not registered under the Act.*—
No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act. (Emphasis supplied)

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17. *Appropriate Authority and Advisory Committee.*—

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(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.*

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(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,—*

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

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

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

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

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Provided that it shall be the duty of the State or the Union territory concerned to constitute multimember State or Union territory level Appropriate Authority within three months

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of the coming into force of the Pre-natal Diagnostic Techniques
(Regulation and Prevention of Misuse) Amendment Act, 2002:

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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.

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(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;

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(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;

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(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;

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(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;

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

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

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

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(5) *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.*

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(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.*

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(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.*

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(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:*

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

(9) *The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to*

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be followed by such Committee in the discharge of its functions shall be such as may be prescribed.

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17A. Powers of Appropriate Authorities.- The Appropriate Authority shall have the powers in respect of the following matters, namely:-

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- (a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;
 - (b) production of any document or material object relating to clause (a);
 - (c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and
 - (d) any other matter which may be prescribed.

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18. Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics.-

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(1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection, or render services to any of them, after the commencement of the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such centre, laboratory or clinic is duly registered under the Act.

(2) Every application for registration under sub-section (1), shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.

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(3) Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged, either partly or exclusively, in

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counselling or conducting pre-natal diagnostic techniques for
any of the purposes mentioned in section 4, immediately before
the commencement of this Act, shall apply for registration
within sixty days from the date of such commencement.

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(4) Subject to the provisions of section 6, every Genetic
Counselling Centre, Genetic Laboratory or Genetic Clinic
engaged in counselling or conducting pre-natal diagnostic
techniques shall cease to conduct any such counselling or
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technique on the expiry of six months from the date of
commencement of this Act unless such Centre, Laboratory or
Clinic has applied for registration and is so registered
separately or jointly or till such application is disposed of,
whichever is earlier.

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(5) No Genetic Counselling Centre, Genetic Laboratory or
Genetic Clinic shall be registered under this Act unless the
Appropriate Authority is satisfied that such Centre, Laboratory
or Clinic is in a position to provide such facilities, maintain
such equipment and standards as may be prescribed.

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23. *Offences and penalties.-*

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(1) Any medical geneticist, gynaecologist, registered medical
practitioner or any person who owns a Genetic Counselling
Centre, a Genetic Laboratory or a Genetic Clinic or is
employed in such a Centre, Laboratory or Clinic and renders
his professional or technical services to or at such a Centre,
Laboratory or Clinic, whether on an honorary basis or
otherwise, and who contravenes any of the provisions of this Act
or rules made thereunder shall be punishable with
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imprisonment for a term which may extend to three years and
with fine which may extend to ten thousand rupees and on any
subsequent conviction, with imprisonment which may extend to
five years and with fine which may extend to fifty thousand
rupees.

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(2) The name of the registered medical practitioner shall be
reported by the Appropriate Authority to the State Medical
Council concerned for taking necessary action including

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suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

(3) *Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sinologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre- natal diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.*

(4) *For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.*

32. *Power to make rules.-*

(1) *The Central Government may make rules for carrying out the provisions of this Act.*

(2) *In particular and without prejudice to the generality of the foregoing power, such rules may provide for—*

(i) *the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (2) of section 3;*

(ia) *the manner in which the person conducting ultrasonography on a pregnant woman shall keep*

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record thereof in the clinic under the proviso to sub-section (3) of section 4;

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(ii) the form in which consent of a pregnant woman has to be obtained under section 5;

(iii) the procedure to be followed by the members of the Central Supervisory Board in the discharge of their functions under sub-section (4) of section 8;

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(iv) allowances for members other than ex-officio members admissible under subsection (5) of section 9;

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(iva) code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics to be laid down by the Central Supervisory Board under clause (iv) of Section 16;

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(ivb) the manner in which reports shall be furnished by the State and Union territory Supervisory Boards to the Board and the Central Government in respect of various activities undertaken in the State under the Act under clause (iv) of sub-section (1) of section 16A;

(ivc) empowering the Appropriate Authority in any other matter under clause (d) of section 17A;

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(v) the period intervening between any two meetings of the Advisory Committee under the proviso to subsection (8) of section 17;

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(vi) 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 under sub-section (9) of section 17;

(vii) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 18;

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(viii) the facilities to be provided, equipment and other standards to be maintained by the Genetic

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- Counselling Centre, Genetic Laboratory or Genetic Clinic under sub-section (5) of section 18;*
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- (ix) *the form in which a certificate of registration shall be issued under sub-section (1) of section 19;*
- (x) *the manner in which and the period after which a certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 19;*
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- (xi) *the manner in which an appeal may be preferred under section 21;*
- (xii) *the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 29;*
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- (xiii) *the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody such documents, records or objects were seized under sub-section (1) of section 30;*
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- (xiv) *any other matter that is required to be, or may be, prescribed.*

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33. *Power to make regulations.- The Board may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for—*

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- (a) *the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 9;*
- (b) *the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 11;*
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- (c) *the method of appointment, the conditions of service and the scales of pay and allowances of the*

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 officer and other employees of the Board appointed under section 12;

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 (d) generally for the efficient conduct of the affairs of the Board.

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 34. Rules and regulations to be laid before Parliament.- Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

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PCPNDT RULES

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 18. Code of Conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics, Imaging Centres, etc.—All persons including the owners, employee or any other persons associated with Genetic Counselling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics, Imaging Centres registered under the Act/these rules shall—

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 (i) not conduct or associate with, or help in carrying out detection or disclosure of sex of foetus in any manner;
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 (ii) not employ or cause to be employed any person not possessing qualifications necessary for carrying out pre-natal diagnostic techniques/procedures, techniques and tests including ultra-sonography;

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(iii) *not conduct or cause to be conducted or aid in conducting by himself or through any other person any techniques or procedure for selection of sex before or after conception or for detection of sex of foetus except for the purposes specified in sub-section (2) of section 4 of the Act;*

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(iv) *not conduct or cause to be conducted or aid in conducting by himself or through any other person any techniques or test or procedure under the Act at a place other than a place registered under the Act/these rules;*

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(v) *ensure that no provision of the Act and these rules are violated in any manner;*

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(vi) *ensure that the person, conducting any techniques, test or procedure leading to detection of sex of foetus for purposes not covered under section 4 (2) of the Act or selection of sex before or after conception, is informed that such procedures lead to violation of the Act and these rules which are punishable offences;*

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(vii) *help the law enforcing agencies in bring to book the violators of the provisions of the Act and these rules;*

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(viii) *display his/her name and designation prominently on the dress worn by him/her;*

(ix) *write his/her name and designation in full under his/her signature;*

(x) *on no account conduct or allow/cause to be conducted female foeticide;*

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(xi) *not commit any other act of professional misconduct.]*

18A. Code of Conduct to be observed by Appropriate Authorities.

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(7) *All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following regulation of ultrasound equipments, namely:-*

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(i) *monitor the sales and import of ultrasound machines including portable or buyback, assembled, gift, scrap or demo (Emphasis Supplied);*

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(ii) *ensue regular quarterly reports from ultrasound manufacturers, dealers, wholesalers and retailers and any person dealing with the sales of ultrasound machines at the State level;*

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(iii) *conduct periodical survey and audit of all the ultrasound machines sold and operating in the State or district to identify the unregistered machines:*

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(iv) *file complaint against any owner of the unregistered ultrasound machine and against the seller of the unregistered ultrasound machine.”*

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8. One of the arguments of the petitioner is that the petitioner was not running an imaging centre and was thus not liable to be proceeded. As noted above, Section 3B of the PCPNDT Act prohibits sale of ultrasound machine or imaging machine or scanner or any other equipment capable of detecting the sex of the foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act and from the material placed on record by the competent authority it is evident that though the petitioner has not installed any imaging machine in his office but is dealing in the sale of equipments of the imaging machine and has sold to one clinic which is unregistered. Thus, prima facie there is material to come to the conclusion that the petitioner has committed an offence as defined under Section 3B of the PCPNDT Act.

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9. The next limb of argument of the petitioner is that the appropriate authority could have observed the compliance of the rules and regulations in relation to ultrasound equipment and not imaging machine and by way of a circular the appropriate authority could not have extended the ambit of Rule 18A (7). The circular dated 27th May, 2015 reads as under:

*“Directorate of Family Welfare, Government of NCT of Delhi
7th Level, B & C Wing, Vikas Bhawan-II, Civil Lines,
New Delhi-54*

F.No.9(10)65/PNDT/DFW/14/4308

Dated: 27/05/15

Preamble

The skewed child sex ratio is a matter of great concern for the State of Delhi. Rapid technological advancements in techniques for sex selection/determination have direct relation to the declining Child Sex Ratio. Ultrasonography machines/Imaging Machine or any other machine capable of detecting sex are usually instrumental in prenatal sex determination which paves way for female foeticide. The strict implementation of the PC & PNDT Act is the prime duty of the State Government.

In reference to notification dated 24.2.2014 from Ministry of Health & Family Welfare, wherein Rule 18(A)(7):- All Appropriate Authorities including the State, District and Sub-District notified under the Act, inter-alia, shall observe the following regulation of ultrasound equipments namely:-

- (i) Monitor the sales and import of ultrasound machines including portable or buy back, assembled, gift, scrap or demo;*
- (ii) Ensure regular quarterly reports from ultrasound manufacturers, dealers, wholesalers and retailers and any person dealing with the sales of ultrasound machine at the State level;*
- (iii) Conduct periodical survey and audit of all the ultrasound machines sold and operating in the State or District to identify the unregistered machines;*

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(iv) File complaint against any owner of the unregistered ultrasound machine and against the seller of the unregistered ultrasound machine.

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The monitoring of the unauthorized sale/circulation of USG/ Imaging machines and to curb their misuse, is hence is the duty of the State Government and therefore, the following instructions are circulated for strict compliance.

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Circular:

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1. *All manufacturers, retailers, distributors, importers, dealers and technicians dealing in sale, buyback or repair of Ultrasonography/ Imaging machines in Delhi are to be registered with State Appropriate Authority, PC & PNDT, Government of NCT of Delhi. No person will be permitted to sale/ purchase/ buy back/repair or carry out any transaction of USG/ Imaging machine / probes or any instrument capable of detection of sex of foetus except from the dealers/ manufactures/ repairers registered with State Appropriate Authority in Government of NCT of Delhi. (As per attached application for registration)*
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2. *Manufacturers/ dealers will sell / buy back / repair USG machines / Imaging machine / any other machine capable of detecting sex and probes only to those clients/ clinics which are registered with the District Appropriate Authority of the concerned district.*
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3. *Manufacturers, retailers, distributors, importers, dealers and technicians they will report to the State Appropriate Authority, Govt. of NCT Delhi as well as the concerned District Appropriate Authority for every transaction or repair of USG/ Imaging machines prior to actual sale/ buyback or repair of the machines with all the details like make, model and serial no. of the machines and probes.*
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4. *No clinic/ doctor will purchase/ sell/ give USG machines by way of buy back or repair of any USG/ Imaging machine from/ to any manufacturer, retailer; distributor, importer, dealer or technicians not registered with State Appropriate Authority, Govt. of NCT Delhi.*
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5. *Manufacturers, retailers, distributors, importers, dealers and technicians, will keep complete record of their business at the place of their business, in serial order regarding the date, make-model & serial no. of the USG/ Imaging machines/ any other machine capable of detecting sex/ probes sold/ bought back/ repaired/ traded or destroyed & will submit their quarterly report of sale/ buyback to District and State Appropriate Authority within 15 days of end of every quarter. Even if the information is “Nil”, it is to be reported mandatorily.*
 6. *Every manufacturer, retailers, distributors, importers, dealers and technicians will provide reasonable facilities for inspection of their record of the business at the place of their business on demand by concerned Appropriate Authority during inspection visit at all reasonable times.*
 7. *All the transactions regarding the USG/ Imaging machines/ any other machine capable of detecting sex/ probes will be notified to the District Appropriate Authority of the concerned district by the Clinic / Doctor as well as by concerned Manufacturers, Distributors, Retailers, Importers/ technician.*
 8. *Manufacturer/ dealer will report to both the State Appropriate Authority and District Appropriate Authority for every transaction of USG machine/Imaging machine/ any other machine capable of detecting sex/ probes prior to the actual sale of the machine.*
 9. *Manufacture/dealer will submit the report online. Till this mechanism is developed, reporting should be made on email id dirdfw@nic.in and a hard copy submitted to the State Appropriate Authority, Directorate of Family Welfare, 7th level, Vikas Bhawan II, Civil Lines, Delhi - 110 054.*
 10. *The manufacturer/Dealer/retailers / distributors /importers/ technician while doing transaction of any equipment which is capable of detection of sex of foetus will take an affidavit on stamp paper duly signed by notary public from the purchaser that no court case is pending against him / her in any state of India in relation to PC & PNDDT Act.*

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11. *Manufacturer/ dealer will report to State Appropriate Authority, Govt. of NCT Delhi about the buyback of old equipments and probes from the client.*

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12. *Manufacturer/ dealer will report to State Appropriate Authority, Govt. of NCT of Delhi about the refurbishment or cannibalization of any old equipment purchased from the client.*

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All *Manufacturers, Distributors, Retailers, Importers, technicians of Ultrasonography / Imaging machines/probes any other equipment capable of detecting sex of foetus are to follow the above mentioned instructions strictly, in a bid to stop illegal transactions of Ultrasonography / Imaging machines/probe or any other equipment capable of detecting sex. Any non-compliance of these instructions will be viewed as contravention of Sec. 3 (B) of The PC & PNDDT Act, 1994 & Rule 3-A of the PC & PNDDT Rules 1996 & will be liable to prosecution by the concerned Appropriate Authority.*

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By Order and in the name of the Government of Delhi.

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*Sd/-
Chairperson
State Appropriate Authority,
PC & PNDDT Act, Directorate of Family Welfare
Govt. of NCT Delhi*

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10. The word used in Sub-Rule 7 of Rule 18A is 'ultrasound equipment' which comes within the ambit of allied equipments and parts thereof. The term 'ultrasound equipment' appearing in Sub-Rule 7 of Rule 18A cannot be given a restricted meaning and confined the same to an ultrasound machine but has to be applied to all allied machines which can serve the purpose of an ultrasound machine and would thus include an imaging machine as well. Hence, the circular issued by the competent authority does not suffer from

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the vice of arbitrariness being beyond the competence nor does it over-ride
any rule or regulation or provision of the PCPNDT Act.

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11. In view of the discussion aforesaid this Court finds no merit in the
petition. Petition and applications are dismissed.

(MUKTA GUPTA)
JUDGE

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OCTOBER 12, 2018
'ga/rk'



a *This print replica of the raw text of the judgment is as appearing on court website (authoritative source)*

Publisher has only added the Page para for convenience in referencing.

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