

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W. P. (C) No. 3858 of 2016

Mahesh Kumar

..... Petitioner

vs.-

1. The State of Jharkhand.
2. Director, Jharkhand Rural Health Mission Society,
Department of Health, Medical Education and
Family Welfare, Govt. of Jharkhand, Namkum, Ranchi
3. Secretary, Jharkhand Rural Health Mission Society,
Department of Health, Medical Education and
Family Welfare, Govt. of Jharkhand, Namkum, Ranchi
- 4 Civil Surgeon, Jharkhand Rural Health Mission Society,
Department of Health, Medical Education and
Family Welfare, Govt. of Jharkhand, Namkum, Ranchi ...Respondents.

CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH

For the Petitioner

: M/s. Anil Kumar Sinha, Sr. Adv.
Ramesh Kumar, Adv.

For the Respondents

: J. C. to A. G.

2/22.7.2016

Petitioner, who is a qualified doctor having MBBS and MS Surgery degree running Ultrasound Clinic in the name of Ranchi Nursing Home, has questioned the notification of State Government through Jharkhand Rural Health Mission Society, Department of Health, Medical Education and Family Welfare dated 1st July, 2016, whereunder respective Civil Surgeons-cum- competent authorities under Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Selection) Act, 1994 have been informed of schedule of Competency Based Evaluation Exam in respect of running and operation of Ultrasound or Imaging Technique. The instant exercise is being undertaken pursuant to the provisions of Act of 1994 and PNDT Rules, 2014.

Learned senior counsel for the petitioner submits that the provisions of Act of 1994 contained in Section 2(p) and Rule 3(3)(1)(b) of PNDT Rules framed thereunder, have been declared ultra vires by learned Division Bench of Delhi High Court vide judgment dated 17th February, 2016 in Writ Petition nos. 6968/2011, 2721/2014 and 3184/2014 (Annexure-1) prosecuted by Indian Radiological Society and Imaging Association (IRIA), Indian Medical Association and Sonological Society of India. Learned Senior counsel for the petitioner submits that definition Clause of Sonological or Imaging Specialist under Section 2(p) has been

held to be bad to the extent it includes persons possessing a postgraduate qualification in ultrasonography or imaging techniques because there was no such qualification recognised by MCI and the PNDT Act. The PNDT Act does not empower the statutory bodies constituted thereunder or the Central Government to devise and coin new qualification. It is submitted that Rules which required compulsory six months' training for a person desirous of setting up a Genetic Clinic/Ultrasound Clinic/Imaging Centre have also been declared ultra vires PNDT Act to that extent. Petitioner is a licensee of Ultrasound clinic and himself a registered qualified doctor, who has locus standi to assail the impugned order being undertaken by the respondent, Jharkhand Rural Health Mission Society, Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand, as the provisions of law in relation thereto have already been declared ultra vires. It is also pointed out that though the said judgment has been challenged by Union of India and others in Special Leave Petition (Civil) No. 16657-16659/2016, but no interim order has been passed therein. It is submitted that the impugned exercise would therefore be a nullity in the eye of law and would unnecessarily compel the qualified doctors to undertake six months course training in 2014 and/or to face the CBE Exam as proposed by Jharkhand Rural Health Mission Society, Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand.

Counsel for the State submits that instructions are required in the matter

Having regard to the position in law rendered by learned Division Bench of Delhi High Court in W. P. (C) No. 6968 of 2011 and other analogous cases vide judgment dated 17th February, 2016, the impugned action of the respondent does not appear to be backed by the authority of law as the relevant provisions have already been declared ultra vires. Therefore, pending adjudication, the proposed exercise as contemplated under Annexure-2 dated 1st July, 2016 and advertisement, Annexure-3 are stayed.

List this case accordingly after 3 weeks on 11th August, 2016 under the heading 'For Admission' as unfixed matter, by which time, the respondents should positively offer their response to the matter.

Sd/- (Ajayesh Kumar Singh, J)

Certified to be True Copy

[Signature]
25/7/16

Deputy

[Signature]

(M) 3rd Charvama 1930
26/07/16

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