

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

(1) S.B. Civil Writ Petition No. 5858 / 2015

Dr. Pramod Bedi S/o Shri Inderjeet Singh Bedi, Aged about 57 years, By caste Bedi, R/o H.No.69 P Block, Sri Ganganagar, District Sri Ganganagar (Rajasthan)

For Bedi Ultra Sound Centre, Sri Ganganagar

-----Petitioner

Versus

State of Rajasthan, through Principal Secretary, Department of Medical & Health, Secretariat, Jaipur (Rajasthan).

Rajasthan Medical Council, Sardar Patel Marg, 22 Godam circle scheme, Jaipur (Rajasthan).

3. The Appropriate Authority-(SDM), Under PCPN & DT Act cum Chief Medical & Health Officer, Sri Ganganagar (Raj.)
4. Block Appropriate Authority & Sub Divisional Officer, Sri Ganganagar (Rajasthan)

-----Respondents

Connected With

(2) S.B. Civil Writ Petition No. 1493 / 2016

Dr. Ajay Singhal S/o Late Sh. Manmohan Singhal, By Caste Agarwal, Aged 47 Year, Resident of Akesh Hospital Teli Road, Ladnu, District Nagour.

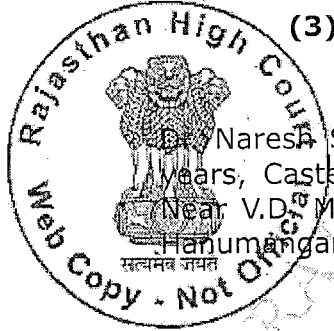
-----Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Department of Medical & Health, Secretariat, Jaipur.
2. Rajasthan Medical Council, Sadar Patel Marg, 22 Godown circle scheme, Jaipur – through its registrar.

3. The Appropriate Authority under PCPNDT Act cum Sub – Chief Medical & Health Officer, sub division Ladnu District, Nagour.
4. Appropriate Authority (PC & PNDT) and sub-division, Ladanu, Rajasthan.

----Respondents



(3) S.B. Civil Writ Petition No. 3139 / 2016

Dr. Naresh Sanklecha S/o Shri Ganpat Raj Sanklecha, Age – 38
Years, Caste – Jain, Owner of – Dr. Naresh Diagnostic Center,
Near V.D. Motors, Town-Jn. Road, Hanumangarh Town, District –
Hanumangarh (Rajasthan)

----Petitioner

Versus

1. The State of Rajasthan through the Principle Secretary, Medical and Health Department, Secretariat, Jaipur, Rajasthan.
2. The Sub Divisional Appropriate Authority cum Chief Medical and Health Officer, Hanumangarh.

----Respondents

(4) S.B. Civil Writ Petition No. 3972 / 2016

Dr. Vijay Makkar S/o Sh. BabuRam Ji Makkar, By Caste Arora,
Aged 58 Year, Owner & Resident of Makkar Nursing Home,
Ramsinghpur, District Sri Ganganagar.

----Petitioner

Versus

1. State of Rajasthan through principal secretary, Department of Medical & Health, secretariat, Jaipur.

2. Rajasthan medical Council, Sardar Patel Marg, 22 Godown circle scheme, Jaipur – through its Registrar.
3. The Block Appropriate Authorities & Sub-Chief Medical and Health officer, Sri Ganganagar.

----Respondents

(5) S.B. Civil Writ Petition No. 4987 / 2016



Sushil Kumar Aseri S/o Shri Jagdish Chandra Aseri, Age – 38 years, Caste – Aseri, Manager of – J.C. Aseri Memorial Hospital, Pilbanga, Resident of – Ward No.7, Pilibanga, District Hanumangarh (Rajasthan).

----Petitioner

Versus

1. The State of Rajasthan through the Principle Secretary, Medical and Health Department, Secretariat Jaipur, Rajasthan.
2. The Sub Divisional Appropriate Authority cum Chief Medical and Health Officer, Hanumangarh.

----Respondents

(6) S.B. Civil Writ Petition No. 5253 / 2016

Dr. Praveen Garg S/o Sh. Jagdish Rao Garg, Age 55 years, Manager and Owner of Pratham Diagnostic Centre, 2-A-2, Sukhadia Nagar, Sri Ganganagar.

----Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Department of Medical & Health, Secretariat, Jaipur.
2. Sub Divisional Appropriate Authorities cum Chief Medical and Health Officer, Sri Ganganagar.

----Respondents

(7) S.B. Civil Writ Petition No. 5269 / 2016

Dr. Pradeep Kumar S/o Sh. Banarasi Das Garg, by caste Garg
Agarwal, aged 55 years, Resident of 2-A-9, Sukhadia Nagar, Sri
Ganganagar (Raj.)



----Petitioner

Versus

State of Rajasthan through Principal Secretary, Medical &
Health Department, Government of Rajasthan, Jaipur.

2. Rajasthan Medical Council, Sardar Patel Marg, 22 Godown
Circle Scheme, Jaipur through its Registrar.
3. The Block Appropriate Authority and Chief Medical & Health
Officer, Sri Ganganagar.

----Respondents

(8) S.B. Civil Writ Petition No. 7512 / 2016

Dr. K.K. Rastogi S/o Sh. V.P. Rastogi, aged around 53 years,
Owner of Dr. K.K. Rastogi Diagnostic Centre, 41-Sukhadiya
Shopping Centre, Sri Ganganagar.

----Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Department
of Medical & Health, Secretariat, Jaipur.
2. Sub Divisional Appropriate Authorities cum Chief Medical and
Health Officer, Sri Ganganagar.

----Respondents

(9) S.B. Civil Writ Petition No. 12886 / 2016

Dr. Shankar Lal Son of Shri Tara Chand, aged 50 years, resident
cum Owner of City Hospital, Ward no.1 Nai Mandi, Gharsana,
District Sriganganagar (Raj.)

----Petitioner

Versus



State of Rajasthan through Principal Secretary, Department
of Medical & Health, Secretariat, Jaipur.

Rajasthan Medical Council, Sardar Patel Marg, 22 Godown
Circle Scheme, Jaipur - through its Registrar.

The Block Appropriate Authority & Deputy Chief Medical and
Health Officer (Health), Sri Ganganagar.

----Respondents

(10) S.B. Civil Writ Petition No. 13080 / 2016

Dr. K.L. Bansal Son of Shri Gopi Ram Bansal, aged 63 years,
resident cum Owner of Bansal Nursing Home, Ward No.19 (New),
Suratgarh, District Sriganganagar (Raj.)

----Petitioner

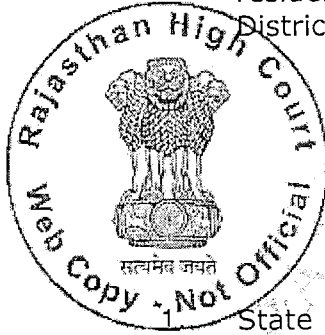
Versus

1. State of Rajasthan through Principal Secretary, Department
of Medical & Health, Secretariat, Jaipur.
2. Rajasthan Medical Council, Sardar Patel Marg, 22 Godown
Circle Scheme, Jaipur - through its Registrar.
3. The Block Appropriate Authority & Additional Chief Medical
and Health Officer (Family Welfare), Sri Ganganagar.

----Respondents

(11) S.B. Civil Writ Petition No. 13081 / 2016

1. Dr. Vijay Prakash Beniwal Son of Shri Daulat Ram, aged 60 years, resident cum Owner of Bikaner Diagnostic Centre, Ward No.18, Suratgarh, District Sriganganagar (Raj.)
2. Dr. Rajendra Chhabra Son of Shri Amarnath Chhabra, presently working as Doctor at Bikaner Diagnostic Centre, resident of Ward No.18, Vivekanand Nagar, Suratgarh, District Sriganganagar (Raj.).



-----Petitioners

Versus

1. State of Rajasthan through Principal Secretary, Department of Medical & Health, Secretariat, Jaipur.
2. Rajasthan Medical Council, Sardar Patel Marg, 22 Godown Circle Scheme, Jaipur - through its Registrar.
3. The Block Appropriate Authority & Additional Chief Medical and Health Officer (Family Welfare), Sri Ganganagar.

-----Respondents

(12) S.B. Civil Writ Petition No. 13082 / 2016

Dr. Vijay Arora Son of Shri Roshan Lal Arora, aged 62 years, resident cum Owner of Arora Care Home, Vivekanand Nagar, Bikaner Road, Suratgarh, District Sriganganagar (Raj.)

-----Petitioner

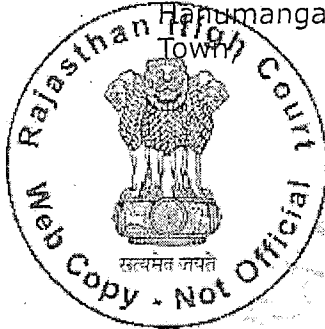
Versus

1. State of Rajasthan through Principal Secretary, Department of Medical & Health, Secretariat, Jaipur.
2. Rajasthan Medical Council, Sardar Patel Marg, 22 Godown Circle Scheme, Jaipur - through its Registrar.
3. The Block Appropriate Authority & Additional Chief Medical and Health Officer (Family Welfare), Sri Ganganagar.

----Respondents

(13) S.B. Civil Writ Petition No. 13669 / 2016

Dr. Rajendra Kumar Sethi S/o Late Shri Moti Ram Sethi, Age - 71 years, Caste - Sethi, Manager of - Sethi Nursing Home, Hanumangarh Town, Resident of - Ward No.-21, Hanumangarh District - Hanumangarh (Rajasthan).



----Petitioner

Versus

1. The State of Rajasthan through the Principal Secretary, Medical and Health Department, Secretariat, Jaipur, Rajasthan.
2. The Sub Divisional Appropriate Authority cum Chief Medical and Health Officer, Hanumangarh.

----Respondents

(14) S.B. Civil Writ Petition No. 13670 / 2016

Dr. Banshi Dhar Gupta S/o Late Onkar Mal Gupta, Age-65 years, Caste - Gupta, Manager of - Laigharia Ultra-Sound Center, Resident of - Opposite Agarwal Dharamshala, Rawatsar Road, Hanumangarh Town, District - Hanumangarh (Rajasthan).

----Petitioner

Versus

1. The State of Rajasthan through the Principal Secretary, Medical and Health Department, Secretariat, Jaipur, Rajasthan.
2. The Sub Divisional Appropriate Authority cum Chief Medical and Health Officer, Hanumangarh.

----Respondents

(15) S.B. Civil Writ Petition No. 13671 / 2016

Dr. Sutindra Paul Gupta S/o Shri B.C. Gupta, Age -49 years, Caste - Gupta, Manager of - Chandigarh Ultrasound Center, Chandigarh Hospital, Resident of - Opposite Bus Station, District - Hanumangarh Junction - 335512, (Rajasthan)



----Petitioner

Versus

The State of Rajasthan through the Principal Secretary, Medical and Health Department, Secretariat, Jaipur, Rajasthan.

2. The Sub Divisional Appropriate Authority cum Chief Medical and Health Officer, Hanumangarh.

----Respondents

(16) S.B. Civil Writ Petition No. 13975 / 2016

Dr. Rajendra Gupta S/o Shri Dau Ram Gupta, aged 60 years, resident of Rajendra Colour Ultrasound & Eco Centre, Near Vijay Cinema, Town Junction Road, Hanumangarh Town, District Hanumangarh.

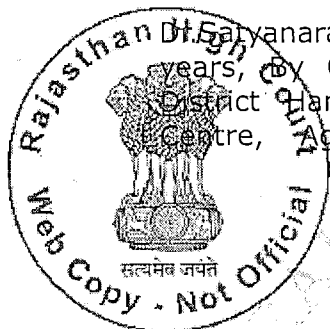
----Petitioner

Versus

1. The State of Rajasthan through Secretary, Department of Medical and Health, Government of Rajasthan, Secretariat, Jaipur.
2. The Project Director (P.C.P.N.D.T.) and Dy. Director (R.C.H.), Medical and Health Services, Rajasthan, Jaipur.
3. Sub Division Appropriate Authority and Chief Medical and Health Officer (District P.C.P.N.D.T. Cell), Hanumangarh.

----Respondents

(17) S.B. Civil Writ Petition No. 5672 / 2017



Dr. Satyanarayan Mittal S/o Sh. Hansraj Ji Mittal, aged about 57 years, by Caste Agarwal, Resident of ward No.13, Sangaria, District Hanumangarh, presently Manager Mittal Ultra Sound Centre, Agrasan Market, Sangaria, District Hanumangarh.

----Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Department of Medical & Health, Secretariat, Jaipur.
2. Rajasthan Medical Council, Sadar Patel Marg, 22 Godown Circle Scheme, Jaipur - through its registrar.
3. The Appropriate Authority under PCPNDT Act cum Chief Medical & Health Officer, Hanumangarh.
4. Block Appropriate Authority and sub-divisional officer, Sangaria, District Hamumangarh.

----Respondents

(18) S.B. Civil Writ Petition No. 8299 / 2017

Dr. P.C. Jain Son of Shri Rikhabdas, aged 62 years, resident cum Owner of Jain Hospital, Station Road, Opposite Dargah, Kapasan, District Chittorgarh (Raj.)

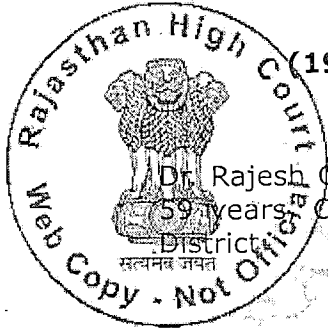
----Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Medical & Health Services, Secretariat, Jaipur.

2. The District Appropriate Authority (PCPNDT), & District Collector, Chittorgarh.
3. The Sub Divisional Appropriate Authority (PCPNDT), Sub-division Kapasan & Deputy Chief Medical and Health Officer (Health), Chittorgarh.

----Respondents



(19) S.B. Civil Writ Petition No. 12911 / 2017

Dr. Rajesh Gaur S/o Sh. Laxmi Narayan, B/c Brhamin Aged about 59 years, Owner of Shanti Nursing Home, Nai Mandi Gharsana, District Sri Ganganagar. (Raj.)

----Petitioner

Versus

1. State of Rajasthan, through the Principal Secretary, Department of Medical & Health, Secretariat, Jaipur (Raj.)
2. Chief Medical & Health Officer, Sri Ganganagar (Raj.)
3. Block Appropriate Authority & Dy. Chief Medical & Health Officer (Health), Sri Ganganagar. (Raj.)

----Respondents

(20) S.B. Civil Writ Petition No. 14638 / 2017

Dr. Renu Setia W/o Shri Amar Setia, Aged about 55 years, R/o - Renu Ultra Sound Centre, Bombay Hospital and Maternity Home, Town Road, Hanumangarh Junction, Distt. Hanumangarh.

----Petitioner

Versus

1. The State of Rajasthan through Principal Secretary, Department of Medical & Health Secretariat, Jaipur (Raj.)

2. Rajasthan Medical Council, Sardar Patel Marg, 22 Godam Circle Scheme, Jaipur (Raj.)
3. The Appropriate Authority (SDM) and Chief Medical and Health Officer (Distt. PCPNDT Cell), Hanumangarh (Raj.).
4. Block Appropriate Authority & Sub Division Office, Hanumangarh (Raj.).

-----Respondents



For Petitioner(s) : Mr. G.J. Gupta, Mr. Pankaj Sharma,
Mr. Pankaj Gupta, Mr. P.K. Mathur,
Mr. Kshamendra Mathur, Mr. Vineet Jain,
Mr. Yashpal Khileree, Dr. A.A. Bhansali,
Mr. B.S. Sandhu, Mr. Vipin Makkad,
Mr. Rajender Soni, Mr. D.S. Gharsana,
Mr. Jamwant Gurjar, Mr. Rajesh Punia

For Respondent(s) : Mr. Sunil Joshi for Mr. Rajesh Panwar,
Additional Advocate General

HON'BLE MR. JUSTICE VIJAY BISHNOI

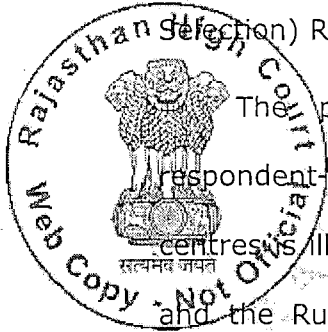
Order

22/01/2018

All these writ petitions have been filed by the petitioners under Article 226 of the Constitution of India being aggrieved with the rejection of their applications for renewal of registration of their Genetic Counselling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics and Imaging Centres for the purpose of carrying out Genetic Counseling/Pre-natal Diagnostic Tests/Ultra Sonography.

The case, as set out by the petitioners, is that earlier their centres were registered by the registering authority and after expiry of the period of registration, the registrations were renewed from time to time, however, from the year 2015 onwards, their

certificates have not been renewed on the ground that case is pending against them for violation of the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'the Act of 1994') and Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short 'the Rules of 1996').



The petitioners are claiming that the action of the respondent-authorities of refusing to renew registration of their centres is illegal and violative of the provisions of the Act of 1994 and the Rules of 1996, therefore, a direction be issued to the respondent-authorities to renew their registrations.

Learned counsels for the petitioners have argued that Rule 8 of the Rules of 1996 provides procedure for renewal of registration. It is contended that as per sub-rule (2) of Rule 8 of the Rules of 1996, it is mandatory for the appropriate authority to hold an enquiry to satisfy itself regarding the compliance of requirements of the Act of 1994 and the Rules of 1996 and to obtain advice of the advisory committee. It is contended that as per sub-rule (3) of Rule 8 of the Rules of 1996, after enquiry and taking into consideration the advice of the advisory committee, if the appropriate authority is satisfied that the registration of the applicant cannot be renewed, then, the appointing authority is required to provide opportunity of hearing to the applicant and then only his application for renewal of registration can be rejected.

It is further contended that in all the cases, the Chief Medical

and Health Officers of the District concerned straightway refused to accept the renewal applications filed by the petitioners and straightway rejected their applications as the case may be without seeking any advice from the advisory committee and without giving any opportunity of hearing to the petitioners. Learned

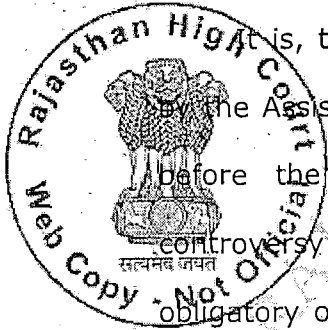


counsel for the petitioners have therefore argued that the action of the respondent-authorities of rejecting the applications for renewal of registration filed by the petitioners, without following the mandatory procedure provided under Rule 8 of the Rules of 1996 is illegal and the same is liable to be set aside.

Learned counsels for the petitioners have further argued that the respondent-authorities have rejected the applications filed by the petitioners for renewal of their registration, while taking aid of provision of clause-(ii) of sub-rule (4) of Rule 18-A of the Rules of 1996, however, the said provision cannot be interpreted in the manner so as to make the mandatory provision of Rule 8 redundant. It is submitted that the respondents are always under an obligation to objectively decide the renewal application for registration filed by the applicant as per the procedure laid down under sub-rule (2) and (3) of Rule 8 of the Rules of 1996.

It is further argued by learned counsels for the petitioners that before the Bombay High Court, Bench at Aurangabad, the Additional Solicitor General appeared on behalf of the Union of India in S.B. Civil Writ Petition No.4478/2015, decided on May 05, 2015 and S.B. Civil Writ Petition No.6979/2015, decided on 13th August, 2015 and gave a statement, on instructions, that Rule 18-

A (4)(ii) of the Rules of 1996, incorporated with effect from 28.1.2015 shall not be construed as a total prohibition on the appropriate authority to receive an application for renewal or fresh registration and the application shall have to be received and processed in accordance with rule 8 of the Rules of 1996.



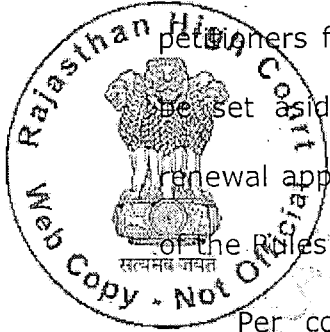
It is, therefore, argued that in view of the statement given by the Assistant Solicitor General appeared for the Union of India before the Bombay High Court, Bench at Aurangabad, no controversy remains and it became absolutely clear that it is an obligatory on the part of the authorities concerned to decide the renewal application as per the procedure laid down under Rule 8 of the Rules of 1996 and the renewal application cannot be rejected straightway without following the said procedure.

Learned counsels for the petitioners have also argued that even if it is assumed that the application filed by any person, against whom any case is pending in any court for violation of the provisions of the Act of 1994 and the Rules of 1996, then also, the applications filed by the **petitioners are not liable to be rejected because in almost all the cases, the charges against the petitioners have not been framed by the competent criminal court and, therefore, it cannot be said that any case is pending against them.**

Learned counsels for the petitioners have also contended that the cases filed against the petitioners with the allegation of violation of the provisions of the Act of 1994 and the Rules of 1996 are false and have been filed with ulterior motives containing

no evidence and, therefore also, the action of the respondent-authorities of rejecting applications for renewal filed by the petitioners is illegal and liable to be set aside.

Learned counsel for the petitioners have, therefore, prayed that the impugned orders, whereby, the applications filed by the petitioners for renewal of their registration have been dismissed, be set aside and the respondents be directed to decide their renewal applications as per the provisions laid down under Rule 8 of the Rules of 1996.



Per contra, learned counsel Mr. Sunil Joshi appearing on

behalf of Mr. Rajesh Panwar, Additional Advocate General for the

respondents has vehemently opposed the writ petitions and argued that there is no illegality in the action of the respondent-

authorities in not accepting/rejecting the renewal applications filed by the petitioners, looking to the fact that the cases are pending against the petitioners for violation of provisions of the Act of 1994 and the Rules of 1996 because Rule 18-A (4)(ii) of the Rules of 1996 mandates that any application for fresh registration or renewal of registration cannot be accepted, if any case is pending in any court against the applicant for violation of any of the provisions of the Act and the Rules made thereunder.

It is also argued by Mr. Joshi that the contention of learned counsels for the petitioners to the effect that the respondent-authorities are required to follow the procedure laid down under Rule 8 of the Rules of 1996 is bereft of any merit because Rule 18-A (4)(ii) of the Rules of 1996 clearly says that no such application

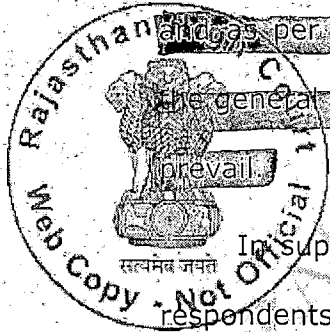
for renewal of registration can be accepted where any case for violation of the provisions of the Act of 1994 and the Rules of 1996 is pending against the applicant. Mr.Joshi asserts that the provisions contained in Rule 8 are general provisions, whereas,

the provisions contained in Rule 18-A (4)(ii) are special provisions.

and as per rule of interpretation, where a statute contains both

the general provisions as well as specific provisions, the later must

prevail.



In support of the above contention, learned counsel for the respondents has placed reliance on the decision of the Hon'ble

Supreme Court rendered in the case of **Commercial Tax Officer,**

Rajasthan Vs. Binani Cements Limited and Another, reported

in **(2014) 8 SCC 319.**

Learned counsel Mr.Joshi has submitted that it is not in dispute that the cases for violation of the provisions of the Act of 1994 and the Rules of 1996 are pending against the petitioners and, therefore, as per the provisions contained in Rule 18-A (4)(ii) of the Rules of 1996, the respondent-authorities have rightly not accepted/rejected their applications for renewal of registration. It

is further argued by learned counsel for the respondents that the

ordinary meaning of word 'pending' is that the matter has not

come to an end or not concluded. It is contended that the

legislature has used the word 'pending' in Rule 18-A (4)(ii) and

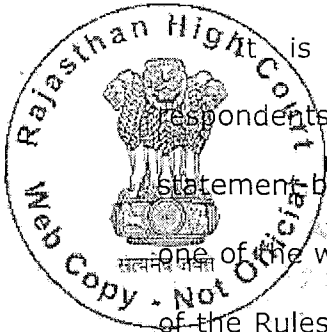
has not used the word 'pending trial' or charges have been

framed and, therefore, it cannot be said that the word 'pending'

as used in the above provision means that charges have been

Tramed

In support of the above contention, Mr.Joshi has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of **Lt. Col. S.K.Kashyap and another Vs. the State of Rajasthan**, reported in **1971(2) SCC 126**.



It is further submitted by learned counsel for the respondents that though the Additional Solicitor General made a statement before the Bombay High Court, Bench at Aurangabad in one of the writ petitions that despite existence of Rule 18-A (4)(ii) of the Rules of 1996, appropriate authority is bound to receive an application for renewal or fresh registration, though any case is pending against the applicant for violation of the provisions of the Act of 1994 and the Rules of 1996, but in the State of Rajasthan, no such instructions have ever been received by the authorities and there is no circular or any order issued by the Union of India clarifying that despite the existence of Rule 18-A (4)(ii), an application filed by any person, against whom, any case for violation of provisions of the Act of 1994 and the Rules of 1996 is pending, is liable to be accepted by the appropriate authority and has to be dealt with as per the provisions of Rule 8 of the Rules of 1996. It is contended that in the absence of any such instruction, clarification or direction, it cannot be said that there is any illegality in the action of the respondents in not accepting/rejecting the applications for renewal of registration of the petitioners.

Learned counsel Mr.Joshi has, therefore, prayed that there is

no force in these writ petitions and the same are liable to be dismissed.

Heard learned counsel for the parties and perused the material available on record.

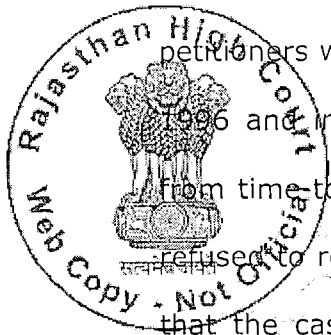
It is not in dispute that earlier the centres run by the petitioners were registered under the Act of 1994 and the Rules of 1996 and in some of the cases, the registrations were renewed from time to time. However, now the respondent-authorities have refused to renew the registration of the petitioners on the ground that the case/cases for violation of the provisions of the Act of 1994 and the Rules of 1996 is/are pending against them.

Rule 8 of the Rules of 1996 is regarding renewal of registration, which reads as under:-

"8. Renewal of registration. - (1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. Acknowledgment of receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub-rule (2) of Rule 4.

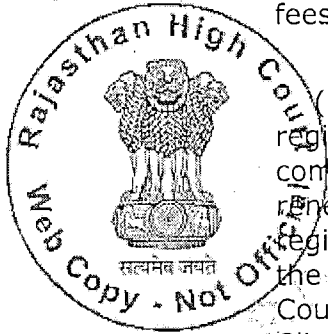
(2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the Advisory Committee in this behalf, renew the certificate of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of registration earlier granted.

(3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied



that the applicant has not complied with the requirements of the Act and these rules, it shall, for reasons to be recorded in writing, reject the application for renewal of certificate of registration and communicate such rejection to the applicant as specified in Form C.

(4) The fees payable for renewal of certificate of registration shall be one-half of the fees provided in sub-rule (1) of Rule 5.



(5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication of rejection of application for renewal, both copies of the earlier certificate of registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory [Genetic Clinic, Ultrasound Clinic or Imaging Centres].

(6) In the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed."

Vide amendment dated 24.4.2014, the Central Government has inserted Rule 18-A in the Rules of 1996 and laid down a code of conduct to be observed by the appropriate authorities. Further amendment is made in clause (ii) of Rule 18-A on 28.1.2015. Clauses (i) and (ii) of sub-rule (4) of Rule 18-A, which now exist in the statute book, read as under:-

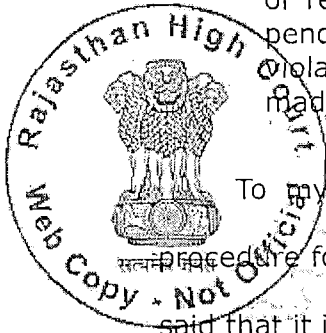
"18-A. Code of Conduct to be observed by Appropriate Authorities.- xxxxx

(4) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following conduct

for registration and renewal of applications under the Act, namely -

(i) dispose of the application for renewal and new registration within a period of seventy days from the date of receipt of application;

(ii) ensure that no application for fresh registration or renewal of registration is accepted if any case is pending in any court against the applicant for violation of any provision of the Act and the rules made thereunder."



To my mind, Rule 8 of the Rules of 1996 prescribes the procedure for renewal of registration in normal course or it can be said that it is a general provision regarding renewal of registration,

however, with the insertion of Rule 18-A (4)(ii); the legislature has made a specific provision or carved out an exception to the general rule, directing the appropriate authorities including the State, Districts and Sub-districts not to accept the applications for fresh registration or renewal of registration of those applicants against whom, the case is pending in any court for violation of the provision of the Act of 1994 and the Rules of 1996. With the insertion of Rule 18-A (4)(ii) in the statute book, a classification is created among existing ultrasound clinics firstly, where a criminal case is pending and secondly, where the other irregularities in compliance of the Act of 1994 and the Rules of 1996 exist. It is settled legal position in law that where a statute contains both a general as well as specific provision, the later must prevail.

The Hon'ble Supreme Court in the case of **Commercial Tax Officer, Rajasthan** (supra) has held as under:-

"32. Before we deal with the fact situation in the present appeal, we reiterate the settled legal position in law, that is, if in a statutory rule or statutory notification, there are two expressions used, one in general terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a statute contains both a general provision as well as specific provision, the latter must prevail.



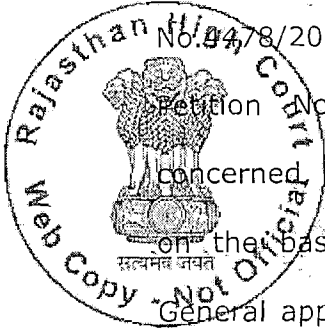
- 33. xxxxx
- 34. xxxxx
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- 46. xxxxx

47. Having noticed the aforesaid, it could be concluded that the rule of statutory construction that the specific governs the general is not an absolute rule but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction. This rule is particularly applicable where the legislature has enacted comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject-specific provision relating to a specific, defined and describable subject is regarded as an exception to and would prevail over a general provision relating to a broad subject."

In view of the above, the contention of learned counsels for the petitioners that despite existence of Rule 18-A (4)(ii) of the Rules of 1996, the respondent-authorities are bound to accept and

dispose of the renewal applications filed by the applicants as per Rule 8 of the Rules of 1996, is not acceptable and the same is liable to be rejected, hence rejected.

So far as regarding the judgments of the Bombay High Court, Bench at Aurangabad rendered in S.B. Civil Writ Petition No. 4478/2015, decided on May 05, 2015 and in S.B. Civil Writ Petition No. 6979/2015, decided on 13th August, 2015 are concerned. It is noticed that the said judgments have been passed on the basis of a statement made by the Assistant Solicitor General appeared for Union of India to the effect that Rule 18-A



(4)(ii) of the Rules of 1996 shall not construe as a total prohibition on the appropriate authority to receive an application for renewal or fresh registration and the application shall have to be received and processed in accordance with Rule 8 of the Rules of 1996.

However, confronted with this situation, this Court vide order dated 9.8.2017 directed the respondent-State to file additional affidavit regarding the statement made by the Additional Solicitor General appearing for Union of India before the Bombay High Court, Bench at Aurangabad and pursuant to that, an additional affidavit has been filed by the Project Director, PCPNDT, Jaipur, the relevant portion whereof reads as under:-

"4. That before further submissions in regard of the applicability of the judgment it is necessary to throw some light on the existing provisions. In this regard it is submitted that the Rule 8 of the rules of 1996 prescribes the procedure of renewal in normal course but vide amendment dated 28.1.2015 the legislation has carved out exception to the general rule, whereby, the appropriate

authority has been directed to ensure that at the time of renewal of the application of the registration should not be accepted if there is any case is pending in any court against the applicant.

The aforesaid amendment brings the reasonable classification among existing ultrasound clinics, one is where criminal case is pending and the second is where any other irregularities in the compliance of the act and rules made thereunder.



5. That after examining the record of the proceedings, it is pointed out that there is no circular or any order has been issued by the Union of India regarding the clarification of amendment dated 28.1.2015. In view of this the state cannot divert from the mandate enshrined by way of amendment in rules of 1996 vide notification dated 28.01.2015.

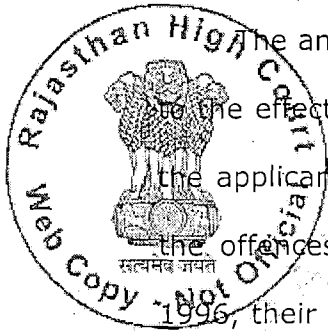
6. That the judgment supra rendered in case of Dr. Sudhir's case, it is abundantly clear that the matter has been concluded on the statement made by the counsel for Union of India in its individual capacity, therefore, the statement is not binding upon the state of Rajasthan. Moreover, the above stated statement is not based upon any document, therefore, it is said to be made in its individual capacity.

7. That since the Union of India has not issued any guidelines or order in respect of amended provision, therefore, the state cannot divert from the language adopted by the legislation. It should be read in plain meaning rule. Hence, the applicability of the amended provision is absolute and the state will adhere to the same.

8. That any other interpretation of the amended provision will frustrate the objective of the legislation, therefore, the appropriate authority should not usurp the legislative function under the disguise of interpretation."

In view of the specific stand taken by the respondent – State that it is not in receipt of any such direction from the Union of India that the applications for renewal of registration are liable to

be dealt with as per Rule 8 of the Rules of 1996 ignoring the fact that any case for violation of provisions of the Act of 1994 and the Rules of 1996 is pending against the applicant, the judgments of the Bombay High Court, Bench at Aurangabad, are of no help to the petitioners.



The another argument of learned counsels for the petitioners to the effect that since the charges have not been framed against the applicants by the competent criminal court for commission of the offences as mentioned in the Act of 1994 and the Rules of 1996, their applications are not liable to be rejected, is also bereft of any merit. It is noticed that in Rule 18-A(4)(ii) of the Rules of

1996, the word 'pending' has been mentioned. The legislature has not used the phrase 'pending trial' or 'charges have been framed' in the said rule.

Learned counsel for the respondents has rightly placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of **Lt. Col. S.K. Kashyap** (supra) wherein, the Hon'ble Supreme Court held as under:-

"25. xxxxx

The word 'pending' will ordinarily mean that the matter is not concluded and the Court which has cognizance of it can make an order on the matter in issue. The test is whether any proceedings can be taken in the cause before the Court or Tribunal where it is said to be pending. The answer is that until the case is concluded it is pending.

xxxxx

26. The next question is as to what meaning should be given to the words "charged with and tried for an offence under the principal Act", occurring in Section 5(1)(a). Counsel for the appellants contended that the words "charged with and tried for an offence" would mean that charges had been actually framed and trial commenced. There is a distinction between Clauses (a) and (b) of sub-section (1) of Section 5 of Act 22 of 1966. Clause (a) deals with persons who are subject to the military, naval or air-force law being charged with and tried for an offence together with a person or persons not so subject whereas clause (b) deals only with persons who are subject to military, naval or air-force law. In the present case, the appellants are persons who were subject to military law and they were charged along with civilians. Therefore, clause (a) is attracted. It is in connection with a case which concerns only persons subject to military, naval or air-force law that under Section 5(1)(b) it is enacted that a case is not only to be pending before 30 June, 1966 before a Special Judge but that charges should also have been framed against such persons. The absence of framing of charges, in clause (a) and requirement of framing charges in clause (b) repels the construction suggested by counsel for the appellants that charges should have been framed in the present case in order to make it a case pending within the meaning of Section 5(1) (a) of the 1966 Act. The words "charged with and tried for an offence" mean that there are accusations and allegations against the person. The words "charged with" are used in Section 5(1) (a) in contra-distinction to the words "charges have already been framed" in Section 5(1)(b) of the Act. Therefore the use of separate words in the two separate clauses (a) and (b) is significant to indicate that the statute speaks of the words "charged with" in clause (a) not in the sense of "charges have been framed" in clause (b). The legislative intent is abundantly clear from the use of separate words."



In view of the above proposition of law, it can safely be said

that the word "pending" used in Rule 18-A (4)(ii) of the Rules of

1996 does not mean that charges have actually been framed or

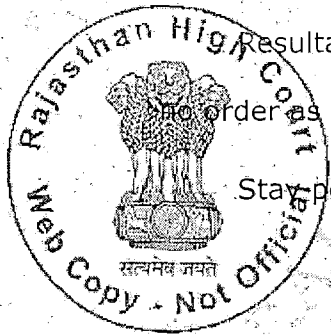
trial commenced.

In view of the above discussion, I do not find any illegality in the action of the respondent - authorities of not accepting/rejecting the applications with a prayer for renewal of registration filed by the petitioners. Hence, no interference is called for by this Court in the present writ petitions.

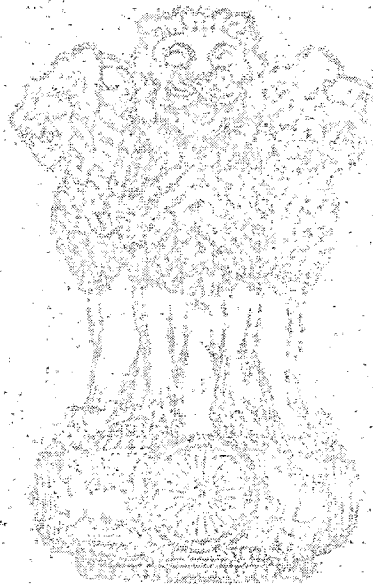
Resultantly, the writ petitions are dismissed. There shall be no order as to costs.

Stay petitions are also dismissed.

(VIJAY BISHNOI), J.



Ms rathore



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