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समस्त राजस्थान राज्य सरकार, जयपुर
Certified Copy of Order Dated... 30/01/18

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

S.B. CIVIL REVIEW PETITION NO. 99/2014

IN

S.B. CIVIL WRIT PETITION NO. 10286/2012

1. The State of Rajasthan, through the Principal secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

REVIEW PETITIONER/
RESPONDENTS

VERSUS

Dr. Vijay Gupta, son of Shri D.P. Agarwal, aged about 53 years, Resdient of 29, Kailashpuri, Tonk Road, Jaipur.

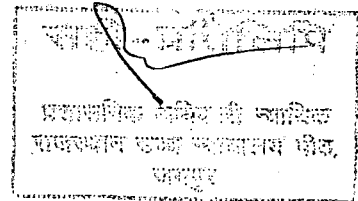
RESPONDENT/PETITIONER



S.B. CIVIL REVIEW APPLICATION UNDER ORDER
47 RULE 1 READ WITH SEC.151 OF C.P.C.
AGAINST THE JUDGMENT & ORDER DATED
22.5.2014 (COPY PREPARED AND RECEIVED ON

Kishana Ram Esharwal
Deputy Director, RCH
OIC, State PCPNDT Cell
Medical & Health Deptt.
Jaipur PIN-302001

8.7.2014) PASSED BY HON'BLE MR. JUSTICE M.N.
BHANDARI IN S.B. CIVIL WRIT PETITION
NO.10286/2012 (DR. VIJAY GUPTA VS. STATE OF
RAJASTHAN & ORS.) AND OTHER 20 CONNECTED
MATTERS, WHEREBY DISPOSED OF THE WRIT
PETITIONS



**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. CIVIL REVIEW PETITION NO.99/2014

IN

S.B. CIVIL WRIT PEITION NO.10286/2012

1. The State of Rajasthan, Through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, Through Its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur

---REVIEW PETITIONER/RESPONDENTS

Versus

Dr. Vijay Gupta, Son of Shri D.P. Agarwal, Aged About 53 Years,
29, Kailashpuri, Tonk Road, Jaipur.

----RESPONDENT/PETITIONER

Connected With

S.B. CIVIL REVIEW PETITION NO.113/2015

IN

S.B CIVIL WRIT PETITION NO.12395/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.



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3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

M/s. Anil Hospital through Dr. Anil Kumar, age about 58 years,
R/o. C-13, Deepak Marg, Moti Doongari Road, Jaipur.

----RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO.114/2015

IN

S.B CIVIL WRIT PETITION NO.8351/2012

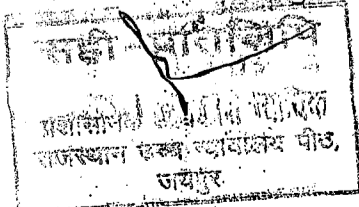
1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

Indian Red Cross Society, Rajasthan State Branch, Outside Sangneri Gate, Jaipur, through Dr. Rajendra Kumar Jain, son of late Shri Uadi Singh Jain, Resident of 4-kha-2, Shastri Nagar Housing Board Colony, Jaipur.

---RESPONDENT/PETITIONER



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S.B. CIVIL REVIEW PETITION NO. 115/2015

IN

S.B CIVIL WRIT PETITION NO. 6434/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

Dr. Pramila Awtani Chowksey W/o. Shri Kailash Chandra Chowksey, aged 65 years, resident of A-14, Vaishali Nagar, Jaipur.

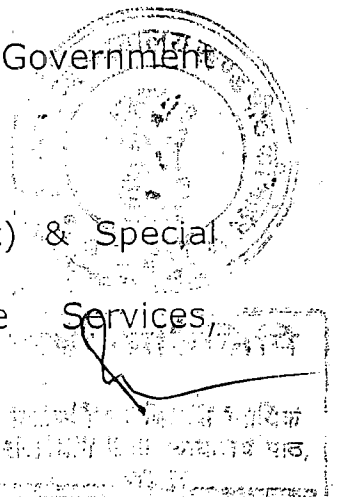
---RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 116/2015

IN

S.B CIVIL WRIT PETITION NO. 5630/201

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.



3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

Sanjeevani Hospital, Madhukar Colony (Garh), Kotputli-303108,
District Jaipur through its Director, Dr. S.M.Yadav. Son of Shri
Lala Ram Yadav, aged about 47 years, resident of Madhukar
Colony (Garh), Kotputli-303108, District Jaipur.

----RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 117/2015

IN

S.B CIVIL WRIT PETITION NO. 15728/2012

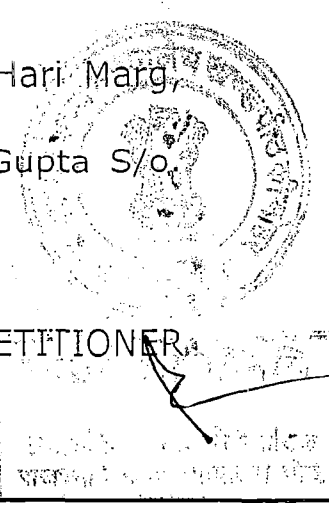
1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

Dr. B. Lal Clinical Laboratory Private Limited, A-725, Hari Marg,
Malviya Nagar, Jaipur through its Director, Dr. B. Lal Gupta S/o.
Shri Babu Lal Maithi.

RESPONDENT/PETITIONER



S.B. CIVIL REVIEW PETITION NO. 118/2015

IN

S.B CIVIL WRIT PETITION NO. 12690/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur; through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

M/s. Health Line Diagnostic Centre through Dr. Deen Dayal Gupta,
Shop No. 1-3, Raja Ram Marg, Brahmpuri, Jaipur, Rajasthan.

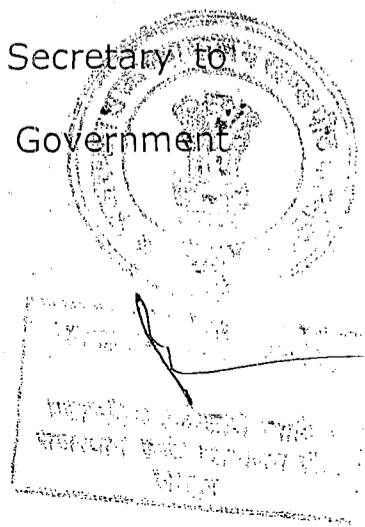
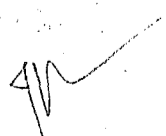
---RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 119/2015

IN

S.B CIVIL WRIT PETITION NO. 2095/2012

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



2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Sikar.

---REVIEW PETITIONER/RESPONDENTS

Versus

Dr. Virendra Kumar Mahala S/o. Shri Tansukh Rai Choudhary,
Ruchika Diagnostic & Research Centre, Shekhpura, Mohalla,
District Sikar.

---RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 120/2015

IN

S.B CIVIL WRIT PETITION NO. 10086/2011

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

Dr. Satish Jain S/o. Shri Jagdish Prasad Jain, Aged about 45 years,
R/o. 17-B, Joshi Colony, Barkat Nagar, Jaipur.



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---RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 121/2015

IN

S.B CIVIL WRIT PETITION NO.9357/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Sikar.

---REVIEW PETITIONER/RESPONDENTS

Versus

Dr. Prabodh Kumar Gupta S/o Sh. Vijay Chand Gupta, Aged about 56 years, by Caste Mahajan, R/o. B-6, Basant Bihar, Sikar, District Sikar, Proprietor Of Shubham Clinic, Sikar (Raj.).

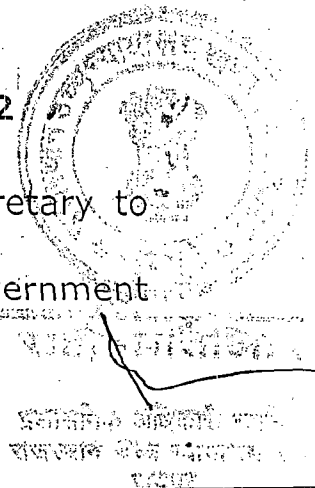
---RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 122/2015

IN

S.B CIVIL WRIT PETITION NO. 15727/2012

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



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2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

Dr. B. Lal Clinical Laboratory, 11, Unnati Tower, Central Spine, Vidyadhar Nagar, Jaipur through its proprietor, Dr. B. Lal Gupta S/o. Shri Babu Lal Maithi.

---RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 123/2015

IN

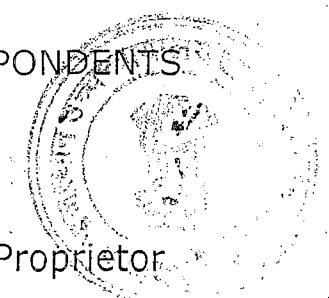
S.B CIVIL WRIT PETITION NO. 18533/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

1. Smt. Bidami Devi W/o. S. M. Yadav, Age adult, Proprietor Sanjeevani Hospital, Garh Colony, Kotputali, District Jaipur



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2. Dr. Roop Narayan Koolwal S/o. Manna Lal Koolwal, R/o. 8/50, Vidhyadhar Nagar, Jaipur (Raj.).

----RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 124/2015

IN

S.B CIVIL WRIT PETITION NO. 13428/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

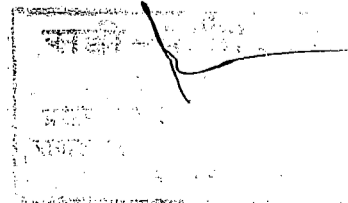
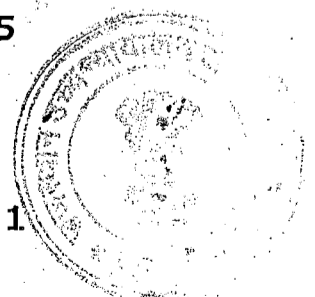
M/s. Shree Bai Hi-Tech Imagine Centre through Dr. Ashok Kumar Gupta, age 40 years, R/o. Opp. Community Centre, Basi, Jaipur.

----RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 125/2015

IN

S.B CIVIL WRIT PETITION NO. 10449/2011



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1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Ajmer.

---REVIEW PETITIONER/RESPONDENTS

Versus

- 1- Dr. Smt. Anjana Rathi W/o. Dr. Rajendra Rathi, Aged about 40 years, by Caste Rathi, R/o. 28/25, Saket Nagar, Housing Board, Beawar, District Ajmer (Raj.).
- 2- Rathi Hospital Alias Ganga Bai Hospital, Beawar, District Ajmer, through Dr. Anjana Rathi.

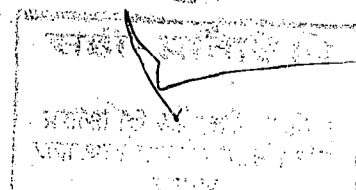
----RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 126/2015

IN

S.B CIVIL WRIT PETITION NO. 4752/2011

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.



4/11

3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

Pardaya Memorial Hospital (Unit of Parpati Bai Dayal Das Vaswani Memorial Charitable Trust) Through Dr. Prakash Chablani (Executive Director) Sanganer, District Jaipur (Raj.)

----RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 127/2015

IN

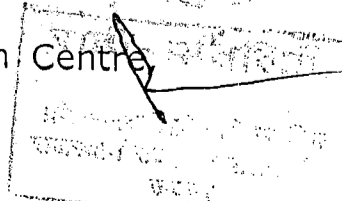
S.B CIVIL WRIT PETITION NO. 16035/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Sikar.

---REVIEW PETITIONER/RESPONDENTS

Versus

- 1- Dr. Sharda Mahala w/o. Dr. Virendra Kumar Mahala, Ruchika Nursing Home, Fertility & Research Centre, Opposite S Government School Play Ground N.H. 11, District Sikar (Raj.)
- 2- Dr. Virendra Kumar Mahala, S/o. Shri Tansukh Rai Choudhary, Ruchika Nursing Home, Fertility & Research Centre



AK

Opposite S. K. Government School Play Ground N.H. 11, District
Sikar (Raj.).

----RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 128/2015

IN

S.B CIVIL WRIT PETITION NO. 17983/2011

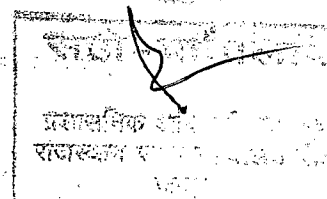
1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Sikar.

---REVIEW PETITIONER/RESPONDENTS

Versus

- 1- Dr. Rajesh Arora, Aged 43 Years, S/o. Shri Gurudas Arora, by Caste Punjabi, R/o. C-20, Basant Vihar, Sikar, Tehsil And District Sikar (Raj.).
- 2- Dr. Pritam Singh Aged 37 Years, S/o. Bholaram, by Caste Hindu, R/o. B-33,34, Basant Vihar, Sikar, Tehsil & District Sikar (Raj.).

----RESPONDENT/PETITIONER



S.B. CIVIL REVIEW PETITION NO. 143/2015

IN

S.B CIVIL WRIT PETITION NO. 13192/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

M/s. A. K. Diagnostic Centre through Dr. Dheeraj Gupta, age 47,
R/o. A-47, Sumanglam Apartment, Shastri Nagar, Jaipur.

----RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 145/2015

IN

S.B CIVIL WRIT PETITION NO. 12151/2012

1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.



4/12
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3. The Chief Medical & Health Officer-II, Jaipur.

---REVIEW PETITIONER/RESPONDENTS

Versus

M/s. Rajat Diagnostic Centre through Dr. Akancha Jain W/o. Dr. T. C. Jain, 38, R/o. 80/432, Shankarcharya Marg, Mansarowar, Jaipur.

---RESPONDENT/PETITIONER

S.B. CIVIL REVIEW PETITION NO. 231/2015

IN

S.B CIVIL WRIT PETITION NO. 10139/2012

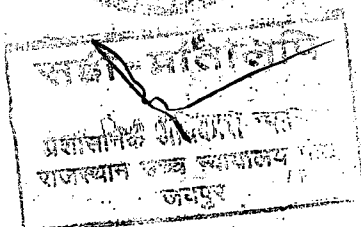
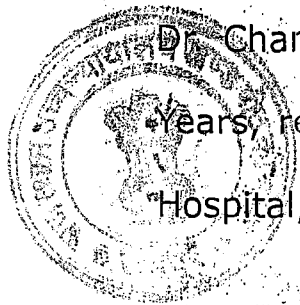
1. The State of Rajasthan, through the Principal Secretary to the Government, Medical and Health Department, Government of Rajasthan, Secretariat, Jaipur.
2. The State Appropriate Authority (PCPNDT Act) & Special Secretary, Medical, Health and Family Welfare Services, Rajasthan, Jaipur, through its Chairman.
3. The Chief Medical & Health Officer-II, Tonk.

---REVIEW PETITIONER/RESPONDENTS

Versus

Dr. Chanchal Sharma wife of Dr. Manoj Sharma, Aged about 42 Years, resident of plot no. 22-23, behind Badi Mandir, Sri Kalyan Hospital, Niwai, District Tonk.

----RESPONDENT/PETITIONER



AM

For Petitioner(s) : Mr. GS Gill, AAG with Mr. HC Kandpal
For Respondent(s) : Mr. Prahlad Singh, Mr. Aruneshwar Gupta,
Mr. Abhay Jain & Ms. Shiv Goyal for Mrs.
Parinitoo Jain, Mr. SS Hora with Mr. Siddharth
Lamror, Mr. Monu Kumar for Mr. Sudhir Jain,
Mr. Sudhir Yadav for Mr. Amit Jindal, Mr.
Hemant Taylor for Mr. Rajeev Surana, Mr.
Ashok Mehta, Sr. Adv. with Mr. Siddhant
Jain, Mr. Mudit Singhvi, Mr. Sarthak Gupta &
Mr. Himanshu Jain

HON'BLE MR. JUSTICE M.N. BHANDARI

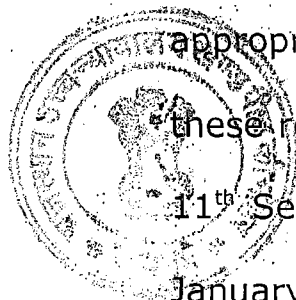
Judgment

30/01/2018

These review petitions have been filed against the order dated 22nd May, 2014 passed by this court in bunch of writ petitions.

Learned Additional Advocate General Shri GS Gill submits that an order passed under Section 20 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short "the Act of 1994") was challenged in the bunch of writ petitions. It was mainly on the ground that no gazette Notification for appointment of appropriate authority was issued, thus order of authority was illegal.

It is submitted that various Notifications for appointment of appropriate authority were issued from time to time. So far as these review petitions are concerned, a Notification was issued on 11th September, 2008 followed by another Notification dated 15th January, 2010 and lastly, on 13th October, 2012. It was for appointment of Chairman of the appropriate authority. A



राष्ट्रीय मानव अधिकार आयोग
भारत सरकार
जयपुर

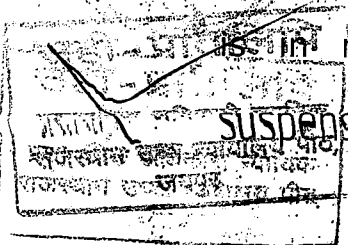
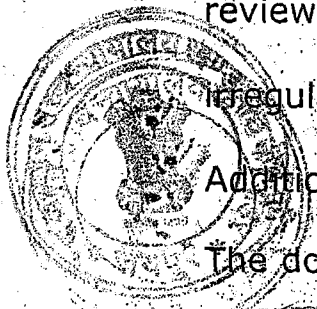
411

Notification was also issued on 19th November, 2007 to nominate an officer of the law department. In view of the above, constitution of the appropriate authority was made properly.

It is further submitted that even if the appropriate authority was not constituted properly then also any order passed by them should have been saved by applying the doctrine of de facto. A reference of judgment of the Apex Court in the case of **M/s. Beopar Sahayak (P) Ltd. Vs. Vishwa Nath & Ors., reported in (1987) 3 SCC 693** has been given wherein applying the doctrine of de facto, the plea taken by other parties was not accepted. The order under Section 20 of the Act be saved by applying the doctrine of de facto.

It is lastly urged that in three cases, the petitioner preferred appeals and were pending and in other cases, it was decided though certain writ petitions were filed directly before this court to challenge the order issued under Section 20 of the Act of 1994. The writ petitions were not maintainable when appeals were preferred. Taking into consideration the issues raised above, impugned order dated 22nd May, 2014 may be reviewed.

Learned counsel for the respondents have contested the review petitions. It is submitted that there exists no material irregularity so as to review the order. The issues raised by learned Additional Advocate General have been dealt with by this court. The doctrine of de facto would not apply to the present cases as it is in regard to an administrative order for cancellation or suspension of registration under Section 20 of the Act of 1994 and



not an order in judicial or quasi judicial side.

I have considered the rival submissions made by learned counsel for the parties and perused the record.

The bunch of review petitions have been filed to challenge the judgment passed in writ petitions regarding cancellation or suspension of registration under Section 20(2) of the Act of 1994. It was precisely on the ground that appropriate authority was not constituted in consonance to Section 17 of the Act of 1994. The said provision is quoted hereunder for ready reference:

"17. Appropriate Authority and Advisory

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

2. The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.

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

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



सर्वोच्च न्यायालय
प्रशासनिक अधिकारी कार्यालय
राजस्थान उच्च न्यायालय की,
जयपुर

AM

- (i) an officer of or above the rank of the Joint Director of Health and Family Welfare-Chairperson;
- ii) an eminent woman representing women's organization; and
- iii) an officer of Law Department of the State or the Union territory concerned:

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

Provided further that any vacancy occurring therein shall be filled within three months of the occurrence.

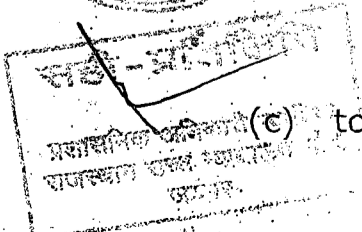
(b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

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

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

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

(c) to investigate complaints of breach of the



97

provisions of this Act or the rules made thereunder and take immediate action;

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

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

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

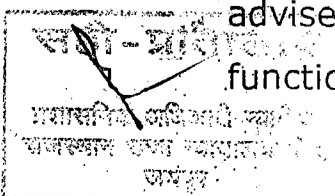
(g) to supervise the implementation of the provisions of the Act and rules;

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

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



5. The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the



Advisory Committee to be its Chairman.

6 The Advisory Committee shall consist of—

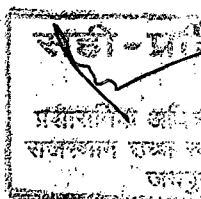
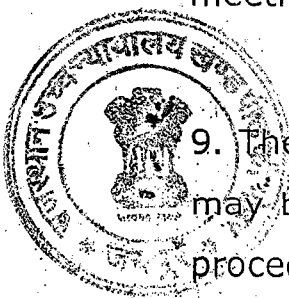
- (a) three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists;
- (b) one legal expert;
- (c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be;
- (d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

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

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

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

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



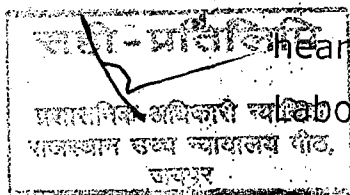
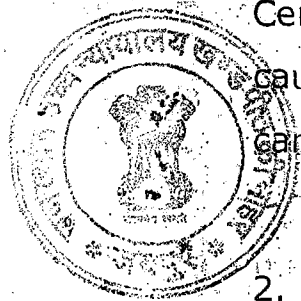
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Section 17 of the Act of 1994 provides for constitution of the appropriate authority by a Notification in the official gazette. What would be constitution of the appropriate authority has also been given under Section 17(3) of the Act of 1994. The appointment of the entire appropriate authority has to be made by publishing it in the Gazette Notification. The nomination of an officer of the law department of the State was made by a Gazette Notification dated 19th November, 2007. The nomination of Chairman has also been made in the same manner but no Gazette Notification was issued for an eminent woman representing women's organisation. In absence of the Gazette Notification for it, constitution of the appropriate authority or advisory committee was not in consonance to Section 17 of the Act of 1994. In the light of the aforesaid, power given to the appropriate authority for cancellation or suspension of registration was invoked by a committee not constituted as per the provisions of law. Section 20 of the Act of 1994 is also quoted hereunder for ready reference:

"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



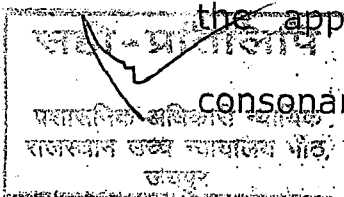
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advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, 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)."

The order challenged in the writ petitions was passed by an officer nominated by the appropriate authority. Section 20 of the Act of 1994 does not provide delegation of power by the appropriate authority. The rules were amended subsequently for it. In any case, when constitution of the appropriate authority itself was not in the manner given under Section 17 of the Act of 1994, thus the orders challenged in the writ petitions could not sustain.

Learned Additional Advocate General has referred judgment of the Supreme Court in the case of M/s. Beopar Sahayak (P) Ltd. (supra) to apply the doctrine of de facto for any order passed by the appropriate authority even if it was not constituted in consonance to Section 17 of the Act of 1994. The perusal of

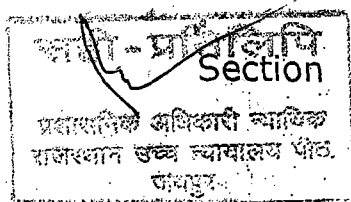
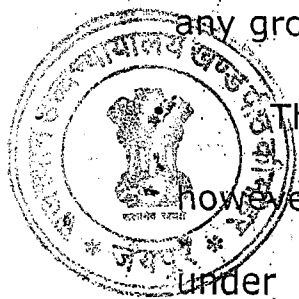


4/12

judgment would show it to be in reference to the order passed by the court, which includes even Executive Magistrate and not in the administrative side. In case, doctrine of de facto is applied even for the administrative order then there would be no sanctity to the provisions of law for constitution of the appropriate authority or a committee for the aforesaid purpose, thus judgment in the case M/s. Beopar Sahayak (P) Ltd. (supra) would not apply to the facts of these cases. The view aforesaid is supported by the judgment of the Apex Court in the case of **State of M.P. Vs. Manvinder Singh Gill, SLP No.2226/2014, decided on 3rd August, 2015.**

The issue now comes regarding filing of appeals in few cases. I find that an elaborate discussion about the issues in reference to Section 21 of the Act of 1994 has also been made. It provides for remedy of appeal in the prescribed manner, which was not notified. When the order of suspension or cancellation of registration was not passed by the competent authority, the order passed in appeal was also set aside. It is not a case where the petitioner did not challenge the order passed in appeal because even if remedy of appeal was taken, further remedy is not provided under the Act of 1994, accordingly, writ petitions were filed. Taking into consideration all the relevant facts, I do not find any ground to review the order dated 22nd May, 2014.

The review petitions are, accordingly, dismissed. It is, however, made clear that order in these cases pertain to action under Section 20 of the Act of 1994 and not in reference to Section 28 of the Act of 1994. If an issue is raised in the



47

proceedings in reference to Section 28 of the Act of 1994, the court concerned can decide it though the issue would be in the co-lateral proceedings. It would, accordingly, be governed by the judgment of the Apex Court in the case of M/s. Beopar Sahayak (P) Ltd. (supra) where objection was not accepted in co-lateral proceedings.

A copy of this order be placed in each connected file.



(M.N. BHANDARI) J.

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