

Reserved on : 30.07.2024
Pronounced on : 09.08.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3002 OF 2024

BETWEEN:

- 1 . DR. SMT. SUBHALAKSHMI N.,
W/O MANIYAN NARAYANAN
AGED ABOUT 39 YEARS
RESIDING AT NO.22
KHATA NO. 862, 2ND CROSS
ABBAIAH REDDY LAYOUT
PROPRIETOR
MEDIZONE MEDICAL CENTRE
KAGGADASAPURA
BENGALURU - 560 093.

- 2 . DR. MOSCOW MANI SA
S/O SOMASUNDARAM S.,
AGED ABOUT 46 YEARS
RESIDING AT NO. 77,
4TH MAIN ROAD
VIVEKANAGAR
FURTHER EXTENSION
BENGALURU - 560 047.

... PETITIONERS

(BY SRI PRAVEEN S., ADVOCATE)

AND:

- 1 . STATE BY
DISTRICT APPROPRIATE AUTHORITY (DAA)
PC AND PNDT DISTRICT HEALTH AND
FAMILY WELFARE OFFICE
BANGALORE URBAN DISTRICT
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

- 2 . DR. RAVINDRANATH M.METI
AGED ABOUT 50 YEARS
DISTRICT HEALTH AND
FAMILY WELFARE OFFICER
BENGALURU URBAN DISTRICT.

... RESPONDENTS

(BY SRI B.N.JAGADEESH, ADDL. SPP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CASE AND PROCEEDINGS AGAINST THE PETITIONERS IN C.C.NO.1938/2024 IN PCR NO.2/2024 FOR ALLEGED OFFENCES P/U/S 23, 23(1)(2), 20(1)(2)(3) OF PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994, PENDING ON THE FILE OF HONBLE MMTC-1, MAYOHALL, BANGALORE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioners, both doctors, are before this Court calling in question proceedings in C.C.No.1938 of 2024 pending before the Metropolitan Magistrate, Traffic Court-I, Mayo Hall, Bangalore, pursuant to a complaint initiated by the 1st respondent under Section 200 of the Cr.P.C., alleging offences under Sections 20(1), (2), (3) and 23(1) and (2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ('the Act' for short).

2. Facts, in brief, germane are as follows:-

Both the petitioners are doctors. The 1st petitioner is the proprietor of the Diagnostic Centre in the name and style of 'Medizone Medical Centre' (the Centre' for short). The 2nd petitioner is a certified registered operator of the ultrasound machine at the Diagnostic Centre. It is the averment in the petition that the ultrasound diagnostic procedures are conducted at the centre between 10.30 a.m. and 11.30 a.m. and between 6.00 p.m. and 7.00 p.m. on the prescription of doctors who direct a test to be

conducted upon the patients. When things stood thus, the 1st respondent/Appropriate Authority under the Act, on receipt of certain information, conduct an inspection at 4.00 p.m. on 08-12-2023 at the Centre. At that time, it was found that the ultrasound room, which was situated opposite the reception counter, was open and in active mode. It is said that the lab technician have admitted that scanning was done in the Centre. The medical centre is closed, the scanning machine is locked. The result of conduct of inspection and seizure of materials is filing of a complaint before the jurisdictional Magistrate invoking Section 200 of the Cr.P.C., read with Section 28 of the Act, by registering a crime for offences punishable as afore-quoted. The registration of criminal case and issuance of summons is what has driven the petitioners to this Court in the subject petition.

3. Heard Sri S. Praveen, learned counsel appearing for the petitioners and Sri B.N. Jagadeesh, learned Additional State Public Prosecutor appearing for the respondents.

4. The learned counsel appearing for the petitioners would vehemently contend that inspection of the Centre is conducted at 4.00 p.m. when no records were displayed. The bone of contention is that signatures of 4 patients on Form-F were missing. Those signatures were taken in the register. It is not that the scanning was done without prescriptions from respective doctors. The information that is filled in Form-F clearly indicates that it is pursuant to prescriptions from doctors. The duration of pregnancy is also indicated. He would admit that signatures of concerned patients were not taken on the form, but they were taken in the register. Based upon the inspection, a notice comes to be issued on 08-12-2023. The notice seeks the petitioners to reply as to why registration should not be suspended, but on the same day seizure, closure and locking of the scanning machine had happened. Therefore, it was a post-decisional hearing. He would like to place reliance upon certain guidelines issued by Government of India, in the Ministry of Health and Family Welfare, to buttress his submission *qua* the procedure adopted by the respondent in registering and continuing with the criminal case.

5. Per contra, the learned Additional State Public Prosecutor would vehemently refute the submissions to contend that taking of signatures in Form-F is mandated under the statute. It cannot be that the patients would not sign on the document and scanning is done. It is, therefore, necessary for the petitioners to explain or face proceedings for having conducted the scanning without the consent of patients. He would submit that guidelines so issued by Government of India are adopted by the State and no separate guidelines are notified by the State Government. He would further contend that the petitioners should come out clean in the trial, as they have admittedly undertaken the exercise of conducting ultrasound scanning to determine sex of the fetus.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The issue, at this juncture, lies in a narrow compass. The 1st respondent is said to be the Appropriate Authority under the Act to check violations of

the Act and regulate functioning of the diagnostic centres. The petitioners are respectively the proprietor and certified operator of the ultrasound machine in the diagnostic centre. The diagnostic centre of the petitioners is inspected by the 1st respondent at 4.00 p.m. on 08-12-2023 and found several irregularities in the functioning of the Centre. The moment irregularities are found, a complaint comes to be registered invoking Section 28 of the Act. Since the entire issue has now sprung from the complaint, the complaint is necessary to be noticed. It reads as follows:

"....

3. It is further submitted that complainant is a officer of Government having designation as the District Health and Family Welfare Officer at Bengaluru urban District, Reporting Letter and CTC document are herewith produce, visited with power given by the District Appropriate Authority under PC & PNDT Act under Sec.17A and 28 of the Pre-Conception and pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, read with Rules 18A(1)(V) of the PC & PNDT Rules, 1996. The Delegation of power for filing of this case Delegation of power for authorize to inspect Dr. Ravindranath M.Meti, PC & PNDT the same is hereby produced for the kind perusal of this Hon'ble Court and marked as Annexure 'A' and 'B'.

4. The complainant states that it is the duty of the Appropriate Authorities to implement the act as per Rules 12 and to take action against all bodies upon violation of the Act and also against persons who have appointed/ allowed a person to operate without a valid qualification as mentioned in the Act or involved in sex selection/ determination of sex of the same to anyone else, as they are amount to violation of Act u/Sec.3A, 4, 5, 6, 29 and 30.

5. The complainant further submits that on 08-12-2023 the District Appropriate Authority & District Inspection and monitoring Committee visited MEDIZONE MEDICAL CENTRE, No.22, 2nd Cross, Abhayareddy, Kaggadasapur, Bengaluru-560 093 comprising of Dr. Ravindranath M.Meti, DHO, Delegated as DAA, Dr. NadeemAhamad, FWO, Dr. Leela Government Radiologist, Mr. Narayana R (Case Worker PCPNDT) Bengaluru Urban, on 08-12-2023 Friday about 4.00 p.m. The complainant have produced panchanama hereby produced for the kind perusal of this Hon'ble Court and marked as Annexure-C.

6. The DAA & DIMC, Team has inspected MEDIZONE MEDICAL CENTRE Kaggadasapura, Bangalore and checked the relevant registers and Form F etc., under the provision of said Act and Rule on arrival at the premises the DIMC found that.

7. The Ultrasound room is located opposite to the Reception. The ultrasound room was open when team visited the Centre and the USG machine was in the active mode. Mis/Mrs Jenifer & Karthik (Lab Tech.) accepted that scanning was done without generating Form F as per the PC and PNDT Act.

8. The USG machine present in the Diagnostics Centre was Wipro GeVoluson P8 BT16, with serial No.VP8002800 with single curvilinear probe.

9. On inspection of the machine, it was found that no images and patient details were not found and it was not store in any media, including the USG machine.

10. On inspection of Form B (Certificate of Registration) 1 USG machines were found with following details, Wipro GeVoluson P8 BT16, with serial No.VP8002800 machine was available in the Diagnostic Centre premises and staff were unable to provide referral slips & Form-F (1) Images, Patient Bill, Referral slips are hereby marked as Annexure-D.

11. The complainant submits that –

- a) The signature of the Patient was not found in the Form-F

- i) *The patient Signature was not found in Form-F name of the patients Neelam aged: 31 years Dated 13-11-2023, Ayesha aged 24 years, Dated: 26-11-2023; Rashmitha aged 31 years Dated 26-11-2023; Ramani aged 30 years Dated 27-11-2023*

The same is hereby produced for kind perusal of this Hon'ble Court and marked as Annexures E, F, G, H.

- b) *It is further submitted that, the complainant respectfully prays that this Hon'ble Court may kindly be pleased to permit to produce that seized documents before this Hon'ble Court other notice and Letter given by the complainant to the Centre. The same is hereby produced for kind perusal of this Hon'ble Court and marked as Annexure-I & J.*
- c) *The complainant further submits that after inspecting and examining the ultrasound machine, District Appropriate Authority found that these major violations of the PCPNDT Act, that all the relevant records be seized and sealed.*
- d) *The cause of action arose in Bangalore Urban Baiyappanahlli Police Station Limits. Hence, this Court has got jurisdiction to try this matter.*

12. It is for the submitted that, the complainant being the Appropriate Authority file this complaint against the accused without any mala-fide intention and misuse of power.

PRAYER:

Wherefore, it is respectfully prays that this Hon'ble Court may kindly be pleased to take cognizance non-bailable offence punishable under Section 23, 23(1), 23(2), 20(1), 20(2), 20(3) and other relevant Sections of PC & PNDT Act and other relevant applicable sections under IPC and secure the accused person and punish him for having committed the said offences, as per law, in the interest of justice."

The complaint results in invocation of offences under Sections 20(1), (2), (3) and 23(1) and (2) of the Act. It is necessary to notice those provisions. Sections 20 and 23 of the Act read as follows:

"20. Cancellation or suspension of registration.—(1)

The Appropriate Authority may suo motu, 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 advise 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).

... ..

23. Offences and penalties.—(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 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.

(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 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 any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist 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."

Section 20 which deals with cancellation of registration and empowers the Appropriate Authority to issue a notice to any diagnostic centre to show cause as to why its registration should not be suspended or cancelled for reasons mentioned in the notice.

After giving a reasonable opportunity of being heard, if the Authority concerned is satisfied that there has been breach of the provisions of the Act, it may initiate criminal action against the Centre, suspend its registration for a period it may think fit or cancel its registration for reasons to be recorded in writing. Section 23 which deals with offences and penalties makes any person who would contravene the provisions of the Act to undergo punishment stipulated therein.

8. The Act is notified for the purpose of prohibition of sex selection before or after conception and for regulation of pre-natal diagnostic techniques to abolish this crude of female foeticide. Therefore, two factors would emerge from the present proceedings – the first being, that the diagnostic centre must be involved in activities which would contravene the provisions of the Act, the foundation of which is determination of sex and the other being, prior to cancellation or suspension of registration, a reasonable opportunity should be granted to the person whose registration is sought to be suspended or cancelled. It is not in dispute that the 1st respondent is the Appropriate Authority empowered to conduct

inspection in terms of Rule 18 of the Rules framed under the Act. The diagnostic centre is inspected on 08-12-2023. The inspection panchanama is drawn thereto. It reads as follows:

“ಸ್ಥಳ ಪಂಚನಾಮೆ

ಡಾ|| ರವೀಂದ್ರನಾಥ್ ಎಂ.ಮೇಟಿ ಆದ ನಾನು ಬೆಂಗಳೂರು ನಗರ ಜಿಲ್ಲೆ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು, ಪಿ.ಸಿ.&ಪಿ.ಎನ್.ಡಿ.ಟಿ. ಕಾಯ್ದೆಯ ಸೆಕ್ಷನ್ 17(ಎ), ಸೆಕ್ಷನ್ 18 ಎ(A) ಮತ್ತು ಸೆಕ್ಷನ್ 30 ರಂತೆ ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ ಪ್ರತ್ಯಾಯೋಜಿಸಿದ ಅಧಿಕಾರದ ಮೇರೆಗೆ ದಿನಾಂಕ...ರಂದು ಬೆಳಿಗ್ಗೆ / ಮಧ್ಯಾಹ್ನ / ಸಂಜೆ 4 ಗಂಟೆಗೆ **MEDIZONE MEDICAL CENTRE Kaggadasapura, Bengaluru Urban District** ಸ್ವಾನಿಂಗ್ ಸೆಂಟರ್ / ಲ್ಯಾಬೋರೇಟರಿ / ಕ್ಲಿನಿಕ್ / ಆಸ್ಪತ್ರೆಗೆ ಭೇಟಿ ನೀಡಿ ಪಂಚನಾಮೆ ಮಾಡಿರುತ್ತೇನೆ.

ರಾಜ್ಯ / ಜಿಲ್ಲಾ ತಪಸಣಾ ಮತ್ತು ಪರಿಶೀಲನಾ ಸಮಿತಿ ಮತ್ತು ರಾಜ್ಯ / ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ ಗುರುತಿಸಿದಂತೆ **MEDIZONE MEDICAL CENTRE Kaggadasapura, Bengaluru** ಸ್ವಾನಿಂಗ್ ಸೆಂಟರ್ / ಕ್ಲಿನಿಕ್ / ಆಸ್ಪತ್ರೆ ಯು ದಸ್ತಾವೇಜುಗಳನ್ನು / ವಹಿಗಳನ್ನು ಕಾನೂನು ಬದ್ಧವಾಗಿ ನಿರ್ವಹಿಸಿರುವುದಿಲ್ಲ ಮತ್ತು ಪಿ.ಸಿ.&ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ 20/3 Rule 8 ವಿಧಿ / ನಿಯಮಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿರುತ್ತದೆ.

ಈ ಕೆಳಕಾಣಿಸಿದ ದಾಖಲೆಗಳು / ದಾಸ್ತಾವೇಜುಗಳು / ನಮೂನೆಗಳು / ವಸ್ತುಗಳು / ಯಂತ್ರಗಳನ್ನು ರಾಜ್ಯ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ / ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ, ಅಲ್ಟ್ರಾಸೌಂಡ್ ಸ್ವಾನಿಂಗ್ ಸೆಂಟರ್ ಮಾಲೀಕರ ಸಮಕ್ಷಮ ಮತ್ತು ಈ ಕೆಳಗೆ ಸಹಿ ಮಾಡಿರುವ ಪಂಚರ ಸಮಕ್ಷಮ ಪಿ.ಸಿ.&ಪಿ.ಎನ್.ಡಿ.ಟಿ. ಕಾಯ್ದೆಯ ಕಲಂ 30 ನಿಯಮ 12 ರಂತೆ ಜಪ್ತಿ ಮಾಡಲಾಯಿತು.

1. Ultra sound scanning ಯಂತ್ರ wipro Ge Voluson P8BT16 S/N VP8002800	5.
2. Form - F"	6.
3.	7.
4.	8.

What forms crux of the complaint is that signatures of patients were not found in Form-F. Four patients are named. These four patients' details are appended to the petition. The first patient is

one Neelam, aged 31 years who gets scanning done of the pregnancy pursuant to a prescription by a doctor – Dr. Shoba Venkat. **The pregnancy is said to be of eight weeks.** The next patient is one Ayesha aged 24 years. The prescription is by one doctor – Dr. Asha. **The pregnancy is said to be of 5 weeks.** The third patient is one Rashmita, aged 31 years, again referred by the same Dr.Asha. **Pregnancy is said to be of six weeks.** The fourth patient is one Ramani, aged 30 years referred by one Dr. Maya V.V., **The pregnancy is of 9 weeks.** It is understandable as to how between five weeks and nine weeks of pregnancy the determination of sex of the fetus can happen. It is in public domain that sex of the fetus can be determined only after 12 to 14 weeks. Therefore, what was carried out in the diagnostic centre was only normal general routine pregnancy test on prescription of doctors.

9. It is an admitted fact that forms which contained details of the patients did not contain signatures of the patients. It is the contention of the learned counsel appearing for the petitioners that those signatures are in the register. The register and all other documents are said to have been seized. The Additional Special

Public Prosecutor would contend that there was no register maintained for getting the signatures, as there is no seizure undertaken of the register being maintained also. While the complaint contends that there were no images in the scanning unit, but the images are taken and seized. Though it becomes a matter of documentation or evidence that signatures are found in the register or otherwise, what merits consideration of the petition notwithstanding absence of signatures is the notice that is issued. The notice is issued on 08-12-2023. It reads as follows:

“ನೋಟೀಸ್”

ವಿಷಯ: ಗರ್ಭಧಾರಣಾ ಪೂರ್ವ ಮತ್ತು ಪ್ರಸವ ಪೂರ್ವ ಲಿಂಗ ಪತ್ತೆ ಹಚ್ಚುವ ತಂತ್ರಗಳು (ಲಿಂಗ ಆಯ್ಕೆ ನಿಷೇಧ) ಕಾಯ್ದೆ 1994 ಸಮರ್ಪಕವಾಗಿ ಅನುಷ್ಠಾನಗೊಳಿಸದಿರುವ ಬಗ್ಗೆ.

ತಮ್ಮ ಸಂಸ್ಥೆ / ಆಸ್ಪತ್ರೆಗೆ ದಿನಾಂಕ:8/12/2023ರಂದು ಪಿ.ಸಿ ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾರ್ಯಕ್ರಮದ ಪರಶೀಲನೆಗಾಗಿ ಜಿಲ್ಲಾ ಸ್ವಲ್ಪ ಪ್ರಾಧಿಕಾರವು ಅನಿರೀಕ್ಷಿತ ಭೇಟಿ ನೀಡಿದಾಗ ಈ ಕೆಳಕಂಡ ನ್ಯೂನತೆಗಳನ್ನು ಸರಿಪಡಿಸಿಕೊಂಡ ಕ್ರಮದ ವರದಿಯನ್ನು ಈ ಕಛೇರಿಗೆ ಕೂಡಲೇ ಸಲ್ಲಿಸಲು ತಿಳಿಸಿದೆ. ತಪ್ಪಿದಲ್ಲಿ ಪಿ.ಸಿ. ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯನ್ವಯ ಕ್ರಮ ವಹಿಸಲಾಗುವುದು.

*ಗರ್ಭಧಾರಣಾ ಪೂರ್ವ ಮತ್ತು ಪ್ರಸವ ಪೂರ್ವ ಪತ್ತೆ ಹಚ್ಚುವ ತಂತ್ರಗಳು (ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ) (ಲಿಂಗ ಆಯ್ಕೆ ನಿಷೇಧ) ಕಾಯ್ದೆ 1994ರ ಅನ್ವಯ ಈ ಕೆಳಕಂಡ ಆಕ್ಷೇಪಣೆಗಳಿಗೆ ಸಮರ್ಪಕ ಸಮಜಾಯಿಷಿಯನ್ನು ನೀಡುವುದು:-

1. ತಾವು ಪಿ.ಸಿ ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಕಲಾಂ 4 ಮತ್ತು ಉಪಕಲಾಂ (1) (2) (3) (4) ಮತ್ತು (5) ರಂತೆ ಪ್ರಸವಪೂರ್ವ ಪತ್ತೆ ತಂತ್ರ ವಿಧಾನಗಳನ್ನು ಉಪಯೋಗಿಸಲು ಅಥವಾ ಕೈಗೊಳ್ಳಲು ಅರ್ಹತೆ ಹೊಂದಿದ ವ್ಯಕ್ತಿಯು ಯಾವುದೇ ಷರತ್ತುಗಳನ್ನು ಪೂರೈಸಲಾಗಿದೆ ಎಂಬುದನ್ನು ನೀವು ಲಿಖಿತವಾಗಿ ದಾಖಲಿಸದೆ ಮೇಲ್ಕಾಣಿಸಿದ ಕಲಾಂ ಮತ್ತು ಉಪ ಕಲಾಂಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿರುತ್ತೀರಿ ಎಂದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
2. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಕಲಾಂ 5 ರನ್ವಯ ಗರ್ಭಿಣಿ ಮಹಿಳೆಯ ಲಿಖಿತ ಸಮ್ಮತಿ ಉಪ ಕಲಾಂ 1 (ಎ) (ಬಿ) (ಸಿ) ಮತ್ತು 2ನ್ನು ಉಲ್ಲಂಘಿಸಿರುತ್ತೀರಿ.

3. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಕಲಾಂ 6 ರಂತೆ ಲಿಂಗ ನಿರ್ಧರಣೆಯನ್ನು ನಿಷೇಧಿಸಲಾಗಿದ್ದರೂ ತಾವು ಲಿಂಗ ನಿರ್ಧರಣೆಯನ್ನು ಮಾಡಿ ಉಪಕಲಾಂ (ಎ) (ಬಿ) (ಸಿ) ಯನ್ನು ಉಲ್ಲಂಘಿಸಿರುತ್ತೀರಿ ಎಂದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
4. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಕಲಾಂ 18 ಮತ್ತು ಉಪ ಕಲಾಂ (1) ರಂತೆ ಅನುವಂಶೀಯತೆಯ ಸಲಹಾ ಕೇಂದ್ರಗಳು, ಅನುವಂಶೀಯತೆಯ ಪ್ರಯೋಗಾಲಯಗಳು ಮತ್ತು ಅನುವಂಶೀಯತೆಯ ಚಿಕಿತ್ಸಾಲಯಗಳನ್ನು ನೋಂದಣಿ ಮಾಡದೆ ಕಾಯ್ದೆಯನ್ನು ಉಲ್ಲಂಘಿಸಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.
5. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಕಲಾಂ 19 ಉಪ ಕಲಾಂ 4 ರಂತೆ ನೋಂದಣಿ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ತಮ್ಮ ಸಂಸ್ಥೆಯ ವ್ಯವಾಹಾರದ ಸ್ಥಳದಲ್ಲಿ ಕಾಣುವಂತೆ ಪ್ರದರ್ಶಿಸದೇ ಇರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.
6. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯಡಿಯಲ್ಲಿ ಪ್ರಸವ ಪೂರ್ವ ಲಿಂಗ ನಿರ್ಧರಣೆಗೆ ಸಂಬಂಧಿಸಿದ ಜಾಹೀರಾತಿನ ನಿಷೇಧವಿದ್ದರೂ ತಾವು ಕಲಾಂ 22 ಉಪಕಲಾಂ(1) ಮತ್ತು (2)ನ್ನು ಉಲ್ಲಂಘಿಸಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
7. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಕಲಾಂ 29ರ ಉಪ ಕಲಾಂ(1) ಮತ್ತು (2)ನ್ನು ನಿಯಮ 9 ಉಪನಿಯಮ (1) (2) (3) (4) (5) (6) (7) ಮತ್ತು (8) ರಂತೆ, ದಾಖಲಾತಿಗಳನ್ನು ನಿರ್ವಹಣೆ ಮಾಡದೆ ಕಾಯ್ದೆಯನ್ನು ಉಲ್ಲಂಘಿಸಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
8. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಕಲಾಂ 8ರ ಉಪ ಕಲಾಂ(1) ರಂತೆ ನೋಂದಣಿಯ ನವೀಕರಣವನ್ನು ಮಾಡದೆ ಕಾಯ್ದೆಯನ್ನು ಉಲ್ಲಂಘಿಸಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.
9. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ನಿಯಮ 10ರಂತೆ ಜನನ ಪೂರ್ವ ಪತ್ತೆಯ ತಂತ್ರ ವಿಧಾನ ಪ್ರಕ್ರಿಯೆಗಳಿಗೆ ಷರತ್ತುಗಳನ್ನು ಉಪನಿಯಮ (1) ಮತ್ತು (3) ರಂತೆ ಗರ್ಭಿಣಿ ಸ್ತ್ರೀಯಿಂದ ಆಕೆಗೆ ಗೊತ್ತಿರುವ ಭಾಷೆಯಲ್ಲಿ ತಿಳಿಸಿರುವುದಿಲ್ಲ.
10. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ನಿಯಮ 13ರಂತೆ ನೌಕರರಲ್ಲಿ, ಸ್ಥಳದಲ್ಲಿ ಅಥವಾ ಸಾಧನ ಸಲಕರಣೆಗಳಲ್ಲಿ ಆದ ಬದಲಾವಣೆಯ ಬಗ್ಗೆ ಜಿಲ್ಲಾ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರಿಗೆ ತಿಳಿಸದೇ ಇದ್ದು, ಕಾಯ್ದೆಯನ್ನು ಉಲ್ಲಂಘಿಸಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.
11. ತಾವು ಪಿ.ಸಿ.ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ನಿಯಮ 17ರಂತೆ ಸಂಸ್ಥೆಯಲ್ಲಿ ಭ್ರೂಣದ (ಗರ್ಭಸ್ಥ ಶಿಶುವಿನ) ಲಿಂಗವನ್ನು ಬಹಿರಂಗ ಪಡಿಸುವುದು ಕಾನೂನಿನ ಮೇರೆಗೆ ನಿಷೇಧಿಸಲಾಗಿದೆ ಎಂಬ ಸೂಚನೆಯನ್ನು ಸಾರ್ವಜನಿಕ ಮಾಹಿತಿಗಾಗಿ ಇಂಗ್ಲೀಷಿನಲ್ಲಿ ಮತ್ತು ಸ್ಥಳೀಯ ಭಾಷೆಗಳಲ್ಲಿ ತಮ್ಮ ಸಂಸ್ಥೆಗಳ ಆವರಣಗಳಲ್ಲಿ ಎದ್ದು ಕಾಣುವಂತೆ ಪ್ರದರ್ಶಿಸದೇ ಇರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.

12. ನಿಯಮ 17 ಉಪ ನಿಯಮ (2) ರಂತೆ ಸ್ಟ್ಯಾನಿಂಗ್ ಕೊಠಡಿಯಲ್ಲಿ ಪಿ.ಸಿ.ಮತ್ತುಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಪುಸ್ತಕ ಇಟ್ಟಿರುವುದಿಲ್ಲ.
13. ನಿಯಮ 18 ಉಪನಿಯಮದಂತೆ ತಮ್ಮ ಸಂಸ್ಥೆಯಲ್ಲಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿರುವ ಆತನ/ಆಕೆಯ ಹೆಸರನ್ನು ಮತ್ತು ಪದನಾಮವನ್ನು (ಹುದ್ದೆಯ ಹೆಸರನ್ನು) ಆತನ/ಆಕೆಯ ಧರಿಸಿದ ಉಡುಪುಗಳ ಮೇಲೆ ಸ್ಪಷ್ಟವಾಗಿ ಕಾಣುವಂತೆ ಪ್ರದರ್ಶಿಸಿರುವುದಿಲ್ಲದೇ ಇರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.
14. ವೈದ್ಯರು ಭೇಟಿ ನೀಡುವ ವೇಳಾಪಟ್ಟಿಯನ್ನು ಪ್ರದರ್ಶಿಸಿರುವುದಿಲ್ಲ.
15. ಎಂಪ್ಲಾನ್‌ಲ್ ಮಾಡಿಕೊಂಡಿರುವ ವೈದ್ಯರ ಹೆಸರು, ಅರ್ಹತಾ ಪತ್ರಗಳನ್ನು ಪ್ರದರ್ಶಿಸಿರುವುದಿಲ್ಲ.
16. ಎಂಪ್ಲಾನ್‌ಲ್ ಮಾಡಿಕೊಂಡಿರದೆ ಇರುವ ವೈದ್ಯರಿಂದ ಸ್ಟ್ಯಾನಿಂಗ್ ಮಾಡಿಸಿರುತ್ತೀರಿ ಎಂದು ತಿಳಿದು ಬಂದಿರುತ್ತದೆ.
17. ಓ.ಬಿ.ಜಿ ಸ್ಟ್ಯಾನಿಂಗ್ ಮಾಡಿಸಿಕೊಂಡಿರುವವರ ರಿಜಿಸ್ಟರ್ ಪುಸ್ತಕ ಇಟ್ಟಿರುವುದಿಲ್ಲ.
18. ಫಾರಂ-ಎಫ್ ನ್ನು ನಿಯಮಾನುಸಾರವಾಗಿ ನಿರ್ವಹಿಸಿರುವುದಿಲ್ಲ.
19. ತಾವು ನೀಡುತ್ತಿರುವ ಸೌಲಭ್ಯಗಳಿಗೆ ಭರಿಸುವ ಶುಲ್ಕದ ಪಟ್ಟಿಯನ್ನು ಫಲಕದಲ್ಲಿ ಪ್ರದರ್ಶಿಸದೇ ಇರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.
20. ತಮ್ಮ ಕ್ಲೀನಿಕ್ / ಸ್ಟ್ಯಾನಿಂಗ್ / ಸೆಂಟರ್‌ನಲ್ಲಿ ಅವಶ್ಯಕವಾಗಿ ಬೇಕಾಗಿರುವ ಸಲಕರಣೆಗಳು, ಉಪಕರಣಗಳನ್ನು ಹೊಂದದೇ ಇರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
21. ತಮ್ಮ ಕ್ಲೀನಿಕ್ / ಸ್ಟ್ಯಾನಿಂಗ್ / ಸೆಂಟರ್‌ನಲ್ಲಿ ರೋಗಿಗಳಿಗೆ ಸೂಕ್ತ ಸೇವೆ ಕೊಡಲು ಅವಶ್ಯಕವಾದ ಕಟ್ಟಡ, ಗಾಳಿ, ಬೆಳಕು ಇಲ್ಲದೇ ಇರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
22. ಶೌಚಾಲಯದ ವ್ಯವಸ್ಥೆ ಸರಿಯಾಗಿ ಇಲ್ಲದೇ ಇರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.
23. ಇತರೆ:- **Scanning Room Inside Photo Image**
ಮೇಲ್ಕಾಣಿಸಿದ ಎಲ್ಲಾ ನ್ಯೂನತೆಗಳನ್ನು ಪರಿಶೀಲಿಸಿ ಪಿ.ಸಿ ಮತ್ತು ಪಿ.ಎನ್.ಡಿ.ಟಿ ಕಾಯ್ದೆಯ ಕಲಾಂ20(1), (2) ಮತ್ತು (3) ರಂತೆ ತಮ್ಮ ಕ್ಲೀನಿಕ್ / ಸ್ಟ್ಯಾನಿಂಗ್ / ಸೆಂಟರ್ ಲ್ಯಾಬೋರೇಟರಿಯ ನೋಂದಣಿ ರದ್ದಾಗಲೀ ಅಥವಾ ಅಮಾನತು ಏಕೆ ಮಾಡಬಾರದು? ಎಂಬುದಕ್ಕೆ 7 ದಿನಗಳೊಳಗೆ ಉತ್ತರ ನೀಡಲು ಆದೇಶಿಸಲಾಗಿದೆ.”

The notice notices several lacunae in the maintenance of the unit.

It gives an opportunity to the petitioners to reply as to why the

registration should not be cancelled or suspended within seven days from the date of receipt of the notice. The registration stood suspended on the day of the notice itself. Therefore, no time was granted to these petitioners to submit reply to the so called show cause notice.

10. The learned Additional Special Public Prosecutor submits that a show cause notice is to be issued to the petitioners and accordingly it has been issued. There are serious lacunae in the maintenance of diagnostic centre. If leniency is shown to these petitioners, they would indulge in the tests of sex determination as well as the State is on a serious look out of checking sex determination being done illegally resulting in female foeticide. The object of the State is laudable, as it is imperative today to check the growth of cases of female foeticide which happen due to determination of sex at the diagnostic centres illegally. While that cannot be brushed aside for implementation, without compliance with the provisions of the Act, as every diagnostic centre cannot be painted with the same brush.

11. Therefore, the notice that is given to any diagnostic centre in terms of Section 20 of the Act, it should be in furtherance of providing an opportunity to explain with regard to the violations of the Act, failing which, the notice would become meaningless, or an empty formality, as they are held guilty and criminal cases are registered even before seeking an appropriate explanation. Any act of this kind of not providing adequate opportunity would be in blatant violation of principles of natural justice. It is this that merits entertainment of petition notwithstanding signatures not being found in the Form. If it is found in the register, it was for the petitioners to explain as to why it was not taken in the Form and then the criminal case could be registered against these petitioners, as law clearly indicates that if satisfactory reply is not given by those laboratories only then a criminal case can be registered. The procedure cannot be deviated in the wake of any rush to implement the provisions of the Act.

12. It now becomes germane to notice the guidelines issued by Government of India, Ministry of Health and Family Welfare publishing the standard operating guidelines of District Appropriate

Authorities. I deem it appropriate to quote certain clauses of the guidelines, since the Additional State Public Prosecutor has admitted that the State has adopted and is following the same guidelines, though no document to that effect is produced before the Court. The guidelines are issued under the Act. It varies from Code of Conduct for the Appropriate Authorities under the Act; Guidelines for inspection of facilities; Search and Seizure operations; Guidelines for filing criminal complaints and Indicative Checklist for inspection of facilities under the Act. I deem it appropriate to quote them. They read as follows:

"1. Code of Conduct for the Appropriate Authorities under the Act

.....

8) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, Inter-alia, shall observe the following conduct for Inspection and monitoring, namely

- **conduct regular inspection of all the registered facilities once in every ninety days and shall preserve the inspection report as documentary evidence and a copy of the same be handed over to the owner of facility inspected and obtain acknowledgement in respect of the inspection**
- *place all the inspection reports once in three months before the Advisory Committee for follow up action*

- *maintain bimonthly progress report containing number of cases filed and persons convicted, registration made, suspended or cancelled, medical licenses cancelled, suspended, inspections conducted, Advisory Committee meetings held at the district level and quarterly progress report at the State level*

(a) procure the copy of the charges framed within seven days and in the case of doctors, the details of the charges framed shall be submitted within seven days of the receipt of copy of charges framed to the State Medical Council

(b) procure the certified copy of the order of conviction as soon as possible and in the case of conviction of the doctors, the certified copy of the order of conviction shall be submitted within seven days of the receipt of copy of the order of conviction."

...

...

...

5. Guidelines for inspection of facilities.

"....

Following things need to be examined during inspection of a Centre (indicative list not exhaustive): [Also refer to the indicative checklist for inspection of facilities at annex 6]

- *Board is displayed prominently on its premises with text in English and the local language saying, '**Disclosure of the sex of the foetus is prohibited under the law**' [Rule 17 (1)]*
- *Copy of the Act and Rules available on premises (and to be made available to clientele on demand for perusal) [Rule 17 (2)]*
- *Registration Certificate displayed in a conspicuous place (near the machine) at the place of business [Rule 6(2)]*

- *Name and designation of the person using the equipment is to be displayed prominently on the dress/coat worn by him/her [Rule 18 (viii)]*
- *Details to be checked in the Registration application, certificate and other related documents (as per Form B)*
 - i. Validity of certificate of registration*
 - ii. Name and educational qualifications of the persons authorised to use the equipment or machine*
 - iii. Information about the ultrasonography machine or similar equipment such as number, make model including probe/s*
 - iv. Prenatal diagnostic procedures approved for the centre*
- **Details to be checked in case of facilities with portable machine/s***(portable machine to be used for indoor patients or as a part of the mobile medical unit or MMU)*
 - i. Area of operation*
 - ii. Number of portable machines installed and/or used*
 - iii. Make and model of the portable machine/s*
 - iv. Registration of the vehicle that is the mobile medical unit in which the portable machine/s is available. Confirm that the registration number of the vehicle is the same as the one mentioned in Form B (registration certificate)*
 - v. Full address of the service providers*
 - vi. Availability of other services mandated by the PC&PNDT law in MMU.*
- **Review of the records at the centre/facility**
 - i. Review of Form 'F' (Genetic clinics/Ultrasonography centres) [Form F at annex 7]***
 - a. All the relevant points in the F form are filled and the form is duly signed by the Gynaecologist / Radiologist / Registered Medical Practitioner performing the procedure with his/her name, seal, number as per the Act*

- b. *Copy of the F form (including the complete information about the pregnant woman) is sent to the Appropriate Authority before the 5th (date) of every succeeding month*
- c. *Declaration of the pregnant woman is obtained in the language she understands when non-invasive techniques such as ultrasonography have been used*
- d. *Consent letter obtained from the pregnant woman in the language she understands, when invasive techniques such as Amniocentesis have been used*
- e. *Declaration is submitted by the doctor/s with time and date*
- f. *Referral records along with the copy of films of scans are maintained*
- g. *OPD register along with the ANC register and cash receipts*
- h. *Review computer records along with the hard copies of the records.*

The Central Supervisory Board in the meeting held on 17th October 2005 recommended developing mechanisms so that form F can be filled/submitted online. Subsequently, some state governments have made it mandatory to fill 'F' forms online. In such cases, along with online filling of the forms, a hard copy of each form must be maintained at the centre/facility along with the signed declaration/consent letter (as the case may be) of the pregnant woman and the declaration of the doctor.

ii. Review of Form 'D' (Genetic Counselling centres) [Form D at annex 8]

- a. *All relevant points are filled*
- b. *Forms have been submitted by the 5th (date) of every month to the Appropriate Authority [Rule 9 (8)]*

iii. Review of Form 'E' (Genetic Laboratories) [Form E at annex 9]

- a. *All relevant points are filled*
- b. *Consent obtained from the pregnant woman in Form 'G' [at annex 10]*

seal these, If the AA believes that these are likely to furnish evidence related to a commission of offence [Section 30 (1) and Rule 12]”

... ..

9. Guidelines for Filing a Criminal Complaint.

How to file a criminal complaint under the PCPNOT Act?

As per section 28 of PCPNDT Act the Appropriate Authorities are authorised to file a criminal complaint in the Court of Judicial Magistrate First Class/Metropolitan Magistrate. The process of filing a complaint case has been divided into four segments:

- A) Preparatory processes prior to filing a complaint case*
- B) Documents to be submitted or annexed with the complaint*
- C) Actual filing of the case*
- D) General instructions*

A) Preparatory Processes

- The Appropriate Authority or any person authorised by the Appropriate Authority may Inspect any centre. During inspection if the inspecting authority finds a violation of Provisions of the Act, they should mention all the violations of the Act and draw seizure memo/Panchnama with the help of Independent witnesses [Rule 12]*
- Panchnama should be drawn in the presence of Panchas. Witnesses are only to identify seized/witnessed by them*
- if the inspecting authority finds it necessary to seal and seize materials, including the machine and records, this should be done in accordance with the law. Inspecting authority should supply one copy of the list of sealed & seized objects and obtain an acknowledgement from the owner of the centre or a person authorised on his/her behalf [Section 30 Rule 12 (3)]*

- ***AA should issue a showcase for violations found in the centre and call for explanation from the owner of the centre Explanation should un considered in the Advisory Committee and recommendation for cancellation/suspension of the registration of centre should be made to Appropriate Authority Appropriate Authority should suspend or cancel the registration of centre by providing reasons for the action taken***
- *If AA has reason to believe that the machine or any object may furnish evidence of the commission of an offence then they may seal the machine or other objects as well in such cases, the reason has to be recorded in writing for such action being necessary in the public interest and the registration of the centre should be suspended without giving any notice in the interest of law [Section 20 (3)]*
- *In other cases (except in matters of public interest), while suspending registration the authority should issue a show cause notice and call for explanation in a stipulated time.*

The explanation should be put forth for consideration of the Advisory Committee for deciding

a. Cancellation of registration of centre

b. Initiation of Court proceeding as explanation provided in response to the show cause notice was not found satisfactory

- *If the owner of the centre or the facility or the sonologist, assistant/employee gives any confession admitting the offence, it should be properly recorded in writing and duly signed by the owner or the person authorised on his/her behalf. If this is not possible then the statement recorded by anybody on the scene needs to be read by the owner, and if that too is not possible (in case disease, III-health, illiteracy, etc.), the same should be read to him/her and explained and his/her signatures to be taken on it by mentioning that he/she has understood the contents of the statement after it was read to him/her and he/she has signed the it willfully,*

fully conscious of the content and without any coercion or undue influence. This will be helpful for proving the case.

The inspecting authority should draw up a detailed report of the inspections with accurate date and time and place and preferably with a site plan.

B) Documents to be submitted or annexed with the complaint:

[Pl also refer to the indicative checklist to ascertain completeness of legal documentation for filing a Case at annex 17. Pl. note that documents are to be submitted in original as mentioned in the checklist]

It is necessary to submit accurate and complete documents in the Court of Law. The following list of documents must be submitted

- a. Notification of Appropriate Authority in Government Gazette should be submitted in original. (Section 17(1))*
- b. Authorisation letter by the Appropriate Authority in case of inspection by authority or person authorised by Appropriate Authority. The letter should contain date and specific area for inspection, preferably with a site plan*
- c. Inspection report with all seizure memos*
- d. Show cause notice issued by Appropriate Authority (Sec 20(1))**
- e. Panchnama, seized and seized documents/objects(seizure memo) with the list*
- f. Statement of centre owner**
- g. Explanation of centre owner**
- h. Recommendation of Advisory Committee*
- i. Order of Suspension and/or cancellation of registration*
- j. Any other documents which are found during inspection.*

C) Actual filing of the complaint:

The complaint must be filed by the Appropriate Authority or the officer so authorised [Sample format for filing of the complaint at is at Annex 13]

- a. During filing of the case the Appropriate Authority should take all the papers to the legal expert and draft a complaint in consonance with the facts of the inspection*
- b. This procedure should be followed under the guidance of the legal expert who is member in the Advisory Committee/Assistant Public Prosecutor/District Public Prosecutor/Special Public Prosecutor as the case may be and documents vetted by the legal expert before filing of the complaint*
- c. All factual aspects should be narrated in the complaint and law should not be pleaded*
- d. All necessary people should be made an accused and proper addresses should be mentioned in the complaint*
- e. Proper process fee should be submitted in court after the summoning order is passed. All necessary legal fees and process fee to be paid from the account of PCPNDT*
- f. All original documents should be submitted. One copy of the documents should be kept with the Appropriate Authority and concerned lawyer/ Public Prosecutor before submission*
- g. Copy of the documents should be provided to the accused as and when directed by the court*
- h. Proper RCC (Registered Complaint Case) Number should be obtained with the help of superintendent of the Court and allotment of the case should be checked. Proper next date should be obtained. This date and Court name and court proceedings should also be mentioned in the file with the Appropriate Authority.*

D) General instructions:

- a. Witnesses and Panchas should be trustworthy and independent so that the risk of them turning hostile during the trial is minimised
- b. Date and time of inspection is crucial, hence it should be properly cited
- c. Ensure that all points of inspection have been covered during inspection. Use checklist of inspection to ensure completeness (Annex 6)
- d. Ensure that stipulated time is given to the owner of the centre or facility for providing explanation and order of cancellation or suspension should not be passed during this stipulated time.**

....”

**“Indicative Checklist for Inspection of Facilities
Under the PCPNDT Act, 1994**

A. General Information:

Date and time of inspection:	Date:	Time:
<i>Names/designation of the inspecting authority or details of team members, if applicable:</i>		
<i>Name:</i>		
<i>Designation:</i>		
<i>Name:</i>		
<i>Designation:</i>		
<i>Name:</i>		

<i>Designation:</i>	
<i>Name of the facility:</i>	
<i>Name of the facility owner:</i>	
<i>Type of facility (genetic clinic, genetic counseling centre, genetic laboratory, ultrasonography centre, imaging facility and combinations if any, pl. specify)</i>	
<i>Address of the facility(Complete):</i>	
<i>Telephone/mobile:</i>	
<i>E-mail"</i>	

The guidelines would direct all the appropriate authorities including the State and District notified under the Act *inter alia* to observe the conduct that is indicated under the guidelines for inspection and monitoring. They should conduct regular inspection of all the registered facilities once in every 90 days and preserve the inspection report as documentary evidence and copy of the same should be handed over to the owner of the facility inspected and obtain an acknowledgment in respect of the inspection. This is

indicative of the fact that the functioning of both the authorities and the diagnostic centres would be accountable for any violation of the Act. **Guideline No.5** which deals with inspection of facilities has various checks and balances. The details to be checked in case of facilities with portable machines have different parameters. The review of the records at a centre is also indicated in the guidelines. Form-F which is a Form that is appended to the provisions of the Act should be checked intermittently and all the relevant points in the Form should be filled and the Form is duly signed by the medical practitioner performing the procedure and the Form-F should be sent to the Appropriate Authority before 5th of every succeeding month and to be followed several other guidelines *supra*.

13. **Guideline No.6** deals with search and seizure operations. The Appropriate Authorities do hold a right to enter and search any laboratory which is suspected to have contravened the Act, examine all the registers, seize and seal if the Appropriate Authority believes that these are likely to furnish evidence related to the offence. **Guideline No.9** deals with filing of criminal

complaint. It depicts certain preparatory process that the Appropriate Authority should issue a show cause notice for the violation found in the Centre and call for explanation from the owner and the explanation should be considered in the advisory committee and recommendation should be made for cancellation or suspension of registration of the Centre by the Appropriate Authority. It is only then a criminal complaint can be registered. The documents that are to be annexed to the criminal complaint also bear reference in the guidelines which includes a show cause notice issued by the Appropriate Authority under Section 20 *supra*. Statement of the owner, explanation of the centre/owner and general instructions would be indicated. The authority should ensure that stipulated time is given to the owner of the facility to provide explanation and then order cancellation or suspension but during the stipulated time, no cancellation or suspension should take place. The checklist for inspection of facilities is also quoted *supra*.

14. That guidelines issued by Government of India are said to have been adopted by the State. It appears to remain only in

paper. None of the procedures which are stipulated in the guidelines in furtherance of the Act are followed in the case at hand. No doubt, a show cause notice is issued to the petitioners on 08-12-2023. By then, the seizure had already happened and suspension had already taken place. But, the notice is issued as to why the registration should not be suspended. Therefore, it is for the State to henceforth adhere to the guidelines quoted *supra* and meaningfully bring about the violations of the Act. Leaving loopholes in law would only form a protective veneer to the violators of the law, if any. The loopholes should not blur the intent behind the enactment and the rigor of provisions of the Act. Therefore, the afore-quoted guidelines shall be strictly adhered to, by the Authorities, while conducting inspection and registration of criminal cases.

15. Swinging back to the case at hand, as observed hereinabove, the notice that is rendered on 08-12-2023 is after the seizure and cancellation of registration. Therefore, this is not in consonance with Section 20 of the Act. If it is not in consonance, it would tumble down for it being in violation of law. Therefore, the

petitioners should be permitted to reply to the said notice and further action be taken strictly in consonance with the guidelines and the provisions of the Act.

16. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) Notice dated 08-12-2023 issued by the 1st respondent stands obliterated. All consequent actions including registration of criminal case also stand quashed.
- (iii) The State shall issue notice within one week from the date of receipt of the copy of this order. The petitioners shall submit their reply within one week from the receipt of notice.
- (iv) The State, thereafter, is at liberty to initiate action in strict consonance with Section 20 of the Act, if need

arises, after submission of reply or otherwise from the hands of the petitioners.

- (v) The petitioners are entitled to all consequential benefits that would flow from the quashment of the notice and all actions thereto.
- (vi) A copy of this order shall be transmitted to the Secretary, Health and Family Welfare, Government of Karnataka, for necessary compliance.

Consequently, I.A.No.1 of 2024 also stands disposed.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:SS