

COURT CASE/IMMEDIATE

By speed post

W.12017/09/2012-PNDT  
Government of India  
Ministry of Health and Family Welfare

Nirman Bhawan, New Delhi  
Dated 16<sup>th</sup> October, 2012

The Principal Secretary/Secretary  
Health and Family Welfare  
(All States/UTs)

Subject : Order of the Hon. High Court of Delhi, dated 19.09.2012, in W.P (C) 4009 of 2012 Indian Radiological and Imaging Association (IRIA) Vs Union of India and Medical Council of India

Sir/Madam,

This is with reference to the Gazette Notification of Ministry of Health and Welfare, G.S.R.418 dated the 4<sup>th</sup> June, 2012 through which the Central Government has made amendments to the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 which are called the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Amendment Rules, 2012.

The constitutional validity of the Rule 3(3) which regulates each medical practitioner to conduct ultrasonography in a genetic clinic/ultrasound clinic/imaging centre with a maximum of two clinics/centres was challenged before the Hon'ble High Court of Bombay in the case of *Dr Rajeev Vasant Zankar Vs Union of India and Ors. W.P (Lodg.) No 1829 of 2012* wherein the petition was admitted and the Division Bench through its Order dated 20.07.2012 issued an ad-interim stay on the operation of Rule 3(3). To defend its case, the Union of India has filed a detailed affidavit-in-reply in the case placing on record the Objective and the circumstances leading to the amendment of Rule 3.

The Notification was concurrently challenged in the High Court of Delhi in the case of *Indian Radiological and Imaging Association Vs Union of India, W.P (C) 4009 of 2012* wherein the petitioner challenged the constitutional validity of all the provisions namely Rule 3(3), Rule 5 (1) and Rule 13 of the Gazette notification as being unconstitutional, arbitrary and beyond the scope of the Parent Act. The Ministry of Health and Family Welfare has filed a detailed reply in the instant matter. However based on the premise of the Bombay High Court, the Division bench in Delhi also issued an ad interim stay on the application of Rule 3(3).

On the issue of Rule 13 the bench opined that the condition of an advance of 30 days is onerous particularly qua employee. Therefore it directed that an interim arrangement qua Rule 13 be made wherein for every change in place, equipment and address an advance notice of seven days be given to the Appropriate Authority and for every change in employee intimation can be given within 7 days of such change. The Court also held that a delay on the part of the Appropriate Authority in incorporating the change and re-issuing the certificate would not prevent the concerned clinics from effecting the change in place/address/equipment after a lapse of seven days and to continue with their activities. The matter is now posted for a detailed hearing in November 2012.

This Notification has subsequently been challenged in various High Courts, as detailed below-

| Sr No | Forum   | Case Details  | Status  |
|-------|---|---|---|
| 1.    | In the High Court of Bombay-Nagpur Bench      | IRIA Vs Union of India W.P (C) 3390 of 2012                                     | The Union of India is in the process of filing a reply in the case. |
| 2.    | In the High Court of Allahabad -Lucknow Bench | Dr Ravi Shrivastav Vs Union of India & Ors. W.P (C) 6965 of 2012                | The Union of India is in the process of filing a reply in the case. |
| 3.    | In the High Court of Chandigarh               | IRIA Vs Union of India W.P (C) 15642 of 2012                                    | The Union of India is in the process of filing a reply in the case. |
| 4.    | In the High Court of Bangalore                | Medical Ultrasound Society of Karnataka Vs Union of India W.P (C) 32239 of 2012 | The Union of India is in the process of filing a reply in the case. |
| 5.    | In the High Court of Chhattisgarh             | R.K Diwakar Vs Union of India, W.P (C) 1499 of 2012                             | The Union of India is in the process of filing a reply in the case. |

The Petitioner in the case of IRIA Vs Union of India W.P (C) 4009 of 2012 thereafter filed a fresh civil application seeking clarifications from the Hon'ble High Court of Delhi on the applicability of the ad-interim stay throughout the country. The matter came up for hearing on 19-09-2012 wherein the Hon'ble Division Bench passed an order which is reproduced herein below-


*"By this application, the petitioners inter-alia submit that the stay order granted by this Court be intimated by Respondent No.1 (Union of India) to all the States across the country. We are conscious of the fact that stay order passed by this Court may not be binding on other State Governments. However, at the same time, since Respondent no.1 (Union of India) is a party to the present proceedings and the Act is a Central legislator, Respondent no. 1 (Union of India) can at least inform all the States about the aforesaid order. We order accordingly.*

*In view of the aforesaid order passed, Mr. Vikas Singh, Sr. Advocate, appearing for the petitioners, fairly states that if affiliates of the petitioner have filed any petition in different High Courts, they will advise them to withdraw the petition."*

In line with the aforesaid Order of the Court, you are requested to kindly note the enclosed order dated 23.07.12 and 27.07.12.

Enclosures: As above.

Yours faithfully,

  
(Anuradha Vemuri)  
Director (PNDT)  
Telefax-23062432



ORDER SHEET

CASE No. ....

201

Vs. ....

DATE OF THE ORDER

ORDER

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W P. No.10127/2012

16.1.2014

Shri Pankaj Dubey, learned counsel for the petitioner.

Smt. Kanak Geharwar, learned counsel for respondent.

Heard.

Admit.

Ad-interim stay on the same terms as granted by the Bombay High Court in Writ Petition Lodging No.1829/2012 dated 20.7.2012 in the case of Dr. Rajeev Vasant Zankar Vs. Union of India and Ors., which reads thus:-

“... there shall be admission ~~into~~ of the operation of the following rule inserted in the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Amendment Rules, 2012 at Exhibit ‘C’ to the petition:-

(3) Each medical practitioner qualified under the Act to conduct ultrasonography in a ~~general~~ ~~clinic/centre~~ clinic/imaging centre shall be permitted to be registered with a maximum of two such clinics/centres within a district. The consulting hours for such medical practitioner, shall be clearly specified by each clinic/centre.”

3. It is clarified that the consulting hours for such medical practitioners may be specified by each clinic/centre as consulting hours in the ordinary course, but such specifications shall not prohibit such medical practitioners, when the medical exigency so require, from attending the concerned clinic/centre at other times also.”

The respondents are free to file reply affidavit.