

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION NO. 651 / 2011

DR. ANIL PALOD

Vs.

THE COLLECTOR,  
DISTRICT UJJAIN

\* \* \* \* \*

**ORDER**

( 10/5/2011)

The petitioner before this Court, a Doctor serving as Medical Officer under the Department of Public Health & Family Welfare, has filed this present petition being aggrieved by order dt. 10/1/11 issued by the Collector by which the respondent Collector has cancelled the petitioner's certificate of registration issued in favour of the petitioner under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

The contention of the petitioner is that he is a Doctor serving the State of MP and executive instructions were issued by the State Government permitting the Doctors of the State of MP to carry out private practice in lieu of non practicing allowance. The aforesaid circular dt. 11/11/03 is on record as Annexure P/3. The petitioner has further stated that the aforesaid

circular has been further clarified on 21/3/09 and it has been observed that a Doctor who is not receiving non practicing allowance is permitted to carry out his private practice but at the same time he is not permitted to carry out private practice in a Nursing Home or in a private Hospital or a private clinic registered under the provisions of MP *Upcharyagrah Tatha Rujopchar Sambandhi Staphnain (Registrikaran Tatha Anugyapan) Niyam*, 1997. The petitioner has further stated that he has obtained special qualifications from M.G.M. Medical College and M. Y. Hospital, Indore and has completed 6 months observership in Ultrasonography. A certificate in support of the aforesaid averment is also on record. The petitioner has further stated that after obtaining special qualification in Ultrasonography, he submitted an application in the prescribed format to carry out Ultrasonography and the application was submitted under the provisions of Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The petitioner has further informed this Court that a registration certificate was issued by the Collector who is the appropriate authority under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The petitioner's grievance

is that by the impugned order dt. 10/1/2011 certificate of registration has been cancelled. Learned counsel for the petitioner has argued before this court that the petitioner is not receiving non practicing allowance and therefore he has got every right to practice and to carry out Ultrasound diagnostic work at his residence by virtue of the circulars issued by the State Government dt. 11/11/2003 and 21/3/09 and he is not carrying out any work relating to diagnosis at any private clinic or at any private nursing home, hence, the impugned order is bad in law.

A reply has been filed in the matter and the stand of the State Government is that they have rightly cancelled the registration of the Ultrasonography clinic by passing the impugned order as the petitioner being a Doctor serving the State Government is not entitled to carry out private practice in a nursing home, in a private hospital or in a private clinic. The respondents have also stated that private practice is permissible for Doctors but they are entitled to carry out private practice only from their residence and the petitioner under the garb of private practice is in fact running a small clinic. The respondents have also stated that as per Rule 16 of the MP Civil Services

(Conduct) Rules, 1965, the petitioner being a Government servant cannot carry out any trade or profession and as he has engaged himself in a trade and running a Sonography Centre, the respondents have rightly cancelled the registration of the petitioner. The respondents have prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record.

The petitioner before this Court, a medical officer serving the Public Health and Family Welfare Department of the State of MP, has filed this present petition being aggrieved by the order passed by the Collector, Ujjain dt. 10/1/11 by which the Collector, being the appropriate authority under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 has cancelled the certificate of registration dt. 8/1/08. In the present case, it is not in dispute that the petitioner is a qualified Doctor and is holding necessary qualifications for getting himself registered under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. Section 18 of the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 provides for registration of

Diagnostic Counseling Centre, Diagnostic Laboratories and Diagnostic Clinics and no person unless and until he is having a certificate of registration under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 read with the Rules of 1996 is entitled to open and operate any diagnostic counseling centre, diagnostic lab or diagnostic clinic. The petitioner has further stated that as he was qualified to open a diagnostic counseling centre / lab, submitted an application before the Authority (Collector, Ujjain) under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and has disclosed in his application that he is a Government Servant and has also disclosed that he is installing a machine for his private clinic. The application of the petitioner was processed and finally a certificate of registration was issued on 8/1/08. Petitioner since then is carrying out diagnosis by virtue of certificate of registration by using the Ultrasonography. Not only this, the petitioner has given examples of other similarly situated Doctors, as many as 6 in numbers, who are also having a valid certificate of registration under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 in their favour and are also carrying out

Ultrasonography and they are the medical officers of the same Department. The Circular issued by the State Government dt. 11/13 January, 1999, permits Doctors to carry out private practice and permits Doctors of Public Health & Family Welfare Department to carry out private practice. The aforesaid circular has further been clarified by the State Government by issuing another circular on 21/3/09 and it provides that no Government Doctor shall be permitted to render his services in respect of a nursing home, private hospital / private clinic which is registered under the provisions of *MP Upcharyagrah Tatha Rujopchar Sambandhi Staphnain (Registrikaran Tatha Anugyapan) Niyam*, 1997. The Doctor serving the Department were also directed to submit an affidavit and the petitioner has submitted an affidavit on 17/6/09. It is an admitted fact that the petitioner is carrying out the diagnostic activities at his residence only as a private practice and the respondent State has not alleged any violation of any statutory provisions of law under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 while cancelling the registration of the petitioner and therefore this Court is of the considered opinion that the order cancelling the registration of the petitioner specially in view of the fact that

he is carrying out Ultrasonography at his residence by way of private practice, is bad in law. The petitioner is carrying out private practice at his own residence and therefore as his residence is not registered under the Rules of 1997, the order passed by the Collector is bad in law and is liable to be set aside and is hereby quashed. The writ petition is allowed. No order as to costs.

(S. C. SHARMA)  
J U D G E

*SR*