



Judgment

wp391 & 3918.23.odt

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**CRIMINAL WRIT PETITION NO.391 OF 2023
AND
CIVIL WRIT PETITION NO.3918 OF 2023**

CRIMINAL WRIT PETITION NO.391 OF 2023

1. Dr.Niraj s/o Kumarsinh Kadam, age:- 47 years, occupation: - Doctor, r/o Kadam Hospital, Basant Nagar Taluka:- Aarvi, district Wardha. 442 201.

2. Dr.Rekha wife of Niraj Kadam, age:- 44 years, occupation:- doctor, r/o Kadam Hospital, Basant Nagar Taluka:- Aarvi, district Wardha. 442 201. **Petitioners.**

:: V E R S U S ::

1. State of Maharashtra, Public Health Department, through Secretary, G.T. Hospital Complex Building, 10th floor, Mantralaya, Mumbai 400001.

2. Dr.Mohan s/o Bhanudas Sute, aged about:- 55 years, occupation: - Medical Superintendent Aarvi Hospital, r/o Aarvi Hospital, Taluka:- Aarvi, district- Wardha. (As mentioned in the complaint No.31 of 2022). **Respondents.**

CIVIL WRIT PETITION NO.3918 OF 2023

1. Dr.Niraj s/o Kumarsinh Kadam, age:- 47

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years, occupation: - Doctor, r/o Kadam Hospital, Basant Nagar Taluka:- Aarvi, district Wardha. 442 201.

2. Dr.Rekha wife of Niraj Kadam, age:- 44 years, occupation:- doctor, r/o Kadam Hospital, Basant Nagar Taluka:- Aarvi, district Wardha. 442 201. Petitioners.

:: VERSUS ::

1. State of Maharashtra, Public Health Department, through Secretary, G.T. Hospital Complex Building, 10th floor, Mantralaya, Mumbai 400001.

2. Dr.Mohan s/o Bhanudas Sute, aged about:- 55 years, occupation: - Medical Superintendent Aarvi Hospital, r/o Aarvi Hospital, Taluka:- Aarvi, district- Wardha. (As mentioned in the complaint No.31 of 2022). Respondents.

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Shri S.Zia Quazi, Counsel for Petitioners.
Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Shri S.S.Hulke, APP for Respondent No.1/State.

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CORAM : URMILA JOSHI-PHALKE & NIVEDITA P.MEHTA, JJ.
CLOSED ON : 07/07/2026
PRONOUNCED ON : 17/07/2026

JUDGMENT : (Per : Urmila Joshi-Phalke)

1. Heard learned counsel Shri S.Zia Quazi for petitioners and learned Public Prosecutor Shri D.V.Chauhan (Senior Counsel) assisted by Additional Public Prosecutor Shri S.S.Hulke for respondent No.1/State. **Rule.** Rule returnable forthwith. Heard finally by consent.

2. By these petitions, petitioners have challenged Notification dated 16.3.2016 issued by respondent No.1 under provisions of Section 17(2)(3) of The Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994. (for short, “**the PCPNDT Act**”).

Factual matrix of case:

3. **In Cr.Writ Petition No.391/2023**, petitioners seek quashing of Notification dated 16.3.2026 and Regular Criminal Case No.31/2022 pending before learned JMFC, Aarvi, district Wardha.

4. **In Civil Writ Petition No.3918/2023**, petitioners seek quashing of Notification dated 16.3.2026 and order passed by
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respondent No.2 - Dr.Mohan s/o Bhanudas Sute, Medical Superintendent, Aarvi Hospital, under Section 20 of the PCPNDT Act and also seek directions to remove “Seal Sonography Machine from X-Ray Room of “Kadam Hospital” and place the same at any other place in safe custody.

Facts of case in Cr.Writ Petition No.391/2023:

5. Petitioners are medical practitioners and Gynaecologists and practising at Arvi, district Wardha. Father of petitioner No.1 is also a medical practitioner and running a hospital under the name and style as “Kadam Hospital.” As per contentions of petitioners, they, after due compliance of all formalities, made an application for grant of licence to run “Genetic and Ultrasound Clinic.” The competent authority granted the licence and, therefore, their “Genetic and Ultrasound Clinic” was registered vide registration No.36/2006. Respondent No.1 is the authority under the PCPNDT Act to appoint appropriate authority as contemplated under provisions of Section 17 of the PCPNDT Act.
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Respondent No.2 is the appropriate authority appointed by respondent No.1.

6. Respondent No.2 - Dr.Mohan s/o Bhanudas Sute, the Medical Superintendent, had filed complaint under provisions of Section 28 of the PCPNDT Act alleging that respondent No.2 being an appropriate authority, has conducted inspection of “Genetic and Ultrasound Clinic” of petitioners on 18.1.2022. During the inspection, several discrepancies were noted in the above mentioned “Genetic and Ultrasound Clinic” of petitioners. There were discrepancies in Form-F regarding signatures. Further, a copy of the PCPNDT Act was not found in the patients’ waiting area. Thus, there is contravention of provisions of the PCPNDT Act, which is punishable under Section 23 read with 25 of the PCPNDT Act. On the basis of the said complaint, Regular Criminal Case No.31/2022 was registered. Respondent No.2 had filed spot inspection report; seizure panchanama; inspection report; and Notification issued by respondent No.1. Learned JMFC at Arvi, after

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taking cognizance, on 22.2.2022 issued process against petitioners.

7. As per contentions of petitioners, impugned order passed by learned JMFC at Arvi of issuance of process is without application of mind. In fact, respondent No.1 had issued Notification on 16.3.2016 contrary to provisions of Section 17 of the PCPNDT Act. Petitioners, being aggrieved by the Notification issued by respondent No.1, and order passed by learned JMFC, approached this court. As per contentions of petitioners, FIR came to be lodged against them with Arvi Police Station, district Wardha for offences under Sections 201, 312, 313, 315, 341, 376(3), and 376(2) (n) read with Section 34 of the IPC and under Sections 4 and 6 and 21(1) of the Protection of Children from Sexual Offences Act, 2012 alleging that petitioners have conducted medical termination of pregnancy of minor girls.

8. The said petition was opposed by the State on the ground that it is obligatory and mandatory on the part of
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petitioners to maintain all records, charts, forms, reports, consent letters, and all other documents in view of Section 29 of the PCPNDT Act and Rule 9 framed thereunder. During the inspection, respondent No.2 has also verified records maintained by both the petitioners and noted various irregularities. It was noted that a copy of the PCPNDT Act was not found in OPD, which is contravention of Rule 17(2). The consent letters were obtained, but there were no signatures of patients on the same letters as required under Section 5 of the PCPNDT Act. The persons, conducting Ultra-Sonography on pregnant women, shall keep a complete record thereof in clinic in such a manner as may be prescribed and any deficiency/inaccuracy found therein shall amount to contravention of provisions of Sections 5 and 6 of the PCPNDT Act. The owner of Sonography Centre has not maintained details of patients required under Section 29(1) and Rule (9) of the PCPNDT Act. During the inspection, Sonography Form-F was found, but signatures or consent or

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declaration of patients were not found as required under the PCPNDT Act. Thus, considering all illegalities and irregularities committed, inspection report was prepared and, thereafter, the complaint came to be lodged. The act of petitioners is against object of the PCPNDT Act and, therefore, action was taken.

Facts of case in Civil Writ Petition No.3918/2023:

9. Petitioners are medical practitioners and Gynaecologists and practising at Arvi, district Wardha. Father of petitioner No.1 is also a medical practitioner and running a hospital under the name and style as “Kadam Hospital.” Petitioners, after due compliance of all formalities, made an application for grant of licence to run “Genetic and Ultrasound Clinic.” The said application was granted in their favour. Respondent No.1 is the authority under the PCPNDT Act to appoint the State level appropriate authority as contemplated under provisions of Section 17 of the PCPNDT

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Act. Respondent No.2 is the appropriate authority appointed by respondent No.1.

10. Respondent No.2 - Dr.Mohan s/o Bhanudas Sute, who was appointed as appropriate authority, allegedly conducted an inspection in “Genetic and Ultrasound Clinic” of petitioners along with six other persons. The alleged inspection was conducted during night hours from around 8:00 pm and was completed at 11:15 pm on 18.1.2022. After the alleged inspection, one spot inspection report and one seizure panchanama were also prepared. Respondent No.2 had prepared alleged seizure report, which was signed by panchas and signatures of brother of petitioners were obtained on the said seizure report. It is alleged by petitioners that, though seizure report was concluded at around 11:15 pm, signatures of pancha witnesses were obtained at around 2:00 am on 19.1.2022. The FIR was registered against petitioners with Arvi Police Station for offences under Sections 201, 312, 313, 315, 341, 376(3), and 376(2)(n) read with Section 34 of the

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IPC and under Sections 4 and 6 and 21(1) of the Protection of Children from Sexual Offences Act, 2012 alleging that petitioners have conducted medical termination of pregnancy of minor girls and, therefore, offences came to be registered against them. The complaint came to be filed by respondent No.2 in the court of JMFC at Arvi under Section 28 of the PCPNDT Act. It is alleged by petitioners that during inspection, several discrepancies were allegedly noted by respondent No.2 and copy of the same was not furnished to the petitioners. As per contentions of petitioners, action of respondent No.2 is arbitrary and illegal and colourable exercise of powers without any authority. The main contentions of petitioners are that, respondent No.2 is appointed as appropriate authority by contravening Section 17(3)(b) of the PCPNDT Act.

11. The said petition is opposed by the State on the ground that petitioners were found involving in illegal activities. During the inspection, various discrepancies are noted and,

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therefore, action is taken against petitioners. The appointment of respondent No.2, as an appropriate authority, is in view of Section 17(3)(b) of the PCPNDT Act.

Submissions of counsel for petitioners:

12. Learned counsel for petitioners submitted the appointment of respondent No.2 is in contravention of Section 17(2)(3) of the PCPNDT Act. He submitted that requirement is of Multi Member Committee. Whereas, respondent No.2, who is the only persons, is shown to have been appointed as appropriate authority, which is contrary to above mentioned provisions of Section 17 of the PCPNDT Act and, therefore, the Notification by respondent No.1 is illegal and liable to be quashed and set aside. It is further submitted that respondent No.2 has filed documents, which are spot panchanama, seizure panchanama, inspection report. The provisions of the PCPNDT Act to be implemented and followed scrupulously are not followed by respondent No.2. The procedure, in view of Rule 12 of The Pre-Conception and Pre-Natal Diagnostic11/-

Techniques (Prohibition of Sex Selection) Rules, 1996, is also not followed by respondent No.2. In fact, following the above said procedure prescribed is mandatory. It is mandatory that list of material seized from the premises shall be prepared in duplicate at the place of effecting seizure and both copies of the list shall be signed on every page by the appropriate authority or the officer authorized in this behalf by witnesses at the time of seizure. Thus, he submitted that the appointment of the appropriate authority itself is contrary to the provisions of the PCPNDT Act and, therefore, the activities conducted, in view of the Notification issued, are contrary to the law. The entire activity is illegal, unauthorized, and contrary to the law and, therefore, the Notification deserves to be quashed. He further submitted that as respondent No.2 is not the appropriate authority, the complaint filed before learned JMFC, Arvi deserves to be quashed and set aside.

Citations:

13. In support of his submissions, learned counsel for petitioners has placed reliance on following decisions:

(1) Help Welfare Group Society vs. The State of Haryana and ors and ors, reported in 2013 SCC OnLine P&H 19599;

(2) Cri.W.P.No.977/2016 (Dr.Zoni Jain & ors vs. The State of Punjab and ors) (P&H High Court);
and

(3) Ravindra Kumar vs. State of Haryana, reported in 2024 SCC OnLine SC 2495.

Submissions of Public Prosecutor:

14. *Per contra*, learned Public Prosecutor/Senior Counsel strongly opposed these petitions and submitted that statements and objects of the Act require to be considered. The Act was enacted to prohibit prenatal diagnostic techniques for determination of sex of foetus leading to female foeticide. Such abuse of techniques is discriminatory against female and against the dignity and status of women. The Legislation is required to regulate use of such techniques
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and provide deterrent punishment to stop such inhuman acts.

Therefore, Bill, *inter alia*, provides for:

- (1) prohibition of misuse of prenatal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
- (2) prohibition of advertisement of prenatal diagnostic techniques for detection or determination of sex; (3) permission and regulation of use of prenatal diagnostic techniques for the purposes of detection of specific genetic abnormalities or disorders;
- (4) permitting the use of such techniques only under certain conditions by the registered institutions; and
- (5) punishment for violation of provisions for the proposed legislation.

By way of an amendment in the year 2001, the Act provides for regulation of the use of prenatal diagnostic techniques for detecting genetic or metabolic disorders or Chromosomal Abnormalities, certain congenital malformation of sex linked disorders and for the prevention of

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misuse of such techniques for the purposes of prenatal sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

Section 30 of the PCPNDT Act gives powers to search and seizure of the records. The said Sections states that, “if the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place, such Authority or any officer authorized in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may

furnish evidence of the commission of an offence punishable under this Act.

The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

He submitted that in view of above said circumstances, petitions being devoid of merits are liable to be dismissed.

He further submitted that in the year 2003, there is an amendment to Section 17(3)(a) of the PCPNDT Act. However, Clause (b) to the said Section was kept as it is intentionally. Clause (a) to Section 17, relates to whole part of the State. Whereas, Clause (b) relates to part of the State.

He also invited our attention towards various illegalities committed by petitioners and contraventions and inspection report and submitted that the entire documents substantiate the action taken by respondent No.2 is correct and legal.

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Citations:

15. In support of his contentions, learned Public Prosecutor for the State has placed reliance on following decisions:

(1) Writ Petition No.250/2025 (Dr.Payal w/o Shreekant Chobe vs. State of Mah., and ors) decided by this court at Aurangabad Bench on 16.10.2015;

(2) Suo Motu vs. State of Gujarat, reported in 2008 SCC OnLine Gujarat 294; and

(3) Dr. Ramesh vs. State of Mah. and anr, reported in 2026 SCC OnLine SC 1113.

(4) Ramesh Chand Gupta and ors vs. State of Rajasthan, reported in 2015 RLR 2824

16. We have heard learned counsel for petitioners and learned Public Prosecutor for the State at length.

Discussion:

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17. Before entering into the merits of the case, it would be apposite to see the object behind enactment i.e. the PCPNDT Act. Few basic requirements of the Act are; (i) registration under Section 18 of the Act; (ii) written consent of the pregnant woman and prohibition of communicating the sex of foetus under Section 5 of the Act; and (iii) maintenance of records as provided under Section 29 of the Act.

18. A look at the basic requirement of the Act shows the simplicity of the Act, but non-compliance of the Act in any manner, be it the smallest of an error brings wrath upon the errant. The Act is legislated in a manner that it should be a deterrent for those indulging in sex determination. It prohibits misuse of medical technologies for prenatal sex determination and gender biased abortions.

19. The Hon'ble Apex Court in the case of **Dr. Ramesh vs. State of Mah. and anr** (supra), relied upon by learned Public Prosecutor for the State, has taken note of object of the Act and observed in paragraph No.14, as under:

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“14. The provisions reproduced above and also the judicial interpretation thereof leave no room for doubt. The keeping of records is essential to the Act and its avowed purpose. It is true that in general terms, the declining sex ratio issue is better and has shown considerable improvement but, however, diluting the provisions of law, or letting infractions thereof slide cannot be countenanced. According to official Government of India data, the country’s sex ratio has shown clear signs of improvement in recent years, though the story is not entirely straightforward. The National Family Health Survey-5 (2019–21)¹¹, conducted under the Ministry of Health and Family Welfare, records the sex ratio to be 1,020 females per 1,000 males, compared to 991 in NFHS-4 (2015–16). At the same time, the sex ratio at birth, which reflects the number of girls born relative to boys in the five years preceding the survey, stood at 929 females per 1,000 males.”

Further observations in paragraph No.16 are as under:

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“16. These schemes are indicative of continued efforts to eradicate the systemic bias suffered by the girl child in an inherently patriarchal system. Much progress has been made, and yet, much is left to be desired. In sum, while the situation is markedly better than it was in the mid-1990s, the data does not support complacency. The statistics referred to above show that the progress made is incomplete and uneven. Consequently, the integrity and strict enforcement of welfare-oriented legislation such as the PCPNDT Act remain essential along with efforts continued and earnest, till the time there is a widespread change in mentality and what till now, is perceived as the ‘inherent weakness’ of the woman, is replaced by true equality, when there will dawn a realization that efforts such as these are no longer required. This is not to say that the laws protecting women within legislation such as IPC/BNS will no longer be required but at least, there will no longer be a question on whether a girl child deserves to be born.”

20. In the light of the above observations of the Hon’ble Apex Court, the challenge in both petitions requires to be20/-

considered. The challenge in both petitions is to the Notification issued in view of Section 17(3)(b) of the PCPNDT Act. The said Notification, for reference, is reproduced, as under:

"महाराष्ट्र शासन राजपत्र भाग चार-अ, गुरुवार ते बुधवार एप्रिल ७-१३, २०१६/चैत्र २८-२४. शके १९३८

PUBLIC HEALTH DEPARTMENT

G. T. Hospital Complex Building, 10th Floor, Mantralaya, Mumbai 400 001 dated the 16th March 2016

NOTIFICATION

PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994.

No.PRACHINE 2012/CR-78/FW-In exercise of the powers conferred by sub-section (2) read with (3) of section 17 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of sex selection) Act, 1994 (57 of 1994) (hereinafter referred to ne "the said Act Land of all other posit enabling it in that behalf, and in supersession of the Government Notification, Public Health Departinent, bearing No. PRACHINI: 2012/CR-78/PW, dated the 15th May 2015 the Government of Maharashtra is hereby pleased to appoint an Appropriate Authorities consisting of the members mentioned in column (2) in respect of the level specified against each of them in column (3) and allocates among each of them the area mentioned in column (4) of the Table appended below :-

Sr.No. (1)	Appropriate Authority (2)	Level (3)	Allocated Areas (4)
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1	Collector, Civil Surgeon	District	Whole District (excluding Municipal
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		Corporation and Municipal Councils)
2 Medical Superintendents, Rural hospitals/Sub-District Hospital/General/cottage Hospital.	Taluka	Taluka/Area allocated to Rural Hospital General/Cottage Hospital.
3 Municipal Commissioner, Medical Health Officer	Municipal Corporation	Concern Municipal Corporation and Contonment Board (If any) concern ward.
4 Deputy Director, Health Service	Regional	Concern Health in charge circle.
5 Executive Health Officer, Joint Executive Health Officer, Deputy Executive Health Officer, Special Officer (FW) Medical Officers of Health of all wards	Greater Mumbai Municipal Corporation	Greater Mumbai Municipal Corporation/ concern ward.
6. Medical Director	Pimpri Chinchwad Municipal Corporation	Pimpri Chimchwad Municipal Corporation
7 Medical Superintendent	Nashik Municipal Corporation	Nashik Corporation
8. Assistant Medical Officer of Health	Pune Municipal Corporation	Pune Municipal Corporation

2. The Government of Maharashtra further directs that, the function provided under clause of sub-section (4) of section 17 of the said Act, to grant, suspend or cancel registration netic Counseling Centre, Genetic

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laboratory of Genetic Clinic vest only with the Medical appropriate Authorities of the District or Corporation, as the case may be.

The Appropriate Authority shall perform the other functions mentioned in the said Act. Orders (if any) pending on the date of publication of the said notification shall be dealt by the concerned authorities.

By order and in the name
of the Governor of Maharashtra,

S. H. KARANJEKAR,
Deputy Secretary to Government.”

21. The contention of learned counsel for petitioners is that, the Notification authorizing “A Single Member Authority” is contrary to requirement of law and contrary to the definition provided under Section 17(3)(b) of the PCPNDT Act. He submitted that requirement of the law is of “Multi Member Committee.” Whereas, the State Government has issued Notification appointing “A Single Member Committee,” which is absolutely contrary to the law.

In support of his contentions, he placed reliance on the decision in the case of **Help Welfare Group Society vs. The State of Haryana and ors and ors** (supra) wherein the Punjab

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and Haryana High Court, while interpreting provisions of Section 17(3)(a) of the PCPNDT Act, held that, “the purposive construction must be given to the said provisions and the intent to have a multi member body is not eschewed in Sub-section (b) when the appointment is for a part of the State or the Union Territory. We find it difficult to accept that if the appointment is for the whole of the State, it will be three members committee, while it is for part of State, it will be single member committee. The only change is that the Chairperson need not be of the rank of Joint Director of the Health and Family Welfare, but of such other rank as the State Government may deem fit. It will still continue to be a multi-member committee having an eminent woman representing women's organization and officer of the Law department of the State as a member.”

22. In the case of **Dr.Zoni Jain & ors vs. The State of Punjab and ors** (supra), the Punjab and Haryana High Court has taken a contrary view and referred the matter to the Chief

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Justice of Punjab and Haryana High Court to refer the same to the Larger Bench. In view of the reference, the Chief Justice of Punjab and Haryana High Court constituted a Larger Bench in **Dr.Zoni Jain & ors vs. The State of Punjab and ors and other connected**, reported in 2019 SCC OnLine Punjab and Haryana High Court 6262 and while summoning up, the Full Bench Held as under:

“41. Keeping in view the aforesaid parameters, statement of object and reasons, preamble, and statute as a whole, the principle of purposive construction seem more conducive to invoke while interpreting clause (b) of Section 17(3) of the Act.

42. Constitution of multi-member, appropriate authority for a part of the State and the Union-Territory shall enhance the functional principle of the enactment. Interpreting clause (b) of Section 17(3) in aforesaid manner would only fructify object and purpose of the act.

43. Keeping in mind the aforesaid, appointment of multi- member appropriate authority for a part of the State or the Union Territory shall advance the

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purpose of the Act while removing the mischief observed in the functioning of the enactment which lead to making large scale amendments.

44. In view of the above facts and discussions as between the conflicting judgments noticed above, we prefer to approve the ratio laid down by the judgment in the case of **Help Welfare Group Society vs. The State of Haryana (CWP No.21565/2011)** as the same is in advancement of aims and object of legislature. Accordingly, the view taken in the judgment rendered in the case of **Dr.Zoni Jain vs. The State of Punjab (Criminal Writ Petition No.977/2016)** in our opinion does not lay down correct law.”

23. Learned counsel for petitioners submitted that thus in view of the Full Bench Judgment of the Punjab and Haryana High Court, there has to be the constitution of Multi Member Authority even for part of the State and the Union Territory to enhance the functional principle of the enactment.

24. On the contrary, learned Public Prosecutor for the State strongly opposed the said contentions and submitted that the contrary view is taken by the Full Bench at Gujarat High Court in the case of **Suo Motu vs. State of Gujarat** (supra) wherein it is observed that,

“A conjoint reading of the above provisions would clearly indicate a well-knit legislative scheme for ensuring a strict and vigilant enforcement of the provisions of the Act directed against female foeticide and misuse of pre-natal diagnostic techniques. In fact, the use of those techniques are restricted to the purpose of detection of any of the abnormalities or diseases enumerated in sub-section (2) of Section 4 of the Act. The provisions are stricter in case of conduct of pre-natal diagnostic techniques on a pregnant woman, requiring her written consent and determination of sex of a foetus is prohibited by the provisions of Sections 5 and 6. Constitution of 'Appropriate Authority' under Section 17 is clearly meant to ensure proper and vigorous implementation of the Act; and it is expressly prescribed as one of its

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functions to take legal action against the use of any sex-selection technique. That authority, where appointed for the whole of a State or Union Territory, has to consist of three members. And when it is appointed for a part of the State or a Union Territory, it could consist of an officer of such rank as the Government concerned may deem fit.”

25. Thus, the Full Bench of the Gujarat High Court has taken a view that for a whole of State if appropriate authority requires to be appointed it should consist of three members, whereas for a part of a State it would consist of an officer of such rank as the Government concern may deem fit.

26. By accepting the view taken by the Full Bench of the Gujarat High Court, the Delhi High Court in **Criminal M.C.NO.4556/2015 (Manish Gupta vs. State of NCT of Delhi)** decided on 22.4.2022 held in paragraph No.12 as under”

“12. The Full Bench decision rendered by the Gujarat High Court and relied upon by the learned Additional Standing Counsel for the State though

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did not deal with the interpretation of Section 17(3)(a) of the PC&PNDT Act, however, distinguished Clause (a) and Clause (b) of Section 17(3) and held that the use of the word 'Appropriate Authority' twice, at the beginning and end of Clause (a) of sub-Section (1) of Section 28 clearly conveys that the complaint could be made by an officer who is authorized in that behalf by the Central Government, the State Government or the Appropriate Authority, besides the Appropriate Authority itself.”

The Delhi High Court, further, in paragraph No.15, observed, as under:

“15. "Appropriate Authority" is defined under Section 2(a) of the PC&PNDT Act to mean the Appropriate Authority appointed under Section 17 of the PC&PNDT Act. Though amendment was carried out in Section 17(3)(a) by the Act 14 of 2003, however no corresponding amendment was carried out in Section 17(3)(b). Reading Section 17(3) as it stood prior to the amendment, there was no stipulation on the number of members and

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only stipulation was on the rank whether it be an Appropriate Authority for the whole of State or Union Territory under Section 17(3)(a) or for any part of the State or Union Territory under Section 17(3)(b). Legislature in its wisdom amended only clause (a) of sub-section 17(3) and not clause (b) to sub-Section 17(3) which was retained as it existed prior to the amendment. Thus, only if the Appropriate Authority is appointed for the whole of the State or Union Territory it would be required to be a multi-member authority. However when Appropriate Authority is appointed for part of the Union Territory or part of the State, a single member Appropriate Authority can competently be appointed and a valid cognizance taken on the complaint of such a single member Authority. If the Legislature had so desired it could have amended clause (b) of sub-section 17(3) as well.”

27. The similar view is taken by the Rajasthan High Court in the case of **Ramesh Chand Gupta and ors vs. State of Rajasthan** (supra). The observations of the Rajasthan High Court, in paragraph Nos.9, 10, 11, 12, and 13, are reproduced as under:

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“9. The perusal of sub-section (1) of section of 17 of the PCPNDT Act reveals that the Central Government can appoint one or more Appropriate Authorities for the Union Territories. The case in hand is not of Union Territories, thus aforesaid sub-section is not relevant for this case.

10. Sub-section (2) of section 17 provides about the appointment of one or more Appropriate Authority by the State Government for whole or part of the State. In the instant case, Appropriate Authority has been appointed for part of the State.

11. Sub-section (3) of section 17 refers as to how the Appropriate Authority would be appointed under **sub-section (1) and sub-section (2). Clause (a) to sub-section (3) of section 17** provides for appointment for whole of the State or Union Territory. It should consist of three members referred therein.

12. **clause (b) of sub-section (3) of section 17** is relevant and provides about appointment of appropriate authority for any part of the State or the UT. It is such rank as the State Government or the Central Government deem fit. The present case

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is covered by **clause (b) of sub-section (3) of section 17 of PCPNDT Act**. According to the petitioner, it has to be read along with sub-section (3)(a), which provides about appointment under **sub-section (1) and (2)**. Under clause (a) of the said sub-section, nomination should be of three members and, according to him, same composition should exist for the part of the State.

13. The argument aforesaid cannot be accepted for the reason that if same composition would have been required i.e an Appropriate Authority for the part of the State with three members, it would have been specified under **clause (b) of sub-section (3) of section 17**. The Legislature, under their wisdom, only referred such rank as the State Government or the Central Government deem fit. It clearly shows composition to be different than of the State level. If the composition of three members would have been required, necessary provision could have been inserted as to who would be other two members. It is more so when at the State level, composition has been specifically given and, according to it, one eminent woman representing women's organization is to be part of

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the Appropriate Authority. If it is to be repeated for every Appropriate Authority and even for the part of the State, indication aforesaid would have been specific, which does not exist herein. Thus, I am unable to take the interpretation as has been given by learned counsel for the petitioners.”

28. In the light of the above observations of various courts, we would like to first refer definition of “Appropriate Authorities” given under Section 2(a) of the PCPNDT Act, as under:

“2. Definitions. - In this Act, unless the context otherwise requires, - (a) “Appropriate Authority” means the Appropriate Authority appointed under section 17”

29. Section 17 reads as under:

“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.

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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.

3. 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-

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 multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques
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(Regulation and Prevention of Misuse) Amendment Act, 2002:

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

(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 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;

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(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 CSB 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 organizations.

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.

17A. Powers of Appropriate Authorities.- The Appropriate Authority shall have the powers in respect of the following matters, namely:-

- a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;
- b) production of any document or material object relating to clause (a);
- c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and
- d) any other matter which may be prescribed.”

30. Thus, Section 17(3)(a) and 17(3)(b) are two provisions which provide for constitution of the appropriate authority. Section 17(3)(a) was amended and came into effect from 14.2.2003. The difference between pre-amended and post-amended, Section 17(3)(a) is as under:

UN- AMENDED	AMENDED
CHAPTER V	CHAPTER V
Appropriate Authority and Advisory Committee	Appropriate Authority and Advisory Committee
17. Appropriate Authority and Advisory Committee.- (1) The Central Government shall appoint, by notification in the Official Gazette, one more Appropriate Authorities for each of the Union Territories 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 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 female foeticide.	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 each of the Union Territories for the purposes of this Act. (2) The State Government shball appoint, by notificatoion in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of purposes of this Act having regard to the intentsity of the problem of pre-natal sex determination leading to female

(3) 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, of or above the rank of the Joint Director of Health and Family Welfare: and (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.	foeticide. (3) The officers appointed as Appropriate funder 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- (i) an officer of or above the rank of the Joint Director of Health and Family Chairperson; Welfare- (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 of 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."
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31. Thus, the amendment in Section 17(3)(a) of the PCPNDT Act restructured the appropriate authority into Three Member Committee. The purpose to ensure enforcement of provisions to curb female foeticide and to improve accountability by the de-centralizing powers. At the same time, legislature intentionally omitted the corresponding amendment in Section 17(3)(b) to maintain operational flexibility. When clause (a) was updated to mandate a Three Member Committee for the 'appropriate authority,' however clause (b) was left untouched to empower the Government to appoint single officer authorities for smaller jurisdiction, sub-divisions or specific search and seizure tasks.

32. Thus, perusal of the aforesaid provisions reveals that Section 17(1) applies to the Central Government. While, Section 17(2) applies to the State Government by which the

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State Government by Notification under official gazette may appoint one or more appropriate authorities for the whole State as per Section 17(3)(a), for part of the State as per Section 17(3)(b) to carry out the purpose of the Act. Sub-section (3)(a) of Section 17 when appropriate authority is appointed for the whole of the State or the Union Territory, such authority would be vested within three members as specified in sub-clause (I), (ii), and (iii). But when appropriate authority is required to be appointed for the part of the State Government, under Section 17(2), (3)(b) i.e. the officer of such other rank not specified under Section 17(3) (a)(i)(ii)(iii) by way of Notification of the State Government published in the official gazette.

33. Section 17(4) of the PCPNDT Act provides function of **“Appropriate Authorities.”**

34. In view of the multifarious functions assigned to the Appropriate Authority, the Act contemplates constituting

Appropriate Authority both at the State level as well as the District level or part of the State. In such a situation to perform the various functions it is not unusual for the Act to provide multiple Appropriate Authorities to perform the multiple functions. Thus by reading the requirement of Section 17(3)(a) into Section 17(3)(b) though it may be desirable but it cannot be said that a single member Appropriate Authority would be contrary to the said Statute and thus incompetent to file the complaint. Further in terms of Section 28(1) of the PCPNDT Act even a person duly authorized by the Appropriate Authority can file a valid complaint.

35. As observed above, the functions assigned to the appropriate authority are multifarious and in view thereof the Act contemplating appropriate authorities at State level and District or part of the State level is duly conceived by Sections 17(3)(a) and Section 17(3)(b) of the PCPNDT Act.

36. The concept behind it that every time where raid is conducted in different areas of the State, it cannot be accepted that an officer of the Department of Law will be available every time. This prima facie appears to be reason why no corresponding amendment has been brought in Section 17(3)(b) of the PCPNDT Act. It is trite law that when the language of the Section is plain and simple the Court would not substitute its opinion about the desirability to have a multi member committee even under Section 17 sub-section (3) Clause (b) of the Act. In view of the plain language of Section 17(3)(b) of the PCPNDT Act, it cannot be held that even for part of State, a Multi Member Committee would be a validly constituted as “Appropriate Authority”.

37. This aspect is further considered by the Madhya Pradesh High Court in the case of **Mukesh Rathore vs. State of M.P.**, reported in 2020 Criminal Law Journal (CriLJ) 4094

and while interpreting Section 17(3)(a) and 17(3)(b) of the PCPNDT Act, it is observed in paragraph No.16 as follows:

“16. On perusal of the aforesaid, it is clear that section 17(1) applies to the Central Government while section 17(2) applies to the State Government by which the State Government by a notification under official gazette may appoint one or more appropriate authorities for the whole State as per Section 17(3)(a) or part of the State as per Section 17(3)(b) to carry out the purposes of the act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. Subsection (3)(a) specifies when appropriate authority is appointed for the whole of the State or the Union territory, such Authority would be vested within the three members as specified in sub clause (i), (ii) and (iii). But when Appropriate Authority is required to be appointed for a part of the State then under Sections 17(2), (3)(b), i.e. the officer of such other rank not specified under Section 17(3)(a)(i)(ii)(iii), by way of a notification of the State Government published in the official gazette.”

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38. Thus, the consistent view is that the appropriate authority for whole State consists of three members, whereas the appropriate authority for the part of the State would be one member committee.

39. Thus, even by giving a purposive construction to Section 17(3)(b) of the PCPNDT Act, the acts performed by the Appropriate Authority of filing complaints pursuant to a valid notification cannot be quashed.

Conclusion:

40. Thus, the Act contemplates constituting appropriate authority both at the State level as well as the District level or part of the State. In such a situation, the legislature in its wisdom amended only clause (a) of sub-section 17(3) and not clause (b) to sub-section 17(3) which was retained as it existed prior to the amendment. Thus, only if the Appropriate Authority is appointed for the whole of the State or Union Territory it would be required to be a multi-member

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authority. However when Appropriate Authority is appointed for part of the Union Territory or part of the State, a single member Appropriate Authority can competently be appointed.

41. A provision, which has not been provided by the Legislature, cannot be inserted.

42. Admittedly, the Act is social welfare legislation. It is settled law that to prevent injustice and to promote the justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal constructions.

43. Considering the object behind the PCPNDT Act, the provisions are made in the Act and it is to be interpreted as mentioned in the said Act. A provision which has not been provided by legislature cannot be inserted by its own. To implement the provisions of the PCPNDT Act in its true spirit

and letter, the provisions are inserted and timely it was amended.

44. It would be necessary to take into consideration the intent of the legislature behind enactment of the Act. The Act intends to prevent misuse for sex determination leading to female foeticide and declining a sex ratio in India. The Act has further strengthened in 2003 with the inclusion of provisions for more stringent provisions to ensure better implementation. The amended Act increased the penalties for violation and made it mandatory for all ultrasound clinics and machines to be registered and monitored and paved the way for establishment of State and National Boards to oversee the implementation of the Act.

45. Thus, the law has to be interpreted in a way that the object of enactment is not defeated, and in case of any conflict between two provisions in a statute, the Courts must

strive to give effect to both by harmonizing them with each other as far as possible.

46. As observed by the Hon'ble Apex Court in the case of **Rasila S.Mehta vs. Custodian, Nariman Bhavan, Mumbai, reported in AIR 2011 SC 2122**, it is incumbent upon the Courts to interpret the statute in such a way that it protects and advances the purpose of enactment, and not to adopt any technical or restricted interpretation of the provisions which would negate the legislative intent and policy. Since the enactment of PCPNDT Act, there have been several efforts for enforcing its provisions, ensuring its better implementation and even prescribing necessary guidelines. The PCPNDT Act was amended by the Parliament in the year 2003 to strengthen its provisions and improve its implementation. However, Section 17(3)(b) was not amended even it was not touched.

47. Thus, the legislature intentionally omitted corresponding amendment in Section 17(3)(b) of the PCPNDT Act to maintain operational flexibility.

48. In view the above observations, at the State Level, by way of amendment, only Clause (a) was amended and Clause (b) was kept to be un-amended. The indication aforesaid is clear and, therefore, the interpretation by learned counsel for petitioners cannot be given. As already observed, the provision which has not been provided by the legislature cannot be inserted by the court and, therefore, we are unable to accept the submissions made by learned counsel for petitioners.

Challenge No.2:

49. By these petitions, petitioners have further challenged seizure of machines by the appropriate authority.

50. Perusal of the documents reveals that the FIR was registered against petitioners after conducting the inspection
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of the Ultrasound Sonography Center run by petitioners. The inspection report placed on record shows that there was contravention of various provisions. The book required to be kept in the OPD as well as in the cabin of the Medical Practitioner was not found. The consent letters were without the signatures of the patients. The Forms on which signatures were required were also found to be blank. Thus, it is obligatory and mandatory to maintain all records, charts, forms, reports, consent letters, and all other documents required as per the provisions of Section 29 of the PCPNDT Act and Rule 9 framed thereunder. During the inspection, respondent No.2 verified the records maintained by both petitioners and on verification, the above said irregularities and illegalities were noted. Moreover, during the inspection, it was found that for the period from 1.1.2022 to 8.1.2022 on the reference slips, no details were mentioned by the doctors who referred the patients for sonography and also conducted the sonography by the same person and as such

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there is a contravention of Section 29 and Rule 9(4) of the PCPNDT Act. The signatures of the patients were also not found at proper place in all requisite consent forms and Form-F as required under the the PCPNDT Act. During the inspection, it was also found that the OnLine Forms were filled on 10.1.2022 for the required sonography on 8.1.2022. The above contraventions committed by both petitioners, admittedly, are serious in nature.

51. Thus, it reveals that petitioners have not maintained records which are required to be maintained in view of the various provisions and, therefore, the machines/equipment were seized by the appropriate authority. The first part of Section 30 safeguards interest of the genetic laboratory or genetic clinic etc, which provides that search and seizure can be authorized only if appropriate authority has reason to believe that the offence under the PCPNDT Act has been committed/is being committed and the reason to believe is not mere a formality. Before asking the search and seizure in
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terms of Section 30, there must be sufficient material on the basis of which the appropriate authority has reason to believe that the offence under the PCPNDT Act has been committed/ have been committed.

52. Section 30 of the PCPNDT Act reads thus:

“30. Power to search and seize records, etc. -

1. If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place, such Authority or any officer authorized thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to

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believe that it may furnish evidence of the commission of an offence punishable under this Act.

2. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.”

53. Thus, the condition precedent for search of a clinic is that, an appropriate authority must have reason to believe that an offence under the Act of 1994 has been committed or is being committed. Section 30 is the very drastic provision which grants power to the appropriate authority or any officer authorized by it to enter a genetic laboratory / genetic clinic / any other place to examine the record found therein, to seize the same and even seal the same. First part of Sub-section (1) of Section 30 safeguards these centers / laboratories from arbitrary search and seizure action. The safeguard is that search and seizure can be authorized only if the appropriate authority has reason to believe that an

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offence under the Act of 1994 has been committed or is being committed. The phrase “reason to believe” - A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.

54. It is now a trite law that whenever a statute provides for ‘reason to believe’, either the reasons should appear on the face of the notice or they must be available on the materials which had been placed before him.

55. It must be a decision of the appropriate authority or the single member of the appropriate authority who authorizes search that there was a reason to believe. Respondent No.2 along with the inspection team visited premises of the hospital of petitioners at Arvi on 18.1.2022 to verify and confirm the compliance with the provision of the PCPNDT Act and the Rules framed thereunder. At that time, both petitioners were not in the hospital. On enquiry, it was learnt that the hospital is run by petitioners and they are

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owners of Sonography Centre. Respondent No.2 inspected the Sonography Centre in the presence of panchas and witnesses. During the inspection, it was found that following equipment were installed being used by petitioners in the Genetic Clinic; (1) Sonography Machine (non portable) Siemens Sonoline along with its attachment; and (2) Sonography Machine of Siemens Sonoline along with its attachment.

56. In view of Section 29 read with Rule 9 of the PCPNDT Act, It is obligatory and mandatory to maintain all records, charts, forms, reports, and consent letters and all other documents which were not found to be maintained by petitioners. The inspection team noted that the copy of the PCPNDT Act was not found in OPD, which is contravention of Rule 17(2) of the PCPNDT Act. The consent letters were filled, but signatures of patients were not found on some letters as required under Section 5 of the PCPNDT Act. The person conducting Ultra-Sonography on pregnant woman
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shall keep a complete record thereof in clinic in such a manner as may be prescribed. The contravention of the same was also found and thereby petitioners have contravened Sections 5 and 6. The owner of Sonography Centre has not maintained details of patients in the register as required under Section 29(1) and Rule (9)(4) of the PCPNDT Act. During inspection, it was further found that Sonography Form-F were found, but signatures of patients were not there. There were no declaration forms required under the PCPNDT Act. Even, the signatures of Doctor were not found who performed Sonography.

57. It is further noted that monthly reports sent were mismatching. The reference slips for the period from 1.1.2022 to 8.1.2022 wherein names of Doctors who referred patients were also not mentioned. Thus, there was a contravention of Section 29 and Rule 9(4) of the PCPNDT Act.

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58. Thus, on satisfying that there is contravention of various provisions and on satisfying itself, the appropriate authority seized and sealed the said machines. Therefore, as far as search and seizure is concerned, no illegality is committed by the authority and, therefore, contention of petitioners that search and seizure is not according to the provisions of the law, is also not sustainable.

59. As already observed by us that, the Notification issued appointing the appropriate authority by the State Government is in view of Section 17(3)(b) of the PCPNDT Act and there is no requirement of Multi Member Committee when appropriate authority is appointed for the part of the State. The search and seizure conducted by the appropriate authority, after receiving various documents and material, is sufficient to satisfy themselves that there there is a “reason to believe” and after satisfying themselves, search and seizure was conducted and, therefore, no illegality is committed while doing the seizure and seal of the said machines.

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60. In view of the discussion above, petitions being devoid of merits are liable to be dismissed and the same are **dismissed**.

JUDGE

JUDGE

At this stage :

1. Learned counsel, appearing through the Video Conferencing, for petitioners seeks Stay to the proceeding.
2. By order of this court dated 6.6.2023, the Stay was granted in view of the decision in the case of **Help Welfare Group Society vs. The State of Haryana and ors and ors** (*supra*).
3. We have already dealt with the said decision so also considered decision of the various High Courts and, thereafter, came to conclusion that the Notification issued by respondent No.1 is valid as per provisions of law and, therefore, we do not think that the Stay can be extended
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Judgment

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further and, therefore, the prayer of learned counsel for petitioners is rejected.

JUDGE

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