

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No.1494 of 2018**

Dr.Smt.Kiran Agrawal, W/o Dr. Lalit Agrawal, aged about 47 years,  
R/o Arogya Niketan Hospital, Agrasen Marg, Agrasen Chowk,  
Ambikapur, Distt. Ambikapur (CG)

**----Petitioner****Versus**

1. State of Chhattisgarh, Through Collector, Ex-officio Chairman,  
P.C.-P.N.D.T. Act, Through – Appropriate Authority, Ambikapur,  
Distt. Surguja (CG)
2. Secretary, Department of Health and Family Welfare,  
Mantralaya, Mahanadi Bhavan, New Raipur, Distt. Raipur (CG)
3. Nodal Officer, P.C.-P.N.D.T. Act, Ambikapur, Distt. Surguja (CG)
4. Chief Medical & Health Officer, Ambikapur, Distt. Surguja (CG)

**---- Respondents**

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For Petitioner : Mrs.Fouzia Mirza, Advocate  
For Respondents : Mr.D.R.Minz, Dy.Govt.Advocate  
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**Hon'ble Shri Justice Sanjay K. Agrawal****Order on Board****03/07/2018**

1. The petitioner herein is Senior Gynecologist running hospital in the name of Arogya Niketan Hospital at Ambikapur. She also holds valid certificate of registration granted by the appropriate authority for performing sonography/ultrasound in exercise of powers conferred under Section 19 (1) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter called as 'the Act of 1994'), which is valid up to 10.7.2021. A team of National Inspection and Monitoring Committee (hereinafter

called as 'NIMC') along with State representatives constituted under the direction of the Supreme Court in the matter of **Centre for Enquiry Into Health and allied Themes (CEHAT) and others v. Union of India and others**<sup>1</sup> conducted inspection of her hospital particularly of ultrasound/sonography machine installed therein and noticed certain irregularities in maintaining images/records after performing sonography. The said committee immediately then and there on said centre sealed ultrasound machine installed by the petitioner and recommended to the District Appropriate Authority for sealing ultrasound machine and filing of criminal complaint before the jurisdictional Criminal Court under Section 28(1) of the Act of 1994, but unfortunately the District Appropriate Authority did not proceed further either to file complaint envisaged under Section 28 (1) of the Act of 1994 or proposed any other further proceeding to confirm the order of sealing passed by inspection team leading to filing of writ petition by the petitioner before this Court on 9.5.2018 praying for unsealing of ultrasound/sonography machine and any other reliefs which she is entitled stating inter-alia that the Committee constituted under the direction of the Supreme Court has no power and jurisdiction to seal her ultrasound machine as power and jurisdiction is vested with the District Appropriate Authority i.e. District Magistrate under Section 30(1) of the

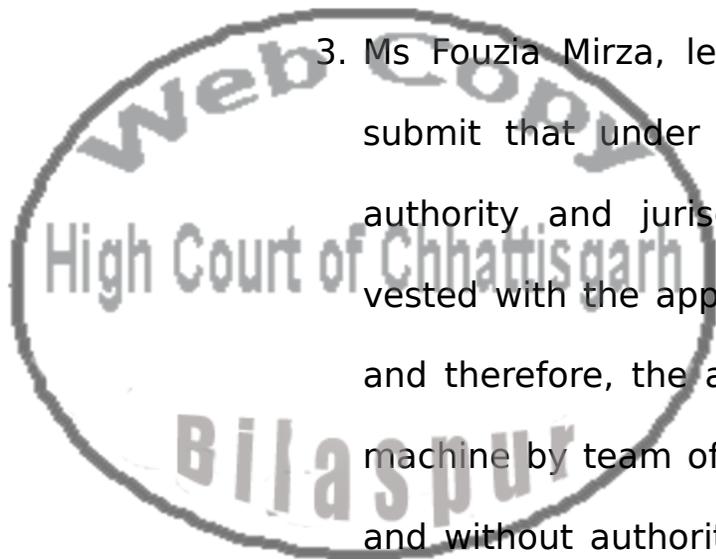
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<sup>1</sup> AIR 2003 SC 3309

Act of 1994, therefore, ultrasound machine be unsealed by setting aside the order sealing her ultrasound machine.

2. Return has been filed by the respondents stating inter-alia that respondents No.2 to 4 have already filed criminal complaint before the Court of Chief Judicial Magistrate, Ambikapur, which is pending consideration and the petitioner's remedy is to file an application under Section 457 of the CrPC read with Section 30(2) of the Act of 1994 before the jurisdictional criminal Court for custody of ultrasound machine.

3. Ms Fouzia Mirza, learned counsel for the petitioner, would submit that under Section 30(1) of the Act of 1994 the authority and jurisdiction to seal ultrasound machine is vested with the appropriate authority i.e. District Magistrate and therefore, the act of sealing the petitioner's ultrasound machine by team of inspection (NIMC) is without jurisdiction and without authority of law. She would further submit that power and jurisdiction to seal ultrasound machine lies subject to recording finding that he has "reason to believe" that an offence under the Act of 1994 has been or is being committed at such centre, then only the power of sealing can be exercised. In the instant case, neither sealing has been done by the District Appropriate Authority nor the finding of "reason to believe" has been recorded, therefore, the impugned order is without jurisdiction and without authority of law and it deserves to be set aside.



4. Mr.D.R.Minz, learned State Counsel of the respondents, would submit that several irregularities were noticed in ultrasound centre of the petitioner by the said committee as proper records or images were not maintained, which were mandatory to be maintained under the Act of 1994 and rules made thereunder and thereafter criminal complaint has already been filed by the officer authorized by the District Magistrate before the jurisdictional criminal Court, which is pending consideration and therefore, no interference is called for by this Court and the writ petition deserves to be dismissed. Even otherwise, remedy is to move application under Section 457 of the CrPC read with Section 30(2) of the Act of 1994.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

6. It is correct to say that the committee constituted pursuant to the direction of the Supreme Court in **Centre for Enquiry Into Health And allied Themes** (supra) inspected sonography centre of the petitioner and noticed certain discrepancies/irregularities in maintaining the records as well as images, but the committee itself sealed ultrasound machine at said centre installed by the petitioner. The said inspection committee made recommendation to the District Magistrate-cum-appropriate authority for sealing the machine of the petitioner.

7. The question for consideration would be whether the team of NIMC is justified in sealing ultrasound machine of the petitioner noticing certain irregularities/discrepancies in maintaining records/images.
8. In order to appreciate the point raised here, it would be appropriate to notice Section 17 of the Act which is included in Chapter V of the Act of 1994 which states 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.

(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) to (9) xxx xxx xxx”

Appropriate authority has been defined under Section 2(a) which reads as under:-

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

9. The Central Government has issued office memorandum in this regard by memo dated 12.2.2007 with reference to Section 17(2) of the Act of 1994, which states as under:-

“No.24026/III/06-PNDT  
 Ministry of Health & Family Welfare  
 Government of India

Nirman Bhawan, New Delhi  
 Dated :- 12<sup>th</sup> Feb.2007

**OFFICE MEMORENDUM**

Under Section 17(2) of the Pre Conception & Pre-Natal Diagnostic Techniques Act, 1994 amended in 2002, State Govt. shall appoint, by notification in the Official Gazette one or more Appropriate Authorities for the whole or part of the State for the purpose of the Act having regard to the intensity of the problem of pre-natal sex determination leading to female Foeticide. The Central Supervisory Board, constituted under the Act, in its 15<sup>th</sup> meeting held on 09<sup>th</sup> January, 2007 under the Chairmanship of Union Minister of Health & Family Welfare has decided that District Appropriate Authority shall be the District Magistrate (DM) for the District. The DM may nominate an executive magistrate of the district as his/her nominee to assist him/her in monitoring the implementation of the PC & PNDT Act, as deemed necessary.

All State Governments are requested to issue necessary notification to implement the decision with immediate effect.

Sushma Rath  
Under Secretary to the Govt. of India

Secretary (H&FW)  
All States/Uts

Copy to:-  
Ms. Ena Singh,  
UNFPA."

10. The above-stated office memorandum states that the District Magistrate of the District would be the District Appropriate Authority for the purpose of Section 17(2) of the Act of 1994. Thereafter the State Government on 1.10.2007 issued notification appointing District Magistrate for the District under Section 17(2) of the Act of 1994, which states as under:-

"Raipur, the 15<sup>th</sup> October, 2007

#### **NOTIFICATION**

No.F 21-03/2007/IX/55.-In exercise of the powers conferred by clause (b) of sub-section (3) of Section 17 read with sub-section (2) of Section 17 of the "Pre-conception and Pre-natal

Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (No.57 of 1994)” and in supersession of Department Notification No.977/4169/2001/H., dated 30-10-2001, the State Government, hereby, appoints the District Magistrate for the District and the Block Medical Officer for the Block as “Appropriate Authority within their respective jurisdiction.

By order and in the name of the  
Governor of Chhattisgarh  
P. Ramesh Kumar, Secretary”

11. At this stage, it would be appropriate to notice Section 30 of the Act of 1994 which states as under:-

**“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, such Authority or any officer authorised 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 and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize 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.

(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.”

12. Rule 12 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter called as 'the Rules of 1996') states as under:-

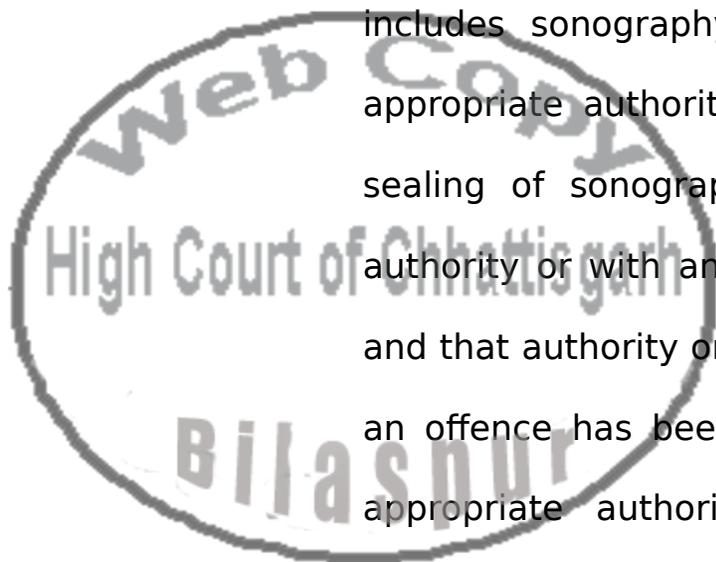
**“12. Procedure for search and seizure.-**(1) The Appropriate Authority or any officer authorised in this behalf may enter and search

at all reasonable times any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or more independent witnesses for the purposes of search and examination of any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seal and seize the same if there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act.

(2) to (5)            xxx            xxx            xxx”

13. A focused perusal of Section 30 of the Act of 1994 would show that power to seal the material object which includes sonography machine has been conferred to the appropriate authority and condition precedent for directing sealing of sonography machine lies with the appropriate authority or with any other authorized officer in that behalf and that authority or officer must have reason to believe that an offence has been or is being committed, then only the appropriate authority/officer can exercise the power of sealing ultrasound machine.

14. Rule 12 of the Rules of 1996 also authorizes the appropriate authority or any officer in that behalf to enter and search at all reasonable times any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or more independent witnesses for the purposes of search and examination of any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seal and seize the same if there is reason to believe that it may furnish



evidence of commission of an offence punishable under the Act.

15. "Reason to believe" or "reasonable belief" means coming to factual conclusion on the basis of information that a thing, condition, statement or a fact exists. Reason to believe contemplates an objective determination based on intelligent care and deliberation as distinguished from purely subjective consideration. The said expression is not synonymous to subjective satisfaction of the authority. It postulates belief and existence of reason for that belief. The belief has to be held in good faith. It cannot be a mere pretence. The reason for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant for the purpose of the section.

16. Reverting to the facts of the present case, it appears from the record that that the petitioner's ultrasound machine was sealed by team of NIMC and after sealing the machine, the said committee recommended to the District Magistrate-cum-Appropriate Authority to seal sonography machine of the petitioner. Nothing has been brought on record to demonstrate that NIMC inspection team was authorized to exercise jurisdiction under Section 30(1) of the Act of 1994 and to seal the ultrasound machine of the petitioner. The act of recommendation by the said committee read with notification dated 12.2.2007 would clearly indicate that the inspection team (NIMC) was not authorized to exercise power

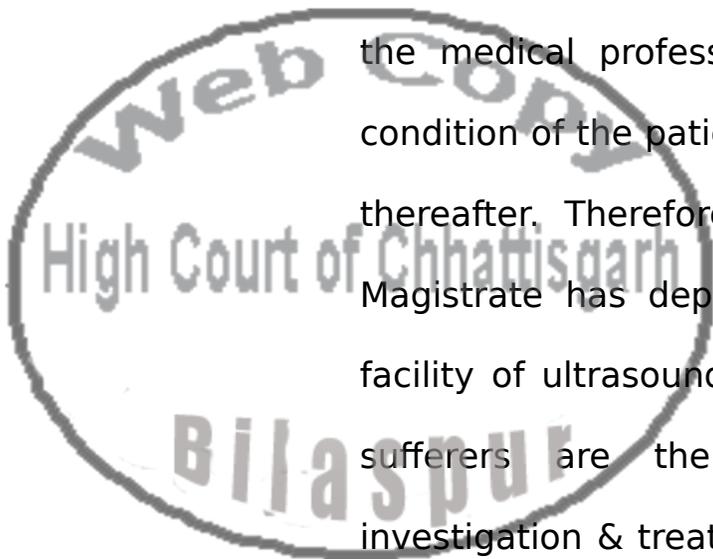
of sealing under Section 30(1) of the Act of 1994 and the District Magistrate being the appropriate authority under Section 17(2) of the Act of 1994 has not exercised the power under Section 30(1) of the Act of 1994. Therefore, I am of the considered opinion that order passed sealing the ultrasound machine of the petitioner is absolutely without jurisdiction and without authority of law and the order impugned deserves to be set aside.

17. By virtue of the provisions contained in Section 30(2) of the Act of 1994, provisions contained in CrPC relating to search & seizure has been made applicable, to the search & seizure made under this Act. In the present case, neither search has been made nor seizure has been made, only ultrasound machine has been sealed. For unsealing no such provision in CrPC has been brought to my notice, therefore, plea of alternative remedy is over-ruled.

18. As a fallout and consequence of the above-stated discussion, sealing of ultrasound machine of the petitioner at her hospital premises is hereby quashed. The respondents are directed to unseal ultrasound machine of the petitioner forthwith upon receipt of certified copy of this order. While unsealing, the respondents are at liberty to collect data from ultrasound machine for the purpose of evidence.

19. It is shocking as well as disturbing to note that ultrasound machine of the petitioner was inspected and sealed by the inspection committee on 2.11.2017 and matter was reported

to the District Appropriate Authority/District Magistrate on the same day, but the said authority neither took any steps to file criminal complaint as mentioned in Section 28(1) of the Act of 1994 nor took any steps to unseal the said machine till the present writ petition was filed before this Court on 9.5.2018. An ultrasound scan is a medical test that uses high-frequency sound waves to capture live images from inside human body. An ultrasound can provide a view of bladder, eyes, gallbladder, kidneys, liver, ovaries, pancreas, spleen, thyroid, testicles, uterus, blood vessels etc. It is extremely useful for the medical professionals to make diagnosis of the body condition of the patient and to begin treatment of the patient thereafter. Therefore, inaction on the part of the District Magistrate has deprived inpatients and outpatients of the facility of ultrasound which is extremely serious as virtually sufferers are the patients visiting the hospital for investigation & treatment. The District Magistrate must keep it in mind that medical profession deal with life of human being and he should be cautious in sealing ultrasound machine unless a strong case is made out as per law. In order to avoid future repetition of this kind of action, a cost of ₹ 10,000/- is imposed upon respondent No.2, who shall deposit the said amount to the District Legal Services Authority, Ambikapur, District Surguja. However, the said authority will be entitled to recover the said amount from erring officials.



20. The writ petition is allowed to the extent sketched hereinabove.

Sd/-

(Sanjay K.Agrawal)  
**Judge**

B/-



**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No.1494 of 2018****Petitioner**

Dr.Smt.Kiran Agrawal

**Versus****Respondents**

State of Chhattisgarh and others

(Head-note)

**(English)**

National Inspection and Monitoring Committee has no authority and jurisdiction to seal ultrasound machine of medical professional as the District Magistrate is the Appropriate Authority under Section 17(2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

**(हिन्दी)**

राष्ट्रीय निरीक्षण तथा अनुश्रवण समिति के पास चिकित्सा व्यवसायी के अल्ट्रासाउण्ड यंत्र को सील करने का प्राधिकार तथा क्षेत्राधिकार नहीं है क्योंकि गर्भधारणपूर्व तथा प्रसवपूर्व जाँच तकनीक (लिंग का चयन) अधिनियम, 1994 की धारा 17 (2) के अन्तर्गत जिलाधीश उपयुक्त प्राधिकारी है।