

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 27.04.2023**

**PRONOUNCED ON : 26.05.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

**W.P.Nos.33547 to 33549 of 2017**

**and**

**W.M.P.No.37068 of 2017**

Tamil Nadu Ayush Sonologist Association  
Rep. by its President,  
Dr.C.Ramesh Kumar,  
No.1075, 48<sup>th</sup> Street,  
TVS Colony, Anna Nagar West Extension,  
Chennai – 600 101.

... Petitioner  
in 3 Wps

Vs.

- 1.Union of India,  
Rep. by its Secretary,  
Ministry of Health and Family Welfare Department,  
Nirman Bhavan, C-Wing,  
New Delhi – 110 001.
- 2.The Joint Director of Medical and Rural Health Services  
District Appropriate Authority  
Pre-natal Diagnostic Techniques  
(Regulation and Prevention of Misuse) Act, 1994  
(Act No.57 of 1994)  
Government of Tamil Nadu,  
Health and Family Welfare Department,  
Fort St. George, Chennai – 600 009.

- 3.The Director of Medical and Rural Health Services,  
State Appropriate Authority,  
DMS Complex, No.361, Anna Salai,  
Chennai – 600 006.
- 4.The Tamil Nadu Homoeopathy Medical Council,  
Rep. by its Registrar,  
Aringnar Anna Government Hospital Campus,  
Arumbakkam, Chennai 600 106.
- 5.Tamil Nadu Board of Indian Medicine,  
Rep. by its Registrar,  
Aringnar Anna Government Hospital Campus,  
Arumbakkam, Chennai – 600 106.
- 6.Ministry of Ayush,  
Rep. by its Secretary,  
Ayush Bhawan, B Block,  
GPO Complex, INA, New Delhi 110 023.
- 7.Director of Indian Medicine Commissionarate  
Arumbakkam Government Siddha Medical College,  
Anna Arch Road, PP Garden, Arumbakkam,  
Chennai – 600 106.
- 8.Central Council of Homoeopathy,  
Rep. by its Registrar,  
Jawaharlal Nehru Bhartiya Chikitsa Avum Homoeopathic  
Anusandhan Bhawan,  
61-65, Institutional Area, Opp. 'D' Block,  
Janak Puri New Delhi – 110 058.
- 9.Central Council of Indian Medicine,  
Rep. by its Secretary,  
Jawaharlal Nehru Bhartiya Chikitsa Avum Homoeopathic  
61-65, Institutional Area, Opp. 'D' Block,  
Janak Puri New Delhi – 110 058.

... Respondents  
in 3 WPs

**Prayer in W.P.No.33547 of 2017:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring that doctors holding degrees BHMS, BUMS, BAMS, BSMS, and BNYS degrees obtained from recognised institutions and who have undergone certificate course in ultrasonogram are fully qualified to carry out various diagnostic procedure and ultrasonogram / Ultrasound technique on pregnant women as long as they do not undertake sex selection before or after conception which is prohibited under the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and misuse the pre-natal diagnostic techniques for sex determination leading to female foeticide.

**Prayer in W.P.No.33548 of 2017:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring that doctors who have undergone BHMS, BUMS, BAMS, BSMS, and BNYS courses in recognized institutions in the State of Tamil Nadu and certificate course in ultrasonogram are eligible to sign the Ultrasound diagnostic reports under Form F of the Pre-conception and Pre-Natal Diagnostic Test / Procedure by Genetic Clinic / Ultra Sound clinic / Image Centre.

**Prayer in W.P.No.33549 of 2017:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the Appropriate Authority constituted under the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (Act 57 of 1994 as amended by Act 14 of 2003) from exercising power under Section 20 (3) of Act 57 of 1994 and suspending the registration of any Genetic

Counselling Centre, Genetic Laboratory, Genetic Clinics and hospitals for permitting doctors who have undergone BHMS, BUMS, BAMS, BSMS, BNYS courses in recognized institutions in the state of Tamil Nadu and Certificate Course in ultrasonogram to do ultrasonogram on pregnant women without misusing the Pre-natal diagnostic techniques for sex determination leading to female foeticide which is prohibited under the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

- For Petitioners : Mrs.Nalini Chidambaram  
Senior Counsel  
For Mrs.C.Uma  
(in all three W.Ps)
- For R1 and R6 : Mr.S.S.Pajani Radja  
Senior Panel Counsel (in all three W.Ps)
- For R2, R3, R4 : Mr.T.Arunkumar  
R5 and R7 Additional Government Pleader  
(in all three W.Ps)
- For R9 : Mr.K.Vellaya Raj  
For M/s.V.K. Raj Law Chambers  
(in all three W.Ps)
- For R8 : No appearance (in all three W.Ps)

**COMMON ORDER**

Since the issues raised in all the three writ petitions are interconnected, these writ petitions are heard together and hence a common order has been passed.

2. W.P.No.33547 of 2017: The relief sought for in the writ petition is for a declaration to declare that doctors holding degrees BHMS, BUMS, BAMS, BSMS, and BNYS degrees obtained from recognised institutions and who have undergone certificate course in ultrasonogram are fully qualified to carry out various diagnostic procedure and ultrasonogram / Ultrasound technique on pregnant women as long as they do not undertake sex selection before or after conception which is prohibited under the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and misuse the pre-natal diagnostic techniques for sex determination leading to female foeticide.

2.1 W.P.No.33548 of 2017: The relief sought for in the writ petition is to declare that doctors who have undergone BHMS, BUMS, BAMS, BSMS, and BNYS courses in recognized institutions in the State of Tamil Nadu and certificate course in ultrasonogram are eligible to sign the Ultrasound diagnostic reports under Form F of the Pre-conception and Pre-Natal Diagnostic Test / Procedure by Genetic Clinic / Ultra Sound clinic / Image Centre.

2.2. W.P.No.33549 of 2017: The relief sought for in the writ petition is to forbear the Appropriate Authority constituted under the Pre-

natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (Act 57 of 1994 as amended by Act 14 of 2003) from exercising power under Section 20 (3) of Act 57 of 1994 and suspending the registration of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinics and hospitals for permitting doctors who have undergone BHMS, BUMS, BAMS, BSMS, BNYS courses in recognized institutions in the state of Tamil Nadu and Certificate Course in ultrasonogram to do ultrasonogram on pregnant women without misusing the Pre-natal diagnostic techniques for sex determination leading to female foeticide which is prohibited under the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

3. The petitioner in all the three writ petitions is Tamil Nadu Ayush Sonologist Association. The members of the petitioner's Association are the holders of BHMS (Bachelor of Homoeopathic Medicine and Surgery), BUMS (Bachelor of Unani Medicine and Surgery), BAMS (Bachelor of Ayurvedic Medicine and Surgery), BSMS (Bachelor of Siddha Medicine and Surgery) and BNYS (Bachelor of Naturopathy and Yoga Science) degrees from institutions affiliated to Dr.MGR Medical University.

4. The members of the petitioner's Association are referred to as AYUSH doctors. The members of the petitioner's Association have undergone certificate course in Ultra Sonogram. The Regulations containing the eligibility and duration of the certificate course and the syllabus has been published. The members of the petitioner's Association are fully qualified to carry out various diagnostic procedures and Ultra Sonogram/Ultrasound techniques.

5. The Government of India, Ministry of Health and Family Welfare has issued Clarificatory notification dated 01.11.2013 to the Secretary to Government of Indian State and UT regarding practice of Gynaecology and Obstetric and diagnostic Ultrasonography by ISM Graduates. The clarification reads as under:

*“National Integrity Medical Association has represented that they are institutionally qualified graduates of Indian System of Medicine and they are eligible to carry out various diagnostic procedures and other technological innovations and practice modern medicines including surgery. Gynecology and Obstetrics as per the Circular issued from ime, TV Unene by the Central Council of Indian Medicine*

*The matter has been examined by the Government in view of*

*the notifications/letters issued by CCIM from time to time. It is clarified that institutionalized qualified practitioners of Indian systems of Indian Medicine (Ayurveda Siddha and Unani) are eligible to practice Indian Systems of Indian Medicine and Modern Medicine including Surgery, Gynecology and Obstetrics based on their training and teaching which are included in the syllabus of via courses of ISM prescribed by Central Council of Indian Medicine other approval of the Government of India.*

*The meaning of the word "Modern Medicine" (Advances) means advances made in various branches of Modern Scientific Medicine Clinical, Non-clinical, bio-Sciences also technological innovations made from time to time and notify that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented with such Modern Advances.*

*Further, it is clarified that the rights of practitioners of Indian Systems of Medicine to practice Modern Scientific System of Medicine (Allopathic Medicine) are protected under Section 17 (3) (b) of Indian Medicine Central Council Act, 1970.*

*Further, holders of Ayurvedacharya (BAMS) Kamil-e-tib-o-jarahat*

*(BUMS) and equivalent qualification included in a second schedule e.g. Radiology, Ultrasonography, E.C.G. etc. in their clinical practice on the basis of them teaching and training as notified already by CCIM notification No.E-5706-AY (MM) dated 06.01.2009.*

*However, it is made clear that they will not violate any of the provisions of the pre-Natal Diagnostic Techniques (Prohibition) of Sex Selection Act 1994 and the Medical Termination of Pregnancy Act, 1971".*

*By a clarification circular dated 15-03-2015 addressed to the Secretaries of the State Government and Union Territories the Government of India has issued a clarification regarding practise of Gynaecology and Obstetrics and Diagnostic Ultrasonography by ISM graduates,*

6. The petitioner's Association state that they have studied Ultra Sonogram/Ultrasound techniques. Since they are fully qualified, they must be permitted to carry out diagnostic procedures and Ultra Sonogram/Ultrasound techniques.

7. The learned Senior counsel appearing on behalf of the petitioner's Association mainly contended that the members of the petitioner's Association are fully qualified to carry out various diagnostic procedures. They have studied certificate course in Ultra Sonogram / Ultrasound techniques and that apart even in the main degree, there is a syllabus prescribed and therefore, the members of the petitioner's Association are entitled to practice and carry out diagnostic procedures and Ultra Sonogram/Ultrasound techniques.

8. The learned Senior counsel for the petitioner's Association contended that the Government of Tamil Nadu issued Tamil Nadu Clinical Establishments (Regulations) Rules 2018. The notification was issued by the Health and Family Welfare Department of the Government of Tamil Nadu in G.O.Ms.No.206, Health and Family Welfare (Z2) dated 01.06.2018. As per the said Rule, the members of the petitioner's Association are fully qualified. The Rules provides definitions for 'Clinic',

'Doctor' and 'Hospital'. The definitions stipulated in the said Tamil Nadu Rules would unambiguously and explicitly provides that the AYUSH Doctors are qualified to practice and carry out various diagnostic procedures and Ultra Sonogram/Ultrasound techniques. There is a specific clause under the Rules, stating that all tests shall be carried out by qualified technical persons only and it includes '*by a qualified Doctor or by a Radiologist' or concerned Specialist as per the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994*'. When it is explicitly stated that qualified Doctor is eligible to carry out X-Ray and Ultra Sonogram, the members of the petitioner's Association are also qualified. Thus, the Government should permit the members of the petitioner's Association to carry out diagnostic procedures and Ultra Sonogram/Ultrasound techniques.

9. The learned Senior counsel appearing on behalf of the petitioner's Association relied upon the Tamil Nadu Clinical Establishments (Regulations) Rules, 2018 and contended that the petitioner's Association is fully qualified for carrying out various diagnostic procedures and thus, the writ petitions are to be allowed.

10. The learned counsel appearing on behalf of the 9<sup>th</sup> respondent made a submission that the National Commission for Indian System of Medicine Act, 2020, is the authority and as per the prescribed syllabus of BAMS, BUMS, & BSMS of erstwhile CCIM now known as NCISM, the Basic knowledge of ECG, USG, X-Ray, CT Scan, MRI are taught in the colleges and these subjects are the integral part of the syllabus of the above said courses. Since the said diagnostic procedures are prescribed as a syllabus in the degree course, there is no impediment for allowing the members of the petitioner's Association to practice Ultra Sonogram/Ultrasound techniques and Diagnostic procedures.

11. The learned counsel for the 9<sup>th</sup> respondent relied on the recent judgment of the Hon'ble Supreme Court of India in the case of ***State of Gujarat & Others., etc., Vs. Dr. P. A. Bhatt & Others, etc., in Civil Appeal Nos.8553-8557 of 2014 dated 26.04.2023***, wherein the Apex Court dealt with the issues relating to 'equal pay for equal work'.

12. The learned Additional Government Pleader appearing on behalf of the respondents 2, 3, 4, 5 and 7 mainly contended that the Tamil Nadu Clinical Establishments (Regulations) Rules, 2018 has been misconstrued and wrongly interpreted by the petitioner's Association. The

said Rules issued by the Government of Tamil Nadu is for the purpose of establishment of clinics and issued in exercise of the powers under Sub-Section (1) to Section 14 of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 (Tamil Nadu Act 4 of 1997). The rules, no doubt stipulates that the qualified Doctors can carry out diagnostic procedures and Ultra Sonogram/Ultrasound techniques on Pregnant women. However, the qualified Doctors must possess the qualification as stipulated under the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, which is a Central Act. Therefore, by merely referring the Tamil Nadu Clinical Establishments (Regulations) Rules 2018, the petitioner's Association cannot say that their members are eligible and qualified to practice diagnostic procedures and Ultra Sonogram/Ultrasound techniques.

13. The learned Additional Government Pleader appearing on behalf of the respondents 2, 3, 4, 5 and 7, relying on the Act of Parliament, contended that as per the said Act, the members of the petitioner's Association are not qualified and therefore, the writ petition is to be rejected.

14. The issue to be considered in the writ petitions is, whether the Doctors holding degrees viz., BHMS, BUMS, BAMS, BSMS, BNYS obtained from recognized institutions are qualified for carrying out various diagnostic procedures and Ultra Sonogram/Ultrasound techniques on pregnant women.

15. Whether the members of the petitioner's Association, AYUSH Doctors are qualified under the provisions of the Statutes and Rules in force.

16. Let us now consider the Special Act, which is an act of Parliament i.e., Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

17. The Act provides Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics, Regulation of Pre-Natal Diagnostic Techniques, Central Supervisory Board, Appropriate Authority and Advisory Committee, Registration of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics, Offences and Penalties.

18. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 was issued in exercise of the powers conferred under Section 32 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, which is a Central Act.

19. Rule 2 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 [as amended vide GSR 345(E), dated 31.03.2021, w.e.f 25.05.2021] provides 'Definitions'. Rule 2 (f) of the said Act defines “Gynaecologist”. Rule 2(i) defines “pre-natal diagnostic procedures”. Rule 2 (j) defines “pre-natal diagnostic techniques”. Rule 2 (k) defines “pre-natal diagnostic test”. Rule 2(m) defines “registered medical practitioner” and Rule 2(p) defines “sonologist or imaging specialist”.

20. Rule 3 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 [as amended vide GSR 599(E), dated 19.06.2017, w.e.f 19.06.2017] enumerates “Minimum Requirements”. Accordingly, the qualifications of employees, requirement of equipment etc., for a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall be as under:

*(1) Any person being or employing-*

*(i) a gynaecologist or a paediatrician having six months' experience or four weeks' training in genetic counselling; or*

*(ii) a medical geneticists,*

*having adequate space and educational charts/models/equipments for carrying out genetic counselling may set up a genetic counselling center and get it registered as a genetic counselling center.*

*(2)(a) Any person having adequate space and being or employing, -*

*(i) a Medical Geneticist and*

*(ii) a laboratory technician, having a B.Sc. degree in Biological Sciences or a degree or diploma in medical laboratory course with atleast one year experience in conducting appropriate pre-natal diagnostic techniques, tests or procedures, may set up a genetic laboratory.*

*(b) Such laboratory should have or acquire such of the following equipments as may be necessary for carrying out chromosomal studies, biochemical studies and molecular studies: -*

*(i) Chromosomal studies:*

*(1) Laminar flow hood with ultraviolet and*

*fluorescent light or other suitable culture hood.*

(2) *Photo-microscope with fluorescent source of light.*

(3) *Inverted microscope.*

(4) *Incubator and oven.*

(5) *Carbon dioxide incubator or closed system with 5% CO<sub>2</sub> atmosphere.*

(6) *Autoclave.*

(7) *Refrigerator.*

(8) *Water bath.*

(9) *Centrifuge.*

(10) *Vortex mixer.*

(11) *Magnetic stirrer.*

(12) *pH meter.*

(13) *A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.*

(14) *Double distillation apparatus (glass)*

(15) *Such other equipments as may be necessary.*

(ii) *Biochemical studies : (requirements according to tests to be carried out)*

(1) *Laminar flow hood with ultraviolet and fluorescent light or other suitable culture hood.*

(2) *Inverted microscope.*

(3) *Incubator and oven.*

(4) *Carbon dioxide incubator or closed system with 5% CO<sub>2</sub> atmosphere.*

- (5) *Autoclave.*
- (6) *Refrigerator.*
- (7) *Water bath.*
- (8) *Centrifuge.*
- (9) *Electrophoresis apparatus and Power supply.*
- (10) *Chromatography chamber.*
- (11) *Spectro-photometer and Elisa reader or Radio-immunoassay system (with gamma beta-counter) or fluorometer for various biochemical tests.*
- (12) *Vortex mixer.*
- (13) *Magnetic stirrer.*
- (14) *pH meter.*
- (15) *A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.*
- (16) *Double distillation apparatus (glass).*
- (17) *Liquid nitrogen tank.*
- (18) *Such other equipments as may be necessary.*

*(iii) Molecular studies:*

- (1) *Inverted microscope.*
- (2) *Incubator.*
- (3) *Oven.*
- (4) *Autoclave.*
- (5) *Refrigerators (4 degree and minus 20 degree Centigrade).*

- (6) *Water bath.*
- (7) *Microcentrifuge.*
- (8) *Electrophoresis apparatus and Power supply.*
- (9) *Vertex mixer.*
- (10) *Magnetic stirrer.*
- (11) *pH meter.*
- (12) *A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.*
- (13) *Double distillation apparatus (glass).*
- (14) *P.C.R. Machine.*
- (15) *Refrigerated centrifuge.*
- (16) *U.V. Illuminator with photographic attachment or other documentation system.*
- (17) *Precision micropipettes.*
- (18) *Such other equipments as may be necessary.*

(3) (1) *Any person having adequate space and being or employing,-*

(a) *Gynaecologist having experience of performing at least 20 procedures in chorionic villi aspirations per vagina or per abdomen, chorionic villi biopsy, amniocentesis, cordocentesis foetoscopy, foetal skin or organ biopsy or foetal blood sampling etc. under supervision of an experienced gynaecologist in these fields; or*

*[(b) a sonologist or imaging specialist or*

*registered medical practitioner having Post Graduate degree or diploma or six months, training duly imparted in the manner prescribed in the “the pre-conception and Pre-natal Diagnostic Techniques (Prohibition of sex selection) (six Months Training) Rules,2014; or*

*(c) a medical geneticist,  
may set up a genetic clinic/ultrasound clinic/imaging centre.*

*(2) The Genetic Clinic/ultrasound clinic/imaging centre should have or acquire such of the following equipments, as may be necessary for carrying out the tests or procedures -*

*(a) Equipment and accessories necessary for carrying out clinical examination by an obstetrician or gynaecologist.*

*(b) An ultra-sonography machine including mobile ultrasound machine, imaging machine or any other equipment capable of conducting foetal ultrasonography.*

*(c) Appropriate catheters and equipment for carrying out chorionic villi aspirations per vagina or per abdomen.*

*(d) Appropriate sterile needles for amniocentesis or cordocentesis.*

*(e) A suitable foetoscope with appropriate accessories for foetoscopy, foetal skin or organ*

*biopsy or foetal blood sampling shall be optional.*

*(f) Equipment for dry and wet sterilization.*

*(g) Equipment for carrying out emergency procedures such as evacuation of uterus or resuscitation in case of need.*

*(h) Genetic Works Station.]*

*[(3) Each medical practitioner qualified under the Act to conduct ultrasonography in a genetic clinic/ultrasound 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]*

***3A. Sale of ultrasound machines / imaging machines:***

*(1) No organization including a commercial organization or a person including manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any-other equipment, capable of detecting sex of foetus, shall sell, distribute, supply, rent, allow or authorize the use of any such machine or equipment in any manner, whether on payment or otherwise, to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or*

*any other body or person unless such Centre, Laboratory, Clinic, body or person is registered under the Act.*

*(2)The provider of such machine / equipment to any person / body registered under the Act shall send to the concerned State/UT Appropriate Authority and to the Central Government, once in three months a list of those to whom the machine/equipment has been provided.*

*(3) Any organization or person, including manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment capable of detecting sex of foetus selling, distributing, supplying or authorising, in any manner, the use of any such machine or equipment to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person registered under the Act shall take an affidavit from the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person purchasing or getting authorisation for using such machine / equipment that the machine/equipment shall not be used for detection of sex of foetus or selection of sex before or after conception.]”*

**Pre-Conception and Pre-Natal Diagnostic Techniques  
(Prohibition of Sex Selection) (Six Months Training) Rules, 2014:**

21. Rule 2 (c) of the above said Rules defines “Six months training” means the training imparted under these rules. Rule 2 (d) stipulates “Syllabus” means the syllabus given in Schedule I.

21.1. Rule 3 defines “Nomenclature of the Six months training in ultrasonography” - The Six months training imparted under these rules shall be known as “the Fundamentals in Abdomino-Pelvic Ultrasonography: Level one for M.B.B.S Doctors”

21.2. Rule 5 defines “Components of the six months training curriculum.-

*(1) The major components of the training curriculum shall be -*

*(a) theory based knowledge to equip registered medical practitioners with the knowledge, professional skills, attitudes and clinical competencies;*

*(b) skill Based knowledge;*

*(c) log book and Assessment.*

*(2) The comprehensive syllabus for the said six months training is as specified in Schedule I.*

*(3) The details related to log book and assessment*

*are as specified in Schedule II.”*

21.3. Rule 6 of the above said Rules defines “Eligibility for training” -

*(1) Any registered medical practitioner shall be eligible for undertaking the said six months training.*

*(2) The existing registered medical practitioners, who are conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six month training are exempted from undertaking the said training provided they are able to qualify the competency based assessment specified in Schedule II.*

*(3) If a medical practitioner fails to clear the said competency based examination, after three attempts, he shall undertake the complete six months training, as provided under these rules, for the purpose of renewal of registrations.”*

21.4. Rule 7 enumerates “Accreditation of institutions for six months training and its recognition.”-

*(1) The following teaching institutions would be accredited as training centres to impart the six months training, namely:-*

*(a) Centres of Excellence established under the Acts of Parliament;*

*(b) Medical Council of India recognised institutions offering Post Graduate programmes in Obstetrics and Gynaecology or Radiology;*

*(c) Institutions offering full time residency DNB programme in Obstetrics and Gynaecology or Radiology.*

*(2) The names of the institutions recognised for this purpose shall be notified State wise by the State Health Medical Education Department.*

*Provided that the training institutes recognised for imparting the six months training shall maintain the standards of infrastructure, equipment and manpower including the faculty as per apex regulatory bodies like the Medical Council of India or the National Board of Examination.”*

21.5. Schedule I to the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 stipulates “Syllabus” as Fundamentals in Abdomino Pelvic Ultrasonography: Level one 6 Months Course for M.B.B.S Doctors.

22. Therefore, the members of the petitioner's Association must possess the qualifications as prescribed under the Central Rules issued pursuant to the provisions of the Act 14 of 2003. Mere prescription of general subject in the course of Ultra Sonogram would be insufficient to

satisfy the minimum requirements as contemplated under the Special Act.

23. As far as the Tamil Nadu Clinical Establishments (Regulations) Rules 2018 is concerned, it is about Clinical Establishments, which all are regulated. However, for carrying out the diagnostic procedures and Ultra Sonogram/Ultrasound techniques, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, which is a Central Act, will prevail over and the Rules framed thereunder in exercise of the powers conferred by Section 32 of the Central Act must be satisfied for the purpose of granting permission to the AYUSH Doctors to carry out various diagnostic procedures and Ultra Sonogram/Ultrasound techniques on pregnant women.

24. Therefore, it is not sufficient that a person is a qualified Doctor as contemplated under the Tamil Nadu Rules. The eligible criteria to declare as a qualified Doctor as contemplated under the Tamil Nadu Clinical Establishments (Regulations) Rules 2018 must be holistically read along with the provisions of the Special Act and Rules i.e., the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. The general term defined in the Tamil Nadu Act about qualified Doctors is to be construed as general definition and as far

as this specialized diagnostic procedures and Ultra Sonogram/Ultrasound techniques on pregnant women are concerned, it is a special diagnostic procedure or treatment to be provided and therefore, the special qualifications prescribed under the Central Act and the Rules must be scrupulously followed by the competent authorities.

25. All qualified Doctors are not qualified under the provisions of the Act 57 of 1994 and the Rules framed thereunder, which is a Central Act and Rules.

26. The general definition of qualified Doctors cannot be followed, since the special qualifications are prescribed under the Central Act, which is a Special Act for carrying out various diagnostic procedures. When the Special Act is holding the field, then the general rules notified i.e., Tamil Nadu Clinical Establishments (Regulations) Rules 2018 cannot be adopted for the purpose of granting permission to carrying out various diagnostic procedures and Ultra Sonogram/Ultrasound techniques on pregnant women.

27. Thus, the qualified Doctors, who possess the specialized qualifications under the provisions of the Central Act and the Rules

framed thereunder i.e, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 alone is eligible to carry out diagnostic procedure and Ultra Sonogram/Ultrasound techniques on pregnant women and all other Doctors, who do not possess the specialized qualification as contemplated under the Central Act and Rules are ineligible to practice and they cannot be allowed to carry out such diagnostic procedures.

28. The contention of the 9<sup>th</sup> respondent that as per the prescribed syllabus of BAMS, BUMS, & BSMS of erstwhile CCIM now known as NCISM, the Basic knowledge of ECG, USG, X-Ray, CT Scan, MRI are taught in the colleges would be insufficient and cannot be construed as prescribed qualification within the meaning of the Special Central Enactment. Merely prescribing syllabus for diagnostic procedure or Ultra Sonogram/Ultrasound techniques cannot be considered as a prescribed qualification within the meaning of the Central Act and Rules. The Doctors qualified and specialized in the field as prescribed under the provisions of the Central Act and Rules alone are eligible to carry out diagnostic procedures and Ultra Sonogram/Ultrasound techniques on pregnant women and mere general study as stated by the 9<sup>th</sup> respondent cannot be considered for carrying out such diagnostic procedure.

29. The judgment relied on by the 9<sup>th</sup> respondent, which was delivered by the Apex Court is relating to the issue of 'equal pay for equal work' and therefore, the said judgment is of no avail for the petitioner's Association to grant relief as such sought for in the present writ petitions.

30. In view of the facts and circumstances, the members of the petitioner's Association if at all qualified under the provisions of the Central Act and Rules framed thereunder are entitled to be construed as qualified Doctors within the meaning of the Central Act for carrying out various diagnostic procedures and Ultra Sonogram/Ultrasound techniques on pregnant women.

31. Thus, the petitioner's Association have not established any acceptable ground for the purpose of granting the relief as such sought for in the present writ petitions. Accordingly, all the three writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**26.05.2023**

kak/jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

1. The Secretary,  
Union of India,  
Ministry of Health and Family Welfare Department,  
Nirman Bhavan, C-Wing,  
New Delhi – 110 001.
2. The Joint Director of Medical and Rural Health Services  
District Appropriate Authority  
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PP Garden, Arumbakkam,  
Chennai – 600 106.

8. The Registrar,  
Central Council of Homoeopathy,  
Jawaharlal Nehru Bhartiya Chikitsa Avum Homoeopathic  
Anusandhan Bhawan,  
61-65, Institutional Area, Opp. 'D' Block,  
Janak Puri New Delhi – 110 058.

9. The Secretary,  
Central Council of Indian Medicine,  
Jawaharlal Nehru Bhartiya Chikitsa Avum Homoeopathic  
61-65, Institutional Area, Opp. 'D' Block,  
Janak Puri New Delhi – 110 058.

W.P.Nos.33547 to 33549 of 2017

**S.M.SUBRAMANIAM, J.**

kak/jeni

**W.P.Nos.33547 to 33549 of 2017**

**26.05.2023**