

*Before Satish Kumar Mittal & K.C. Puri, JJ.*

**DR. PARDEEP OHRI,—Petitioner**

*versus*

**STATE OF PUNJAB AND ANOTHER,—Respondents**

C.W.P. No. 19018 of 2006

20th December, 2007

*Constitution of India, 1950—Arts. 20(1) & 226—Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994—S. 23(2)—Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996—Rls. 9(1)(4) and 10—Conviction of petitioner under section 23(1) of 1994 Act—Release of petitioner on probation for one year—Punjab Medical Council under section 23(2) removing name of petitioner from State Medical Register for 5 years—Challenge thereto—Unamended S. 23(2) at the time of commission of alleged offence provides that name of registered medical practitioner who has been convicted could be removed for a period of 2 years for first offence and permanently for subsequent offence—Amending provisions enhancing period of penalty from 2 to 5 years with effect from 14th February, 2003—Amendment prospective and not retrospective—Art. 20(1) prohibits imposition of greater penalty for a prohibited act which might have been inflicted under the law in force at time of commission of offence—S. 23(2) clearly imposes a penalty of removal of the name of a medical practitioner in case he is convicted for violating provisions of PNDT Act—Penalty clearly attracts rigour of Art. 20(1)—Name of petitioner could not have been removed as a penalty on his conviction for more than the period which was prescribed in statute at the time of alleged commission of offence—Impugned order modified, penalty of removal of name of petitioner reduced to two years from five years.*

*Held*, that the alleged offence under the PNDT Act and Rules made thereunder was committed on 9th July, 2002 for which the petitioner has been convicted under Section 23(1) and released on probation,—*vide*

judgment dated 24th September, 2004 and subsequently a penalty for removal of his name for a period of five year from the Medical Register has been imposed under Section 23(2) of the PNDT Act,—*vide* order dated 7th November, 2005. It is also not disputed that at the time of commission of the alleged offence, the unamended Section 23(2) of the PNDT Act provides that the name of the registered medical practitioner who has been convicted by the court under sub-section (1) could be removed by the State Medical Council for a period of two years for the first offence and permanently for the subsequent offence. The said provision was amended by PNDT Amendment Act, 2002 (Act No. 14 of 2003) notified with effect from 14th February, 2003. The amended provisions have enhanced the period of penalty for removal of the name of a medical practitioner from two years to five years with effect from 14th February, 2003. Undisputedly the said amendment was prospective and not retrospective.

(Para 10)

*Further held*, that from the reading of Article 20(1) of the Constitution of India, it is clear that in the said Article the word “penalty” has been used and not the “sentence/imprisonment”. Merely because sub-section (1) of Section 23 of the PNDT Act deals with sentence/imprisonment to be imposed and sub-section (2) of the said Section deals with the removal of the name of a medical practitioner from the State Medical Register on his conviction, does not make any difference. In both the situations, a penalty is provided which is to be imposed upon a person who has been convicted for the offence under the said Act. For an offence, there can be two penalties, one in the shape of imprisonment and the other in a different shape which is in the present case is the removal of the name of a medical practitioner from the State Medical Register on his conviction. Both the penalties are subjected to rigour of Article 20 of the Constitution. Therefore, the name of the petitioner could not have been removed from the State Medical Register as a penalty on his conviction under Section 23(2) of the PNDT Act for more than the period which was prescribed in the statute at the time of the alleged commission of the offence.

(Para 18)

Anupam Gupta, Advocate, *for the petitioner.*

Charu Tuli, Sr. Deputy Advocate General, Punjab, *for respondent No. 1*

B.S. Walia, Advocate, *for respondent No. 2.*

**SATISH KUMAR MITTAL, J.**

(1) The petitioner, who had obtained the M.B.B.S. degree in the year 1990 and got himself registered as medical practitioner by the Punjab Medical Council (hereinafter referred to as 'the Medical Council') in the year 1991 and subsequently also obtained the MD degree from Guru Nanak Dev University in the year 1996, has filed this petition challenging the order dated 7th November, 2005 (Annexure P-4) passed by the Medical Council removing his name from the State Medical Register for a period of five years under Section 23(2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'the PNDT Act, 1994') in view of his conviction under Section 23(1) of the said Act. He has also challenged the subsequent order dated 21st August, 2006 (Annexure P-5) whereby the Medical Council re-affirmed its earlier decision to remove the name of the petitioner from the State Medical Register.

(2) In the present case, the petitioner was running Satyam Diagnostic Centre inside Ohri Nursing Home. On 9th July, 2002, an inspection of the said ultrasound centre viz. Satyam Diagnostic Centre was made by the district medical authorities. During the inspection, it was found that the petitioner had violated Section 5(a)(b)(c) of the PNDT Act, 1994 and Rules 9(1)(4) and 10 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as 'the Rules'). On a complaint under the aforesaid provisions, he was prosecuted and convicted under Section 23(1) for the offence committed under Section 5(a)(b)(c) of the PNDT Act, 1994 and Rules 9(1)(4) and 10 made thereunder. But, he was released on probation for a period of one year under Section 4(1) of the Probation of Offenders Act, 1958,—*vide* judgment dated 24th September, 2004 delivered by the Chief Judicial Magistrate, Amritsar. Since the petitioner was released on probation and not sentenced to any imprisonment, he was legally advised that it was not

necessary for him to file an appeal against the conviction. Subsequently he was advised that he should contest the conviction by way of an appeal and accordingly he filed an appeal before the Session Court, Amritsar along with an application under Section 5 of the Limitation Act for condonation of delay in filing the appeal.

(3) It is pertinent to mention here that against the order of release of the petitioner on probation, the State filed a revision petition in the High Court seeking enhancement of punishment by way of imposition of a sentence of imprisonment. We have also been informed that the appeal filed by the petitioner before the Sessions Court has now been transferred to this court and the said appeal as well as the revision are still pending in this court.

(4) After more than a year of his conviction by the trial court,—*vide* the above-said judgment, the petitioner's name was removed from the State Medical Register by the Medical Council under Section 23(2) of the PNDT Act,—*vide* order dated 7th November, 2005. The petitioner has challenged this order in this petition.

(5) Before dealing with the controversy, it will be necessary at this stage to set out the provisions of Section 23 of the PNDT Act, 1994 whereunder the action has been taken by the Medical Council against the petitioner, which are reproduced below :—

**“23. Offences and penalties.—**(1) Any medical geneticist gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

- (2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.
- (3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for the purposes other than those specified in sub-section (2) of Sec. 4 he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.
- (4) For the removal of doubts, it is hereby provided that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.”

(6) The petitioner has challenged the aforesaid orders of the Medical Council on the following grounds :—

- (a) that, completely without prejudice to the grounds (b) to (d) below, the removal of the name of the petitioner from the State Medical Register for a period of five years following his conviction for an offence or offences allegedly committed on 9th July, 2002 is squarely hit by the inviolable constitutional prohibition against retrospective or *ex post facto* action imposed by Article 20(1) of the Constitution. It is submitted

that while removing the petitioner's name from the State Medical Register for a period of five years, the Medical Council has purported to act under Section 23(2) of the PNDT Act, 1994 as amended by the PNDT Amendment Act, 2002 (Act No. 14 of 2003) notified with effect from 14th February, 2003. Prior to such amendment, Section 23(2) reads as under :---

“The name of the registered medical practitioner who has been convicted by the Court under sub-section (1) shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.”

Following the PNDT Amendment Act, 2002 notified with effect from 14th February, 2003, the period of two years for the first offence has been enhanced to five years. It is submitted that even if for the sake of arguments it is presumed that all other conditions for the applicability of Section 23(2) of the PNDT Act, 1994 to the petitioner are satisfied, the infliction of the enhanced penalty of removal for five years instead of two on the petitioner by purporting to apply the amended provisions of Section 23(2) of the PNDT Act (notified with effect from 14th February, 2003) in respect of an offence or offences allegedly committed on 9th July, 2002 is clearly illegal and directly hit by the prohibition under Article 20(1) of the Constitution.

- (b) Though the petitioner has been convicted for violation of certain provisions of the PNDT Act, 1994 and the Rules made thereunder and he could have been punished with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees, but the Chief Judicial Magistrate instead of awarding the sentence, released the petitioner on probation under Section 12 of the Probation of Offenders Act. It is argued that it is settled law (ever since the

judgment of the Apex Court in **Divisional Personnel Officer, Southern Railway versus T.R. Challappan (1)**, which continues to hold the field on this point despite being overruled on another point in **Tulsi Ram Patel's case**), that release on probation in lieu of sentence does not erase the stigma of conviction, or does not absolve a government servant employee of his liability to departmental punishment for misconduct, but such punishment shall not suffer a disqualification, if any, attaching to a conviction of an offence under such law in view of Section 12 of the Probation of Offenders Act. Equally, it is settled law that Section 12 does apply to a disqualification automatically attaching to a conviction and provided by that very law which prescribes the offence and punishment therefor. It is argued that this is precisely the situation in the case of the petitioner. The removal of his name from the State Medical Register on his conviction under Section 23(2) of the PNDDT Act, 1994 is directly and automatically flowing from his conviction under the same provisions i.e. Section 23(1) of the PNDDT Act, 1994. Therefore, it is argued that the respondent-Medical Council has acted illegally and without jurisdiction while ordering removal of the petitioner's name from the State Medical Register on the ground of his conviction under the PNDDT Act which is grossly in violation of Section 12 of the Probation of Offenders Act, which reads as under :—

**12. Removal of disqualification attaching to conviction.**—Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release under section, is subsequently sentenced for the original offence.”

In this context, it is further argued that while both the Probation of Offenders Act and the PNDDT Act, 1994 are Central laws, there is no

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(1) AIR 1975 S.C. 2216

provision in the PNDT Act which ousts or excludes the applicability of the Probation of Offenders Act or any provision thereof ; and secondly no general *non obstante* clause under the PNDT Act with reference to any other law. On the other hand, not only Section 12 of the Probation of Offenders Act but both Section 3 and 4 thereof as well (both of which are referred to in Section 12) contain a general *non obstante* clause with reference to any other law. In support of his contention, learned counsel for the petitioner has relied upon the decision of the Supreme Court in **Hari Chander versus Director of School Education, (2)** whereby while upholding the dismissal from service of the appellant, convicted under Section 408 of the IPC, but released on probation, the Supreme Court has held as under :—

“7. In our view, Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words “disqualification, if any, attaching to a conviction of an offence under such law” therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification.”

Thus, it is argued that the disqualification contemplated by Section 12 of the Probation of Offenders Act is something attached to the conviction which is flowing automatically from the conviction or which is a consequence or result of the conviction. In that situation, if a person is released on probation under Sections 3 and 4 of the Probation of Offenders Act in lieu of the sentence for the said conviction, then he shall not suffer disqualification notwithstanding anything contained in any other law attaching to a conviction for the said offence. Learned counsel for the petitioner argued that the removal of the doctor’s name from the State Medical Register is a necessary and automatic consequence of his conviction under the PNDT Act as is apparent from a bare perusal of Section 23(2) of the said

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(2) AIR 1998 S.C. 788



Act. The removal of the petitioner's name from the Medical Register is solely based upon his conviction under Section 23(1), and not on any conduct or misconduct of the petitioner. In view of the law so clearly and comprehensively laid down by the Apex Court as cited hereinabove, the removal of the name of the petitioner from the Medical Register is nothing but a disqualification hit by Section 12 of the Probation of Offenders Act.

- (c) Thirdly, it is argued that entirely without prejudice to ground (b) above, the expression "conviction" in Section 23(2) of the PNDT Act necessarily means and implies a conviction that is final and conclusive and not a conviction that is being impeached or still liable to be impeached by way of appeal or revision or other mode known to law. While referring to the decision of the Supreme Court in **Dalip Kumar Sharma and others versus State of Madhya Pradesh**, (3) learned counsel for the petitioner argued that a conviction that is defeasible or capable of being, or liable to be voided, annulled or undone by way of appeal or revision or other judicial process known to law, is clearly and wholly outside the purview of the said expression. Thus, the Medical Council acquires no jurisdiction to remove the name of the medical practitioner from the Medical Register of the State Medical Council under Section 23(2) of the PNDT Act, 1994 until the conviction under the PNDT Act becomes final and conclusive whose judgment has already been impeached by the petitioner by filing an appeal which is still pending for consideration in the court. Hence, the removal of the name of the petitioner from the Medical Register is illegal and void.
- (d) That the State Medical Council acquires jurisdiction to act under Section 23(2) of the PNDT Act only if and when a medical practitioner registered with the Medical Council is convicted by a criminal court under Section 23(1) of the Act or, alternatively under sub-section (3) of Section 22 or Section 25 thereof. Unless and until the medical practitioner concerned is

convicted under sub-section (1) of Section 23, sub-section (3) of Section 22 or Section 25, no question of the Council acquiring jurisdiction to act against the medical practitioner under sub-section (2) of Section 23 arises. Chapter VII of the Act comprising Section 22 to 28 and titled "Offences and Penalties" deals exclusively with offences, conviction and punishment therefor under the Act. No other part or provision of the Act provides for offences and conviction or punishment therefor. The only offences under the Act are those prescribed in sub-section (3) of Section 22, sub-section (1) and (3) of Section 23 and Section 25. Conviction for any or more of such offences is an indispensable *sine quo non* for action by the State Medical Council under sub-section (2) of Section 23. In absence of such conviction, any action by the State Medical Council purporting to act under Section 23(2) would be wholly and indubitably *coram non iudice*, without jurisdiction and a nullity for that reason.

Since the petitioner was neither prosecuted nor charged nor convicted for any of the aforesaid offences under the Act, there being no other offence created or prescribed under the PNDT Act, the order dated 7th November, 2005 passed by the Medical Council is a complete nullity in law. The provisions of Section 5 and Rules 9 and 10 (under which alone the petitioner was convicted by the trial court) do not constitute offences in themselves, apart from and independently of Section 23(1) of the PNDT Act.

(7) Learned counsel for the petitioner submitted that in case the contention of the petitioner raised in ground (a) is accepted and it is held that the name of the petitioner cannot be removed from the State Medical Register for a period of more than two years, as the date of occurrence was 9th July, 2002, in view of the provisions of Section 23(2) of the PNDT Act, 1994 existing prior to the amendment made by Act No. 14 of 2003, i.e. with effect from 14th February, 2003, then this Court need not to consider and decide the contentions raised in grounds (b) to (d), referred to above, as the petitioner has already undergone two years penalty.

(8) On the other hand, Shri B.S. Walia, learned counsel for the Medical Council argued that the protection provided under Article 20(1) of the Constitution of India would not be available to the petitioner. According to him, the said protection is available only in respect of the criminal offences punishable under Section 23 (1) of the PNDT Act, 1994 which provides for punishment by way of imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees etc. Learned counsel further argued that by the Amending Act no change has been made in sub-section 23(1) of the PNDT Act nor the petitioner has been imprisoned for his conviction as he was released on probation. He submits that the penalty provided under sub-section (2) of Section 23 of the said Act is not the punishment for conviction as contemplated under Article 20(1) of the Constitution of India. Therefore, he submits that the amended provisions of Section 23(2) of the PNDT Act which provide for enhancement of period of removal of the name of a medical practitioner from the Medical Register for a period of five years for the first offence and permanently for the subsequent offence is the ensuing civil consequences in distinction to the penal consequences for the conviction under Section 23(1) of the said Act. Therefore, if by the amendment the period of removal has been extended from two years to five years, it makes no difference and the name of the petitioner has been rightly removed from the Medical Register for a period of five years on the basis of the provisions which were existing on the date of decision. In support of his contention, learned counsel for respondent-Council has relied upon the decision of the Supreme Court in **M/s Hathising Manufacturing Co. Ltd., Ahmedabad and another versus Union of India and another, (4)**. Besides this contention, learned counsel for the respondent has also controverted the other arguments raised by the learned counsel for the petitioner.

(9) After considering the arguments raised by the learned counsel for the parties and going through the relevant provisions of the PNDT Act and the Rules made thereunder, and Article 20(1) of the Constitution of India as also considering the judgments referred during the course of arguments and other relevant judgments, we are of the opinion that the removal of the name of the petitioner from the State Medical Register for a period of five years following his conviction for the offences under the PNDT Act allegedly

committed by him on 9th July, 2002, is illegal and unconstitutional and the same is squarely hit by the inviolable constitutional prohibition against retrospective or *ex-post-facto* action imposed by Article 20(1) of the Constitution of India.

(10) Undisputedly, the alleged offence under the PNDT Act and Rules made thereunder was committed on 9th July, 2002 for which the petitioner has been convicted under Section 23(1) and released on probation,—*vide* judgment dated 24th September, 2004, and subsequently a penalty for removal of his name for a period of five years from the Medical Register has been imposed under Section 23(2) of the PNDT Act,—*vide* order dated 7th November, 2005. It is also not disputed that at the time of commission of the alleged offence, the unamended Section 23(2) of the PNDT Act provides that the name of the registered medical practitioner who has been convicted by the court under sub-section (1), could be removed by the State Medical Council for a period of two years for the first offence and permanently for the subsequent offence. The said provision was amended by PNDT Amendment Act, 2002 (Act No. 14 of 2003) notified with effect from 14th February, 2003. The amended provisions have enhanced the period of penalty for removal of the name of a medical practitioner from two years to five years with effect from 14th February, 2003. Undisputedly, the said amendment was prospective and not retrospective.

(11) In view of these facts, it is to be determined whether removal of the name of the petitioner from the State Medical Register for a period of five years by the Medical Council is in violation of Article 20(1) of the Constitution of India which provides as under :—

**“20. Protection in respect of conviction for offences.—(1)**  
No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

(12) The argument of the learned counsel for the petitioner is that Section 23 of the PNDT Act, 1994 provides for the offences and the penalties under the said Act. This Section imposes two types of penalties

for the contravention of any provisions of the PNDT Act and the Rules made thereunder. Sub-section (1) of Section 23 of the said Act provides that if a registered medical practitioner contravenes any provisions of the Act or rules made thereunder, he shall be punished with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees, and sub-section (2) further provides that the name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council on conviction for removal of his name from the Medical Register of the Council for a period of five years for the first offence and permanently for the subsequent offence. Learned counsel submitted that the removal of the name of the medical practitioner from the Register of the Medical Council on his conviction under the PNDT Act is also a penalty which attracts the rigour of Article 20 of the Constitution of India.

(13) On the other hand, it is the contention of the learned counsel for the respondent-Council that the removal of the name of the medical practitioner on his conviction under Section 23(2) of the PNDT Act and the rules made thereunder is not a punishment or penalty but it is a civil consequence which a medical practitioner would suffer on his conviction under the Act. Therefore, the protection of Article 20(1) of the Constitution of India will not be available to the petitioner and removal of his name for a period of five years on his conviction under the Act on the basis of the amended provisions is absolutely legal and valid.

(14) The aforesaid contention of the learned counsel for the respondent-Council cannot be accepted. In our opinion, the removal of the name of the medical practitioner under Section 23(2) of PNDT Act following his conviction for the offences under the said Act and the rules made thereunder for a particular period is also a penalty provided under the said Act. If various provisions of the PNDT Act are examined, it appears that Chapter VII of the Act deals with offences and penalties under the PNDT Act. The whole of Section 23 is a penal provision, attracting the rigour of Article 20 of the Constitution as is apparent from the title of Section 23 itself i.e. Offences and Penalties.

(15) It is well settled that the law which imposes additional punishment to that prescribed when a criminal act was committed is

ex-post-facto and a change in law that alters a substantial right can be ex-post-facto even if the statute takes a seemingly procedural form. It is the duty of the Court to interpret the penal laws in a manner that they do not have ex-post-facto operation. The provision contained in Article 20 of the Constitution also recognises principles laid down under Article 11(2) of the Declaration of Human Rights of the United Nations and Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which lay down as under :—

“11(2). No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”

“7(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

(2) This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

(16) The Supreme Court in **People’s Union for Civil Liberties versus Union of India**, (5) has recognised the principle that in view of the fact that India is a member of the United Nations Organisation and is also a signatory to the aforesaid conventions, it is almost an accepted proposition of law that rules of customary international law shall be deemed to be incorporated in the domestic law. It is also well settled that Article 20 of the Constitution is the most precious fundamental right which relates to the personal liberty of a person which should be given liberal interpretation. Under clause (1) of Article 20 of the Constitution, the protection available

is not only against conviction for an act or omission which was not an offence under the law in force when the same was committed, it is also against infliction of a greater penalty than what was provided under the law in force when the offence was committed. Recently, a question came up for consideration before the Supreme Court in **Transmission Corporation of A.P. versus Ch. Prabhakar and others**, (6) whether the constitutional guarantee enshrined in Article 20 (1) was confined only to prohibition against conviction for any offence except for violation of law in force at the time of the commission of the Act charged as an offence and subjection to a penalty greater than that which might have been inflicted under the law in force at the time of commission of offence or it also prohibited legislation which aggravated the degree of crime or made it possible for the accused to receive greater punishment even though it was also possible for him to receive the same punishment under the new law as could have been imposed under the prior law or deprived the accused of any substantial right or immunity possessed at the time of the commission of the offence charged, is a moot point to be debated. The said question of law has been referred to the larger Bench for consideration.

(17) As far as it is undisputed that there is no conflict to the proposition that clause (1) of Article 20 of the Constitution prohibits imposition of greater penalty for a prohibited Act which might have been inflicted under the law in force at the time of commission of offence. In the present case, Section 23 of the PNDT Act provides for the penalties and offences committed under the Act. Sub-section (1) of Section 23 of the said Act provides that whosoever contravenes any of the provisions of this Act and the rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees. Sub-section (2) of the said Section provides that the name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence. In our opinion, the removal of the name of a medical practitioner from the register of the Medical

(6) (2004)5 S.C.C. 551

Council for a period of five years (before the amendment of two years) on his first conviction is in the nature of penalty imposed on him due to his conviction under the Act. Sub-section (2) of Section 23 does not give any discretion to the medical authorities. Once the factum regarding his conviction is reported to the Medical Council, the removal of the name of the medical practitioner from the register of the Medical Council for five years (or for two years before Amendment) is mandatory. There is no discretion with the authorities to impose the penalty for a lesser period. Therefore, the removal of his name from the State Medical Register on his conviction under the PNDT Act, 1994 is directly and automatically flowing from his conviction under the same provisions i.e. Section 23(2) of the PNDT Act, because under the said sub-section the word "shall" has been used and not the word "may". In our opinion, it can be said that the provisions of sub-sections (2) and (3) of Section 23 are not penal provisions, but are provisions which provide for civil consequences. Since both the sub-sections are part and parcel which provide penalty for the alleged offence, in our opinion, the whole of Section 23 of the PNDT Act is a penal provision which attracts the rigour of Article 20 of the Constitution of India.

(18) From the reading of Article 20(1) of the Constitution of India, it is clear that in the said Article the word "penalty" has been used and not the "sentence/imprisonment". Merely because sub-section (1) of Section 23 of the PNDT Act deals with sentence/imprisonment to be imposed and sub-section (2) of the said Section deals with the removal of the name of a medical practitioner from the State Medical Register on his conviction, does not make any difference. In both the situations, a penalty is provided which is to be imposed upon a person who has been convicted for the offences under the said Act. For an offence, there can be two penalties, one in the shape of imprisonment and the other in a different shape which in the present case is the removal of the name of a medical practitioner from the State Medical Register on his conviction. In our opinion, both the penalties are subjected to rigour of Article 20 of the Constitution. Therefore, the name of the petitioner could not have been removed from the State Medical



Register as a penalty on his conviction under Section 23(2) of the PNDT Act for more than the period which was prescribed in the statute at the time of the alleged commission of the offence.

(19) In our opinion, the judgment cited by the learned counsel for the respondent-Council in **M/s Hathising Manufacturing Co. Ltd., Ahmedabad's Case** (*supra*) in support of his contention that the removal of the name of a medical practitioner from the State Medical Register on his conviction under the PNDT Act is not a punishment or a penalty, but is only a civil consequence which has flown from his conviction, is not applicable in the facts and circumstances of the present case. In that judgment, the insertion of Section 25 FFF of the Industrial Disputes Act by an amendment was challenged on the ground that it also violates Article 20(1) of the Constitution of India. In that case, it was held that the law which creates a civil liability in respect of a transaction which has taken place before the date on which the Act was enacted, does not violate the mandate of the said Article. The Supreme Court came to the conclusion that the said Section imposes civil liability to pay compensation for closure prior to the Act and non-compliance was not made an offence, therefore, the same does not attract Article 20(1) of the Constitution. In this regard, following observation has been made :—

“It is true that the Amending Act which has introduced S. 25 FFF was passed in June 1957, and liability to pay compensation arises in respect of all undertakings closed on or after 28th November, 1956. But, if liability to pay compensation is not a condition precedent to closure, by failing to discharge the liability to pay compensation and wages in lieu of notice, the employer does not contravene S.25 FFF (1). If the statute fixes criminal liability for contravention of the prohibition or the command which is made applicable to transactions which have taken place before the date of its enactment the protection of Art. 20(1) may be attracted. But S. 25 FFF (1) imposes neither a prohibition nor a command. Undoubtedly for failure to discharge

liability to pay compensation, a person may be imprisoned, under the statute providing for recovery of the amount e.g. the Bombay Land Revenue Code, but failure to discharge a civil liability is not, unless the statute expressly so provides, an offence. The protection of Art. 20(1) avails only against punishment for an Act which is treated as an offence, which when done was not an offence. It is therefore not attracted to S. 25 FFF.”

(20) In our opinion, the aforesaid observations are not applicable in the present case. It has been clearly observed that if the statute fixes criminal liability for contravention of the prohibition or the command which is made applicable to transactions which have taken place before the date of its enactment, the protection of Article 20(1) of the Constitution may be attracted. But Section 25 FFF (1) neither imposes a prohibition nor a command. In the instant case sub-section (2) of Section 23 of the PNDDT Act clearly imposes a penalty of removal of the name of a medical practitioner from the State Medical Register in case he is convicted for violating the provisions of the PNDDT Act. Therefore, it attracts the rigour of Article 20(1) of the Constitution of India. Since we have decided the ground (a) in favour of the petitioner, therefore, in view of the stand taken by the learned counsel for the petitioner, we are not deciding the other contentions raised by him.

(21) In view of the aforesaid discussion, this petition is partly allowed and the impugned order dated 7th November, 2005 and the subsequent order passed by the Medical Council is modified and penalty of removal of the name of the petitioner from the State Medical Register is reduced to two years from five years.

(22) No order as to costs.

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**R.N.R.**