

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8772 OF 2019

Mrs. Sumaiya Imran Shaikh & Anr. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

Mr. Uttam Dubey a/w. Mr. Siddhesh Rajput i/b. Law Counsellors for the Petitioners.

Mr. A.P. Vandrse, AGP, a/w. Ms. K.N. Solunke, AGP for the State.

CORAM : AKIL KURESHI &

S.J. KATHAWALLA, JJ.

DATE : 13TH AUGUST, 2019

P.C.:

1. On 8th August, 2019, the Division Bench of this Court (Coram : R.M. Borde and Mr. N.J. Jamadar, JJ) passed the following Order :

“1. Not on board. Mentioned. Taken on board.

2. The Petitioner seeks permission to terminate the pregnancy at gestational age of 28 weeks, on account of deformities found during sonological examination of the fetus. According to the Petitioner, there is a substantial risk that if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

3. The Petitioner has placed on record the report of the sonological examination conducted on 24th July, 2019. In the sonological examination following deformities are noticed,

“Impression :

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Single live intrauterine gestation of mean gestational age 23 weeks and 4 days with semilobar holoprosencephaly and complete bilateral cleft lip and palate.”

So far as the status of brain is concerned it is reported thus:

“There is fusion of bilateral thalami and anterior cerebral hemispheres with single ventricle suggestive of semilobar holoprosencephaly”

4. Considering the aforesaid report of sonologist, it is desirable to refer the Petitioner for medical examination by the Medical Board consisting of Dean of the Hospital, Head of the Department (Gynecology), Professor and Head of the Department

of Pediatric, Professor and Head of the Department of Cardiology, Professor and Head of the Department of Radiology and Professor and Head of the Department of Psychiatry and any other expert as suggested by the Dean of the Medical College.

5. The Petitioner shall appear before the Medical Board of Sir J. J. Group of Hospitals and Grand Medical College, Mumbai, at 11.00 a.m. on 9th August, 2019.

6. The Medical Board shall conduct the medical examination of the Petitioner in reference to the fetal deformities, referred as above, and shall tender the report through the learned Government Pleader on 13 th August, 2019.

7. List the matter for further consideration on 13 th August, 2019.

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2. Pursuant to the above Order, the Dean of the Sir J.J. Group of Hospitals, Mumbai has constituted a Medical Board comprising of the following doctors :

- i. Dr.Ashok Anand, Professor and Head, Department of Obstetrics and Gynecology, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.
- ii. Dr.V.P.Kale, Professor and Head, Department of Psychiatry, Grant Government Medical College and Sir. J.J. Group of Hospitals, Mumbai.
- iii. Dr.Varsha Rathi, Professor, Department of Radiology, Sir.J.J. Group of Hospitals, Mumbai.
- iv. Dr.Nita Sutay, Professor and Head, Department of Pediatrics, Grant Government Medical College and Sir J.J.Group of Hospitals, Mumbai
- vii. Dr.Kalyan Munde, Professor and Head, Department of Cardiology, Sir J.J. Group of Hospitals Mumbai.

3. The Board has submitted its report to this Court today. We have gone through the report and the opinion of the Board, which reproduced hereunder :

“UPON EXAMINATION & AFTER CAREFUL STUDY OF MULTIPLE SONOGRAPHY REPORTS, IT IS CONFIRMED THAT THE FETUS SUFFERS FROM SERIOUS PHYSICAL CONDITION “SEMILOBAR HOLOPROSENCEPHALY AND COMPLETE

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BILATERAL CLEFT LIP AND PALATE”.

THE CONDITION OF THE FETUS FULFILLS THE CRITERIA OF “SUBSTANTIAL RISK OF SERIOUS PHYSICAL HANDICAP”.

THE WOMAN WAS BEEN EXPLAINED ABOUT THE OUTCOME IN THE LANGUAGE SHE UNDERSTANDS.

THE PREGNANT WOMAN HAS VOLUNTARILY EXPRESSED HER DESIRE TO TERMINATE THE PREGNANCY AND IS WELL INFORMED ABOUT THE NATURE OF THE CONDITION OF FETUS AND ITS OUTCOME. SHE IS ANGUISHED WITH THE CONDITION OF THE FETUS IN UTERO. AS THE CHILD BORN WITH MAY HAVE MORBID LIFE WITH MULTIPLE OPERATIVE INTERVATIONS WITH VERY HIGH MORBIDITY AND MORTALITY.

THE PREGNANCY HAS ADVANCED TO 23 WEEKS, 4 DAYS AND IS BEYOND 20 WEEKS CUT OFF OF THE MEDICAL TERMINATION OF PREGNANCY ACT. HENCE SHE HAS APPROACHED COURT FOR TERMINATION OF PREGNANCY.

THUS IF THE COURT PERMITS, THE PREGNANCY CAN BE TERMINATED AT ANY TERTIARY CARE HOSPITAL, AS DESIRED BY THE WOMAN.”

4. In view thereof, the above Writ Petition, which is taken up for final hearing, is allowed. The Petitioner No. 1 is permitted to undergo medical termination of pregnancy at Sir J.J. Group of Hospitals, Mumbai.
5. Since the learned Advocate appearing for the Petitioners has informed the Court that the Petitioners are not in a position to bear the medical expenses of the procedure of medical termination of pregnancy at Sir J.J. Group of Hospitals, Mumbai, the Dean of Sir J.J. Group Hospitals is requested to arrange the procedure of medical termination of pregnancy of Petitioner No. 1 free of costs.
6. It is clarified that Petitioner No. 1 is informed by the Committee / Medical Board about the risk factors involved and that Petitioner No. 1 shall undergo the procedure of medical termination of pregnancy at her own risk. It is further made clear that the doctors, who have put their opinions on record, shall have the immunity in the event of occurrence of any litigation arising out of the instant Petition.
7. Rule is accordingly made absolute.
8. There shall be no order as to costs.
9. All concerned including the Dean of Sir J.J. Group of Hospitals, Mumbai, shall act upon the authenticated copy of this Order.
10. The Writ Petition is accordingly disposed off.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)

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