

Bombay High Court

XXXXXXXXXXXX vs XXXXXXXXXXXX on 31 December, 2021

Bench: S.J. Kathawalla, Milind N. Jadhav

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.31015 OF 2021

XXXXX	...	Petitioner
Versus		
State of Maharashtra	...	Respondent

Ms. Aditi Saxena i/by Mr. Kaustubh Gidh, for Petitioner.
Mr. Abhay Patki, Addl. Govt. Pleader with Mrs. Uma Palsule-Desai, AGP, for State.
CORAM: S.J. KATHAWALLA &
 MILIND N. JADHAV, JJ.

DATE: 31st DECEMBER, 2021
 (VACATION COURT)

P.C.:

1. As recorded in our order dated 29th December, 2021, the Petitioner who is a 30 years old married lady and is 25 weeks pregnant, has moved this Court seeking medical termination of her pregnancy on the ground that in her sonography reports, it is recorded that the foetus suffers from microcephaly. As recorded in our said order, microcephaly is a medical condition involving a smaller than normal head. Microcephaly may be present at birth or it may develop in the first few years of life; since brain growth is correlated with head growth, people with this disorder often have an intellectual disability, poor motor function, poor speech, abnormal facial features, seizures and dwarfism.

2. We had therefore, directed the Dean of J.J. Group of Hospitals, Mumbai to constitute a medical board comprising of the Dean of the said Hospital, Head of the SSP 1/6 3 wpl 31015 of 2021.doc Department (Gynecology), Professor and Head of Department of Pediatric / Cardiac Surgeon, Professor and Head of Department of Radiology and Head of Psychiatry Department, Professor and Head of Neurological Department and any other expert in the field as the Dean may deem appropriate to be included to examine the Petitioner and submit their report on 31 st December, 2021 at 10.30 a.m. qua the termination of the pregnancy of the Petitioner.

3. Accordingly, the Petitioner was present before the Board on 30 th December, 2021 to enable the medical board to examine her and submit their report to this Court today at 10.30 a.m. The

Petitioner has been examined by the Medical Board consisting of Dr. Ashok Anand, Professor and Head, Department of Obstetrics and Gynecology, Dr. Vanshree Patil, Professor & Head, Dept. of Psychiatry, Dr. Shruti Dhale, Associate Professor and Head, Dept. of Paediatrics, Dr. Yogesh Thube, Assistant Professor, Dept. of Radiology, Dr. Shashank Nagendra, Assistant Professor, Dept. of Neurology and Dr. Hrushikesh Khoraskar, Assistant Professor, Dept. of Neurosurgery of Grant Government Medical College and Sir J.J.Group of Hospitals, Mumbai. The said Medical Board have submitted their report dated 30 th December, 2021 to this Court. We have perused the report and the opinion of the medical Board is reproduced hereunder :

"After careful examination of patient and study of ultrasonography reports, the Committee has come to the conclusion that in view of severe microcephaly and potential mental retardation and cognitive affection of the SSP 2/6 3 wpl 31015 of 2021.doc fetus the mother is anguished with the condition of fetus in utero. Therefore, the termination of the affected foetus is advisable as per the potential morbidities.

The mother has expressed her desire to terminate the pregnancy and is well informed about the nature of the condition of the Fetus and its outcome. Since the pregnancy has advanced to 26 weeks she has approached to Honourable High Court for termination of pregnancy. If the Court permits, the medical termination of fetus can be done in any center where the pregnant woman wishes to undergo the procedure. The Hon'ble High Court is however, requested to instruct the parents to bear responsibility of the child and the required neonatal management if born alive."

4. In the backdrop of the opinion of the Medical Board, we are of the opinion that the continuation of pregnancy will affect the mental health of Petitioner. The Division of this Court (Coram : A.S.Oka, as he then was and M.S.Sonak, JJ.) in their Order dated 3rd April, 2019 passed in Writ Petition Nos.10835 of 2018 and 9748 of 2018 have correctly held that "in a situation where continuation of pregnancy poses grave injury to physical and mental health of the mother, the pregnant mother could not be forced to continue with the pregnancy merely because it had extended beyond the ceiling of 20 weeks; that would be a serious affront to fundamental rights of such mother to privacy, to exercise reproductive choices and even to her bodily integrity as also dignity." We therefore, pass the following order :

(i) As per the opinion dated 30th December, 2021 of the Medical SSP 3/6 3 wpl 31015 of 2021.doc Board of Grant Government Medical College and Sir J.J.Group of Hospitals, Mumbai, the Petitioner is permitted to undergo the procedure for medical termination of pregnancy.

(ii) The Petitioner has offered to present herself on 1 st January, 2022 at 11.00 a.m., at Wadia Hospital to complete the requisite procedure of medical termination of her pregnancy under the guidance / supervision of Dr. Vandana Bansal.

(iii) In the event of the child being born alive, the Medical Practitioner conducting the procedure shall ensure that all necessary facilities are made available to such child for saving his/her life.

(iv) In the event of the child being born alive and the Petitioner and her husband are not willing to take responsibility of such child, the State and its agencies will have to assume full responsibility for such child.

(v) The Writ Petition is accordingly disposed of.

(vii) All concerned shall act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.

5. Before parting with this order, it is necessary to point out that under Section 3(2)(b) of the Medical Termination of Pregnancy (Amendment) Act, 2021 the limitation to undergo medical termination of pregnancy is extended upto 24 th weeks. However, Section 3(2B) carves out an exception in cases of foetal abnormalities. The said Section reads thus :

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"3 (2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessiated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board."

6. Section 3 (2C) and (2D) reads thus :

"(2C) Every State Government or Union Territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act, to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following namely : -

- (a) a Gynaecologist;
- (b) a Paediatrician;
- (c) a Radiologist or Sonologist; and
- (d) such other number of members as may be

notified in the Official Gazette by the State Government or Union Territory, as the case may be.

7. Though required to constitute Medical Boards under Section 3(2C), the State of Maharashtra has not done so thus far. The failure of the State Government to do so not only causes hardship to women seeking medical termination of pregnancy, SSP 5/6 3 wpl 31015 of 2021.doc but also increases the number of Petitions filed for such purpose. The State of Maharashtra should therefore forthwith proceed to constitute Medical Boards, as the same will result in providing efficacious redressal to women seeking medical termination of pregnancy with foetal abnormalities.

A copy of this order shall be forthwith forwarded to the Learned Advocate General for further and prompt action in this regard.

(MILIND N. JADHAV, J.)

(S.J.KATHAWALLA, J.)

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