

382 SUPREME COURT CASES (2016) 14 SCC

**(2016) 14 Supreme Court Cases 382**

*(Record of Proceedings)*

(BEFORE JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.)<sup>§</sup>

Writ Petition (C) No. 593 of 2016

X .. Petitioner;

*Versus*

UNION OF INDIA AND OTHERS .. Respondents.

*With*

(BEFORE JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.)<sup>§</sup>

Writ Petition (C) No. 593 of 2016

X .. Petitioner;

*Versus*

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 593 of 2016, decided on July 22, 2016

*With*

Writ Petition (C) No. 593 of 2016, decided on July 25, 2016

**Human and Civil Rights — Medical Termination of Pregnancy Act, 1971 — Ss. 5, 3 and 4 — Termination of pregnancy after 20 weeks to save life of pregnant woman — When permissible — Grave danger to physical and mental health of pregnant woman (an alleged rape victim)\***

— Petitioner wanted to terminate her pregnancy of about 23-24 weeks — Medical Board was specially constituted in pursuance of directions of Supreme Court — Board was of opinion that continuation of pregnancy can gravely endanger petitioner's physical and mental health — Termination of pregnancy under such special circumstances — Legality of — Held, according to S. 3 it is permissible for termination of pregnancy after 20 weeks — However, S. 5 creates exception to S. 3 and it permits termination of pregnancy after 20 weeks if it is necessary to save life of pregnant woman — Medical Board already was of opinion that risk of continuation of pregnancy can gravely endanger physical and mental health of petitioner — Further, Board also advised not to continue pregnancy — Hence, liberty granted to petitioner to terminate her pregnancy, if so advised — Constitution of India — Art. 21 — Penal Code, 1860, S. 376

(Paras 6 to 13)

G-D/57296/SR

§ **Ed.:** Given the nature of these orders, they have been published in SCC, together, in chronological order, by the date of the order, as one combined report with the citation: (2016) 14 SCC 382. This is to facilitate a holistic view of the matters decided in such orders. Furthermore, to make it possible to search for a particular order by date as well, in SCC Online, each order has been reported separately with an independent citation with reference to the page on which it falls in SCC, in the combined report of all the orders i.e. (2016) 14 SCC 383(1) and (2016) 14 SCC 383(2).

\* **Ed.:** See report in *The Indian Express*, <http://indianexpress.com/article/india/india-news-india/sc-allows-alleged-rape-victim-to-terminate-pregnancy-post-mandated-20-weeks-2934646/>. Last visited on 27-1-2017.

Advocates who appeared in this case :

- Colin Gonsalves, Senior Advocate (Moses Raj and Satya Mitra, Advocates) for the Petitioner;
- a** Ranjit Kumar, Solicitor General [Ms Binu Tamta, Ajay Sharma, Ms Kiran Bhardwaj (for D.S. Mahra) (Advocate-on-Record), Nishant Katneshwarkar and Arpit Rai, Advocates] for the Respondents.

**(2016) 14 SCC 383(1)**

**ORDER dated 22-7-2016**

- b** (BEFORE JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.)  
Writ Petition (Civil) No. 593 of 2016

1. Mr Ranjit Kumar, learned Solicitor General for India, has entered appearance on behalf of Respondents 1 and 3. Mr Nishant Katneshwarkar, Advocate has entered appearance on behalf of Respondent 2.

- c** 2. The learned counsel for the respondents state that it would be in the fitness of the matter if a Medical Board at KEM Hospital and Medical College, Mumbai is ordered to be constituted, so as to submit a report with reference to the petitioner, and only thereafter to consider the matter on merits.

- d** 3. Accepting the suggestion of the learned Solicitor General for India, and the learned counsel for the State of Maharashtra, we direct Respondent 2 State of Maharashtra, to constitute a Medical Board at KEM Hospital and Medical College, Mumbai, so as to medically examine the petitioner. The learned counsel for Respondent 2 undertakes to ensure that the medical examination of the petitioner shall be conducted by the Medical Board on 23-7-2016.

- e** 4. The petitioner undertakes to appear before the Medical Board at the premises of KEM Hospital and Medical College, Mumbai at 10.00 a.m. on 23-7-2016 for medical examination. The report of the Medical Board shall be placed for the consideration of this Court on 25-7-2016 in a sealed cover.

5. Post for further consideration on 25-7-2016.

**(2016) 14 SCC 383(2)**

**ORDER dated 25-7-2016**

- f** (BEFORE JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.)  
Writ Petition (Civil) No. 593 of 2016

- g** 6. By our Motion Bench order dated 22-7-2016<sup>1</sup>, we had accepted the suggestion of the learned Solicitor General for India, and the learned counsel for the State of Maharashtra in directing Respondent 2, the State of Maharashtra, to constitute a Medical Board at KEM Hospital and Medical College, Mumbai, to medically examine the petitioner.

7. In furtherance of the direction issued by this Court, a Medical Board comprising of the following seven doctors was constituted at KEM Hospital and Medical College, Mumbai.

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<sup>1</sup> Set out in paras 1 to 5, above.

1. Dr Avinash N. Supe, Director (Medical Education and Major Hospitals) and Dean (G&K) — Chairman

2. Dr Shubhangi Parkar, Professor and HOD, Psychiatry, KEM Hospital a

3. Dr Amar Pazare, Professor and HOD, Medicine, KEM Hospital

4. Dr Indrani Hemantkumar Chincholi, Professor and HOD, Anaesthesia, KEM Hospital

5. Dr Y.S. Nandanwar, Professor and HOD, Obstetrics and Gynaecology, LTMMC and LTMG Hospital b

6. Dr Anahita Chauhan, Professor and Unit Head, Obstetrics and Gynaecology, KEM Hospital

7. Dr Hemangini Thakkar, Additional Professor, Radiology, KEM Hospital.

8. The Medical Board has submitted a report dated 23-7-2016, which is taken on record and marked as Annexure A. In its analysis, the report, inter alia, recorded as under: c

“4. From general medical examination she has no active medical complaints.

5. Obstetric examination shows 24 weeks’ pregnancy, with severe polyhydramnios, with foetal parts not felt. On internal examination, the cervix is closed and high up. d

6. Radiological diagnosis is single live foetus with gestational age of 23 weeks 3 days with following malformations:

(1) exencephaly i.e. evidence of no skull vault above orbit, with presence of brain tissue floating in amniotic fluid. e

(2) omphalocele (presence of liver, intestines and stomach bubble outside the abdomen and in the amniotic cavity).

(3) Heart is bulging into the omphalocele sac.

(4) Kyphoscoliosis which is an anomaly of the spine involving the thoracolumbar vertebrae with polyhydramnios (excessive amniotic fluid) with closed vertex.” f

9. Based on the above medical examination, the findings of the Medical Board were expressed as under:

“1. Current pregnancy is about 23-24 weeks by clinical and radiological evaluation. g

2. In view of severe multiple congenital anomalies, the foetus is not compatible with extra-uterine life.

3. Risk to the mother of continuation of pregnancy can gravely endanger her physical and mental health. h

4. Risk of termination of pregnancy is within acceptable limits.

Hence, the Medical Board advises that the patient, Ms X should not continue with this pregnancy.”

a 10. The question that arises for our consideration is, whether it would be justified and legal, to terminate the pregnancy of the petitioner, which the medical report itself shows, as of 24 weeks’ duration?

b 11. The learned Attorney General representing the Union of India has invited our attention to Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as “the Act”), which is extracted below:

c “3. *When pregnancies may be terminated by registered medical practitioners.*—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner—

d (a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are,

of opinion, formed in good faith, that—

e (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

f *Explanation I.*—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

g *Explanation II.*—Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman’s actual or reasonable foreseeable environment.

h (4)(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

A perusal of the above provision reveals, that the provision deals with termination of pregnancies of different durations, and the procedure contemplated therefor. Section 3 leaves no room for doubt, that it is not permissible to terminate a pregnancy, after 20 weeks. However, Section 5 of the Act lays down exceptions to Section 3. a

12. Section 5 of the Act is also reproduced hereunder:

“5. *Sections 3 and 4 when not to apply.*—(1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. b

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified. c

(3) Whoever terminates any pregnancy in a place other than that mentioned in Section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years. d

(4) Any person being owner of a place which is not approved under clause (b) of Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years. e

*Explanation 1.*—For the purposes of this section, the expression “owner” in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

*Explanation 2.*—For the purposes of this section, so much of the provisions of clause (d) of Section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.” f

A perusal of Section 5 of the Act reveals that the termination of pregnancy, which is necessary to save the life of the pregnant woman, is permissible.

13. Having perused the medical report (relevant extracts whereof have been reproduced hereinabove), we are satisfied that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy g  
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in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to  
*a* terminate her pregnancy.

**14.** The writ petition is disposed of in the above terms. As a sequel to disposal of the writ petition, pending interlocutory application also stands disposed of.

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