

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WP-ASDB-LD-VC-230 / 2020

WRIT PETITION (ST.) NO. OF 2020

Seema Pandurang Survase ... Petitioner
Vs.
State of Maharashtra ... Respondent

Ms. Aditi Saxena i/b. Mr. Niranjan Deshpande for Petitioner.
Mrs. M. P. Thakur, AGP for Respondent-State.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

DATE : AUGUST 03, 2020

P.C. :

Heard Ms. Saxena, learned counsel for the petitioner and Mrs. Thakur, learned AGP for the respondent-State.

2. Petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondent for medical termination of her pregnancy which is stated to be in the 24th week on the ground of fetal abnormality.

3. When the writ petition was moved on 30.07.2020, this Court had passed the following order:

“1] The Petitioner is seeking medical termination of pregnancy of 24 weeks.

2] A Medical Board shall be constituted by the Dean of Sasoon General Hospital, Pune, comprising of himself and at least three other Doctors.

3] The Petitioner shall make herself available before the Medical Board tomorrow. The Medical Board shall examine the Petitioner and submit a report to this Court before the next date.

4] Stand over to 3rd August, 2020.”

4. Today when the matter is called upon, report of the medical board

has been placed before us in a sealed cover which we have opened in the Court.

5. From a perusal of the report of the medical board, it is seen that the medical board was comprised of the following Doctors:

Sr. No.	Name	Designation	Specialization
1.	Dr. Muralidhar Tambe	Dean	PSM
2.	Dr. Ramesh Bhosale	Prof & Head of Department	Obst & Gyn
3.	Dr. Ruchi N. Thakur	Associate Professor	Obst & Gyn
4.	Dr. Shashikala Sangle	Prof & Head of Department	Medicine
5.	Dr. Aarti Kinikar	Prof & Head of Department	Paediatrics
6.	Dr. Shefali Pawar	Prof & Head of Department	Radiology
7.	Dr. Jay Gunjkar	Assistant Professor	Neurosurgery

6. Petitioner was examined by the medical board on 31.07.2020. As per recommendation of the medical board, petitioner is in her 23rd week of pregnancy. Ultrasonographic findings of multiple fetal anomalies have been diagnosed. The baby has poor prognosis and can have severe mental and physical morbidity and mortality. Therefore, medical termination of pregnancy has been recommended.

7. In *Suchita Srivastava Vs. State (UT of Chandigarh)*, (2009) 9 SCC 1, Supreme Court expressed the view that the right of a woman to have reproductive choice is an inseparable part of her personal liberty as envisaged under Article 21 of the Constitution. She has a sacrosanct right to her bodily integrity.

8. The *Medical Termination of Pregnancy Act, 1971* has been enacted to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. As per the statement of objects and reasons, provisions regarding termination of pregnancy in the Indian Penal Code have virtually become *otiose*. Abortion was considered or looked at

primarily from the prism of an offence. With expansion and improvement of health services, doctors were often confronted with gravely ill or dying pregnant women requiring operation. Therefore to liberalise existing provisions relating to termination of pregnancy, the aforesaid Act was conceived as a health measure to mitigate the following:

- where there is danger to the life or risk to physical or mental health of the woman;
- on humanitarian grounds, such as, when pregnancy arises from a sex crime; and
- on eugenic grounds where there is substantial risk that the child, if born, would suffer from deformities and diseases.

9. Section 3 of the *Medical Termination of Pregnancy Act, 1971*, briefly 'the Act' hereinafter, deals with situations when pregnancies may be terminated by the registered medical practitioners. Section 3 is extracted hereunder:

“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,-

(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-

(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.

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.

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.

(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.”

10. Supreme Court in *X Vs. Union of India*, (2016) 14 SCC 382 considered the aforesaid provision and observed that the said provision deals with termination of pregnancies of different durations and the procedure contemplated thereof. Section 3 leaves no room for doubt that it is not permissible to terminate a pregnancy after 20 weeks.

11. On the other hand, section 5 of the Act enumerates the situations when sections 3 and 4 would not apply. Section 5 is 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.

(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.

(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.

(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.

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.”

12. Supreme Court in the above case, on perusal of Section 5 observed that termination of pregnancy, which is necessary to save the life of the pregnant woman, is permissible.

13. In that case, Supreme Court considered the report of the medical board which recorded a finding that the risk to the petitioner of continuation of her pregnancy of 24 weeks could gravely endanger her physical and mental health. In the light of the above, Supreme Court was satisfied that it was permissible to allow the petitioner to terminate her pregnancy which was in the 24th week in terms of Section 5 of the Act. In view thereof liberty was granted to the petitioner to terminate her pregnancy if she was so advised.

14. In *Sarmishtha Chakraborty Vs. Union of India*, (2018) 13 SCC

339, Supreme Court was again confronted with the prayer made by the petitioners, husband and wife, for constituting medical board to assess the pregnancy of the wife and directing termination of the pregnancy, after the pregnancy had crossed the outer limit of 20 weeks. In that case, Supreme Court considered the report of the medical board which revealed that the mother i.e. petitioner wife would suffer mental injury if the pregnancy was continued and there would be multiple problems if the child was born alive. Medical board had arrived at the conclusion that in a special case of that nature, pregnancy should be allowed to be terminated even after 20 weeks. In the fact situation of that case, Supreme Court directed medical termination of pregnancy of the petitioner wife.

15. This issue cropped up again before the Supreme Court in *A Vs. Union of India*, (2018) 4 SCC 75. In that case also, petitioner sought for a direction to allow her to undergo medical termination of her pregnancy beyond 20 weeks as she apprehended danger to her life when she discovered that her fetus was diagnosed with severe defects which were untreatable and certain to cause the infant's death during or shortly after birth, which was also likely to endanger the mother's life. After evaluation of the report submitted by the medical board which stated that petitioner was in her 25th / 26th week of pregnancy, Supreme Court permitted the petitioner to undergo medical termination of her pregnancy.

16. Thus having regard to the above and upon thorough consideration of the matter as well as on perusal of the report of the medical board, we are of the opinion that liberty may be granted to the petitioner to terminate her pregnancy which is in the 24th week for the reasons given by the medical board.

17. Accordingly, permission is accorded to the petitioner for termination of her pregnancy to be carried out under the supervision of

the medical board of Sassoon General Hospital, Pune or any other hospital which is registered under the provisions of the aforesaid Act.

18. With the above direction, writ petition is disposed of.

19. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

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