

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11940 OF 2017

Priti Mahendra Singh Rawal

...Petitioner

Versus

1.Union Of India And Ors.

...Respondents

Ms.Meenaz Kakallia with Ms.Bhavana Mhatre & Ms.Kranti L.C., for the
Petitioner.

Mr.D.P. Singh, for Respondent Nos.1 and 3.

Mr.Sandeep Babar, AGP for Respondent No.2

**CORAM : SHANTANU KEMKAR &
G. S. KULKARNI, JJ.**

DATE : NOVEMBER 6, 2017

PC.:

Petitioner -Priti Mahendra Singh Rawal has approached this Court under Article 226 of the Constitution of India, seeking direction to the first respondent to produce a report of the appropriate committee which may be constituted by this Court for her examination and submitting its report as to whether the petitioner can be allowed to get the pregnancy terminated.

2. On 3 November 2017 this Court while issuing notices to the respondents, constituted a committee of experts from Sir.J.J.Groups of

Hospitals, Mumbai. As per the Medical Board's report as constituted by this Court, the petitioner has been medically examined by the Committee. The Committee has submitted its opinion. A detailed opinions of various experts are filed alongwith the said opinion of the dated 4 November 2017. The Committee which has examined the petitioner opined thus:-

“OPINION OF THE COMMITTEE

DATE-04/11/2017

UPON EXAMINATION OF THE PATIENT PRITI AND AFTER CAREFULLY STUDYING THE SONOGRAPGHY REPORTS AND FETAL 2D ECHO REPORTS, IT IS CONFIRMED THAT THERE ARE MULTIPLE SERIOUS NEUROLOGICAL AND SKELETOL ABNORMALITIES IN THE FETUS. THERE IS ARNOLD CHIARI MALFORMATION WITH HYDROCEPHALUS WITH LARGE LOWER THORACIC AND LUMBAR POSTERIOR SPINAL DEFECT ASSOCIATED WITH A LARGE MENINGOMYELOCELE. THE LOWER LIMB SHOWS NO MOVEMENT ASSOCIATED WITH ABNORMAL CONTOUR OF THE FOOT AND AN ELONGATED URINARY BLADDER. THESE APPEARANCES ARE SUGGESTIVE OF NEUROGENIC ETIOLOGY. THESE ABNORMALITIES HAVE HIGH CHANCES OR MORBIDITY & MORTALITY IN THE NEWBORN. IT ALSO REQUIRES MULTIPLE SURGERIES. THERE ARE HIGH CHANCES OF MENINGITIS, MENTAL RETARDATION, PARALYSIS OF LOWER LIMBS AND LOSS OF URINE AND BOWEL CONTROL THERE IS NO MAJOR CARDIAC ABNORMALITY.

THE WOMAN HAS BEEN EXPLAINED THE OUTCOME OF THIS PREGNANCY IN THE LANGUAGE SHE UNDERSTANDS. SHE IS MENTALLY SOUND & ABLE TO TAKE HER OWN DECISION ABOUT MEDICAL TERMINATION OF PREGNANCY.

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

THE PREGNANT WOMAN HAS VOLUNTARILY EXPRESSED HER DESIRE TO TERMINATE THE PREGNANCY AND IS WELL INFORMED ABOUT THE NATURE OF THE FETUS AND ITS OUTCOME.

THE PREGNANCY IS ADVANCED TO 25 WEEKS 6 DAYS AND IS BEYOND 20 WEEKS CUT OFF OF THE MEDICAL TERMINATION ACT. HENCE, SHE HAS APPROACHED HON. HIGH COURT, BOMBAY FOR TERMINATION OF PREGNANCY.

AT THIS STAGE OF PREGNANCY THE RISK OF TERMINATION REMAINS THE SAME AS THE NATURAL LABOUR AT TERMS.

THUS IF THE COURT PERMITS THE PREGNANCY CAN BE TERMINATED AS DESIRED BY THE WOMAN.

Sd/- 4/11/17
Dr.VPKale.
VICE DEAN &
PROFESSOR & HEAD
DEPT OF PSYCHIATRY
GGMC, MUMBAI.

sd/-
Dr.Nita Sutay
PROFESSOR & HEAD
DEPT OF PAEDIATRICS
GGMC, MUMBAI

sd/-
Dr.V.N.Kurude
ASSO.PROFESSOR
DEPT OF OBGY
GGMC, MUMBAI.

Sd/-
Dr.Shilpa Domkundwar
PROFESSOR & HEAD
DEPT OF RADIOLOGY
GGMC, MUMBAI.

sd/- 4.11.17
Dr.Sachin Giri
ASSISTANT PROFESSOR
DEPT OF NEUROSURGERY
GGMC, MUMBAI.”

3. We have gone through the aforesaid opinion as also the opinion of various other experts including Paediatrics Surgeon, Professor and HOD of Department of Paediatrics, Professor and HOD of Cardiovascular Surgery, Associate Professor and HOD of Department of Psychiatry. Upon examination of the petitioner and evaluation of the opinions, the aforesaid committee / Medical Board has concluded that there are multiple serious neurological and skeletal abnormalities in the fetus. There is Arnold Chiari malformation with hydrocephalus with large lower thoracic and lumbar posterior spinal defect associated with a large

meningomyelocele. The lower limb shows no movement associated with abnormal contour of the foot and an elongated urinary bladder. These appearances are suggestive of neurogenic etiology. These abnormalities have high chances of morbidity & mortality in the newborn. It also requires multiple surgeries. There are high chances of meningitis, mental retardation, paralysis of lower limbs and loss of urine and bowel control. It also appears that the petitioner has been explained the outcome of this pregnancy in the language she understands. As per the opinion, she is mentally sound & able to take her own decision about medical termination of pregnancy. The condition of the fetus fulfills the criteria of “substantial risk of serious physical handicap” in the fetus. It is also clear that the petitioner has voluntarily expressed her desire to terminate the pregnancy and is well informed about the nature of the fetus and its outcome.

4. Having regard to the aforesaid, it is very difficult for us to refuse the permission to the petitioner to undergo medical termination of the pregnancy. It is certain that if the petitioner's fetus is allowed to born, there is risk that it would suffer from lifelong serious physical handicap, which cannot be avoided. It appears that the baby will certainly not grow any further.

5. In view of the above peculiar situation and having due regard to the fundamental rights conferred on the petitioner under Article 21 of the Constitution of India to live life of dignity, it will be appropriate and in the interest of justice to permit the petitioner to undergo the medical termination of pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971. Such fundamental right as conferred on the petitioner would not allow her to lead and live a life of misery.

6. The learned AGP as also the learned Counsel for Union of India have not opposed the petitioner's prayer on any ground, legal or medical. We order accordingly.

7. We further direct that the termination of the petitioner's pregnancy to be performed tomorrow by the Experts Doctors of Sir.J.J.Group of Hospital, Mumbai, where she has to undergo medical check up.

8. The termination of the pregnancy will be supervised by the Committee/Medical Board constituted by this Court which shall maintain the complete report of the procedure which would be performed on the

petitioner at the time of termination of the pregnancy.

9. With the aforesaid directions, we allow this petition in terms of prayer clause (b) seeking direction to the respondents to allow the petitioner to undergo medical termination of the pregnancy.

10. With the aforesaid directions, the petition is disposed of.

11. Parties to act on the authenticated copy of this order.

(G. S. KULKARNI, J.)

(SHANTANU KEMKAR, J.)