IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13728 OF 2017

Rajashri Nitesh Chadar **...Petitioner**

Versus

Union of India & ors. **...Respondents**

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Ms.Minal Kakalia a/w. Ms. Neha Phillip for the petitioner.
Mr.Rui A. Rodrigues a/w. N. R. Prajapati, Mr. Upendra Lokegaonkar for respondent nos.1 & 3.
Mr.Sandeep Babar, AGP for respondent no.2.
Dr.Pravin A. Bangar, AMO, KEM Hospital Parel present.
Ms.Pooja Yadav for MCGM.

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CORAM : SHANTANU S. KEMKAR &
R. G. KETKAR, JJ.

DATE : 18th DECEMBER, 2017.

P.C. :

1. Heard parties through their counsel. With consent heard and finally disposed of.

2. In this petition, on 13th December, 2017 while issuing notice to the respondents, the Medical Board of expert Doctors of Seth G. S. Medical College & KEM Hospital, Parel, Bombay was constituted by this Court to medically examine the petitioner as her pregnancy was stated to be of 22 weeks so as to form opinion whether it would be

appropriate to direct respondent no.2 to allow the petitioner to carry out the medical termination of pregnancy in view of the various serious infirmities found in the certificate filed by the petitioner from Nanavati Super Specialty Hospital.

3. In pursuance of the order passed by this Court the Medical Board of G. S. Medical College & KEM Hospital, Parel, Bombay has submitted its report dated 15th December, 2017. On going through the report it appears that the Medical Board has examined the petitioner's physical condition and has given its opinion.

4. The relevant portion of the opinion of the Medical Board reads as under;

> *"7. Obstetric examination shows about 22-24 weeks pregnancy, the petitioner herself is in fair health at present.*
>
> *8. Ultrasonographic diagnosis is single live fetus with gestational age of 23 weeks with Dandy Walker malformation.*
>
> *9. As per neurological review, with Dandy Walker malformation. The fetus after birth may have mental retardation, seizures and ataxia. The possible severity of these disabilities cannot be quantified at present.*
>
> *10. As per pediatric surgical review, there is no surgical cure for Dandy Walker malformation.*

11. Pre-anesthetic assessment-The patient is fit for general/regional anesthesia."

5. Based upon the aforesaid findings, the Medial Board has stated as under;

"1. The child if born, viable, has possible risk of mental retardation, ataxia and seizures which cannot be quantified at present.

2. If the pregnancy is terminated now as per the patient's and her family's request:

(a) The most common complication of second-trimester medical abortion is retained placenta, which is estimated to occur at a rate of 15% to 50%.

(b) Other complications of medical abortion include hemorrhage requiring transfusion (,1%), infection (2.6%), and failed abortion.

(c) In advanced gestational age cases induction time is longer and risk of hemorrhage is greater.

(d) The mortality rate with abortions performed at eight weeks or earlier was 0.1 deaths per 100000 legal terminations, and rises to 8.9 deaths per 100,000 abortions for those at 21 weeks or later. Mortality with abortions after 20 weeks is higher than that with natural live births.

(e) If induction fails, the patient may require hysterotomy for maternal indication; in that case, in future pregnancy there is small chance of rupture of scar (about 1%), the relative risk of

morbidly adherent placenta is 3 to 5 (as per available statistics).

(f) At present there is no evidence of any physical risk to maternal health owing to the reported fetal malformations.

In view of the above, the Medical Board is of the opinion that termination of pregnancy may have substantial physical risks for the patient. These risks are stated based on available scientific evidence."

6. We have also noticed that as directed by this Court, in regard to the pros and cons of proposed termination of pregnancy, counseling to the petitioner and her family members was done by the said Medical Board and the petitioner has expressed her willingness to take the risk.

7. Having regard to the aforesaid, in our considered view it would be appropriate to allow the petitioner to terminate the pregnancy as the fetus after birth will be of various serious infirmities as reflected in the opinion as aforesaid, in the circumstances, we allow this petition and direct the petitioner to remain present in the said hospital on 19th December, 2017 so that the termination of pregnancy can be carried out within a day or two as may be deemed fit by the Medical Board.

8. We also make it clear that the Medical Board which has examined the petitioner as per our directions will not held liable for submitting the report and they will not held liable for any litigation arising there

from. We also make it clear that the petitioner has been made aware about the risk involved in carrying out the medical termination of pregnancy and she has taken the prompt decision to undertake the risk by carrying out the medical termination of pregnancy.

9. We direct learned AGP to appraise the Dean of the said hospital. We also direct Ms. Yadav, counsel who generally appears for Municipal Corporation to inform the said Hospital so that the appropriate arrangement of termination of pregnancy can be done.

10. Parties to act on an authenticated copy of this order.

11. Needless to say that the petitioner will bear the necessary expenses as per the norms of the hospital.

12. With aforesaid directions, petition is disposed of.

(R.G. KETKAR, J.) **(SHANTANU S. KEMKAR, J.)**