

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13848 OF 2017

Monisha Hironmoy Mazumder

...Petitioner

Versus

Union Of India

And Ors.

...Respondents

....

Ms. Minaz Kakalia, Advocate for the Petitioner.

Mr.S.K. Halwasia a/w. Mr. N.D. Sharma, Advocate Respondent Nos.1 & 3.

Mr. Sandeep Babar, A.G.P. for Respondent No.2 - State.

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

DATE : DECEMBER 20, 2017

P.C.

The petitioner-Monisha Hironmoy Mazumder has approached this Court under Article 226 of the Constitution of India seeking direction to the State to produce the report of the MTP Committee which may be constituted by this Court for examination and giving its opinion as to whether the petitioner can be allowed to get her pregnancy terminated.

2. The pregnancy of the petitioner has gone to 24 weeks which is beyond the ceiling of 20 weeks. In the circumstances, the aforesaid relief has been sought. On 15.12.2017 this Court after considering the

orders passed by the Hon'ble Supreme Court from time to time as also the orders passed by this Court, constituted a Committee of B. J. Government Medical College / Hospital (Sasoon Hospital), Pune consisting of Dean of said Medical College/Hospital, Head of the Department (Gynecology), Head of the Department (Neurology), Professor and Head of Department of Paediatric Cardiac Surgeon, Professor and Head of Department of Radiology and Psychology of said College/Hospital. Said Medical Board/Committee has examined the petitioner and has submitted its opinion dated 18.12.2017, which reads as under :

“Opinion of the Committee:

The woman was examined thoroughly in the obstetrics OPD and necessary investigations were done example Hologram, ultrasonography, fetal echocardiography etc. It was found that pregnancy is 23 weeks with live fetus with a complex cardiac anomaly like Truncus arterious, Double outlet left/right ventricle with small pulmonary artery.

The committee feels that the child if born alive at term may have to undergo multiple surgery which carry significant risk. The child has likelihood of severe physical and mental impairment and low chances of Survival in later life.

In this condition it is advised to terminate this pregnancy with kind permission from Hon. High Court Mumbai.”

3. Having considered the aforesaid opinion which clearly

indicates that the child if born alive at term may have to undergo multiple surgery which carry significant risk and that the child has likelihood of severe physical and mental impairment and low chances of survival in later life. The Committee in clear terms has advised to terminate the pregnancy.

4. Considering aforesaid opinion, it is very difficult for us to refuse the permission to the petitioner to undergo medical termination of the pregnancy. It is certain that the petitioner's fetus if allowed to born, there is risk that it would suffer from lifelong serious physical handicap, which cannot be avoided.

5. In view of the aforesaid 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 medical termination of pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971.

6. The learned A.G.P. as also the learned counsel for Union of India have not opposed the petitioner's prayer on any ground, legal or medical. We record accordingly.

7. In the circumstances, we allow this Petition and direct that

termination of the pregnancy of the petitioner would be performed within a day or two from the date of receipt of authenticated copy of this order by the expert doctors of said B.J. Government Medical College and Sasoon General Hospital, Pune. The termination of pregnancy will be supervised by the Committee/Medical Board constituted by this Court which shall also maintain complete report of the procedure which would be performed on the petitioner at the time of termination of pregnancy. The expenses as may be chargeable shall be borne by the petitioner. Needless to say that we have not examined the petitioner's prayer for holding Section 3 of the Medical Termination of Pregnancy Act, 1971 to be unconstitutional and violative of Articles 14 and 21 of the Constitution of India.

8. With the aforesaid directions, Petition is disposed of.

9. Parties, including the Hospital in question, shall act on the authenticated copy of this order.

(R. G. KETKAR, J.)

(SHANTANU KEMKAR, J.)