

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9792 OF 2018

Namrata Hemant Birare,
age: 29 years, Occ: Household,
R/o Hanuman Tekdi Parisar,
New Pahadsingpura Area,
Aurangabad,
Tal. & Dist. Aurangabad.

Petitioner

Versus

01 The Union of India,
through the Secretary,
Ministry of Health,
Nirman Bhavan,
New Delhi.

02 The State of Maharashtra,
through Secretary,
Health & Family Welfare Department,
Mantralaya, Mumbai-32.

03 Chief Medical Officer,
Civil Hospital, Aurangabad,
Tal & Dist. Aurangabad.

Respondents

Mr.R.S.Devdhe, advocate i/by and with Mr.S.P.Brahme, advocate
for the petitioner.

Mr.S.B.Deshpande, A.G.P. for Respondent No.1.

Mr.P.S.Patil, A.G.P. for Respondents No.2 & 3.

**CORAM : R.M.BORDE &
MANGESH S. PATIL, JJ.**

DATE : 28th August, 2018

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 The petitioner is a lady undergoing 22nd week of pregnancy and is praying for permitting her to terminate her pregnancy in the hospital of her choice i.e. at Government Medical College & Hospital, Aurangabad.

3 It is the contention of the petitioner that during anomaly scan conducted by the Radiologist, certain deficiencies were noticed. Those are:

E/o - Defect of size P.7 cm is noted in occipital region with Herniation of brain tissues & meninges into it forming a well defined sac of size 3.3 x 2.3 cm s/o occipital encephalocoele in Posterior fossa.

- Cerebellum - Not visualized with obliteration of Retro cerebella space.

- Descent of Cerebellum is noted in cervicomedullary canal.

- Altered shape of skull with bifrontal narrowing s/o lemon shaped skull.

- Face & spinal cord appear normal.

- All 4 limbs appear normal.

- Heart is 4 chambered.

- 3 vessel cord is noted.

- fundic bubble & bladder bubble appear normal

- B/L kidneys appear normal.

4 On noticing the deficiencies during anomaly scan and on noticing that the pregnancy carried by her is of more than

twenty weeks, the petitioner has approached this Court seeking permission for termination of her pregnancy.

5 On consideration of request made by the petitioner, she was referred for examination by the Medical Board consisting of following members:

- 1 Superintendent, Government Medical College & Hospital, Aurangabad;
- 2 Head of Department, Gynecology;
- 3 Head of Department, Medicine;
- 4 Head of Department, Psychiatry;
- 5 Head of Department, Sonography/Radiology;
- 6 Head of Department, Surgery
(Government Medical College & Hospital, Aurangabad).

6 The petitioner appeared before the Medical Board on 27.08.2018 and a eight member Expert Committee conducted thorough examination of the petitioner. The Expert Committee was consisted of:

- 1 Dr.Bharat Sonwane (Chairman), Medical Superintendent, GMCHA.
- 2 Dr.Prashant Bhingare (Member), Asso, Prof. OBGY.
- 3 Dr.Prashant Titare, (Member), Asso. Prof, Radiology;
- 4 Dr.Anil Joshi, (Member), Asso. Prof, Medicine;
- 5 Dr.Pradip Deshmukh (Member), Assit. Prof., Psychiatry;

- 6 Dr.Trupti Joshi (Member), Asso. Prof. Pediatrics;
- 7 Dr.Anant Bidkar (Member), Asso. Prof, Surgery;
- 8 Dr.Rashmi Bangali (Member), Asso. Prof., Anaesthesia;

7 The Expert Committee, on conducting medical examination of the petitioner, has reported thus:

- 1 That the length of pregnancy is 21 weeks 4 days;
- 2 E/o defect of size 1.7 cm is noted in occipital region with herniation of brain tissue and meninges s/o occipital encephalocoele.
- 3 Cerebellum is not visualized in posterior fossa.
- 4 Descent of cerebellum is noted incervicomedullary canal.

8 On consideration of the findings, the Expert Committee has reported that there is evidence of substantial risk to the fetus. Pregnancy can be terminated with due risk.

9 Sub-section (2) of Section 3 of the Medical Termination of Pregnancy Act, 1971, provides that subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical petitioner (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.

10 Section 5 (1) of the Act provides that 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.

11 Sections 3 and 5 of the Act have been interpreted by the Division Bench of this Court in the matter of **Shaikh Ayesha Khatoon Vs. Union of India**, 2018 (3) Mh.L.J. 486, In paragraph no.13 of the judgment, the Division Bench has recorded thus:

“13 It is further observed that ordinarily a pregnancy can be terminated only when a medical practitioner is satisfied that a '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' (as per section 3(2)(b)(i) of the Act of 1971) or when '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' (as per section 3(2)(b)(ii) of the Act of 1971). It is true that Clauses (i) and (ii) of sub-section (2)(b) of section 3 are attracted in the case where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks. However, as has been recorded above section 5 permits termination of pregnancy by a registered medical practitioner in 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. It shall also have to be construed that section 5 brings within its ambit the provisions of section 4 and so much of the provisions of sub-section (2) of section 3 of the Act of 1971 except the limitation in respect of length of the pregnancy of 20 weeks as provided in sub-section (2)(b) of section 3 of the Act of 1971. It would thus be logical to conclude that the contingencies referred in Clauses (i) and (ii) of sub-section (2)(b) of section 3 will have to be read in section 5 of the Act of 1971 and it would be relevant to consider the threat perception and substantial risk involved if the child were to born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. The contingencies laid down in Clauses (i) and (ii) of sub-section (2)(b) of section 3 shall therefore equally apply to the request of a pregnant woman seeking permission to terminate the pregnancy beyond 20 weeks and accordingly section 5(1) will have to be construed, to meet the object and purpose of enactment and to promote cause of justice.”

12 As has been recorded in the judgment referred to above, the contingencies laid down in clauses (i) and (ii) of sub-section (2)(b) of Section 3 will have to be read with Section 5 of the Act of 1971 and as such, it would be permissible in the event that 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', to direct termination of pregnancy.

13 In the instant case, it has been reported that there is a threat perception and substantial risk involved if the child were to born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

14 Considering the report of the Expert Committee as well as judgment of this Court in the matter of **Shaikh Ayesha** (cited *supra*), we deem it appropriate to accept request made by the petitioner for issuance of directions to the respondents to permit the petitioner to terminate her pregnancy. The petitioner may approach the Government Medical College and Hospital, Aurangabad, before 31st August, 2018 and the pregnancy carried by the petitioner shall be terminated under the observation of Expert Committee in the Faculty of Surgery and Gynecology as well as such other experts whose presence is deemed necessary in the Expert Committee. The procedure for termination of pregnancy shall be carried out as expeditiously as possible, preferably within a period of one week from today.

15 With the directions as above, writ petition stands disposed of.

Authentic copy of this order be supplied to the learned Counsel for respective parties.

MANGESH S. PATIL
JUDGE

R.M.BORDE
JUDGE

adb/