

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5332 OF 2018

Dhrupati Vitthal Waghmare

...Petitioner

vs.

Union of India and Others

...Respondents

Ms. Meenaz Kakalia, for the Petitioner

Mr. D.R. Shah a/w. Ms. Nisha Valani, for Respondent Nos. 1 and 3.

Mr. Sandeep Babar, for Respondent No. 2-State.

**CORAM : SHANTANU KEMKAR &
MAKARAND KARNIK, JJ.**

**DATE : MAY 04, 2018
(IN CHAMBER)**

P.C.:

. The Petitioner 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 examination of the Petitioner and for submitting its report as to whether the Petitioner can be allowed to get the pregnancy terminated.

2. According to the Petitioner, pregnancy has gone upto 25 weeks which is beyond the permissible period of 20 weeks, in the circumstances, petitioner has approached this Court.

3. On 27th April, 2018 while issuing notice to the Respondents, this Court has directed constitution of the Committee consisting of various experts from Sir JJ Group of Hospitals, Mumbai. The said Committee after examining the medical reports submitted by the Petitioner and after conducting various tests upon her, submitted its report. The various experts of the Medical Board after examining the Petitioner on 27th April, 2018 had noted their observations in the said report. The observations consists of Dr. Ashok Anand, Dr. K.N. Bhosale, Dr. Shilpa Domkundwar, Dr. Subhash Walinjkar, Dr. N.O. Bansal, Dr. V.P. Kale and Dr. Pawan Ojha. The Committee examined the observations made by all the Doctors and has given its opinion which reads thus:

*“Upon examination & after careful study of multiple sonography reports, it is confirmed that the fetus suffers from serious neurological abnormality in the form of **Cisterna Magna with Vermian Hypoplasia with a small cervical meningocele. Fetal right kidney also shows Pyelectasis.***

*The condition of the fetus fulfills the criteria of **“Substantial risk of serious physical handicap”.***

The woman was been explained about the outcome in the language she understands.

The pregnant woman has voluntarily expressed her desire to terminate the pregnancy and is well informed about the nature of the condition of fetus and its outcome. She is anguished with the condition of the fetus in utero. Hence, it is advisable to

terminate the pregnancy.

The pregnancy has advanced to 26 weeks and is beyond 20 weeks cut off of the medical termination of pregnancy act. Hence, she has approached Court for termination of pregnancy.

At this stage of pregnancy, the risk of termination remains the same as that of natural labour at term.

Thus if the Court permits the pregnancy can be terminated as desired by the woman.”

4. We have gone through the said opinion which includes opinion of the various expert doctors including Dr. Ashok Anand, Professor & Head, Department of Obstetrics & Gynaecology, Dr. V.P. Kale, Prof. & Head, Dept. of Psychiatry, Dr. K.N. Bhosale, Prof. & Head of C.V.T.S., Dr. Shilpa Domkundwar, Prof. & Head, Dept. of Radiology, Dr. Subhash Walinjkar, Prof. & Head, Dept. of Paediatrics, Dr. N.O. Bansal, Prof. & Head, Dept. of Cardiology & Dr. Pawan Ojha, Asso. Prof., Dept. of Neurology of Sir J.J. Group of Hospital, Mumbai. It appears that Committee has reached the conclusion that there would be substantial risk of serious physical handicap.

5. Having regard to the aforesaid, it is very difficult for us to refuse permission to the Petitioner to undergo the medical termination of the pregnancy. It is certain that if the Petitioner is allowed to give birth to fetus, there is substantial risk of serious physical handicap.

6. In view of the above peculiar circumstances and having due regard to the fundamental right 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.

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

8. We further direct that the termination of the Petitioner's pregnancy to be performed **tomorrow on 5th May, 2018** by the expert doctors of Sir J.J. Group of Hospital, Mumbai where she has to undergo medical check up.

9. 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.

10. We also make it clear that in the event of any problem

in connection with the medical termination of the pregnancy, the doctors of the Medical Board shall have immunity in law.

11. Petitioner shall bear the cost of the operation and other expenses.

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

13. Parties to act on authenticated copy of this order.

(MAKARAND KARNIK, J.)

(SHANTANU KEMKAR, J.)