

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 7073 OF 2018

Veena Rajkumar Katkur ... Petitioner

Versus

Union of India and Ors. ... Respondents

Ms. Minaz Kakalia I/by Kranti L.C. for the Petitioner.

Mr. A.R. Varma for respondent nos.1 and 3.

Mr. Sandeep Babar, AGP for respondent no. 2.

**CORAM : SHANTANU KEMKAR &
NITIN W. SAMBRE, JJ.**

DATE : JULY 10, 2018

P.C.:

Petitioner has approached this Court under Article 226 of the Constitution of India seeking directing 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 4th July, 2018 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 opinion of various experts are filed along with the said opinion of the dated 9th July, 2018. The Committee which has examined the petitioner opined thus :

“AFTER CAREFUL EXAMINATION OF PATIENT AND STUDY OF THE ULTRASONOGRAPHY REPORTS, COMMITTEE CONFORMS THAT THE FETUS HAS MULTIPLE CARDIAC AND NEROLOGICAL ABNORMALITIES IN THE FORM OF AV CANAL DEFECT (OSTIUM PRIMUM ASD WITH INLET VSD) WITH SEVERE COARCTATION OF AORTA (AORTIC INTERMPTION) WITH SUSPECTED ASSOCIATION OF DOUBLE OUTLET RIGHT VENTRICAL. NEUROLOGICALLY, THERE ARE PROMINENT BILATERAL LATERAL VENTRICLES. LATERAL VENTRICLES ARE PARALLEL TO EACH OTHER WITH PROMINENT CAVUM SEPTUM PELLUCIDUM SUGGESTING CORPUS CALLOSUM AGENCIES.

THE CONDITION OF THE FETUS FULFILLS THE CRITERIA OF “SUBSTANTIAL RISK OF SERIOUS PHYSICAL HANDICAP” REQUIRING MULTIPLE SURGERIES WITH A VERY HIGH MORBIDITY AND MORTALITY.

THE WOMAN HAS EXPRESSED HER DESIRE TO TERMINATE THE PREGNANCY AND IS WELL INFORMED ABOUT THE NATURE OF THE CONDITION OF THE FETUS AND ITS OUTCOME. SHE IS ANGUISHED WITH THE CONDITION OF THE FETUS IN THE UTERO.

IN THE VIEW OF FETAL CARDIAC ABNORMALITIES, NEUROLOGICAL ANOMALIES AND THE DESIRE OF THE PREGNANT WOMAN TO TERMINATE THE PREGNANCY, THE COMMITTEE RECOMMENDS TERMINATION OF PREGNANCY WITH DUE RISK.

SINCE THE PREGNANCY HAS ADVANCED TO 23 WEEKS AND IS BEYOND 20 WEEKS CUT OF THE MEDICAL TERMINATION OF PREGNANCY ACT, SHE HAS APPROACHED HONOURABLE COURT FOR TERMINATION OF PREGNANCY.

IF THE COURT PERMITS THE PREGNANCY CAN BE TERMINATED AS DESIRED BY THE PREGNANT WOMAN WITH DUE RISK.

Sd/-xxx DR. ASHOK ANAND, PROFESSOR AND HEAD, DEPARTMENT OF OBGY, GGMC, MUMBAI, CHAIRMAN.

Sd/-xxx DR. V.P. KALE, PROFESSOR AND HEAD, DEPT OF PSYCHIATRY, GGMC, MUMBAI, MEMBER.

Sd/-xxx DR. SHILPA DOMKUNDWAR, PROFESSOR AND HEAD, DEPT OF RADIOLOGY, GGMC, MUMBAI, MEMBER.

Sd/-xxx DR. N.O. BANSAL, PROFESSOR & HOD, DEPT OF CARDIOLOGY, GGMC, MUMBAI, MEMBER.

Sd/-xxx DR. K.N. BHOSALE, PROFESSOR AND HEAD, DEPT OF C.V.T.S., G.G.M.C. MUMBAI, MEMBER.

Sd/-xxx DR. BELA VARMA, PROFESSOR AND HEAD, DEPT OF PEDIATRICS, GGMC, MUMBAI, MEMBER.

Sd/-xxx DR. D.R. KULKARNI, PROFESSOR AND HEAD DEPT OF PADIATRICS SURGERY, GGMC, MUMBAI, MEMBER.

Sd/-xxx DR.VITTAL HINGANE, RMO, SIR JJ HOSPITAL, MUMBAI, MEMBER.”

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 opinion, the aforesaid Committee/Medical Board has concluded that the fetus has multiple cardiac and nerological abnormalities in the form of AV CANAL, Defect (OSTIUM PRIMMUM ASD WITH INLET VSD) WITH SEVERE COARCTATION OF AORTA (AORTIC INTERMPTION) WITH SUSPECTED ASSOCIATION OF DOUBLE OUTLET RIGHT VENTRICAL. NEUROLOICALLY, THERE ARE PROMINENT BILATERAL LATERAL VENTRICALS. LATERAL VENTRICALS ARE PARALLEL TO EACH

OTHER WITH PROMINENT CAVUM SEPTUM PELLUCIDUM SUGGESTING CORPUS CALLOSAL AGENCIES.

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 form 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 the 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 by the Experts Doctors of Sir J.J.

Group of Hospital, Mumbai within a week 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.

(NITIN W. SAMBRE, J.)

(SHANTANU KEMKAR, J.)