

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7137 OF 2018

Sowmya Prakash Shetty

...Petitioner

vs.

Union of India and Others

...Respondents

Ms. Neha Philip I/b. Ms. Meenaz Kakalia, for the Petitioner

Mr. Purnima Awasthi, for Respondent Nos. 1 and 3.

Mr. Sandeep Babar, AGP for Respondents-State.

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

DATE : JULY 13, 2018

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 21 weeks which is beyond the permissible period of 20 weeks, in the circumstances, Petitioner has approached this Court.

3. On 6th July, 2018 while issuing notice to the Respondents, this Court has directed constitution of the

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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 had noted their observations in the said report. The observations consists of Dr. Ashok Anand, Dr. K.N. Bhosale, Dr. Shilpa Domkundwar, Dr. V.P. Kale, Dr. N.O. Bansal, Dr. Bela Varma and Dr. D.R. Kulkarni. The Committee examined the observations made by all the Doctors and has given its opinion which reads thus:

*“After careful examination of the patient and of the Ultrasonography reports, Committee conforms that the fetus has multiple cardiac abnormalities in the form of **complex congenital anomaly having transposition of great artery with double outlet right ventricles with pulmonry hypoplasia. Nature of this anomaly requires staged cardiac surgical proccedure having high morbidity and mortility risk. This surgery will be required in neonatal and infantile period.***

*The condition of the fetus fulfils 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 and the desire of the pregnant woman to terminate the pregnancy 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 Hon'ble Court for termination of pregnancy.

If the Court permits the pregnancy can be terminated as desired by the pregnant woman with due risk."

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. N.O. Bansal, Prof. And Head, Dept. of Cardiology, Dr. Bela Varma, Prof. & Head, Dept. of Paediatrics and Dr. D.R. Kulkarni, Prof and Head, Dept. of Paediatrics of Sir J.J. Group of Hospital, Mumbai. It appears that the 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 within three days 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.

(N.W. SAMBRE, J.)

(SHANTANU KEMKAR, J.)