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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13104/2018**
SMT. ANJU

..... Petitioner

Through: Ms. Sneha Mukherjee, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Ms. Suparna Srivastava, CGSC, Ms.
Sanjna Dua, Advocate for UOI
Mr. Sanjoy Ghose, Additional
Standing Counsel for GNCTD and
Mr. Rishabh Jetley, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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10.12.2018

The petitioner seeks a declaration that Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the MTP Act) is unconstitutional inasmuch as it stipulates ceiling of 20 weeks, within which an abortion of foetus is permissible; declaration that Section 5(1) to the extent that it restricts such abortions where it is absolutely essential to save the life of the pregnant women, is also sought.

The petitioner is pregnant with a foetus of 25 weeks gestation age. The pleadings as well as the documents brought on record reveal that the radiological Diagnostic Report, showed that the foetus suffers

from some serious abnormality and that in the event the pregnancy is proceeded with, almost certainly, an abnormal child with significant impairment would be born. The petitioner relies upon previous precedents – notably the orders of the Supreme Court in *Meera Santosh Pal & Ors. vs. Union of India & Ors.* (W.P.(C) No. 17/2017, decided on 16.01.2017) and in *Mrs. X & Ors. vs. Union of India & Ors.* (W.P.(C) No. 81/2017, order dated 07.02.2017).

On the first date of hearing, i.e. on 04.12.2018 this court passed the following order:

“Issue notice to the respondents.

Mrs. Suparna Srivastava, Advocate accepts notice on behalf of the respondent nos.1 and 3. Mr. Sanjoy Ghose, Additional Standing Counsel accepts notice on behalf of the Government of NCT of Delhi.

The petitioner seeks a direction for various reliefs including a direction for quashing of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 inasmuch as it stipulates that beyond 20 weeks of pregnancy, abortion would not be permissible.

The petitioner relies upon various orders and judgments of the Supreme Court and High Courts including the Bombay High Court which facially disclose that Medical Termination of Pregnancy (MTP) has been facilitated even in cases where the threshold of 20 weeks, was crossed – even to the extent of 27 weeks. In this case, the petitioner is stated to be in the 24th week of pregnancy. Further, the medical opinion, which the petitioner relies upon to seek the relief, states that “Fetal head shows hydrocephalus with small posterior fossa, effaced cistern magna, positive banana sign. Spine is short and deformed with open neural tube defect in lower -

dorsal/lumbar region. Orbital and interorbital distances were normal. Facial profile was within normal limits. Four chamber heart, diaphragmatic contour, abdominal viscera, kidneys and urinary bladder were normal. Umbilical cord shows normal three vessels. Cord insertion is normal. Bilateral lower limbs show clubfeet deformity". It is stated that the medical condition of the fetus is abnormal and in all probabilities would result in severe brain damage to the fetus.

Having regard to the materials on record, this Court is of the opinion that immediate and urgent steps are called for. In these circumstances, the Director, All India Institute of Medical Sciences (AIIMS) shall ensure that an appropriate Medical Board consisting of relevant experts is constituted within two days from today which shall then examine the petitioner and carry out such tests, as are necessary, to assess the condition of the fetus and furnish its report within five days from today. The Board so constituted shall also include a Psychiatrist, who can appropriately assess the mental condition of the mother and make appropriate observations in the report.

A copy of this order shall be served immediately, without process fee, through the Registrar of this Court on the Director of AIIMS.

List on 10.12.2018.

Dasti to the parties under signatures of the Court Master."

Pursuant to the directions of the court, the Director, All India Institute of Medical Science (AIIMS) constituted a seven member Board which independently considered the record after having the petitioner examined. The deliberations of the seven member Board

were also attended by the Observer; its report on 06.12.2018 – which was directly made available to the court through Registrar General, records as follows:

“Subject: *Report of the medical board constituted at AIIMS for medical examination of Smt. Anju, in compliance of order dated 04.12.2018 of Hon'ble Mr. Justice S. Ravindra Bhat and Hon'ble Mr. Justice Prateek Jalan, High Court of Delhi vide W.P. (C.) 13104/2018 titled Smt. Anju Versus Union of India and Ors.*

A medical board was constituted by the Medical Superintendent, AIIMS on subject noted above. The Board consists of the following members:

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| 1. | <i>Dr. Vatsala Dadhwal</i>
<i>Professor, Department of Obs. & Gynae</i> | Chairperson |
| 2. | <i>Dr. Ramesh K. Agarwal</i>
<i>Professor, Deptt. of Paediatrics</i> | <i>Member</i> |
| 3. | <i>Dr. Aparna Sharma</i>
<i>Assoc. Professor, Department of Obs. & Gynae</i> | <i>Member</i> |
| 4. | <i>Dr. Surabhi Vyas</i>
<i>Assoc. Professor, Deptt. of Radio-diagnosis</i> | <i>Member</i> |
| 5. | <i>Dr. Raman Deep</i>
<i>Assoc. Professor, Deptt. of Psychiatry</i> | <i>Member</i> |
| 6. | <i>Dr. Abhishek Yadav</i>
<i>Asstt. Professor, Deptt. of Forensic Medicine</i> | <i>Member</i> |
| 7. | <i>Dr. Puneeth T.</i>
<i>Department of Hospital Administration</i> | <i>Member Secy.</i> |
| 8. | <i>Dr. Kshitija Singh</i>
<i>Department of Hospital Administration</i> | <i>Observer</i> |

All the members of the medical board met on Thursday, 6th December, 2018 at 02:00 P.M. in V.I.P. Consultation Room No. 13, M.S. Office Wing, ground floor, AIIMS, New Delhi.

The Medical board reviewed the case in detail by history, available records including a fetal USG done on 23.11.2018. The findings were:

- *The patient is 26 weeks by dates and 25 weeks gestation by first trimester scan.*
- *USG done on 23.11 .2018 showed a gestational age of 22 weeks with open neural tube defect, hydrocephalus with bilateral club feet deformity.*

The USG repeated at AIIMS on 6.12.2018 confirmed gross Cranio-spinal malformation.

The board opined that:

- *The malformation is significant enough to cause gross neurodevelopmental problems in the baby.*
- *Since the pregnancy is pre-viable, MTP may be offered.*
- *There is no known psychiatric history. The clinical mental state examination was conducted which revealed no obvious abnormality.”*

In view of these developments, especially the report of 06.12.2018, this court is satisfied that the first claim of the petitioner, i.e. for a direction to the respondents to allow her to undergo the medical termination of pregnancy should be granted. Accordingly a direction to that effect, in the light of the orders of the Supreme Court cited above.

During the hearing, this court was informed that the petitioner is admitted in the Lady Hardinge Medical College and is undergoing treatment. In the light of the report of AIIMS and the directions of the court that facility (Lady Hardinge Medical College) shall carry out the necessary procedure in accordance with law.

As far as other claims are concerned, this court is of the opinion that in the light of the directions, the challenge to the provisions of the law do not survive consideration.

With aforesaid directions, the writ petition is allowed and is disposed of as such.

A copy of this order be given *dasti* under signatures of the Court Master.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 10, 2018

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