IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2279 OF 2019

Pranita Jaykisan Pardhi ...Petitioner

vs.

Union of India through Secretary Ministry

of Law and Justice and Ors. ...Respondents

Ms. Afreen Khan a/w Ms.Meenaz Kakalia and Ms. Neha Philip for the Petitioner.
Mr. B. V. Samant, AGP for the Respondent/State.
Ms.Nisha Valani for Union of India.

CORAM : B. P. DHARMADHIKARI &
REVATI MOHITE DERE, JJ.
DATE : 01/03/2019.

P.C.:

. On 20/2/2019 we referred the case of petitioner to Expert Committee of JJ hospital, Mumbai to find out feasibility of termination of pregnancy which then was about 23 weeks old. Experts Committee sought one extension to submit report and the report was then submitted on 27/2/2019.

2. The Committee consists of 8 doctors whose designations are as under:

> "1. Dr. Ashok Anand, Professor and Head Dept of Obstetric and Gynecology, Grant Government Medical College and Sir J.J. Group of Hospital, Mumbai.
> 2. Dr. V. P. Kale, Professor and Head, Department of Psychiatry, Sir J.J. Group of Hospitals, Mumbai
> 3.Dr. Shilpa Domkundwar, Professor and Head, Department of Radiology, Sir J.J. Group of Hospitals, Mumbai
> 4. Dr. N. O. Bansal, Professor and Head, Department of Cardiology, Sir J.J. Group of Hospitals, Mumbai.
> 5. Dr. Nita Sutay, Professor and Head, Department of

Paediatrics, Sir J.J. Group of Hospitals, Mumbai.
6. Dr. D. R. Kulkarni, Professor and Head, Department of Paediatricsurgery, Sir J.J. Group of Hospitals, Mumbai
7. Dr. K. N. Bhosle, Professor and Head, Department of C. V. T. S., Sir J.J. Group of Hospitals, Mumbai
8. Dr. Kamlesh Jagaisi, Associate Professor and Head, Department of Neurology, Sir J.J. Group of Hospitals, Mumbai"

3. The opinion of the Committee is as under:

> *" Upon examination and after careful study of multiple sonography reports, it is confirmed that the fetus suffers from interaparenchymal calcifications in liver predominantly in the sub diaphragmatic region with dilated suprahepatic ivc and intra abdominal unbilical vein with congenital absent/hyoplastic portal vein.*
>
> *The condition of the fetus does not fulfill the criteria of "substantial risk" to the fetus.*
>
> *The woman was been explained about the outcome in the language she understands.*
>
> *Since the pregnancy is advanced to 28 weeks of gestation and baby weight is also more than 900 gms it will be advisable to continue pregnancy as the child born will be alive and can survive postnatal period with morbidity and occasional mortality"*

4. Looking to the controversy a copy of report was made available to the learned counsel for petitioner and the matter was adjourned to today.

5. Today, learned counsel for the petitioner has attempted to advance the case of the petitioner by urging that report of Experts Committee does not contain any evaluation on mental health of petitioner as required by section 3(2) (b) (i) of the Medical Termination of Pregnancy Act, 1971. Support is being taken from Division Bench order of this Court dated 5/12/2018 in Writ Petition (L) No.3878/2018 where the Division Bench found that the said clauses (b) (c) and sub clauses (i) (ii) of sub-section (2) of section (3) should be read into section 5.

6. Our attention is invited to the judgment of Division Bench of High Court of Calcutta dated 18/2/2019 to demonstrate that there in similar situation permission has been granted.

7. Learned AGP relies upon the Expert's report to urge that joint findings of all eight Doctors show that there cannot be any termination of pregnancy as such and exercise would result in the child being born alive. He pointed out that even said child born alive is expected by Experts to survive the postnatal period but with morbidity and occasional mortality.

8. The report presented by 8 Doctors forming Experts Committee at Sir J.J. Group of hospital shows that the Professor and Head Department of Psychiatry has recorded his impression that there was no active psychopathology seen in past or then at the time when the petitioner was examined. He concluded that she was mentally sound and fit to undergo the procedure from Psychiatric point of view.

9. The opinion of the Expert Committee together after joint deliberations shows that the condition of fetus does not fulfill the norm of “substantial risk” to the fetus. Not only this after mentioning that pregnancy has advanced to 28 weeks with baby weighing more than 900 gms, the experts have advised to continue it. The reason given by them is the child would be alive and can survive.

10. In the facts before the Division Bench of this Court, in the order dated 5/12/2018 observations in paragraph No.3 shows that there were two reports placed on record by three experts. First report was dated 30/11/2018 while the latter one dated 5/12/2018. Division Bench found that there was no categorical opinion about applicability of sub clause (i) of clause (b) of sub-section (2) of section 3. Thus, Division Bench then

found that there was no consideration whether continuation of pregnancy would involve a risk of causing grave injury to mother's mental health. The matter was therefore sent back to Experts and fresh report was sought. It is pertinent to note here that the very same hospital was involved in said matter.

11. Insofar as the case before the Division Bench of Calcutta High Court is concerned, the mother there was examined and all Doctors then suggested that she should terminate pregnancy. At that time pregnancy had crossed 20 weeks. Hence permission of High Court was sought. It appears that the report of medical board placed before learned single judge revealed that baby was likely to be born alive and with available postnatal care, likely to survive the early postnatal period. Report also reveals finding that prognosis of baby would be better if it be delivered near term. Learned Single Judge therefore did not permit termination of pregnancy.

12. The matter was taken before the Division Bench. The Division Bench has looked into the report of medical board minutely particularly in paragraph Nos.6 and 7 thereof. It found that baby to be born was to suffer from down syndrome, gastrointestinal malformation (esophageal artesia with or without trachea-esophageal fistula) cardiac abnormality and required surgical intervention, prolonged and complicated neonatal course, the outcome of which was unpredictable. In paragraph 19 the Division Bench also found that fetus in the matter before it can neither evolve or develop further naturally to reverse the abnormalities already detected by medical science and produce a quality life once the child is born. Thus, in this backdrop the Division Bench reversed the findings of learned Single Judge and granted the permission.

13. As we have already noted supra the Doctors here have clearly

opined that premature termination will result in a live birth and the child can survive postnatal period with morbidity and occasional mortality. Thus they have not advised pre-mature termination. They have advised continuation of pregnancy. It is apparent that in this situation continuation of pregnancy will help the fetus/baby.

14. In the light of the opinion of the experts which we do not find vitiated on any count, we find that request made by the petitioner/mother cannot be allowed. Accordingly the petition is rejected. No costs.

(REVATI MOHITE DERE, J.) **(B. P. DHARMADHIKARI, J.)**