

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3104 OF 2019

Shanta Yogesh Jadhav

Age: 21 years

202 Near Jilha Parishad School

Nagale, Vasai East, Kaman

Palghar, Maharashtra-401 208.

.... Petitioner

- Versus

1. Union of India

through the Secretary,
Ministry of Law and Justice,
Shastri Bhawan, "C" Wing,
New Delhi 110 001.

2. State of Maharashtra

through the Principal Secretary,
Public Health Services,
Mantralaya, Mumbai 23.

3. Ministry of Health and

Family Welfare,
through its Secretary,
M.H. Division, New Delhi.

4. Municipal Corporation of

Greater Mumbai
Head Quarters, C.S.T.,
Mumbai – 400 001.

.... Respondents

Ms Afreen Khan for the Petitioner.

Ms Anusha Amin for Respondent Nos.1 & 3.

Ms M.P. Thakur, Assistant Government Pleader,

for Respondent No.2.

Ms Shital Mane for Respondent No.4.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : MARCH 18, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. **Rule.** The respondents waive service. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal. Heard.

2. The petitioner has approached this Court urging that, in her case a Medical Committee should be constituted for her examination to assist this Court for arriving at a decision and then allow the petitioner to undergo medical termination of pregnancy at the medical facility of her choice.

3. The prayer clauses (c) and (d) are pressed and they read as under:-

“c For a writ of mandamus or any other writ, order, or direction in the nature of mandamus directing the Respondents to-

- i. *constitute a Medical Committee for the examination of the Petitioner to assist this Hon'ble court in arriving at a decision on the plea of the Petitioner;*
- ii. *allow the Petitioner to undergo Medical Termination of Pregnancy at a medical facility of her choice.*
- d. *For a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondents to set up appropriate Medical Committees in each district in the State of Maharashtra to assess the pregnancy and offer MTP to the Petitioner and other women in need of the procedure beyond the prescribed 20 weeks limit."*

4. We are not going into the larger question for the simple reason that the petitioner, aged 21 years, is a resident of Palghar, and on 28-2-2019, during the 2/3rd Trimester Scan Report, it was detected for the first time that the foetus of the petitioner, with a gestational age corresponding to 22 weeks 1-day, suffers from Ventriculomegaly. Reliance is placed in that behalf on Exhibit-B to the writ petition, which is a report of such Scan.

5. In the light of the diagnosis, the petitioner was admitted to Nowrosjee Wadia Maternity Hospital on 4-3-2019

and underwent further tests which confirms that the foetus suffers as above.

6. Reliance is placed on Exhibit-C and thereafter the petitioner was advised to go ahead for termination of this pregnancy. However, the law came in her way.

7. Our attention is invited to several orders which enable the Court to issue a declaration or a direction over-riding the statutory prescription in order to save the life of the mother in the event the foetus suffers as above. Now the statutory prescription of 20 weeks can be overcome by approaching this Court.

8. Thereafter, this Court directs constitution of a Medical Committee, which was the prayer on the earlier occasion.

9. On that day (12-3-2019), on hearing both the petitioner, the learned AGP and the Advocate for the Municipal Corporation of Greater Mumbai, we passed the following order:-

“1. It is stated that the petitioner will visit the J.J. Hospital tomorrow (13-3-2019 at 11:30 a.m.) and present herself before the Superintendent/Dean of the Sir J.J. Group of Hospitals and thereafter the procedure under the Act, namely, The Medical Termination of Pregnancy Act, 1971 shall be complied with. Meaning thereby, a Medical Board would be constituted so that the petitioner can be examined and all the tests conducted so as to certify as to whether the foetus is indeed suffering from an illness which the petitioner claims to be fatal and on that basis can permission be granted to the petitioner to terminate the pregnancy which is beyond 20 weeks.

*2. Let the matter be placed on **18-3-2019**. First on board.*

3. All concerned to act upon an authenticated copy of this order.”

10. The matter was placed today and a Report of the Committee has been received which Report contains detailed observations of the individual doctors, their opinions and thereafter the Committee’s opinion. The Committee’s opinion reads as under:-

“UPON EXAMINATION & AFTER CAREFUL STUDY OF MULTIPLE SONOGRAPHY REPORTS, IT IS CONFIRMED THAT THE FETUS SUFFERS FROM SERIOUS NEUROLOGICAL ABNORMALITY IN THE FORM OF ARNOLD CHIARI MALFORMATION TYPE 2.

THE CONDITION OF THE FETUS FULFILS THE CRITERIA OF “SUBSTANTIAL RISK OF SERIOUS PHYSICAL HANDICAP”.

THE WOMAN HAS 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 22 WEEKS AND IS BEYOND 20 WEEKS CUT OFF OF THE MEDICAL TERMINATION OF PREGNANCY ACT. HENCE SHE HAS APPROACHED HONOURABLE COURT FOR TERMINATION OF PREGNANCY.

THUS IF THE COURT PERMITS THE PREGNANCY CAN BE TERMINATED IN ANY TERTIARY HOSPITAL, AS DESIRED BY THE WOMAN. THE HON. HIGH COURT IS HOWEVER, REQUESTED TO INSTRUCT THE PARENTS TO BEAR RESPONSIBILITY OF THE CHILD AND THE REQUIRED NEONATAL MANAGEMENT IF BORN ALIVE.”

11. Based on that, the request is that the direction, as prayed, be issued to enable the petitioner to terminate the pregnancy.

12. Having perused this Report, the writ petition and all the annexures thereto, we brought to the notice of the petitioner's Advocate the opinion of the Committee. The experts feel that despite going for such a termination, it could be that in

that process the foetus may be alive. In the event the foetus is alive and has a serious Neurological Abnormality, then the question that arises is, who will take the consequences and the responsibility of its survival.

13. The matter was called out today and kept back in order to enable the petitioner's Advocate to peruse this opinion carefully and thereafter to speak to the petitioner.

14. After speaking to the petitioner and taking her consent, the Advocate informs the Court that the petitioner will take the responsibility in the event, as opined by the Committee, the foetus is alive. Then, she will also take all the necessary consequences as well.

15. We have brought to her attention that it is not just the law which the petitioner has invoked but there are other laws which would make such an act and as performed on the petitioner an offence and committed by somebody else along with her. That somebody else may not be necessarily acting at her behest or on her advice but purely on the directions of this

Court. Everybody including those issuing such directions and those implementing and abiding by them should not be exposed to unnecessary litigation much less prosecution, is our anxiety.

16. Having brought all this to the petitioner's notice through her Advocate and the petitioner saying that she has understood and considered every single aspect and is ready to take the consequences, that we make the Rule absolute in terms of prayer clauses (c) and (d). There shall be no order as to costs.

17. The petitioner has instructed her Advocate to make a request that when the procedure shall be undergone by her and it is her desire that it shall be carried out at the King Edward Memorial (KEM) Hospital of the Municipal Corporation of Greater Mumbai, at Mumbai. Let that be carried out and let the Advocate appearing for the Mumbai Municipal Corporation inform the Dean of that hospital to assist the petitioner by taking care of her as also enable her to undergo this process and procedure at the said hospital.

18. The petition stands disposed of in the above terms.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)