

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5589 OF 2019

Dhanashri Bajarang Khatavkar ... Petitioner

Vs

Union of India and Ors. ... Respondents

Ms.Afreen Khan for the Petitioner.

Mrs.M.P.Thakur, AGP for State.

CORAM :- S. C. DHARMADHIKARI &
M.S.KARNIK, JJ.

DATE :- MAY 02, 2019

P.C. :-

1. Heard both sides.
2. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.
3. The petitioner before this Court is a resident of Pune District. She is 21 weeks pregnant. She says that she will not be able to terminate the pregnancy in-spite of the diagnosis of a foetal abnormality which renders the possibility of survival of the foetus negligible. Hence, this writ petition. The prayer in the writ petition and with which we are concerned, is prayer clause (c) at page 31 of the paper-book, which reads 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."

4. On such a writ petition, we have passed a detailed order on hearing both sides. That order was passed on 26th April, 2019. On 30th April, 2019, we got the report of the Committee formed by B.J. Government College and Sassoon General Hospital, Pune. On perusing this report and with the assistance of the learned advocates, we passed the following order:-

"The report of the Committee formed by B.J. Government Medical College and Sassoon General Hospital, Pune is perused by us in presence of the Petitioner's advocate.

2. On the perusal of this report and bearing in mind the opinion of the Committee, we called upon the Petitioner's Advocate to take instructions, particularly as to whether the Petitioner desires to go ahead with this Petition or otherwise.

3. At her request, we place this matter on 02/05/2019 for passing orders. Copy of the report be provided to the Petitioner's advocate."

5. The instructions given to the petitioner's advocate are that despite the contents of this report, she wishes to have the pregnancy terminated. She relies upon the findings in the report to the effect that she is pregnant 22 weeks and sonography confirms the cardiac anomaly. Now, she was examined even by a

Cardiovascular Surgeon and Sonologist. Their opinion is that the fetus has a major cardiac anomaly (Hypoplastic left heart Syndrome). The Paediatrician as also Radiologist say that the woman is normal but the baby is having a major cardiac anomaly and is unlikely to survive. The further finding is that the baby will require major and multiple cardiac surgeries with increased morbidity and mortality of the baby, if born alive. The other finding before us is that for such a anomaly the fetus will require multiple stage corrections in later life which carry high morbidity and mortality.

6. After perusing this report with the assistance of the advocates, we find that the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as “the MTP Act”) enables this Court to pass an order after taking into consideration the finding and conclusion in the report, particularly in the light of the fact that if the child were born, there is a substantial risk that it would suffer from such physical abnormality as to be seriously handicapped.

7. A faint attempt is made by learned AGP appearing on behalf of the State and she submits that sub-section (3) of Section (3) is also relevant and the opinion concurrently given with regard to the health of the mother is that she is in a sound physical and

mental condition. She has already a child aged five years and that she is, therefore, able to carry the pregnancy till its expected conclusion. That may also be a relevant factor.

8. On such an aspect being brought to the notice, we have considered the matter also in the light of sub-section (3) of Section 3 of the MTP Act. It is stated, on instructions, by the learned advocate appearing for the petitioner that even if we take into account the pregnant woman's actual or reasonable foreseeable environment, what we would find is that the petitioner is 33 years of age. She is unemployed and her husband is employed, but his earnings are also not substantial as would enable both of them to bear the cost of the multiple surgeries or corrective steps which are required to be taken if the child is born alive. In the event the child is seriously handicapped, we must also take into consideration the future of such a child.

9. After taking into consideration all aspects of the matter and particularly, the undisputed medical opinion that there is such a cardiac anomaly which the fetus suffers and which would pose a substantial risk and in the event a child is born, it could be seriously handicapped. There is also a little hope of its survival. In such circumstances, we allow this writ petition. Rule is made absolute in terms of prayer clause (c). There will be no order as to costs.

10. Before parting, we may like to caution the advocates and legal practitioners bringing such petitions. We find that when such petitions are brought before this Court, they contain absolutely no particulars about the petitioner, her status, her finances and whether she has settled life. In the event, she being a single parent or there may be other unfortunate circumstances in which she has to move the Court seeking the relief of the above nature, the advocates and the parties must be candid enough to disclose all of them. We do not know in what circumstances the women are approaching this Court and if indeed there is a possibility of the jurisdiction of this Court being misused and abused, then, that must be avoided at all cost, including by the advocates, who are but the officers of this Court. We hope that corrective steps will be taken in this regard.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)