

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (L) NO.23914 OF 2019

Diksha Dinesh Manjrekar	...	Petitioner
versus		
State of Maharashtra, through Principal Secretary	...	Respondent

Ms. Bhavana Mhatre, for Petitioner.
Ms. Kavita N. Solunke, AGP, for State.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.
DATE: 26th AUGUST, 2019**

P.C.:

1. On 22nd August, 2019 this Court passed the following order :

"1. The above writ petition is mentioned before this Court for urgent admission.

2. The learned AGP appearing for the respondent - State waives service.

3. The petitioner is 32 years old and is 22 weeks pregnant. She has produced the report / certificate dated 20th August 2019 of Dr. Nikhil Datar of Yashada Maternity & Surgical

Home (Obstetric Gynecological Endoscopy and Infertility Services), Sarthak Co-op Housing Society, Aarey Road, Goregaon (E), Mumbai-400 063, stating that it is found that the fetus is suffering from "Arnold Chiari Type 11". It is further stated in the certificate

that in such cases there are very high chances that the baby after birth may die or be vegetative inspite of best treatment available. It is also recorded that the risk involved in termination of pregnancy is not higher than risk in delivery. In view of the above, we pass the following order:

(i) We direct that a Medical Board shall be constituted at Sir J.J. Group of Hospital, Mumbai comprising of the Dean of the said Hospital, Head of the Department (Gynecology), Professor and Head of Department of Pediatric/Cardiac Surgeon, Professor and Head of Department of Radiology and Head of Psychiatry Department, Professor and Head of Neurological Department and any other expert in the field as the Dean may deem appropriate to be included.

(ii) The petitioner will appear before the Board on 23rd August 2019 at 12.00 noon along with her husband.

(iii) The Board shall submit their report before this Court on 26th August 2019 at 11.00 a.m., setting out whether in their view it will be advisable to terminate the pregnancy of the Petitioner. They will also mention in the report if any risk is involved with regard to the life of the Petitioner.

(iv) List the petition First on Board on 26th August 2019.

(v) All concerned shall forthwith act on an ordinary copy of this order duly authenticated by the Associate

of this Court.”

2. Pursuant to the above order, the Dean of Sir J.J.Group of Hospital has constituted a medical board comprising of the following doctors :

“1) Dr. Ashok Anand, Professor & Head, Dept. of Obsetrics and Gynecology, Grant Govt. Medical College and Sir J.J.Group of Hospitals, Mumbai;

2) Dr. V.P.Kale, Professor & Head, Department of Psychiatry, Grant Govt. Medical College and Sir J.J.Group of Hospitals, Mumbai;

3) Dr. Shilpa Domkundwar, Professor & Head, Dept. of Radiology, Sir J.J.Group of Hospitals, Mumbai;

4) Dr. Nita Sutay, Professor & Head, Dept. of Paediatrics, Grant Govt. Medical College and Sir J.J.Group of Hospitals, Mumbai;

5) Dr. Vernan Velho, Professor & Head, Dept. of Neurosurgery, Sir J.J.Group of Hospitals, Mumbai;

6) Dr. Kamlesh Jagiasi, Professor & Head, Dept. of Neurology, Grant Govt. Medical College and Sir J.J.Group of Hospitals, Mumbai;”

3. The Board has submitted its report today. We have gone

through the Report. The opinion of the Board is reproduced hereunder :

*"UPON EXAMINATION & AFTER CAREFUL STUDY OF MULTIPLE SONOGRAPHY REPORTS AND FETAL MRI. IT IS CONFIRMED THAT THE FETUS HAS FROM SERIOUS PHYSICAL CONDITION COMPRISING **GROSS HYDROCEPHALUS, SMALL POSTERIOR FOSSA A LARGE KYPHOSCOLIOSIS IN THE DORSOLUMBAR REGION WITH OPEN SPINAL DEFECT IN THE AREA WITH BILATERAL CLUB FOOT.***

*THE CONDITION OF THE FETUS FULFILLS THE CRITERIA OF **"SUBSTANTIAL RISK OR SERIOUS PHYSICAL HANDICAP"**.*

THE WOMAN WAS 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. AS THE CHILD BORN MAY HAVE MORBID LIFE WITH MULTIPLE OPERATIVE INTERVENTIONS WITH VERY HIGH MORBIDITY AND MORTALITY.

THE PREGNANCY HAS ADVANCED TO 23 WEEKS, 2 DAYS 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 AS DESIRED BY THE WOMAN."

4. In view thereof, the Writ Petition which is taken up for final hearing, is allowed. The Petitioner is allowed to undergo medical termination of pregnancy in Sir J.J.Hospital, Mumbai. The costs of medical termination of pregnancy shall be borne by the Petitioner

and her husband. It is clarified that the Petitioner shall undergo the procedure for medical termination of pregnancy at her own risk.

5. The Petitioner and her husband shall undertake to bear the responsibility of the child and the required neonatal management if born alive. The said undertakings are to be filed by tomorrow i.e. 27th August, 2019.

6. It is further made clear that the doctors who have put their opinion on record, shall have the immunity in the event of occurrence of any litigation arising out of the instant petition.

7. Writ Petition is disposed of in the above terms. There shall be no order as to costs.

8. Copy of this order shall be forwarded to the Dean of Sir J.J.Group of Hospital, Mumbai.

9. All concerned shall act on an ordinary copy of this order duly authenticated by the Associate/Private Secretary of this Court.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)