

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.23222 of 2019

Date of decision:-02.09.2019

Manga Singh

.....Petitioner

versus

Chandigarh Administration & another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ranjan Lakhanpal, Advocate for the petitioner.

Ms. Madhu Dayal, Advocate for respondent No.1.

Mr. Amit Jhanji, Advocate for respondent No.2.

TEJINDER SINGH DHINDSA, J.(ORAL)

Petitioner Manga Singh has filed the instant petition for issuance of direction to the respondent/PGIMER, Chandigarh to undertake the procedure of medical termination of pregnancy of his wife namely Mandeep Kaur.

Writ petition had come up for preliminary hearing before this Court on 29.08.2019. At that stage since counsel had apprised the Court that a Permanent Medical Board already stands approved and constituted at PGIMER, Chandigarh, to examine cases of medical termination of pregnancy and where the gestation period is in excess of 20 weeks accordingly while issuing notice of motion returnable for today a request had been made to the Chairperson of the Permanent Medical Board PGIMER, Chandigarh to examine the wife of the petitioner and a report/opinion be furnished.

During the course of resumed hearing today, Mr. Amit Jhanji, learned counsel representing the respondent-Institute has furnished the report of the Medical Board dated 30.08.2019. Copy of the same is taken on record as Mark 'A'.

The report of the Medical Board reads as follows:-

Subject:- CWP No.23222 of 2019 tilted as Manga Singh Vs. Chandigarh Administration & Another in the Hon'ble High Court of Punjab & Haryana at Chandigarh regarding patient Mandeep Kaur W/o Manga Singh aged 30 yrs.Cr. No.201904886841

With reference to the directions received from the Hon'ble Punjab and Haryana High Court dated 29.08.2019 the patient mandeep Kaur was medically evaluated by the Permanent Medical Board at PGIMER, Chandigarh on dated 30/08/19.

Following are the observations:-

- 1. As per the ultrasound done on 30/08/2019 the period of gestation is 24wks + 2 days with single live intrasuterin fetus with anhydramnious and bilateral renal agenesis.*
- 2. This is a several congenital anomaly. This fetus is not likely to survive as this congenital anomaly is not compatible with life.*
- 3. Keeping in view the above permanent Medical Board recommends medical termination of pregnancy at this stage due to bilateral renal agenesis in the fetus.*

<i>Sd/-</i> <i>Prof. Y.S. Bansal</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr.Tulike Singh</i> <i>(Member)</i>	<i>Sd/-</i> <i>Prof.Kanya Mukhopadhyay</i> <i>(Member)</i>
<i>Sd/-</i> <i>Dr. Manoj Goyal</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Ruchita Shah</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Prashant Panda</i> <i>(Member)</i>
<i>Sd/-</i> <i>Dr. Sahajal Dhooria</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Anupriya Kaur</i> <i>(Member)</i>	<i>Sd/-</i> <i>Dr. Ranjana Singh</i> <i>(Convener)</i>
<i>Sd/-</i> <i>Prof. Rashmi Bagga</i> <i>(Chairperson)</i>		<i>Sd/-</i> <i>Prof. Nandita Kakkar</i> <i>(Mamber)</i>

Perusal of the report would reveals that Mandeep Kaur wife of the petitioner was examined on 30.08.2019 and as per the ultrasound done the period of gestation is 24 weeks +02 days with single live intrauterine fetus with anhydramnious and bilateral renal agenesis. The Board has further opined that the foetus suffers from a severe congenital anomaly and is not likely to survive as such anomaly, is not compatible with life. Accordingly it has been recommended that medical termination of pregnancy at this stage due to bilateral renal agenesis in the foetus be permitted.

Section 3 of the Medical Termination and Pregnancy Act, 1971 reads as follows:

“3. When pregnancies may be terminated by registered medical practitioners.-

1. Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of

this Act.

2. *Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-*

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

3. *In determining whether the continuance of a*

pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.

4. (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a 4 [mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

In the considered view of this Court, case of the petitioner would fall under Section 3(2)(b)(ii) but for the time period embargo of 20 weeks. The clear opinion given by the Permanent Medical Board constituted at PGIMER, Chandigarh, as per report at Mark 'A' is that the foetus is not likely to survive on account of congenital anomaly noticed in the report itself.

The Medical Board is chaired by a Doctor none-other the head of the Obstetrics and Gynecology Department. Under such circumstances it would be difficult for this Court to refuse permission to wife of the petitioner to undergo medical termination of pregnancy. There would be no basis for this Court not to accept the recommendations made by the Permanent Medical Board and the constitution of which was approved by the Director, PGIMER, Chandigarh.

For the reasons recorded above, writ petition is allowed. The Director, PGIMER, Chandigarh is requested to get the pregnancy of

Mandeep Kaur i.e. wife of the petitioner terminated under the supervision of the head of the Department (Obstetrics and Gynecology), PGIMER, Chandigarh.

Needless to observe that all necessary facilities for undertaking such procedure be afforded in favour of the patient

A copy of this order be furnished to counsel for the parties under the signatures of the Bench Secretary to ensure necessary and immediate compliance.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

02.09.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No