

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION (ST.) NO.10590/2020

Mrs.Kaveri Santosh Jadhav,
aged 23 yrs., occu.household,
r/o at post Pal Tq.Phulambri
Dist.Aurangabad.

...Petitioner..

VERUSS

1] The State of Maharashtra,
through Principal Secretary,
Public Health Department,
Government of Maharashtra.

2] District Health Officer,
Aurangabad. Dist.Aurangabad.

...Respondents..

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Shri A.K. Bhosale, Advocates for petitioner.

Shri D.R. Kale, Government Pleader for respondent nos.1 & 2.

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CORAM: V.L. ACHLIYA, J.

DATE: 15.05.2020

PER COURT :

1] Rule. Rule made returnable forthwith. By consent, heard finally.

2] By this petition filed under Article 226 of the Constitution of India, the petitioner has approached to claim the relief as under:-

“b] By issuing writ of mandamus or any other writ of

like nature or any direction directing that the petitioner may abort by getting proper medical aid.

c] Petitioner may be allowed to abort in private hospital.”

3] Heard learned counsel for the petitioner and learned Government Pleader for the respondent nos.1 & 2. Perused the report of expert committee received from the Government Medical College and Hospital at Aurangabad.

4] The petitioner has approached with a case that she is a married woman and carrying 22 weeks pregnancy. During the medical check-up and ultra sound sonography, it was detected that foetus in her womb suffering from foetal anomaly of skull which is called as ANENCAPHALY (i.e. absence of a major portion of the brain, skull and scalp, which occurs during embryonic development). The report to that effect was issued by SUKH SHANTI HOSPITAL AND NURSING HOME, Phulambri Dist.Aurangabad. It is the contention of learned counsel for the petitioner that the disorder as noticed is not curable. There is no standard treatment to treat the said disorder. Most of the ANENCAPHALY foetus do not survive after birth and the infants die within few hours or days after birth due to cardio respiratory arrest. In the background of overall facts of the case, the learned counsel contended that the petitioner

is entitled to get the pregnancy terminated.

5] By order dated 12.5.2020 passed by this Court (Ravindra V. Ghuge, J.), the petitioner was directed to appear before the Medical Board on 13.5.2020 at 11-00 a.m. and the Medical Board was directed to express its opinion on the following issues:-

“[a] Whether, the fetus has such anomalies that a child with serious congenital defects should not be allowed to be delivered by the probable mother?

[b] Whether, such a child, if allowed to be born, would not be able to lead a health life even with medical intervention and assistance ?

[c] Whether, in the opinion of the Medical Board, the termination of pregnancy would be inevitable and necessary ?

[d] Whether, the life of the petitioner would not be subjected to risks if such termination of pregnancy is permitted ?”

6] The petitioner appeared before the Medical Board on 13.5.2020. The expert committee examined the petitioner and on her obstetric ultra-sonography report, recorded findings on the above issues as under:-

[a] Fetus has serious congenital anamoly, should be allowed termination.

[b] If allowed to be born, child would not be able to survive even with medical intervention & assistance.

- [c] Termination of pregnancy is inevitable & necessary.
- [d] Termination of pregnancy has due risk to mother (petitioner) and the risk is explained to her and her relatives."

7] Thus, on due consideration of overall facts of the case, the submissions advanced and the report of the expert committee, I am of the view that the petitioner has made out the case to allow her to terminate the pregnancy. The expert committee has opined that the foetus has serious congenital anomaly and if allowed to be born, child would not be able to survive even with medical intervention and assistance. It is further opined that the termination of pregnancy is inevitable and necessary. The expert committee has also opined that termination of pregnancy has due risk to the petitioner and same has been explained to her as well as her relatives.

8] Learned counsel for the petitioner submits that the petitioner is fully aware about the risk involved in termination of pregnancy and same has been explained to her as well as to her relatives by the expert committee, which has examined the petitioner. She is ready to bear the risk of medical termination of pregnancy and urged to allow the petitioner to get the pregnancy terminated at her risk.

9] Thus, considering the overall facts of the case and report of the expert committee, I am of the view that the case is made out to allow the petitioner to get the pregnancy terminated at her own risk. Accordingly, the petition is allowed. The petitioner is permitted to get her pregnancy terminated in the hospital established or maintained by the Government or at a place approved by the Government or at the District Level Committee constituted by the Government to medically terminate pregnancy as provided u/s 4 of the Medical Termination of Pregnancy Act, 1971.

10] Authenticated copy attested by Court Sheristedar of this Court be supplied to learned counsel for the petitioner as well as to the learned AGP. All concerned to act upon authenticated copy of the order.

11] Rule is made absolute in above terms.

(V.L. ACHLIYA, J.)