

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1974 OF 2021

Madhura Shreyas Pade ... Petitioner
Vs.
State of Maharashtra through the Principal
Secretary, Public Health Department and others ... Respondents

Ms. Rachita Padwal i/b. Ms. Aditi Saxena for Petitioner.
Mr. N. M. Mehra, AGP for Respondents-State.

**CORAM : UJJAL BHUYAN &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : JUNE 08, 2021

P.C. :

Heard Ms. Rachita Padwal, learned counsel for the petitioner and
Ms. N. M. Mehra, learned AGP for the respondents-State.

2. This petition under Article 226 of the Constitution of India has
been preferred by the petitioner seeking the following reliefs:-

- “a. For a writ of declaration or any other appropriate writ, order
or direction in the nature of declaration, declaring that the
case of the petitioner is a fit case for exercising jurisdiction
under Section 3(2B) of the Medical Termination of
Pregnancy (Amendment) Act, 2021 r/w. Section 5 of the
Medical Termination of Pregnancy Act, 1971 for termination
of pregnancy for the fetus that is diagnosed with an anomaly.
- b. For a writ of mandamus or any other writ, order, or direction
in the nature of mandamus directing the respondent to;
 1. 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;
 2. Allow the petitioner to undergo medical termination of
pregnancy for the fetus that is diagnosed with the
anomaly, at a medical facility of her choice.
- c. Pending the hearing and final disposal of this matter this
Hon’ble Court be pleased to direct the constitution of 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.

- d. For ad-interim relief in terms of prayer clause (c).
 - e. For any other order / direction that this Hon'ble Court may deem fit."
3. On 03.06.2021, this Court had passed the following order:-
- "2. The petitioner herein is 22 weeks pregnant and has a fetus which appears to have been detected with the following anomalies, as contained in the report of Dr. Vandana Bansal, annexed at exhibit B to the petition:
- ‘ABSENT CAVUM SEPTUM PELLUCIDUM,
POSSIBLY LOBAR HOLOPROSENCEPHALY
THORACIC KYPHOSCOLIOSIS WITH SHORT
SPINE LEFT SIDED LARGE CONGENITAL
DIAPHRAGMATIC HERNIA CONTAINING
STOMACH, LIVER AND SMALL BOWEL
SINGLE PELVIC MULTICYSTIC DYSPLASTIC
KIDNEY BLADDER NOT VISUALISED
BILATERAL TALIPES EQUINOVARUS WITH
SHORT LEFT LEG, BOWED TIBIA AND ABSENT
FIBULA
AS COMPARED TO PREVIOUS SCAN INTRVAL
GROWTH APPEARS SATISFACTORY
LIQUOR ANHYDRAMINIOS
NORMAL DOPPLER FLOWS
SUGGESTED
- CORD BLOOD SAMPLING/SOS PLACENTAL
BIOPSY FOR KARYOTYPE AND DNA SAVE IN
VIEW OF ABOVE SCAN FINDINGS
- PROGNOSIS POOR’
3. The petitioner has approached this Court seeking permission to medically terminate the pregnancy as it is beyond the stipulated period of 20 weeks, as contained in the Medical Termination of Pregnancy Act, 1971 ("MTP Act").
4. In view of the aforesaid, we deem it appropriate to direct appointment of a medical board to examine the petitioner on the admissibility of the medical termination of pregnancy. Hence, the following order:
- i) The Dean of Sir J. J. Group of Hospitals and Sir Grant Medical College is requested to constitute a medical board as per the MTP Act to examine the petitioner.
 - ii) The petitioner to present herself before the

hospital authorities / concerned Doctor tomorrow i.e., 4th June, 2021 at 11 a.m.

- iii) The medical board to examine petitioner and submit its report in a sealed cover to this Court on or before 11 am on 8th June, 2021.

5. List the matter on 8th June, 2021, before the appropriate Court, First on Board.”

4. Today when the matter is called upon, a report dated 07.06.2021 of the Medical Board constituted in terms of paragraph 4(i) of the order dated 03.06.2021 has been placed before us.

5. Petitioner was examined by the Medical Board whereafter the following opinion has been rendered:-

“ **COMMITTEE OPINION**

AFTER CAREFUL EXAMINATION AND STUDY OF ULTRASONOGRAPHY REPORTS, IT IS CONFIRMED THAT THE FOETUS SUFFERS FROM SERIOUS NEUROLOGICAL, RENAL AND OTHER SYSTEMIC AND SKELETAL ABNORMALITIES IN THE FORM OF - “COLPOCEPHALY, DIAPHRAGMATIC HERNIA, MULTICYSTIC DYSPLASTIC KIDNEY, KYPHOSCOLIOSIS, TALIPES EQUINOVARUS IN A 23 WEEKS PREGNANCY.”

THE CONDITION OF FOETUS FULFILLS THE CRITERIA OF “SUBSTANTIAL RISK OF SERIOUS PHYSICAL HANDICAP WITH VERY HIGH MORBIDITY AND OCCASIONAL MORTALITY”.

TERMINATION OF PREGNANCY AT 23 WEEKS OF GESTATION CARRIES RISK TO THE PREGNANT WOMAN WHICH IS SIMILAR TO THE RISK OF DELIVERY AT TERM.

THE PREGNANT WOMAN HAS VOLUNTARILY EXPRESSED HER DESIRE TO TERMINATE THE PREGNANCY AND IS WELL INFORMED ABOUT THE NATURE OF THE CONDITION OF FOETUS AND ITS OUTCOME. SHE IS ANGUISHED WITH THE CONDITION OF THE FOETUS IN UTERO, HENCE IT IS ADVISABLE TO TERMINATE THE PREGNANCY.

THUS IF THE COURT PERMITS, THE PREGNANCY CAN BE TERMINATED IN ANY TERTIARY CENTRE AS DESIRED BY THE PREGNANT WOMAN, WITH DUE RISK.

THE COMMITTEE WOULD LIKE TO BRING TO THE NOTICE OF THE HONOURABLE HIGH COURT THAT, THE PATIENT HAD UNDERGONE ULTRASONOGRAPHY ON 27/5/2021 AT SURYA HOSPITAL WITH A REPORT SHOWING MULTIPLE ANOMALIES AT 22 WEEKS MATURITY. THIS WAS WELL WITHIN THE TERMINATION OF PREGNANCY ACT DATED 25TH MARCH 2021 (ENCLOSED WITH THIS OPINION).

HENCE THE COMMITTEE FEELS THAT, THE NEW AMENDMENT GUIDELINES IF FOLLOWED HENCEFORTH, WILL REDUCE THE UNWARRANTED REPETITION OF OPINIONS AND PROCEDURES WHICH IN TURN JEOPARDISES MATERNAL HEALTH DUE TO ADVANCED GESTATIONAL AGE.”

6. We have carefully gone through the opinion of the Medical Board and we find that as per the opinion, the fetus suffers from serious neurological, renal and other systemic and skeletal abnormalities and that the condition of the fetus fulfills the criteria of substantial risk of serious physical handicap with very high morbidity and occasional mortality. Medical Board has further opined that termination of pregnancy at this stage carries the same risk to the pregnant woman similar to the risk of delivery at term.

7. Having regard to the opinion rendered by the Medical Board we are of the view that petitioner may be permitted to undergo medical termination of her pregnancy in any hospital of her choice having adequate facilities, expeditiously without any further loss of time and at any rate within seven days.

8. Writ petition is disposed of accordingly.

9. All concerned to act on authenticated copy of this order.

(PRITHVIRAJ K. CHAVAN, J.)

(UJJAL BHUYAN, J.)