

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-10720-2021 (O&M)

Date of Decision: June 07, 2021

Jyoti Devi and another

.... *Petitioners*

Versus

*The Postgraduate Institute of Medical Education and Research, Sector 12,
Chandigarh and others*

... *Respondents*

CORAM: HON'BLE MR.JUSTICE VIVEK PURI

Present: Mr. Gaurav Sharma, Advocate,
for the petitioners.

Mr. Piyush Khanna, Advocate,
for the respondents.

*(The case has been taken up through video conferencing on
account of Covid-19 pandemic.)*

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Vivek Puri, J. (Oral)

Petitioners have approached this Court by way of instant writ petition under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of mandamus for directing the official respondents, to terminate the pregnancy of petitioner no.1, in view of the Ultrasound Report (Annexures P/5 to P/7) and medical record (Annexures P/8 and P/9).

The further report from the Permanent Medical Board, PGIMER, Chandigarh has been received in Court today and the same is

taken on record.

I have heard learned counsel for the parties and perused the record as well as report of the Permanent Medical Board.

The petitioners are married couple and in December, 2020, petitioner no.1 conceived and became pregnant. It has been alleged that during the course of her examination, it was found that the fetus is not healthy and having multiple cysts in both the kidneys, the fetus has very poor prognosis and have been advised that the same is not compatible with life. Accordingly, the petitioners have sought the medical termination of pregnancy.

At the first instance, in terms of order dated 02.06.2021, petitioner no.1 was directed to appear before the Medical Superintendent of PGIMER, Chandigarh on 03.06.2021 at 10.00 AM, who will ensure that she will be examined by the Board and a report was sought regarding the termination of the pregnancy, if so advised.

On 04.06.2021, the report was received, however, some more time was sought to submit final report. The first report of the Permanent Medical Board is as following:-

“As per the ultrasound done on 03/06/2021, the period of gestation is 24 wks with single live intrauterine fetus with multiple cysts in left kidney with few of them communicating suggestive of ? multicystic dysplastic kidneys ?? gross hydronephrosis with Pelvi Ureteric Junction (PUJ) obstruction.

*Right kidney is seen normal with small 3mm cysts in upper pole. The urinary bladder and liquor is normal. **The overall***

prognosis appears to be favourable as one kidney is functional. However the board requires one more day for further evaluation. The final report will be submitted in a day.”

As the Medical Board had sought a day's time, the matter was adjourned for today i.e. 07.06.2021. The further report has been received and the same is as following:-

Subject: CWP No.10720 of 2021 titled as Jyoti Devi and Another Vs Post Graduate Institute of Medical Education and Research and others in the Hon'ble High Court of Punjab & Haryana at Chandigarh regarding patient Jyoti Devi w/o Parveen Kumar aged 20 yrs female CR No. 202102023220, R/o 569 Khuda Ali Sher, Chandigarh.

With reference to the directions received from the Hon'ble Punjab and Haryana High Court dated 02/06/2021 received in the MS office on 02/06/2021 from the Legal Cell, PGIMER wherein the Permanent Medical Board has been asked to examine the petitioner Jyoti Devi and submit its report in a sealed cover to the court regarding the termination of the pregnancy, if advised.

The petitioner Ms Jyoti Devi appeared in the O/o Medical Superintendent on 03/06/2021 and was medically evaluated by the Medical Board at PGIMER, Chandigarh on dated 03/06/2021 and an interim report was submitted to the court on 03/06/2021. The petitioner Ms Jyoti Devi was further evaluated by the Medical Board at PGIMER, Chandigarh on 04/06/2021.

Following are the observations:

- 1) As per the ultrasound done on 03/06/2021, the period of gestation is 24 wks with a single live intrauterine fetus. The fetus has got multiple cysts in left kidney with few of them*

communicating suggestive of ? multicystic dysplastic kidneys?? gross hydronephrosis with Pelvi Ureteric Junction (PUJ) obstruction.

The right kidney is seen normal with a small 3mm cysts in upper pole. The urinary bladder and liquor (amniotic fluid) is normal.

2) The fetal echocardiography (detailed evaluation of fetal heart) done on 04/06/2021 is found to be normal.

3) The blood investigation done for beta-Thalassemia screening on 04/06/2021 is also found to be normal.

4) The pt was medically examined and is found to be fit except for mild anaemia.

5) Keeping in view the above, the Permanent Medical Board does NOT recommend medical termination of pregnancy at this stage as the overall prognosis appears to be favourable as one kidney is functioning normally.

The patient is advised to get regular antenatal check-up (ANC), haematinics to correct anemia and Institutional delivery. The newborn baby will be evaluated after birth by the neonatologist and paediatric surgeons.

*Sd/-
Prog. S P Mandal
(Member)*

*Sd/-
Dr. Shiv Sajan Saini
(Member)*

*Sd/-
Dr. Manoj Goyal
(Member)*

*Sd/-
Dr. Tulika Singh
(Member)*

*Sd/-
Dr Ruchita Shah
(Member)*

*Sd/-
Dr. Anuypriya Kaur
(Member)*

*Sd/-
Dr. GSRSNK NOIDU
(Member)*

*Sd/-
Prof. Rashmi Bagga
(Chairperson)*

*Sd/-
Dr. Ranjana Singh
(Convener)"*

Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as “the Act”) as amended by virtue of notification dated 25.03.2021 is as under:-

“3.(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under the 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 twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been

caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave

injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

- (a) a Gynaecologist;*
- (b) a Paediatrician;*
- (c) a Radiologist or Sonologist; and*
- (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be."*

The petitioners are seeking to invoke the provisions of Section 3 (2)(ii) of the Act as the period of gestation as per the report of the Medical Board is 24 weeks. The petitioners have sought to put-forth a case to the effect that the child, if born, will suffer from serious physical abnormality and as such, medical termination of pregnancy has come essential in the

instant case.

In the case in hand, the Medical Board has made a specific and categorical report to the effect that though left kidney of the fetus has multiple cysts, but the right kidney is normal. It has also given a categorical opinion that the Permanent Medical Board does not recommend the medical termination of pregnancy at this stage as the overall prognosis appears to be favourable as one kidney is functioning normally.

It is painful that one of the kidneys of the fetus is having abnormality, but at the same time, it has to be noted that some sense of relief that right kidney of the fetus is normal. There is every possibility that the child when born will lead healthy and normal life may be with few problems. However, it will be too early and far-fetched to conclude that the abnormality will be to such an extent that the pregnancy should be medically terminated, more particularly in view of the categorical report of the Permanent Medical Board.

In these set of circumstances, it is deemed neither just nor appropriate to direct that the medical termination of the pregnancy of petitioner no.1 at this stage. Accordingly, the request of the petitioners to medically terminate the pregnancy of petitioner no.1 is declined in view of the report of the Permanent Medical Board, PGIMER, Chandigarh.

Disposed of accordingly.

June 07, 2021
vkd

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : *Yes / No*
Whether reportable : *Yes / No*