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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 11th January, 2021

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W.P.(C) 115/2021

KALPANA SINGH

.....Petitioner

Through: Mr. Siddharth Seem, Advocate

versus

GOVERNMENT OF NCT OF DELHI & ORS.Respondents

Through: Mr. V.S.R. Krishna & Mr. V.
Shashank Kumar, Advocates for R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

: D. N. Patel, Chief Justice (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. This writ petition has been preferred with the following prayers:

“a. For a writ of mandamus or any other writ, order, directing the Respondents to allow the Petitioner to undergo Medical Termination of the Pregnancy.

b. For a writ of declaration or any other appropriate writ, order or direction quashing section 3(2)(b) of The Medical Termination of Pregnancy Act, 1971 to the limited extent that it stipulates a ceiling of 20 weeks for an abortion to be done under section 3, as ultra vires Article 14 and 21 of the Constitution of India.

W.P.(C) 115/2021

Page 1 of 13

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c. For a declaration to the effect that the expression “save the life of the pregnant woman” in Section 5 of the MTP Act includes “the protection of the mental and physical health of the pregnant woman” and also incorporates situations where serious abnormalities in the foetus are detected after the 20th week of pregnancy.

d. For an order directing the Respondent No. 3 for setting up an expert panel of doctors to assess the pregnancy and offer MTP to the petitioner in need of the procedure beyond the prescribed 20 weeks limit.

e. For any other order/ direction that this Hon’ble Court may deem fit.”

2. As per the case set out in the petition, petitioner had got Ultrasonography conducted on 31st December, 2020 at gestational stage of 27 weeks 5 days which reveals that the foetus suffered from Anencephaly +. Based on the said report, which indicated a fetal abnormality the petitioner consulted her Gynaecologist at Lady Hardinge Medical College and requested for medical termination of pregnancy. However, since the permissible limit of 20 weeks under the Medical Termination of Pregnancy Act had already crossed, the petitioner’s request was declined. Report dated 31st December, 2020 is annexed at Annexure P-3 to the memo of this writ petition and is as follows:-

“UHID: 20200157120

**Lady Hardinge Medical College
And Smt. S.K. Hospital
Connaught Place, New Delhi-110001**

CONSULTING ROOM NO: Casualty
20000216047507830

EHR ID:

CLINIC: Gynae Casualty TOKEN NO: 101

CASUALTY

Department: Main Casualty
ER No: 2020/078/0056128
CASUALTY

Fees: Rs. 0

GC/551273 Unit:

Name: MRS. KALPANA
PRAKASH

31/12/2020 /11PM W/O:

Date of Registration: 31.12.2020 10:49:37 PM Sex: Female Age:
25 Y

Billing Type: GENERAL

Religion: UNKNOWN

Mobile No.: *****294

Occupation: UNKNOWN

Address: F-7 SHANKAR MARKET CENTRAL DELHI, Patient

Type: NON MLC

DELHI, INDIA

Prepared By: Mr. Satveer Singh

Brought By: Self

Email:

Presenting Complaints:

Investigation:

Temp – 87.49 Primi/23 + 6 Wks. POG/Pain in abdomen/since
morning

No C/L
(illegible)

c Gastuco
No C/o BPV / LPV

Examination : Primi/SPC

P :

BP: M/N – Prev. cycle regulation 3-4d.any flow 28-3LMP-16 Jul
2020

R:

P / u : NAD

P / u : NAD

Doctor's Name

Signature/Date

Patient Consent: I, the holder of the above mentioned mobile
number, herewith give my consent to share my electronic health

W.P.(C) 115/2021

Page 3 of 13

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10:52:53

information with 'My Health Record', an initiative of Govt. of India.
I understand that I can revoke / withhold this consent through site

(<https://myhealthrecord.nhp.gov.in>)

/c ucp
(illegible)
PO
(illegible)
BP-103/86
PR – 84 min.

USG-31/12/2020

NMC: SL/UF

(illegible)

FL – 27 + 5 wks

Anencephaly +

Advice:

- USG for PWB + r/o ectopic stat
- T. Rantop 40mg stat given
- Pt. Obsecured in GC x 3 wks.

Comfortable

No C/O BPV/LPV

Pt. counselled i/v/o poor prognosis of fetus & prolong

POG

Pt. & husband both counselled and advice

Advice:

F/U in GOPD c/m

F/U in GOPD thus 2pm

Fetal medicine OPD

T. PA 5mg. 10 D

((illegible))

3. The matter was listed before us on 7th January, 2021 when we passed the following order:-

“1. Learned counsel for the petitioner seeks permission to amend the name of the petitioner in the memo of parties as well as in the writ petition.

2. The permission as prayed for is granted. The amended memo

W.P.(C) 115/2021

Page 4 of 13

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Signing Date: 13/01/2021
10:52:53

of parties and the amended writ petition be placed on record during the course of the day.

3. Learned counsel for the petitioner submits that the petitioner is 28 weeks pregnant and medical examination report of the petitioner is annexed as Annexure P-3 to the memo of the writ petition. The said report reads as follows:-

“Report

SLIUF, Cephohc

CA+

PL – Post, Nil

FL = 27 Wsd.

*Absence of cranial vault
& cerebral parenchyma
S/o Anencephaly*

Dr. Pavan SR

Signature 94979

Name & Designation of

Person on doing the USG”

4. It is submitted by the Counsel for the petitioner that the health of foetus can also be one of the grounds for termination of the pregnancy even beyond twenty weeks. Counsel for the petitioner has relied upon several decisions which are referred to in the memo of the petition.

5. Issue notice to the respondents. Mr. Jawahar Raza, the learned ASC accepts notice for the respondents No.1 and 2/Govt. of NCT of Delhi.

6. Notice be now issued to respondent No.3/AIIMS.

7. In view of the aforesaid facts and looking to the aforesaid medical report, we consider it apposite to request the Director of All India Institute of Medical Sciences (AIIMS), New Delhi to constitute a Board of three doctors to examine the petitioner. The petitioner shall remain present before the Director, AIIMS on 8th January, 2021 between 11 a.m. to 1 p.m.

8. The report of the Medical Board/Committee shall be presented before this Court on or before 11th January, 2021.

9. List this matter on 11th January, 2021.

10. The Registry is directed to send a copy of this order to Director, AIIMS through fax immediately.

11. We also permit the personal service of this order on the Director, AIIMS by the petitioner.

12. Copy of this order be given dasti to learned Counsel for the petitioner under signature of the Court Master.”

4. In compliance of the aforesaid order, petitioner appeared before the Medical Board, constituted by the Director, All India Institute of Medical Sciences, New Delhi, on 08th January, 2021. The said Medical Board has submitted its report dated 08th January, 2021, which reads as under:-

**“ALL INDIA INSTITUTE OF MEDICAL SCIENCES
Ansari Nagar, New Delhi – 110029**

NO.F.2-2/Medical Board/2021-Estt.(H.)

Dated: 08.01.2021

Subject: *Report of the medical board constituted at AIIMS for Medical examination of petitioner Ms. Kalpana to render an opinion regarding the medical condition of the foetus and also whether the pregnancy can be terminated at this stage in compliance of order dated 07.01.2021 of Hon'ble The Chief Justice and Hon'ble Ms. Justice Jyoti Singh, High Court of Delhi vide W.P.(C.) No. 115/2021 titled Kalpana Versus Govt. of NCT of Delhi & Ors.*

With reference to the Hon'ble court order dated 07.01.2021 of Hon'ble The Chief Justice and Hon'ble Ms. Justice Jyoti Singh, High Court of Delhi vide W.P. (C.) No. 115/2021 titled Kalpana Versus Govt. of NCT of Delhi & Ors., regarding subject noted above, a

W.P.(C) 115/2021

Page 6 of 13

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Digitally Signed By: PANKAJ
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10:52:53

meeting of the medical board was held on 08.01.2021 at 12:00 Noon in VIP Room No. 13, M.S. Office Wing, AIIMS, New Delhi alongwith following board members:

- | | | |
|---|---|---------------------|
| 1. Dr. Vatsla Dadhwal | - | Chairperson |
| Professor, Deptt. Of Obs. & Gynae | | |
| 2. Dr. Surabhi Vyas | - | Member |
| Addl. Professor, Deptt. of Radio-diagnosis | | |
| 3. Dr. Aparna K. Sharma | - | Member |
| Addl. Professor, Deptt. of Obs. & Gynae | | |
| 4. Dr. Abhishek Yadav | - | Member |
| Assoc. Professor, Deptt. of Forensic Medicine | | |
| 5. Dr. Anu Thukral | - | Member |
| Assoc. Professor, Deptt. of Paediatrics | | |
| 6. Dr. Arif T.P. | - | Member Secy. |
| Department of Hospital Administration | | |

Mrs. Kalpana was examined on 08.01.2021 at 12:00 Noon in VIP Room No. 13, M.S. Office Wing, AIIMS, New Delhi and her medical records were evaluated by the panel of experts in the board.

OPINION: The Medical board after reviewing the records is of the following opinion:

- The petitioner Ms. Kalpana is a 25 years old lady. This is her first pregnancy and she is currently at 25 weeks of gestation by date which corresponds with the Ultrasound findings.
- Ultrasound shows anencephaly which is incompatible with life.
- Mother does not have any medical co-morbidities.
- In view of above, Medical Termination of Pregnancy (MTP) can be offered.

(Dr. Vatsla Dadhwal)	(Dr. Surabhi Vyas)	(Dr. Aparna K. Sharma)
Chairperson	Member	Member
(Dr. Abhishek Yadav)	(Dr. Anu Sachdeva)	(Dr. Arif T.P.)
Member	Member	Member Secy."

5. We have heard learned counsels for the parties.

6. The petitioner is 25 years of age. She is in the 25th week of her pregnancy, as per Medical Report of AIIMS dated 08.01.2021. The foetus has been diagnosed with Anencephaly, which is incompatible with life.

7. In the circumstances the petitioner seeks permission to abort the foetus but according to her is prevented Statutorily, from doing so, owing to the combined effect of the provisions of Sections 3(2)(b) and 5(1) of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred as ‘the MTP Act’), the vires of which are challenged in the present petition. Sections 3(2)(b) and 5(1) of the MTP Act, read thus:

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

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

(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.*

5. Sections 3 and 4 when not to apply.—*(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a*

registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.”

8. Petitioner submits that there is an absolute proscription in Section 3(2)(b) of the MTP Act (*supra*), from termination of pregnancy, in cases where gestation has crossed 20 weeks. Where the pregnancy is of less than 12 weeks, it may be terminated by a registered medical practitioner, if the medical practitioner is of the opinion that the continuance of the pregnancy would involve risk of the life of mother, or grave injury to her physical or mental health, or result in the child suffering from physical or mental abnormalities, causing a serious handicap. A similar dispensation is available where the pregnancy has crossed 12 weeks, but has not exceeded 20 weeks, the only difference being that the opinion in such a case has to be of two registered medical practitioners.

9. The controversy involved in the present petition is in a narrow compass and on the legal front no longer *res integra*. In ***Tapasya Umesh Pisal v. Union of India & Ors, (2018) 12 SCC 57***, Tapasya Umesh Pisal, the petitioner, who was 24 years of age approached the Supreme Court, under Article 32 of the Constitution of India, seeking permission to undergo medical termination of her pregnancy, which had progressed to 24 weeks, as the foetus had been diagnosed with tricuspid and pulmonary atresia, a cardiac abnormality. The Supreme Court directed constitution of a Medical Board to examine the medical condition of the petitioner. The Board reported that the treatment of the abnormality in the foetus would require foetal surgery, which carried the risk of high mortality and that even if the surgery were to be successful, such children usually remain physically

W.P.(C) 115/2021

Page 9 of 13

incapacitated and have a limited life span. Supreme Court observed that, except for the time period i.e. the duration for which the pregnancy had continued, the case would fall within Section 3(2)(b) of the MTP Act. In the circumstances, the Supreme Court held as follows:

“8. In these circumstances, it is difficult for us to refuse the permission to the petitioner to undergo medical termination of pregnancy. It is certain that the foetus if allowed to born, would have a limited life span with serious handicaps which cannot be avoided. It appears that the baby will certainly not grow into an adult.” (emphasis supplied)

10. In the case of ***Mrs. X and Ors. v. Union of India and Ors., (2017) 3 SCC 458*** the pregnancy of the petitioner had continued upto 22 weeks, when the foetus was diagnosed as suffering from bilateral renal agenesis and anhydramnios. The Medical Board reported that there was risk of intrauterine fetal death/still birth, with no chance of long term post natal survival, and that there was no curative treatment available for bilateral renal agenesis. The Supreme Court observed as under:

*“8. We have already vide order dated 16-1-2017 [Meera Santosh Pal v. Union of India, (2017) 3 SCC 462] upheld the right of a mother to preserve her life in view of foreseeable danger in case the pregnancy is allowed to run its full course. This Court in that case relied upon **Suchita Srivastava v. Chandigarh Admn.** [Suchita Srivastavav. Chandigarh Admn., (2009) 9 SCC 1: (2009) 3 SCC (Civ) 570], where a Bench of three Judges held: (SCC p. 15, para 22)*

“22. ... a woman's right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution.”

In these circumstances we find that the right of bodily

integrity calls for a permission to allow her to terminate her pregnancy. The report of the Medical Board clearly warrants the inference that the continuance of the pregnancy involves the risk to the life of the petitioner and a possible grave injury to her physical or mental health as required by Section 3(2)(i) of the Medical Termination of Pregnancy Act, 1971. It may be noted that Section 5 of the Act enables termination of pregnancy where an opinion is formed by not less than two medical practitioners in a case where opinion is for the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

9. Though the current pregnancy of the petitioner is about 24 weeks and endangers the life and the death of the foetus outside the womb is inevitable, we consider it appropriate to permit the petitioner to undergo termination of her pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971. We order accordingly.”

11. A similar issue arose in ***Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339***, wherein pregnancy had continued for 25 weeks and the report of the Medical Board constituted to examine the case confirmed that if the pregnancy were allowed to be continued, the mother was under threat of severe injury and the child, even though born alive, would require complex cardiac corrective surgery, with its inherent risks to life. Following its decisions cited *supra*, the Supreme Court allowed the prayer of the petitioner, before it, for medical termination of her pregnancy.

12. We thus find that the issue is covered by the decisions cited hereinabove and permission can be granted to the petitioner for medical termination of her pregnancy. We are also of the opinion, that in holding as we do, we are not infracting Section 3 or Section 5 of the MTP Act (*supra*). Section 3(2)(b) permits termination of pregnancy, *inter alia*, where there is

substantial risk of serious physical or mental abnormalities, were the child to be allowed to be born. Seen in isolation, it places a gap of 20 weeks gestation for this to be permissible. At the same time, Section 5 relaxes the rigours of Section 3(2) in a case where the termination of the pregnancy is immediately necessary to save the life of the pregnant woman. We are also of the opinion that these provisions have to be construed as part of one cumulative dispensation and not isolated from each other. Seen thus, we are convinced that, even in a case where the condition of the foetus is, as in the present case, incompatible with life, the rigour of Section 3(2) deserves to be relaxed, and the right to terminate the pregnancy cannot be denied merely because gestation has continued beyond 20 weeks.

13. Law, needless to say, cannot be construed in a manner incompatible with life.

14. Since the judgments cited above are based on the earlier decisions of the Supreme Court, we have not referred to them separately to avoid prolixity.

15. Having heard the counsel for the petitioner and looking to the urgency of the matter as well as the health of the foetus in the womb of the petitioner and the advance stage of pregnancy of the petitioner, we had passed an order on 07.01.2021 and requested respondent No. 3 to examine the petitioner.

16. Pursuant thereto a Medical Board was constituted and report has been rendered by Respondent No. 3/AIIMS, Delhi. Petitioner has been examined by 6 eminent doctors who have opined that medical termination of pregnancy can be offered. The report has been quoted in extenso in the earlier part of the order.

17. Looking to the judgments of the Hon'ble Supreme Court, cited hereinabove, and in the facts and circumstances of the case including *inter alia*, the report of the Medical Board constituted by the Director, AIIMS, we are of the view that the prayer of the petitioner deserves to be allowed. Accordingly, the petitioner is permitted to have her pregnancy terminated, without any further delay.

18. We express our appreciation for the assistance rendered to the Court by the Director, AIIMS as well as the Medical Board constituted by him, who approached the matter with the urgency it deserved.

19. With these directions, this writ petition is allowed and disposed of.

Copy of the order be given dasti under the signatures of the Court Master.

CHIEF JUSTICE

JYOTI SINGH, J

JANUARY 11, 2021
kks