

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

5 WRIT PETITION NO.7184 OF 2022

**DIPALI SANDIP BORKAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
ANOTHER**

...
Advocate for Petitioners : Mr. M.K. Bhosale h/f. Mrs. Vaishali B.
Dolas

AGP for Respondent/State : Mr. S.G. Sangle

...

**CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.**

DATED : JULY 18, 2022.

PER COURT :

1) On 14.7.2022 we had passed the following order :-

"1. We have received the report dated 13.07.2022 of five members comprising of the MTP Medical Board, Government Hospital, Aurangabad. The report contains one covering page and the second page is a copy of the report. Both are taken on record and marked as "X-1" and "X-2", respectively.

2. On 12.07.2022, when we passed an order referring the petitioner to the Medical Board, we have framed specific issues to be dealt with by the Board with justification, as is visible from paragraphs 3 and 4 reproduced below :-

"3. The foetus is now 26 weeks old and has a beating heart. Merely because the right wrist appears to be absent, cannot be a ground to terminate the pregnancy. Nevertheless, we would not like to take a decision by ourselves in view of these factors. We deem it

appropriate to refer the case of the petitioner to the Medical Board available with the Government Medical College and Hospital at Aurangabad (GMCH).

4. In view of the above, the petitioner shall appear before the Medical Board at GMCH, Aurangabad, along with her husband on 13/07/2022 at 9.30 a.m. We would appreciate a report from the Medical Board on the following grounds :-

- (a) Whether the foetus suffers an abnormality only to the extent of the right wrist ?
- (b) Whether 'Bilateral Renal Pelviectasia' is a life threatening disability ?
- (c) Whether the foetus would be unable to lead a normal life, with the missing right wrist?
- (d) Whether the deformities are such, that the petitioner deserves to be permitted to terminate the pregnancy in the 26 th week?
- (e) Whether the petitioner faces a risk, if termination of the pregnancy is permitted ?"

3. The communication X-1 indicates that the Nodal Officer informs the Court that any person with gestational period beyond 24 weeks need not approach the Court and can directly approach the Medical Board. In the medical report X-2, we find that the Medical Board agrees that the foetus suffers abnormality to the extent of right wrist and fingers. Bilateral mild renal pylectasis is mentioned. However, CBC and urine routine is said to be normal. Yet, the Medical Board has permitted the termination of pregnancy with the justification as "Associated with such a fetal anomaly that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped."

4. There are no reasons assigned by the Medical Board as to how the foetus has mental abnormalities which are not shown in the report X-2 as well as in the report of the Radiologist Dr.Harish Kalamkar, which report is annexed to the petition by the petitioner. Especially, our questions at clauses 4(b), 4(c) and 4(d) have not been answered by the Medical Board. We are uncomfortable in directing the termination of pregnancy on the basis of such report X-2. We express our displeasure in the manner in which the Medical Board has submitted the report.

5. We request the learned AGP to place this order before the Nodal Officer of the Medical Board calling upon the Board to reexamine the petitioner tomorrow at 10:30 AM and submit a detailed report, which would answer the issues framed by us.

6. The petitioner shall appear before the Medical Board at 10:30 tomorrow (15.07.2022). Let the report reach the Court through the Chief Government Pleader Shri D.R.Kale at 10:30 AM on 18.07.2022.

7. Place this Writ Petition for passing orders on 18.07.2022 (Monday)."

2) We are in receipt of the latest report of Medical Board, dated 15.7.2022, which is taken on record and marked as 'X-3' for identification. The report indicates as under :-

"Additional Investigations (if done) :

Sr. No.	Investigations done	Key findings
1	Usg obstetrics anomaly scan	USG anomaly scan 13/07/22-SLIUG with average gestational age of 25 weeks 4 days with hypoplastic right

		forearm (radius & ulna) associated with hypoplastic/agenesis of right hand, wrist, fingers with bilateral mild renal pylectasis
2	CBC, Urine routine	HB-10.5 gm, urine routine normal

Opinion by medical Board for termination of pregnancy :

a) **Allowed.**

b) ~~Denied.~~

Justification for the decision :Associated with such a fetal anomaly that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.

	Question	Answer
(a)	Whether the foetus suffers an abnormality only to the right wrist	No, abnormality of right forearm (radius and ulna) and fingers of right hand are also present.
(b)	Whether 'Bilateral Renal Pelviectasia' is a life threatening disability ?	Yes, in severe cases Bilateral Renal Pelviectasia is a life threatening disability.
(c)	Whether the foetus would be unable to lead a normal life, within the missing right wrist ?	Yes.
(d)	Whether the deformities are such, that the petitioner deserves to be permitted to terminate the pregnancy in the 26 th week	Yes
(e)	Whether the petitioner faces a risk, if termination of the pregnancy is permitted	Yes, risk is similar to termination of the pregnancy in other patients.

3. The learned counsel for the petitioner submits that the petitioner as well as her husband, would submit individual

affidavits/undertakings declaring that both of them are willing to accept the risk that is involved in the termination of pregnancy; both or either of them would not blame the doctors or the paramedical staff of the Government Medical College and Hospital (GMCH for short) Aurangabad before whom the petitioner is going to subject herself for the medical termination of her pregnancy. Such affidavits placed on record by both, dated 18.7.2022, are in Marathi and are marked as 'X-4' and 'X-5' for identification.

4. Considering the above, this petition is allowed. The petitioner along with her husband would present herself to the GMCH, Aurangabad tomorrow at 10.00 a.m. Copies of affidavits tendered before the Court will also be produced before the concerned medical department of GMCH, Aurangabad while filling in the forms and while completing the procedure.

5. The learned AGP would transmit the copy of this order to the Dean, GMCH Aurangabad.

[ANIL L. PANSARE, J.]

[RAVINDRA V. GHUGE, J.]

SSC/