IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9223 OF 2022

XYZ
-VERSUS-
THE STATE OF MAHARASHTRA AND ANOTHER

…
Shri Ashish P. Deshmukh, Advocate for the petitioner.
Shri S.K. Tambe, AGP for the respondents/State.
...

CORAM : RAVINDRA V. GHUGE
&
ARUN R. PEDNEKER, JJ.

DATE :- 14th September, 2022

Per Court :-

1. On 13.09.2022, we had passed the following order:-

> "*1. Leave to substitute respondent No.2 with Medical Board, Government Medical College and Hospital at Aurangabad.*
>
> *2. The petitioner is before us with a case that she is pregnant and the child in her womb is a "love baby". She has conceived on account of her relations with her partner. Being unmarried, she does not intend to deliver the child. The ultra sonogrpahy report dated 07/09/2022 indicates that the foetus does not suffer from any anomaly/ abnormality and appears to be 26 weeks and 3 days. The petitioner is said to be present in the Court premises and is not accompanied by any friend or relative.*
>
> *3. We are of the view that it would be appropriate to refer the petitioner to the*

Medical Board of the Government Medical College and Hospital at Aurangabad. Accordingly, we direct that the petitioner should subject herself to the Medical Board-respondent No.3 herein in between 4.00 to 5.00 p.m. The learned AGP graciously submits that the concerned Board would be informed telephonically for carrying out the medical examination today itself. We expect the Board to submit a confidential report in a sealed envelope to the Court through the Registrar (Judicial) and the report be handed over to the office of the learned Government pleader so as to be placed before us tomorrow.

4. We request respondent No.3 Board to express their opinion on the following aspects.
(A) The foetus be examined to assess the exact gestational age.

(B) What would be the procedure that would have to be adopted if the Court permitted termination of pregnancy?

(C) Whether, in the process of the termination of pregnancy, the foetus is likely to be delivered as a live baby/ beating heart?

(D) What would be the risk to the petitioner if such termination is permitted?

5. Stand over to 14/09/2022 in the passing orders category."

2. Today, we received a sealed envelope from the Department of Obstetrics and Gynecology, Government Medical College, Aurangabad. After opening the envelope, we perused the report of the Medical Board for Pregnancy Termination Beyond 24 Weeks in "Form-D" (see sub clause (ii) of clause (b)

of Rule 3A). For the sake of clarity, we are reproducing the report as under :-

""Form D"

(See sub-clause (ii) of clause (b) of rule 3A)

Report of the Medical Board for Pregnancy Termination Beyond 24 weeks.

Details of the woman seeking termination of pregnancy

Name of the woman : XYZ

1. Date of birth : 18.08.1994, Age – 28 years

2. Registration/Caste Number : WP No.9223/2022

3. Available reports and investigations.

S.No.	*Report*	*Opinion on the findings*
1	*USG anomaly scan 7/9/22-SLIUG with average gestational age of 26-27 weeks. No evidence of obvious congenital anomaly seen.*	*No fetal anomaly.*
2	*CBC, Urine routine*	*HB-9.2 gm, urine routine normal*

Additional Investigations (if done):

S.No.	*Investigations done*	*Key findings*
1	*Usg obstetrics anomaly scan*	*USG anomaly scan 13/09/22-SLIUG with average gestational age of 26 weeks 3 days. No obvious congenital anomaly in present scan.*

Opinion by Medical Board for termination of pregnancy:-

a) Allowed

Justification for the decision : In view of the psychosocial circumstances of XYZ at present (no family support primarily), anticipated threat to her mental health, it is recommended to consider her case for medical termination of pregnancy on mental health grounds.

Opinion expressed about questions asked by Hon. Court, humbly submitted here.

(A) The foetus be examined to assess the exact gestational age.

Exact gestational age as per her last menstrual period, clinical examination and ultrasound examination is – 26 weeks 3 days.

(B) What would be the procedure that would have to be adopted if the Court permitted termination of pregnancy?

Patient will undergo termination of pregnancy by Medical method of

termination, wherein she will be given oral medications for termination, which normally occurs in 3-4 days. If she does not respond to medical method of abortion, then she will be put to surgical method of abortion i.e. hysterotomy.

(C) Whether, in the process of the termination of pregnancy, the foetus is likely to be delivered as a live baby beating heart?

The possibility of delivering a live baby can not be ruled out i.e. live baby may be born.

(D) What would be the risk to the petitioner if such termination is permitted?

She may require blood transfusion and risk involve in, surgical intervention and risk involve in it.

Members of the Medical Board who reviewed the case:

Sr. No.	*Name*	*Designation*	*Specialization*	*Signature*
1	*Dr.Shrinivas Gadappa*	*HOD*	*Nodal Officer MTP Committee (OBGY Dept.)*	*-sd- 12.09.2022*
2	*Dr.Prasad Deshpande*	*Professor*	*Psychiatry Department*	*-sd-*
3	*Dr.Anurag Sonawane*	*Asso. Professor*	*OBGY Department*	*-sd-*
4	*Dr.Shilpa Pawar*	*Asso. Professor*	*Pediatrics Department*	*-sd- 13.09.22*
5	*Dr.Majed Khan*	*Assist. Professor*	*Radiology Department*	*-sd- 13.09.22*
6	*Dr.Pravin Dhakane*	*Assist. Professor*	*Anaesthesia Department*	*-sd- 13.09.22*

Date of time : 13.09.2022 5 PM"

3. Having considered the report, we have recorded the following salient features:-

(a) The foetus does not have any congenital anomaly.

(b) The gestational age as per the last menstrual period,

clinical examination and ultrasound examination, is 26 weeks and 03 days, as on 13.09.2022.

(c) This petition was filed on 12.09.2022 and was granted urgent circulation on the same day on the production board. The matter was again listed on 13.09.2022 when we passed the above reproduced order.

(d) The patient would be required to undergo the termination of pregnancy by medical method wherein, she will be given oral medications for termination, which normally occurs in three to four days. If she does not respond to the medical method of abortion, she would be put to surgical method of abortion i.e. hysterotomy.

(e) The possibility of delivering a live baby while undergoing the medical method of abortion cannot be ruled out and a live baby may be born.

(f) The patient may require blood transfusion and may suffer a risk involved in surgical intervention.

4. We have considered the judgment delivered by this Court (Coram : A.S.Oka (as His Lordship then was) and M.S. Sonak, JJ) in the matter of ***XYZ vs. Union of India and others, 2019 (3) Bom. CR 400***. We have also carefully perused

paragraph Nos.124 to 134, which read as under:-

> *"124] In all such cases, where permission is granted to medically terminate pregnancies the provisions in the MTP Rules, 2003 and the MTP Regulations, 2003, will have to be complied with by the registered medical practitioners, hospitals/clinics and the approved places in terms of section 4(b) of the MTP Act. Therefore, the directions which we have issued, are in addition to and certainly not in derogation of any of the requirements prescribed under the MTP Act, the rules and regulations made there under.*
>
> *125] In some cases, including, in one of the cases in this batch of Petitions, the medical board suggested that the pregnant mother and/or her family members give an undertaking that if, despite attempts at medical termination of pregnancy, the child is born alive, then the pregnant mother and/or her family members take full responsibility for such child.*
>
> *126] At the outset, we make it extremely clear that if despite attempts at medical termination of pregnancy, the child is born alive, then, first and foremost the registered medical practitioner and the hospital/ clinic concerned will have to assume the full responsibility to ensure that such child is offered the best medical treatment available in the circumstances, in order that it develops into a healthy child. Though there is debate as to whether the fetus (child in the womb) is a person, entitled to rights, there is no debate on the issue that a child, born alive, is a person, in whom, the right to life and personal liberty inheres. Therefore, taking into consideration the provisions of Part III and Part IV of the Constitution, we make it clear, that under no circumstances, such a child must be neglected or left to perish, particularly where the pregnant or her family members may not be in*

a position to or may not be willing to assume responsibility in such matters.

127] In the aforesaid regard, we refer to the decision of the Supreme Court in Parmanand Katara vs. Union of India (1989) 4 SCC 286 where it was held that there can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis, that position.

128] The Supreme Court has further observed that a Doctor at the government hospital positioned to meet this State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/ delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. So far as this duty of medical profession is concerned, it is a duty coupled with human instinct and therefore, it needs neither any decision nor any code for compliance. In any case, Code of Medical Ethics framed by the Medical Council of India Item 13 specifically provides for it.

129] In M. Nagraj (supra), the Constitution Bench in the context of certain fundamental rights, including the right to life and human dignity, has held that the values impose a positive

duty on the State to ensure their attainment as far as practicable. The rights, liberties and freedoms of the individual are not only to be protected against the State, they should be facilitated by it. It is the duty of the State to not only to protect the human dignity but to facilitate it by taking positive steps in that direction.

130] *Therefore, if the child, despite attempts at medical termination of pregnancy, is born alive, then the parents as well as the Doctors owe a duty of care to such child. The best interest of the child must be the central consideration in determining how to treat the child. The extreme vulnerability of such child is itself reason enough to ensure that everything which is reasonably possible and feasible, in the circumstances, will have to be offered to such child, so that it develops into a healthy child.*

131] *In such matters, the instinct of the parents, will no doubt take over when it comes to the love and care to be offered to such child. However, in the unfortunate situation, where for several myriad factors, the parents of such child are unwilling to or genuinely not in a position to care for such child, then, the "parens patriae" doctrine, will oblige the State to assume parental responsibility in relation to such child.*

132] *Even apart from the "parens patriae" doctrine, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, will apply to such an unfortunate situation. There are detailed provisions under the Juvenile Justice Act to deal with cases of "abandoned child" as defined under section 2(1) or "child in need of care and protection" as defined in section 2(14) of the Juvenile Justice Act. The hospital/clinic authorities, must take necessary measures as prescribed under the Juvenile Justice Act to deal with such unfortunate situations. The best interest of the child, must*

be the primary consideration in all such matters.

133] According to us, both the parens patriae doctrine as well as provisions of Juvenile Justice Act obliged the State to assume parental responsibility in relation to such children. Therefore, the State, consistent with the provisions of the Juvenile Justice Act will have to protect and take care of such children, should, such need arise. Mr. Vagyani and Ms.Kantharia, the learned Government Pleaders, on the basis of instructions, have assured this Court, that consistent with the provisions of section 27 of the Juvenile Justice Act, the State Government, where it has not already done so, will by notification in the Government Gazette constitute for every District, one or more Child Welfare Committees (CWC) for exercising the powers and discharging the duties conferred upon such Committees in relation to children in need of care and protection under the Juvenile Justice Act.

134] The learned Government Pleaders, on the basis of instructions, have assured this Court that the State and its agencies like CWC etc. will, after compliance prescribed procedures, declare such children legally "free for adoption", in case the enquiries establish that such children have no one to care for or are abandoned or surrendered. In any case, we direct the State and its agencies to take all steps in this regard, keeping in mind the principle of the best interests of such children."

5. The report of the Medical Board was perused by the learned AGP and the learned counsel for the petitioner. We granted a pass over in the matter in the first session. The matter

was thereafter, taken up post lunch session.

6. The learned AGP informs us, on instructions, about a Government hostel which is known as “Shasakiya Vatsalya Mahila Vastigruh” (Mother Home), near Ashok Stambh, Gangapur Road, Nashik, wherein, destitute ladies are nurtured and nourished in the period prior to delivery. Postpartum care is also provided. This mother home also has the facility of medical assistance, routine sonography and assistance even to take care of a newly born baby and the person, who is rendered to motherhood. The learned AGP further submits that if this Court directs, the entire expenditure of lodging and boarding as well as medical assistance to the petitioner (destitute patient) and also for nourishment and medical assistance to a baby as and when born, would be borne by the Government.

7. We informed the learned AGP that in such circumstances, the destitute patient may require the assistance of a counsellor prior to the delivery and even after the delivery considering the attending circumstances, which would lead the destitute patient to motherhood. The learned AGP submits that if such observations are made in the order, the Government would ensure such assistance to her.

8. The learned advocate representing the petitioner submits that the petitioner has agreed to face the situation which would lead her eventually to motherhood. She has expressed in her own handwriting that she may be lodged with such a home/ shelter home at Aurangabad. A handwritten original copy of such views expressed by her, addressed to the learned advocate on 14.09.2022, is placed before us. The same is marked as “X” for identification and we direct the Court Shirestedar to place the said communication in an envelope to be sealed and to be preserved by the learned Registrar (Judicial) by following the due procedure as is laid down in law.

9. The learned advocate for the petitioner submits, on instructions, that the petitioner is agreeable to the suggestion made by the learned AGP of being lodged with the Mother Home at Nashik considering the assistance and facilities available. She also submits that she would have no family support, being an unmarried person and her parents are agriculturists.

10. In view of the above, this Writ Petition is disposed off with the following directions :-

(a) The statement of the learned AGP is recorded that he would communicate this order to the Mother Home at Nashik

(Smt.Garje, Superintendent of Mother Home, Cell No.8669790212).

(b) The District Officer, Women and Child Development Department at Nashik, would be in contact and shall have interaction with the petitioner on routine basis in order to monitor her condition while being lodged with the Mother Home at Nashik.

(c) Besides medical assistance and all other facilities as are normally made available to the inmates of the Mother Home and especially to the pregnant women, would be extended to her. So also, the assistance of a counsellor/psychiatrist/ motivator, would also be extended to her in order to ensure that she is at peace and is in a stable physical and mental condition.

(d) In the light of the consent of the petitioner, she would be lodged with the Mother Home at Nashik tomorrow 15.09.2022.

(e) For the present, she would be lodged at the Government's Savitribai Mahila Rajyagruha at Aurangabad, today. All amenities would be provided to her.

(f) Ambulance available with the Advocates' Bar Association at Aurangabad is graciously made available by the

President and General Secretary of the Association with fuel, so as to transport the petitioner tomorrow around 09.00 AM, so as to be dropped at Mother Home at Nashik tomorrow itself.

(g) The Registry of the Aurangabad Bench shall provide a spare driver to drive the ambulance since the Advocates' Bar Association does not have a specialized driver.

(h) The learned AGP shall make arrangement, through the Police Inspector, Pundaliknagar Police Station, Aurangabad, to provide two lady constables to accompany the petitioner to Nashik and after dropping her at the Mother Home, Nashik, both of them would return to Aurangabad in the same ambulance tomorrow itself.

(i) The Advocates' Bar Association, Aurangabad, has graciously consented to make food and drinking water arrangements for the petitioner and the two ladies accompanying her, for the to and fro journey from Aurangabad to Nashik.

10. We find it appropriate to record that we have arrived at the above decision only in view of the consent of the petitioner.

11. In the event, the petitioner needs any assistance

beyond the assistance which is being provided under this order or if she is in any difficulty and requires legal assistance, she is at liberty to make such request through a civil application in this petition, which is disposed off.

12. After the child is delivered and the time is ripe for the petitioner to leave the Mother Home at Nashik, she is at liberty to take a decision as to whether, she desires to keep the child or seek assistance of the Child Welfare Committee. In these circumstances, paragraphs 132, 133 and 134 of the judgment in ***XYZ (supra)***, would be applicable and if she does not desire to keep the child with her, the Child Welfare Committee would follow the prescribed procedure for declaring the child to be legally “free for adoption” and adopt appropriate steps to place the child in an appropriate agency or orphanage as is prescribed in law.

kps **(ARUN R. PEDNEKER, J.)** **(RAVINDRA V. GHUGE, J.)**