

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6091 OF 2024

XYZ & Anr.	.. Petitioners
Vs.	
The Union of India, Through the Ministry of Healthcare and Family Welfare & Anr.	.. Respondents

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Ms. Meenaz Kakalia, Advocate for the Petitioners.
Dr. Birendra B. Saraf, Advocate General a/w Mr. P P. Kakade, GP a/w Mrs.
M. P. Thakur, AGP for Respondent No.2-State.

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**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 25th APRIL 2024.

PC. :

1. Issue notice to the respondents, returnable on 20/06/2024. The learned Assistant Government Pleader waives notice for Respondent No.2. Respondent No.1 be served by all permissible modes.
2. In this writ petition, the petitioners seek a direction to be issued to the first respondent to correct Form A that has been provided under the Medical Termination of Pregnancy Rules, 2003 (for short, the Rules of 2003) so as to bring it in tune with Rule 5 (1)(ii) of the said Rules. According to the learned counsel for the petitioners, under Section 4 of the Medical Termination of Pregnancy Act 1971 (for short, the Act of 1971), no termination of pregnancy can be made in accordance with the

Act of 1971 at any place other than a hospital established or maintained by Government or a place for the time being approved for the purposes of the Act of 1971 by the Government or District Level Committee as constituted. Referring to Form A prescribed under Rule 5 (1)(ii) of Rules of 2003 the category of approved places indicates that a pregnancy upto twelve weeks or upto twenty four weeks can be terminated at places approved under Section 4(b) of the Act of 1971. It is urged that since under the provisions of Rule 5 (1)(ii), pregnancy beyond twenty four weeks can also be terminated subject to the facilities stated therein being available. Provision of such category is however not provided in Form A. It is therefore necessary to have such category of approved places even in Form A.

3. Prima facie, we find justification in the aforesaid submission inasmuch as in Form A, the category of approved places refer to places where pregnancy can be terminated upto twelve weeks and upto twenty four weeks. There is no category of any approved place for termination of pregnancy beyond twenty four weeks.

4. The Petitioner No.1 carries pregnancy beyond twenty four weeks. As per the opinion expressed by the Medical Board, the Petitioner No.1's pregnancy can be terminated. After hearing the learned counsel for the parties on 23rd April 2024, the following order was passed:-

1. *We have heard the learned counsel for the Petitioners as well as the learned Advocate General for Respondent No.2 who has appeared at our request.*
 2. *Our attention is invited to the report of the Medical Board, wherein opinion has been expressed permitting termination of Petitioner's pregnancy beyond twenty four weeks. The learned counsel for the Petitioners by referring to the Guidance Note for Medical Boards for Termination of Pregnancy beyond twenty weeks submits that the issue with regard to selected foetal reduction may be considered by the Medical Board since an apprehension has been expressed that the foetus could be delivered alive and the concerned Doctors would be bound by the opinion of the Medical Board. The Petitioner No.2 shall have a meeting with the Members of the Medical Board by 24th April 2024 to enable the Medical Board to give its opinion in this regard preferably by 10:00 a.m. on 25th April 2024.*
 3. *List the writ petition on 25th April 2024 "High on board".*
 4. *Parties to act on the authenticated copy of this order.*
5. Today, the learned Advocate General has tendered a copy of the further opinion expressed by the Medical Board which contains an addendum which reads as under:
- "24/04/24-ADDENDUM*
The termination of pregnancy can be done as per patients wish, method of termination (surgical/medical) and place of termination to be decided by obstetrician including prior intrauterine foeticide."
- The same is taken on record and marked 'A' for identification.
6. In accordance with the said addendum, the Petitioner No.1 can proceed to have her pregnancy terminated.
 7. Another prayer made by the Petitioner No.1 is that she may be

permitted to have her pregnancy terminated at a Medical Institution of her choice and also in the presence of Petitioner No.2, a registered Medical Practitioner. In this regard, it is to be noted that pregnancy beyond twenty four weeks can be terminated only at a place which has the necessary facilities prescribed under Rule 5 (1)(ii). The learned Advocate General, on instructions, submitted that presently the said facilities as prescribed are not available at the JJ Group of Hospitals or at the Cooper Hospital. According to him, these facilities are available at Wadia hospital. On this, the learned counsel for the petitioners submitted that at Cloudnine Hospital, Malad West, the aforesaid facilities are available. To substantiate this aspect, an affidavit of Dr. Anurag Mishra, its Business Head is placed on record. It has been stated in paragraph 3 that the said hospital has the requisite approval as per existing Form B under the Rules of 2003 from the Municipal Corporation of Greater Bombay. It is further stated that the hospital has all the required facilities as provided by Rule 5(1)(ii) of the Rules of 2003.

8. Considering the exigency of the case and in the peculiar facts obtaining on record that Form A under the Rules of 2003 does not contain any reference to an approved place where pregnancy beyond twenty four weeks can be terminated, the Petitioner No.1 at her request is permitted to have her pregnancy terminated in accordance with the opinions of the

Medical Board coupled with the addendum at Cloudnine Hospital, keeping the larger issue as regards the provisions of Section 4(b) of the Act of 1971 and Rule 5(1)(ii) of the Rules of 2003 open for consideration. Subject to the consent of the operating team at Cloudnine Hospital, the Petitioner No.2 is free to participate in the said procedure.

9. Parties to act on the authenticated copy of this order.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]