



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10665 OF 2024

ABC,
Age 27 years
Maharashtra

.....Petitioner

Vs.

1. State of Maharashtra,
Through Government Pleader,
Mumbai.
2. State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
Dhobi Talao, CST, Fort,
Mumbai – 400 001.
3. J. J. Group of Hospitals and
Grant Medical College,
Through its Medical Board,
Nagpada-Mumbai Cenral,
Off Jijabhoy Road, Mujmbai,
Maharashtra – 400 008.

.....Respondents

Ms. Pooja Phagnekar, i/b. Mr. Ashley Cusher, for the Petitioner.
Ms. M. P. Thakur, AGP, for Respondents No.1 and 2-State.

**CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.**
DATE : 2nd AUGUST, 2024.

PC.:-

- 1) Vide Order dated 30th July 2024, this Court directed the authorities of J. J. Group of Hospitals and Grant Medical College, Mumbai to constitute a Medical Board in terms of the Medical Termination of

Pregnancy (Amendment) Act, 2021 (MTP Act) to examine Petitioner and to submit a report to this Court. We had requested the Medical Board to evaluate the physical and mental well-being of the Petitioner.

2) Accordingly, a Medical Board was constituted by the J. J. Group of Hospitals and Grant Medical College, Mumbai.

3) Ms. Thakur, learned AGP placed the Report of the Medical Board dated 2nd August 2024 before us today. The said report is taken on record and marked 'X' for identification. The report is unanimous.

4) The opinion recorded by the Medical Board reads as under:

“COMMITTEE OPINION

After examining the mother with all the investigations, the committee has found that the fetus is diagnosed with Tricuspid Atresia with Hypoplastic RV and the mother is fit for Medical Termination of Pregnancy. At present termination of pregnancy bears same risks and consequences as of delivery at term.

If the pregnancy is terminated now, the foetus may be born alive requiring neonatal intensive care with significant comorbidity and mortality.

The mother and her relatives have been made aware of the same.

If the Court permits, the Petitioner can undergo Medical Termination of Pregnancy at any institute of her desire.

However, final opinion regarding the fitness can be decided upon depending on the clinical condition of the mother at the time of the procedure. Here the committee would like to state that since the patient has a congenital anomalous fetus, she could have approached Medical Board directly instead of approaching the High Court thus saving the precious time of the Honorable High Court. “

5) Considering the Report of the Board constituted under the MTP Act, we permit the Medical Termination of the Petitioner's pregnancy. The procedure is to be carried out at the earliest possible, preferably tomorrow, i.e., 3rd August 2024 or as soon as the Specialists at the J.J.Group of Hospitals decide it appropriate. We permit the Hospital to recover the amount of expenditure from the Petitioner as ordinarily charged by the Hospital in other cases.

6) In the event that the baby is born alive, the hospital is to provide the neonatal care as required however, the Hospital is at liberty to recover cost of additional treatment from the Petitioner. If the Petitioner desires to give the child in adoption after the delivery, the State and its agency will assume responsibility of the child and take such steps as necessary to rehabilitate the child including exercising the option of placing the child in foster care/adoption by following the due legal process. This shall not however be construed as a direction of this Court binding the

Petitioner and the State shall abide by the wishes as expressed by the Petitioner at the appropriate stage.

7) We also make it clear that the Hospital Authorities will have complete Medico Legal Immunity from any action or allegations of the Petitioner or anybody claiming through her for this procedure.

8) By Order dated 30th July 2024, we had directed the Petitioner to remain present before the Dean, J.J.Hospital at 11:00 a.m. on 31st July 2024 and the Hospital was requested to give its Report by 1st August 2024. When the matter was listed yesterday, i.e., on 1st August 2024, one day's time was sought by the Hospital to furnish its Report. This delay was stated by Ms. Thakur to be on account of delayed arrival of the Petitioner in the Hospital. However, Mr. Ashley Cusher, learned counsel for the Petitioner stated that, the Petitioner had presented herself at the Dean's office between 9:00 a.m. to 9:30 a.m. Hence, by Order dated 1st August 2024, we had directed the Medical Superintendent, J.J. Hospital, Mumbai to file an Affidavit explaining the delay.

9) Today, Mrs. Thakur, learned AGP has placed on record a detailed Affidavit of Dr. Sanjay Surase, Medical Superintendent, J. J. Hospital, Mumbai dated 2nd August 2024 duly affirmed before a Notary Public. We have perused the Affidavit. We are satisfied with the explanation given therein and accept the same. Although, we are disturbed by the incorrect statement made by the Petitioner regarding the

unavailability of Hospital Authorities to attend the Petitioner and that, she was made to run from one office to the other, we deem it fit to put at rest the issue.

10) Petition is accordingly allowed in the aforesaid terms.

11) All the concerned to act on the production of the authenticated copy of this Order.

(DR. NEELA GOKHALE, J.)

(A.S. GADKARI, J.)