

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13848 OF 2024

XYZ

.....Petitioner

versus

The State Of Maharashtra & Ors.

.....Respondents

Ms. Manisha Shekhar Jagtap, Advocate for the Petitioner.

Smt. M.P. Thakur, AGP for the Respondent No.1-State.

CORAM : SARNAG V. KOTWAL AND

DR. NEELA GOKHALE, JJ.

DATE : 10th OCTOBER 2024.

P.C.:-

1) In this case, the Petitioner is in the 27th week of pregnancy. While undergoing routine check up, it was noticed that the fetus suffered from some abnormalities. Therefore, she has approached this Court for permission to medically terminate the pregnancy.

2) At the first instance, the Petitioner was examined by the Medial Board established under the Medial Termination of Pregnancy Act, 1971 ('MTP Act') of Sir J. J Hospital, Mumbai and they had prepared their report dated 1st October 2024 noting anomalies in the fetus associated with increased risk of mortality and morbidity. The

Board had given an opinion to medically terminate the pregnancy. After this report, the Petitioner went to KEM Hospital where she was advised that the procedure could not be undertaken unless there is an order from the Court. Therefore, this Petition is filed.

3) On this background, we had specifically directed Medical Board at the JJ Group of Hospital to forward its opinion after necessary examination of the Petitioner. This specific order was passed by this Court on 7th October 2024. Petitioner went to the JJ Group of Hospitals on 9th October 2024. However, the Board constituted under the Act did not carry out any examination afresh. Instead, the same report was forwarded before this Court in a sealed envelope under a covering letter dated 9th October 2024. The Medical Board did not conduct any further examination of the Petitioner. It must be noted here that the Petitioner is resident of Kalyan and she had to travel all the way from Kalyan to JJ Group of Hospital and after that had to go back to Kalyan without there being any examination done by the Medical Board. This caused immense hardship to the Petitioner who is in the 27th week of pregnancy. We express our extreme displeasure at the conduct of the Medical Board and the attitude shown by it and particularly at the insensitivity in handling the situation. Therefore,

we asked the learned AGP to file an Affidavit on behalf of the Respondent No.1 in that behalf. In the Affidavit, it is mentioned that there could not have been much difference in the anomalies of the fetus from 28.9.2024 to 09.10.2024 and, therefore, the Petitioner was not examined by the Medical Board. This inaction on the part of Medical Board is in direct defiance of the order passed by this Court. Besides the anomalies in the fetus, the Medical Board completely overlooked the Petitioner's present condition and also failed to examine her health, which aspect was required to be considered and opinion was also required to be given whether she was fit to undergo the procedure of medical termination of pregnancy at this stage. Instead, the same report under a covering letter was sent to this Court. Since the main issue is about granting permission to the Petitioner and since the Affidavit tenders unconditional apology to this Court, we have not taken any further action in this regard. However, we expect the Medical Board to act with more sensitivity and responsibility in future cases.

4) The Medical Board is specifically directed to conduct medical examination of the Petitioner afresh, giving specific report not only about anomaly of the fetus but also about the condition of the

Petitioner's health to go through the procedure of medical termination of pregnancy so that the Court can take a decision based on the opinion of the Medical Board. Considering the prior conduct of the Medical Board, specific importance and priority should be given to the Petitioner. She shall report to the Superintendent of the J.J.Hospital on 11th October 2024 and be admitted to the J.J. Hospital at 9.00 a.m. We expect the opinion of the Medical Board to reach this Court latest by 2.00 p.m. on the same day.

Matter be listed on 11th October at 2.30 p.m.

(DR. NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)

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