

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

WRIT PETITION NO.3992 OF 2026

XYZ and Anr. ...Petitioner
Versus
The Union of India and Anr. ...Respondents

Ms. Meenaz Kakalia for the Petitioner.
Ms. Anusha Amin for the Respondent No.1-UOI.
Ms. M. P. Thakur, A.G.P for the Respondent No.2-State.

***CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATE : 26th MARCH 2026***

P.C. :

1. The petitioner No.1, XYZ aged 37 years, in her advanced stage of second pregnancy seek termination in the background of the opinion of the Medical Board for Termination of Pregnancy from District Civil Hospital, Thane.

In an advanced stage of almost 32 weeks of pregnancy when she was referred to the Medical Board constituted by the District Civil Hospital, Thane by its opinion dated 20th March 2026, the Medical Board has advised against the termination of pregnancy and the justification of the decision reads thus:-

“Justification for the decision:

After taking detailed history and conducting thorough clinical examination, and review of reports by the Gynaecologist, Radiologist, Paediatrician, and Psychiatrist, the District Medical Board, Thane has formed the following opinion:

As per ultrasonography dated 17/03/2026, there is a single live intrauterine fetus of gestational age 31 weeks 1 day, with estimated fetal weight of 1477 gm $\pm$ 216 gm, in cephalic presentation. The anomaly detected is non-lethal short limb skeletal dysplasia, characterized by shortening of long bones (<1st-2nd centile) with normal contour and echogenicity, and no associated lethal anomalies detected in present USG.

At present, no life-threatening abnormality has been identified in the fetus and the condition is compatible with postnatal survival, although it may require specialized neonatal care. It is also noted that the pregnant woman and her husband have expressed unwillingness to continue the pregnancy.

However, as per the provisions and intent of the Medical Termination of Pregnancy (Amendment) Act, 2021 and Government of India guidelines, termination of pregnancy beyond 24 weeks is generally permissible only in cases of substantial fetal abnormalities incompatible with life or serious risk to the mother.

Therefore, considering the advanced gestational age (31+ weeks) and the absence of lethal anomaly, the Medical Board is of the opinion that termination of pregnancy is not justified at this stage.”

The members of the Medical Board who reviewed the case include a Civil Surgeon from the District Civil Hospital Thane, two Gynaecologist, one Radiologist, one Psychiatrist and one Paediatrician

from the very same hospital.

2. Being aggrieved by the said report, the petitioners before us seek termination of pregnancy, by exercising the choice available to XYZ, has urged before us that the reading of Section 3 sub-section (ii), clause (b) along with sub-section 2-B, it is evidently clear that the pregnancy may be terminated by a registered medical practitioner, where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of women as may be prescribed by rules under this Act and the norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by the rules made under the Act. Further by inviting our attention to Rule 3-A framed under the Medical Termination of Pregnancy Act, 1971, setting out the powers and functions of the Medical Board, she had relied upon the following provision to submit that the Board shall allow the termination of pregnancy, where it contemplates substantial risk of the fetal being incompatible with life

or if the child is born it may suffer from such physical or mental abnormality to be seriously handicapped and the said provision reads thus:-

“3-A. Powers and functions of Medical Board. - For the purposes of section 3,-

(a) the powers of the Medical Board shall be the following, namely

(i) to allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2-B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped.”

By relying upon the aforesaid provision, it is sought to be canvassed before us, that though the Medical Report refer to the anomaly as ‘non-lethal short limb skeletal dysplasia’ characterized by shortening of long bones with normal contour and echogenicity, it has opined that no associated lethal anomalies are detected in the USG. According to the learned counsel, the board has not taken into consideration, its power to allow the pregnancy beyond twenty-four weeks of gestational under subsection 2-B of Section 3, which it shall

consider by ensuring that the procedure shall be safe for the women at the gestational age and on also considering 'whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from physical or mental abnormalities to be seriously handicapped.'

Though the petitioners have sought an opinion from a Obstetrician and Gynaecologist from another Hospital in Mumbai, which has specifically spelt out the deficiency which may incur when the child is born and has expressed a possibility that the disorder may result into mental subnormality.

3. The contention of the learned counsel for the petitioner that the justification offered by the Medical Board of the District Civil Hospital, Thane do not meet the requirement of Section 3 along with Rule 3-A(a)(i) but we do not agree with the said submission, as the Medical Board has clearly opined that at present, no life threatening abnormality has been identified in the fetus and the condition is compatible with postnatal survival, although it may require specialized

neonatal care. Apart from this, the opinion of the Medical Board is also based upon the advanced gestational age of the women (31 + weeks) and therefore in absence of lethal anomaly, it has expressed an opinion that the termination of pregnancy is not justified at this stage

We therefore do not agree with the submission of the learned counsel for the petitioners that the contingency contemplated as to whether the fetal malformation, would pose a risk of the child born suffering from physical or mental abnormalities has not been weighed by the Medical Board, as we find that the according to the opinion of the Medical Board there is no life-threatening abnormality in the fetus and the condition is compatible with post natal survival.

4. The learned counsel for the petitioners has also placed reliance upon the decision of the Division Bench in **‘XYZ v/s Sate of Maharashtra (Writ Petition (Lodging) No.4521 of 2025 dated 13th February 2025)** when the Medical Board allowed the request of the petitioner therein for Medical Termination of the Pregnancy on the ground that the amniocentesis was suggestive of 3M syndrome with

findings consistent with skeletal dysplasia and the board had opined that the above condition has high post natal morbidity. It is in this background, the Court recorded thus:-

“7. As far as the first prayer is concerned, we have perused the opinion of the Medical Board. It is clear that there is fetal anomaly in the form of a syndrome associated with severe growth restriction long and short bones anomalies cartilage and axial skeletal anomalies which would require multiple corrective surgeries for severe deformities. The child may have a risk of hypogonadism and infertility in future, hence the Board has recommended medical termination of her pregnancy.”

5. Being conscious of the right of the petitioner to reproductive freedom, her autonomy over the body and her right to choice, was given preference and the petitioner was permitted to medically terminate the pregnancy.

6. In these peculiar facts and circumstances when we had noted that one of the Medical Board has allowed medical termination of pregnancy, when the fetus was suffering from skeletal dysplasia and concluded that was a fetal anomaly in the form of a ‘syndrome associated with severe growth restriction long and short bones

anomalies cartilage and axial skeletal anomalies’, and it would contemplate multiple corrective surgeries for severe deformities and the child may have a risk of hypogonadism and infertility in future, we deem it appropriate to have the petitioner No.1 being examined by Medical Board constituted by Sir. JJ Group of Hospitals, Mumbai and for initiating such a procedure of examining her and securing the opinion about termination of pregnancy, she is directed to approach the Sir. JJ Group of Hospitals, Mumbai, today i.e. **26th March 2026 post lunch session.**

Upon she being referred, the necessary medical examination shall be carried out by the Medical Board forthwith and the report shall be produced before us, by tomorrow i.e. **27th March 2026.**

7. We make it clear that if the Medical Board constituted by the Sir. JJ Group of Hospitals, Mumbai, arrive at the same conclusion which is reached by the Medical Board at Thane, the petitioner No.1 will have no choice than to continue with the pregnancy but if the

Medical Board arrives at the conclusion distinct than the one which is recorded by the Medical Board at Thane, we expect the Medical Board to clearly point out as to on what basis the opinion is formed and why it differs from the opinion of the earlier Board, by which the petitioner No.1 was examined as we are conscious that we are not experts in the field and we will ultimately go by the opinion expressed by the team of experts.

We are conscious that two medical professionals can always have a different opinion and in this peculiar case, since the situation is really serious as we find the parents are apprehensive about giving birth to a child, who suffers from an anomaly, but ultimately it is to be determined whether the anomaly is lethal/substantial.

8. Ms. Thakur, learned A.G.P. shall instruct the Dean of Sir. JJ Group of Hospitals, Mumbai, to carry out the necessary tests as directed by us and produce the Medical Report by tomorrow i.e. **27th March 2026.**

We direct the listing of the petition on **27th March 2026_u**.

To be listed at 03:00 p.m.

All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

BHARATI DANGRE, J.