

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C)No.593 OF 2016

MS. X

.....PETITIONER

VERSUS

UNION OF INDIA AND ORS

.....RESPONDENTS

O R D E R

By our Motion Bench order dated 22.07.2016, we had accepted the suggestion of the learned Solicitor General for India, and the learned counsel for the State of Maharashtra in directing respondent No.2 - the State of Maharashtra, to constitute a Medical Board at KEM Hospital and Medical College, Mumbai, to medically examine the petitioner.

In furtherance of the direction issued by this Court, a Medical Board comprising of the following seven doctors was constituted at the KEM Hospital and Medical College, Mumbai.

1. Dr.Avinash N.Supe, Director (Medical Education & Major Hospitals) & Dean (G&K) - Chairman
2. Dr.Shubhangi Parkar, Professor and HOD, Psychiatry, KEM Hospital
3. Dr.Amar Pazare, Professor and HOD, Medicine, KEM Hospital
4. Dr.Indrani Hemantkumar Chincholi, Professor and HOD,

Anaesthesia, KEM Hospital

5. Dr.Y.S.Nandanwar, Professor and HOD, Obstetrics & Gynecology, LTMMC and LTMG Hospital

6. Dr.Anahita Chauhan, Professor and Unit Head, Obstetrics & Gynecology, KEM Hospital

7. Dr.Hemangini Thakkar, Addl.Professor, Radiology, KEM Hospital.

The Medical Board has submitted a report dated 23.07.2016, which is taken on record and marked as Annexure A. In its analysis, the report *inter alia* recorded as under:

"4. From General Medical Examination she has no active medical complaints.

5. Obstetric examination shows 24 weeks pregnancy, with severe polyhydramnios, with fetal parts not felt. On internal examination, the cervix is closed and high up.

6. Radiological diagnosis is single live fetus with gestational age of 23 weeks 3 days with following malformations: 1) exencephaly, i.e. evidence of no skull vault above orbit, with presence of brain tissue floating in amniotic fluid, 2) Omphalocele (presence of liver, intestines and stomach bubble outside the abdomen and in the amniotic cavity). 3) Heart is bulging into the omphalocele sac. 4) Kyphoscoliosis which is an anomaly of the spine involving the thoracolumbar vertebrae with polyhydramnios (excessive amniotic fluid) with closed vertex."

Based on the above medical examination, the findings of the Medical Board were expressed as under:

"1. Current pregnancy is about 23-24 weeks by clinical and radiological evaluation.

2. In view of severe multiple congenital anomalies, the fetus is not compatible with extra-uterine life.

3. Risk to the mother of continuation of pregnancy can gravely endanger her physical and

mental health.

4. Risk of termination of pregnancy is within acceptable limits.

Hence the Medical Board advises that the patient, Ms.X should not continue with this pregnancy."

The question that arises for our consideration is, whether it would be justified and legal, to terminate the pregnancy of the petitioner, which the Medical Report itself shows, as of 24 weeks duration? Learned Attorney General representing the Union of India has invited our attention to Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act') which is extracted below:

"3. When pregnancies may be terminated by registered medical practitioners.-

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a [mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."

A perusal of the above provision reveals, that the provision deals with termination of pregnancies of different durations, and the procedure contemplated therefor. Section 3 leaves no room for doubt, that it is not permissible to terminate a pregnancy, after 20 weeks. However, Section 5 of the Act lays down exceptions to Section 3. Section 5 of the Act is also reproduced hereunder:

"5. Sections 3 and 4 when not to apply.-

(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven

years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.-For the purposes of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.-For the purposes of this section, so much of the provisions of clause (d) of section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply."

A perusal of Section 5 of the Act reveals, that the termination of pregnancy, which is necessary to save the life of the pregnant woman, is permissible.

Having perused the Medical Report (relevant extracts whereof have been reproduced hereinabove), we are satisfied, that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy, can gravely endanger her physical and mental health. The Medical Board has also expressed an advice, that the patient should not continue with the pregnancy. In view of the findings recorded in para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the

petitioner to terminate her pregnancy in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy.

The writ petition is disposed of in the above terms.

As a sequel to disposal of the writ petition, pending interlocutory application also stands disposed of.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(ARUN MISHRA)

NEW DELHI;
JULY 25, 2016.

