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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 5th July, 2024

+ W.P.(C) 8672/2024 & CM No. 35457/2024

MRS. R.

.....Petitioner

Through: Dr. Amit Mishra, Advocate.

versus

THE PRINCIPAL SECRETARY HEALTH AND FAMILY
WELFARE DEPARTMENT & ORS.Respondents

Through: Ms. Rachita Garg, Mr. Agam Rajput
and Ms. Preeti Chauhan, Advocates
for R-1, 3.

Ms. Arunima Dwivedi, CGSC with
Ms. Pinky Pawar and Mr. Aakash
Pathak, Advocates for UOI.

Mr. Satya Ranjan Swain, Panel
Counsel for AIIMS with Mr. Kautilya
Birat and Mr. Ankush Kapoor,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Considering the facts of the present case and the nature of issues involved, it is directed that the Petitioner's name and associated details shall not be disclosed to the public. The Registry shall reflect the cause title as "*Mrs. 'R' v. The Principal Secretary Health and Family Welfare*



Department & Ors.”.

2. The Petitioner, a married women of 31 years residing with her husband and son of 9 years has approached this Court for medical termination of ongoing pregnancy under Section 3(2B) & 3(3) of the Medical Termination of Pregnancy Act, 1971.¹ The facts of the case are briefly stated as follows:

2.1. The Petitioner got married on 30th November, 2014, and delivered her first child (boy) on 10th October, 2015 at Deen Dayal Hospital.

2.2. The said boy is unfortunately suffering mental disability since birth. He is completely dependent upon the mother to take care of him for his basic needs and day to day activities.

2.3. The Petitioner conceived again after 9 years and on 12th February, 2024, she got an ultrasound done at Deen Dayal Hospital, which confirmed the pregnancy of 12 weeks. The second ultrasound was done on 1st April, 2024, which also confirmed the pregnancy. Subsequently, on 29th April, 2024, the doctors who examined the Petitioner, counselled her about the possibility of chromosomal abnormalities in the ongoing pregnancy that can be part of *Dandy Walker Continuum* and advised her to get a fetal MRI.

2.4. Accordingly, a fetal MRI was conducted on 21st May, 2024, which also suggested of an abnormality of *Dandy Walker Continuum, likely mega cisterna magna*. On 29th May, 2024, another doctor at Lok Nayak Hospital after considering the fetal MRI report, confirmed the abnormality of *Dandy Walker Continuum, likely mega cisterna magna* and suggested that there might be abnormal neurological developmental outcomes in 11 to 20% of cases such as the ongoing pregnancy of the Petitioner.



2.5. Considering the above, on 29th May, 2024, the Petitioner wrote an application for Medical Termination of Pregnancy,² to the Medical Director of Lok Nayak Hospital.

2.6. Meanwhile, the Petitioner on 1st June, 2024, also underwent an ultrasound scan at a private Mahindru Hospital, which further corroborated the finding of an abnormality of *mega cisterna magna with wide communication with fourth ventricle*.

2.7. On 13th June, 2024, the Medical Board at Lok Nayak Hospital denied the MTP application of the Petitioner, resulting in filing of the present petition.

2.8. On 24th June, 2024, taking note of the facts narrated in the petition, the Court directed that a Medical Board be constituted for the medical examination of the Petitioner, comprising of two doctors from Lok Nayak Hospital where the Petitioner is currently being treated. The Medical Board was directed to submit its opinion on the MTP, after examining the Petitioner and the case documents.

2.9. On 28th June, 2024, the counsel representing the hospital submitted that MTP was not possible in this case, as the Medical Board had not recommended the termination.

2.10. On 1st July, 2024, the Court took note of the Medical Board's written opinion dated 27th June, 2024, which was rendered pursuant to the Court's directions, as well as the earlier opinion dated 19th June, 2024, declining the MTP. Both documents were presented to the Court for consideration during the hearing on 1st July, 2024. Upon review, both reports were found to be

¹ "MTP Act"

² "MTP"



inconclusive. The opinion in the report dated 27th June, 2024, was based on old medical records of the Petitioner, without conducting any further tests. The doctors expressed their inability to conclusively confirm the diagnosis of fetal abnormalities, which led to their negative opinion.

3. Taking note of the above developments and the seriousness of the matter, the Court directed the Petitioner to be re-examined by a Medical Board constituted at the All India Institute of Medical Sciences,³ The Court specifically requested the Medical Board to provide an opinion on the fetal abnormalities and assess the safety of the Petitioner in undergoing the procedure.

4. Accordingly, a Medical Board was constituted at AIIMS consisting of six members being - Professor, Deptt. of Obs. & Gynae, Addl. Professor, Deptt. of Paediatrics, Addl. Professor, Deptt. of Paediatrics, Assoc. Professor, Deptt. of Obs. & Gynae, Asstt. Professor, Deptt. of Radio-diagnosis and Deptt. of Hospital Administration. The AIIMS Medical Board conducted a thorough examination, including an ultrasound and an antenatal fetal MRI scan subsequently submitted a report, recommending the termination of the pregnancy in this case. The Medical Board's observations, based on the ultrasound and fetal MRI scans, are as follows:

"4. Additional review done at AIIMS:

<i>S.No.</i>	<i>Investigations done</i>	<i>Key Findings</i>
<i>1.</i>	<i>Ultrasound done at AIIMS on 02.07.2024.</i>	<i>Ultrasonography suggest:</i> <ul style="list-style-type: none"> • <i>Single live intra uterine fetus of 30 weeks 04 day by scan. (32+04) by LMP.</i> • <i>Thickening and elongation of B/L superior cerebellar peduncle with deepening of</i>

³ "AIIMS"



		<p><i>interpeduncular cistern. Fourth ventricle is seen to communicate with mega cisterna magna, features suggestive of Joubert Syndrome.</i></p>
2.	<p><i>MRI scan done at AIIMS on 02.07.2024</i></p>	<p><i>MRI scan done at MRI Scan is suggestive of:</i></p> <ul style="list-style-type: none"> • <i>Thickening and elongation of B/L superior cerebellar peduncle with deepening of interpeduncular cistern. Fourth ventricle is seen to communicate with mega cisterna magna, features suggestive of Joubert Syndrome.</i>

5. *Opinion by Medical Board for termination of pregnancy:*

a) *Allowed (Yes).*

b) *Denied (-).*

Justification for the decision: *The medical board reviewed the case. A review USG followed by antenatal fetal MRI Scan was also performed. The pregnancy is currently of 30 weeks, and fetus has fetal MRI finding suggestive of Joubert Syndrome, a multisystem disorder with poor neurodevelopmental outcome.*

6. *Physical fitness of the woman for the termination of pregnancy:*

a. *Yes (✓)*

b. *No (-)*”

5. The Medical Board at Lok Nayak Hospital has noted the fetal abnormality of Dandy-Walker Syndrome, a neurological malformation of the cranium, however, in absence of conclusive findings, they did not advocate MTP. On the other hand, the Medical Board at AIIMS has concluded that their findings were suggestive of Joubert Syndrome, a multisystem disorder with a poor neurodevelopmental outcome and opined in favour of MTP.

6. Furthermore, although Lok Nayak Hospital reported the Petitioner’s



pregnancy as being over 32 weeks, the AIIMS Medical Board, through a more recent ultrasound scan, determined the gestational period to be 30 weeks and 4 days.

7. On the basis of the record produced before the Court, in the opinion of the Court, the negative recommendation against MTP by Lok Nayak Hospital was essentially because of inconclusive diagnosis, since they relied upon old medical reports and scans without conducting further detailed tests. They have failed to provide a definitive diagnosis or fully assess the Petitioner's current condition. Conversely, the AIIMS Medical Board conducted comprehensive testing, including up-to-date ultrasound and fetal MRI scans, and arrived at a clear diagnosis of Joubert Syndrome.

8. At this juncture, it is essential to highlight the effects of such neurological conditions and their impact on the overall life quality of a person. Through general research of material available in the public domain, it is observed that Dandy-Walker Syndrome involves the brain's development, primarily affecting the cerebellum and fluid-filled spaces around it, often leading to problems with movement, coordination, and cognitive function. On the other hand, Joubert Syndrome, while also affecting the brain, is more extensive in its impact, involving multiple systems of the body and significantly impairing neurological and physical development. This highlights the severity of the condition identified by AIIMS.

9. Joubert Syndrome is recognized as a severe condition due to its multisystem impact, affecting not only neurological development but also leading to respiratory, renal, and ocular complications. The children born with Joubert Syndrome often face significant and multifaceted health



challenges, with a prognosis of poor neurodevelopmental outcomes and a high burden of medical care.

10. The report of the AIIMS Medical Board, which diagnosed the fetus with Joubert Syndrome, was composed by medical experts of different disciplines, who are best positioned to render an opinion on two critical aspects: (i) whether the continuation of the pregnancy will cause grave injury to the physical and mental health of the Petitioner, or if there is a substantial risk that the child, if born, will suffer from serious physical abnormalities leading to significant handicaps, and (ii) whether the Petitioner is physically fit to undergo the termination of pregnancy.

11. The AIIMS Medical Board's report is unequivocal in its findings. It clearly states that the fetus exhibits features suggestive of Joubert Syndrome, a multisystem disorder associated with poor neurodevelopmental outcomes. This diagnosis indicates that the child, if born, would likely face severe neurological impairments and extensive health challenges. Further, the AIIMS Medical Board has assessed the Petitioner's physical fitness for the termination procedure and found her to be medically fit to undergo the procedure. Given these considerations and the conclusive nature of the AIIMS Medical Board's findings, the Court finds the AIIMS report to be more reliable and definitive. Therefore, the Court is inclined to accept the report of the AIIMS Medical Board, which supports the termination of the pregnancy due to identified substantial fetal abnormalities and the significant health risks they pose to the unborn child.

12. Under the scheme of the MTP Act, termination of pregnancy is permitted up to 20 weeks if a registered medical practitioner opines that the continuance of the pregnancy would involve a risk to the life of the pregnant



woman or cause grave injury to her physical or mental health. Additionally, termination is allowed if there is a substantial risk that the child, if born, would suffer from any serious physical or mental abnormality. Section 3(2)(b)(i) of the MTP Act allows for termination on these grounds up to 24 weeks, provided two registered medical practitioners concur that the pregnancy should be terminated.

13. Further, Section 3(2B) of the MTP Act states that the length of the pregnancy shall not preclude termination if substantial fetal abnormalities are diagnosed by a Medical Board. This provision ensures that the gestational age does not hinder necessary medical interventions in cases of substantial fetal abnormalities. The legislative framework must be read in conjunction with Section 3(3) of the MTP Act, which emphasizes considering the actual or reasonably foreseeable environment in determining whether the continuance of the pregnancy would injure the woman's physical or mental health.

14. The legislative intent behind the MTP Act, as clarified through various judicial pronouncements by the Supreme Court and this Court, underscores the importance of reproductive rights. The Act aims to balance the health and well-being of the pregnant woman with the potential quality of life of the unborn child. In *Suchita Srivastava vs. Chandigarh Administration*,⁴ the Supreme Court highlighted that the right to make reproductive choices is integral to the right to personal liberty under Article 21 of the Constitution of India, 1950. This includes the right of a woman to make decisions regarding the termination of her pregnancy, particularly when continuing with the pregnancy poses significant health risks or when



substantial fetal abnormalities are diagnosed.

15. The provisions of the Act, read in harmony with the principles of personal liberty enshrined in the Constitution, affirm the right of a pregnant woman to seek a termination of pregnancy under medically justified circumstances. This ensures that women are not compelled to carry pregnancies to term, in situations where doing so would compromise their health or result in the birth of a child with severe abnormalities.

16. Another crucial aspect of the present case is the invocation of Section 3(3) of the MTP Act, which mandates that, in determining whether the Petitioner would suffer grave physical or mental injury, her actual or reasonably foreseeable environment must be taken into account. The Petitioner has a nine-year-old son who suffers from neurological handicaps, rendering him unable to attend school or perform basic day-to-day tasks, making him completely dependent on the Petitioner. As a homemaker, the Petitioner devotes most of her time to caring for her child. If the current pregnancy were not allowed to be terminated, considering the Medical Board's opinion that the fetus exhibits features suggestive of a syndrome associated with multisystem disorder and poor neurodevelopmental outcomes, the foreseeable environment for the Petitioner would be extraordinarily challenging. She and her family would be compelled to care for two children with significant neurodevelopmental issues, requiring extensive, continuous, and advanced medical care potentially for their entire lives.

17. The Petitioner's financial constraints further exacerbate this situation. The burden of raising two children with severe disabilities in a household

⁴ (2009) 9 SCC 1



with limited financial resources is a daunting prospect that would likely lead to grave injury to the Petitioner's mental health. This scenario aligns with the legislative intent behind Section 3(3) of the MTP Act, which aims to protect the mental well-being of the pregnant woman by considering the practical realities of her life and environment.

18. On the aspect of advanced gestational age of the fetus and the related complications which may arise, it is noted that, even though the Petitioner's pregnancy is beyond 24 weeks (30 ± 4 days), there is a significant risk that the child, if born, would suffer from serious neurological difficulties requiring frequent and persistent medical intervention. Such late-term termination cases warrant careful consideration and adherence to established guidelines to ensure the health and well-being of both the mother and the unborn child.

19. For this purpose, the Ministry of Health and Family Welfare, Government of India, has issued a comprehensive 'Guidance Note for Medical Boards for Termination of Pregnancy Beyond 20 weeks of Gestation', dated 14th August, 2017. This guidance note stipulates that the responsibility of a medical board in such cases, is to ascertain whether the fetal abnormality is substantial enough to qualify as either incompatible with life or associated with significant morbidity or mortality in the child, if born. The determination of substantial fetal abnormalities should be based on a thorough review of the patient's medical records and the medical board should conduct additional investigations as necessary. The guidance note emphasizes that the medical board must base its decision on concrete medical evidence and expert evaluations. This includes reviewing the available documents and performing additional diagnostic tests to confirm



the presence and extent of congenital abnormalities. The objective is to ensure that the decision to terminate the pregnancy is made with the utmost care and consideration for the potential outcomes and quality of life of the child.

20. The opinion rendered by the AIIMS Medical Board aligns with the Ministry's guidance note, is comprehensive and provides a strong basis for the recommendation to terminate the pregnancy. Therefore, considering the substantial risk of serious neurological difficulties and the adherence to the established medical guidelines, the Court finds the recommendation of the AIIMS Medical Board to be well-founded in evidence and in the best interest of the Petitioner's health and the potential quality of life for the child.

21. This Court accepts the AIIMS Medical Board's recommendation. The continuation of the pregnancy poses a significant risk to the Petitioner's physical and mental health and is likely to result in the birth of a child with severe and debilitating health issues. Consequently, the Court finds it appropriate to permit the termination of the pregnancy in the best interest of both the Petitioner.

22. For the reasons recorded above, the writ petition is allowed. Petitioner is permitted to undergo medical termination of pregnancy at a medical facility of her choice. The possible complications of the procedure of termination at this stage have been explained to the Petitioner. She has to take the final decision to undergo the procedure of medical termination of pregnancy, which would be at her own risk and consequences.

23. The facts of the present case, raise a concerning issue. The Court must therefore before parting emphasise that the opinion of the Medical Board in



such cases of termination of pregnancy is of considerable importance for assisting the Courts in arriving at a just order. Medical professionals must offer their expert opinions without fear of legal repercussions, and focus on providing the best possible medical guidance in such sensitive matters. As has been observed by a co-ordinate bench of this Court in W.P. (C) 16607/2022 titled *Mrs. X v. GNCTD & Anr*, the opinions of the Medical Board cannot be sketchy and fragmented; they must be comprehensive and meticulously detailed. The gravity of MTP cases demands not only speed but also the highest quality of reports to ensure that the rights and health of the petitioners are adequately safeguarded.

24. In the present case, the Medical Board at Lok Nayak Hospital did not meet the Court's expectations. Despite the serious nature of the matter, the Board failed to conduct necessary tests and did not approach the issue with the required level of seriousness. When the Court directed them to form a Board, the subsequent report remained inadequate and lacked thorough testing and evaluation. The medical professionals play a crucial role in the society and it is not the intention of this Court to demoralize them, yet, it is imperative to highlight the significance of their responsibility in such sensitive matters.

25. The delay and inadequate counselling of the Petitioner has resulted in an advanced stage of pregnancy. This underscores the need for the Medical Board to act with greater diligence and urgency in future cases. The Court advises the Medical Board of Lok Nayak Hospital on the importance of their role and the critical impact their opinions have on the lives of the Petitioners and their families.

26. At the same time the Court records its appreciation for the assistance



rendered by the AIIMS Medical Board, which provided their medical reports/opinion with commendable promptitude and clarity. The thorough and timely evaluation conducted by the Board has been invaluable in assisting the Court in making an informed decision. The expertise and diligence demonstrated by the doctors involved is also noteworthy.

27. It is also clarified that the doctors who have contributed their opinions as part of the Medical Board shall have immunity in the event of any litigation arising out of this petition.

28. The writ petition, along with pending application, is disposed of in the above terms.

29. A copy of this order shall be supplied to the counsel for parties *via* email by the Court Master.

SANJEEV NARULA, J

JULY 5, 2024

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