



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8920 OF 2024

X. Y. Z.

.....Petitioner

Vs.

1. Dean of Vitthal Sayanna Civil Hospital,
Thane, 1st Floor, Civil Hospital,
Tembhi Naka, Thane (West),
Maharashtra – 400 601.
2. Union of India,
Through the Secretary,
Ministry of Law and Justice,
And
Ministry of Health and Family Welfare,
its Secretary, New Delhi.
3. State of Maharashtra,
Through the Principal Secretary,
Public Health Services,
Mantralaya, Mumbai – 32.

.....Respondents

Mr. Tejas Dande with Ms. Trushna Shah, Mr. Bharat Gadhavi, Mr. Aniket Shitole, i/b. Ms. Trushna Shah, for the Petitioner.

Ms. Purnima Awasthi, Advocate for Respondent No.2/UOI.

Smt. M. P. Thakur, AGP, for Respondent No.3-State.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.

RESERVED ON : 3rd JULY, 2024.

PRONOUNCED ON : 8th JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale) :-

- 1) The Petitioner is a married adult. She has a daughter aged about 4 years of her marriage. However, there is a proceeding for divorce

filed against her by her husband and pending before the Family Court, Thane. Out of her consensual relationship with a married friend, she became pregnant. According to her she learnt about her pregnancy in May 2024. The pregnancy was estimated to be around 26 weeks and 6 days at that time.

2) The Petitioner seeks permission to medically terminate her pregnancy since her pregnancy is beyond 24 weeks and the Medical Termination of Pregnancy (Amendment) Act, 2021 read with the Medical Termination of Pregnancy Act, 1971 (“the Act”) does not permit any Registered Medical Practitioner to carry out the Medical Termination of Pregnancy (“MTP”) procedure at this stage. She sought permission on the following grounds:

- (a) She is unable to give birth because of her poor mental and physical condition;
- (b) Her financial condition is poor, and she is the sole bread winner in her family. Additionally, she is required to take care of her unwell mother, minor brother, and minor daughter; and
- (c) She is worried about the social stigma in Indian society and she is from a lower income group family and the society is not affluent and mature to accept the child born out of friendship after divorce.

3) By our Order dated 27th June 2024, we required the authorities of Vitthal Saynna Civil Hospital, Thane to constitute a Medical Board to

examine the Petitioner and submit its report. We had also required the Board to consider the mental and physical health of the Petitioner during her examination.

4) On 2nd July, 2024, Smt. M.P. Thakur, learned AGP placed the medical report dated 1st July 2024 before us. The said report is taken on record and marked 'X' for identification. The report is unanimous. The team constituted by the Hospital to examine the Petitioner No.1 comprised of the following doctors.

1. Dr.Kailash Pawar, Civil Surgeon, Civil Hospital Thane
2. Dr.Shobhana Chavan, Gynaecologist (Class I), Civil Hospital Thane
3. Dr.Nandini Deshmukh, Gynaecologist, Civil Hospital Thane
4. Dr.Avinash Padalkar, Radiologist (Class I), Civil Hospital Thane
5. Dr.Vijay Salunkhe, Psychiatrist (Class I), Civil Hospital Thane
6. Dr.Rahul Gurav, Paediatrician, Civil Hospital Thane

5) The relevant portion of the report reads thus:

4) Available reports and investigations:

Sr.No.	Report	Opinion on the findings
1.	Gynaecology Department LMP-? Dec 2023 EDD-? Sep 2024 Obstetric History – Married G2P1L1 i)FTCS-female child 4 years old,	On clinical examination, Patient is married 27 years old with 28 weeks pregnancy with Changing Lie

	<p>ii) <i>Present Pregnancy</i></p> <p><i>General examination – Conscious, Oriented,</i></p> <p><i>weight-53 kg, Height - 142 cm Afebrile</i></p> <p><i>Pulse rate-80/m</i></p> <p><i>B.P.-100/60mm of Hg</i></p> <p><i>Pallor 1+, No Icterus, Oedema RS clear</i></p> <p><i>CVS-HS Normal</i></p> <p><i>P/A-Uterus 28 weeks,</i></p> <p><i>Changing Lie, Vertical scar present</i></p> <p><i>FHS +146/m</i></p> <p><i>F.M. Present</i></p> <p><i>p/v-Os Closed</i></p> <p><i>Investigations</i></p> <p><i>HB=8.5 gm,</i></p> <p><i>Blood group 'B'+ve</i></p> <p><i>Obst USG on 28.06.2024 suggestive of single live pregnancy 27 weeks 1 days with transverse lie with foetal weight 1078 gms, adequate liquor.</i></p>	<p><i>with previous LSCS with moderate anaemia (Hb-8.5 gm). For termination of pregnancy she may require surgery as she is a case of previous LSCS</i></p> <p><i>Baby may be alive and will need NICU Care due to prematurity And relatives must take care of this child.</i></p>
<p>2.</p>	<p>Radiology Department</p> <p><i>Ultrasonography of Patient XYZ¹ done on 28.06.2024.</i></p> <p><i>Ultrasonography shows gravid uterus with single viable fetus with Transverse lie with head on right side of Maternal Abdomen. Placenta is Anterior with adequate Amniotic fluid with present foetal activity & foetal cardiac activity of 148 b/m. single live pregnancy of 27 weeks and 1 day.</i></p>	<p><i>Ultrasonography shows gravid uterus with single viable fetus with Transverse lie, Placenta is Anterior with average gestational age of 27 weeks and 1 day,</i></p>

1 The name of the Petitioner appearing in the report is replaced with XYZ to maintain confidentiality.

	<p><i>Approximate EDD – 26/09/2024</i></p> <p><i>Approximate Foetal weight – 1078 gm</i></p> <p><i>Obvious Congential Anomaly is not seen however all anomalies may not be detected on ultrasound.</i></p>	
3.	<p>Psychiatric Department</p> <p><i>Informant-Self</i></p> <p><i>Psychiatric Assesment in view of Medical Termination of Pregnancy.</i></p> <p><i>No symptoms of pervasive sadness of mood</i></p> <p><i>No symptoms of altered behavior</i></p> <p><i>No symptoms of irritability</i></p> <p><i>No symptoms of suicidal ideations</i></p> <p><i>No history of psychiatric illness in the past</i></p> <p><i>No history of psychiatric illness or suicide in family members</i></p> <p><i>No history of major illness in past</i></p> <p><i>Sleep Normal, Appetite – Normal</i></p> <p>Mental Status Examination</p> <p><i>Conscious, Cooperative, Communicative</i></p> <p><i>Mood Anxious occasionally</i></p> <p><i>Affect - Mood congruent Speech continuous/coherent/Relevant</i></p> <p><i>No delusions</i></p> <p><i>No hallucinations</i></p> <p><i>No suicidal ideations</i></p>	<p><i>Patient is not suffering from any major mental illness at present.</i></p> <p><i>No Active Psychopathology seen at present.</i></p>
4	<p>Pediatic Department</p> <p><i>Informant-Patient</i></p> <p><i>Case-</i></p> <p><i>As per informant patient is married and has filed case for divorce in the Court. She</i></p>	<p><i>If Pregnancy terminated at this age, possibility of live birth with extreme prematurity</i></p>

<p><i>is now pregnant out of her relation with her friend.</i></p> <p><i>H/o amenorrhoea - ? 6 month</i></p> <p><i>LMP-? Dec 2023 (not known exactly)</i></p> <p><i>No PV bleeding/leading</i></p> <p><i>O/H - G2P1L1, G2 – Fch/4yrs/LSCS G2 – PP</i></p> <p><i>No any past History of medical or surgical illness</i></p> <p><i>On examination: G.C. mod, afebrile</i></p> <p><i>P-74/w, SPV2 - 98% in air RR-18/m</i></p> <p><i>CVS: S1, S2 normal No Murmur</i></p> <p><i>RS: AEBE clear</i></p> <p><i>CNS-Alert Oriented, NAD</i></p> <p><i>P/A: 30 weeks</i></p> <p><i>FHS-140/m</i></p> <p><i>Vertical scar present</i></p> <p><i>USG Obstetric on 28.06.2024</i></p> <p><i>Ultrasonography of gravid uterus shows single viable fetus In transverse presentation average gestational age of 27 weeks 1 day</i></p> <p><i>-fetal weight 1078 gm</i></p> <p><i>-obvious congenital anomaly not seen 148</i></p> <p><i>BPM/AFI 17 cm</i></p>	<p><i>and baby may require NICU care.</i></p>
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5) *Additional Investigations (if done)*

No Additional Investigations done

6) *Opinion by Medical Board for termination of pregnancy*

a) *Allowed-*

b) *Denied (✓)*

Justification for the decision:

After taking history and clinical examination by Gynaecologist,

Paediatrician, Radiologist and Psychiatrist of District Medical Board, Thane has come to the opinion that at present Patient is G2P1L1 with previous LSCS with 27 weeks and 1 day pregnancy with no gross abnormality is detected in the fetus after sonography.

Pregnant mother has expressed desire to terminate the pregnancy. In the Medical Termination Process, there may be possibility of child being born alive and may need NICU Care. She may require surgery as she is a case of previous LSCS.

Since the pregnancy has advanced upto 27 weeks and 1 day (by USG Report), well beyond legal limits of termination of pregnancy i.e. 24 weeks.

7) *Physical fitness of the woman for the termination of pregnancy*

a) *Yes -*

b) *No - (✓)*”

6) When the matter was taken up for hearing on 2nd July 2024, we shared the report with Mr. Tejas Dande, learned counsel of the Petitioner and Ms. Purnima Awasthi, learned counsel representing the Union of India. Since the report clearly indicates the Petitioner as not fit for medical termination of pregnancy, we requested Mr. Dande to apprise the Petitioner regarding the report. On his request, the matter was listed on 3rd July 2024 to enable him to take further instructions.

7) Mr. Dande, now informs us that the Petitioner is yet desirous to terminate the pregnancy. He in fact, filed an additional affidavit accompanied by a copy of Guidelines issued by the Ministry of Health and Family Welfare, New Delhi, issued to Medical Boards regarding Termination of Pregnancy beyond 24 weeks. In his affidavit, the Medical Report is

assailed on the ground that it does not disclose the parameters or the criterion applied to arrive at such finding. He seeks a direction to obtain a second opinion from any other suitable Hospital in Mumbai. It is further averred that the Petitioner is ready and willing to undergo termination of her pregnancy by surgical method and seeks direction to the Doctors to administer proper treatment to her to achieve the fitness required for the procedure. Mr. Dande argued that the Psychiatric Department has not examined the patient on the aspect of the effect of the pregnancy on the mental health of the Petitioner.

8) Ms. Thakur points to the Column No.3 of the report which according to her also indicates that the Psychiatrist has considered all the aspects pertaining to the mental health of the Petitioner and the report is sufficient to ascertain the mental and physical health of the Petitioner for this purpose. We also asked Ms. Awasthi to clarify whether parameters mentioned in the Column 3 of the report satisfy the requirements of the Ministry of Health and Family Welfare Guidelines relating to termination of pregnancy. She stated that the Medical Board has acted in terms of the specifications mentioned in the guidance note of the Central Government. She further states that the Petitioner will be counseled as per the guidelines once the Court passes an Order permitting the MTP or otherwise. She further assures the Court that they will act strictly in conformity with the specifications outlined in the guidance note regarding counseling of a

pregnant person.

9) Mr. Dande, continued to assail the Medical Report and insisted that the Court must seek a second opinion from any other suitable Hospital in Mumbai. He argued that the Psychiatrist is required to examine and certify the effect of pregnancy which is likely to be caused on the mental health of the pregnant person. According to him, the Medical Report is silent on this aspect. He placed reliance on the decision of the Apex Court in the matter of *A (Mother of X) vs State of Maharashtra*² and drew our attention to paragraph 27 of the judgment which read as thus:

“27. The powers vested under the Constitution in the High Court and this Court allow them to enforce fundamental rights guaranteed under Part III of the Constitution. When a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. In doing so the court relies on the opinion of the medical board constituted under the MTP Act for their medical expertise. The court would thereafter apply their judicial mind to the opinion of the medical board. Therefore, the medical board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person. Therefore, a medical board must examine

2 2024 SCC OnLine SC 835.

the pregnant person and opine on the aspect of the risk to their physical and mental health.”

10) He also placed reliance on para 68 of the decision of the Supreme Court in the matter of X vs Principal Secretary, health and family Welfare Department, Government of NCT of Delhi & Anr.³ Paragraph 68 reads thus:

68. The expression "mental health" has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The World Health Organisation defines "mental health" as a state of "mental well-being that enables people to cope with the stresses of life, realise their abilities, learn well and work well, and contribute to their community". [World Health Organisation, "promoting Mental Health: Concepts, Emerging Evidence, Practice (Summary Report)" (2004)] The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context. Our understanding of the term "mental health" cannot be confined to medical terms or medical language, but should be understood in common parlance. The MTP Act itself recognises the need to look at the surrounding environment of the woman when interpreting injury to her health. Section 3(3) states that while interpreting grave injury to her physical or mental health", account may be taken of the pregnant woman's actual or reasonably foreseeable environment. The consideration of a woman's "actual or reasonably foreseeable environment" becomes pertinent,

³ (2023) 9 SCC 433.

especially when determining the risk of injury to the mental health of a woman.”

11) We have carefully perused the averments of the Petitioner in the Petition and in her Additional Affidavit, the Report submitted by the Medical Board, and the precedents cited on behalf of the Petitioner. The termination of pregnancies is governed by the MTP Act, and the Rules made thereunder. Section 3 of the Act stipulates certain conditions which must be satisfied before a pregnancy can be terminated. The conditions depend on the length of pregnancy and exceptions are made in certain cases. Rule 3B of the MTP Rules (as amended by the MTP Act of 2021) provides grounds for termination of pregnancies up to 24 weeks which *inter alia* permits medical termination for the following persons:

- (a) Survivors of sexual assault or rape or incest:
- (b) Minors:
- (c) Change of marital status during the ongoing pregnancy (widowhood and divorce);
- (d) Women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];
- (e) Mentally ill women including mental retardation;
- (f) The foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical

or mental abnormalities to be seriously handicapped; and

(g) Women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.

12) Further the provisions of Section 3(2) of the Act relating to the length of the pregnancy shall not apply to the termination of a pregnancy by a Registered Medical Practitioner, where the termination is necessitated by the diagnosis of any substantial fetal abnormalities diagnosed by the Medical Board. The Medical Board has the power to allow or deny termination of pregnancies beyond 24 weeks. It may do so only after ensuring that the procedure would be safe for the woman at that gestation age and after considering whether the fetal malformation leads to a substantial risk to the fetus, or where the fetus may suffer physical or mental abnormalities. Thus, there are some exceptions in the Act and the Rules made thereunder in which case the outer limit of the length of the pregnancy is lifted. However, on the consideration of the Medical Report submitted by the Board, we do not find the case of the Petitioner to fit into any of the exceptions provided in the statute.

13) We have carefully considered the decisions of the Apex Court as relied upon by the Petitioner. We are conscious of the right of the Petitioner to reproductive freedom, her autonomy over her body and her right of choice. However, the Medical Report specifically concludes that the Petitioner is not fit for termination of pregnancy at this stage. The report

clearly indicates that all relevant parameters and aspects have been examined and considered by the Board. In respect to the complaint of the Petitioner that the Board has failed to comment on effect of the pregnancy on her future mental health, we find the opinion of the Psychiatrist specified in Column 3 of the report to be satisfactory and we are of the considered view that, the aspects mentioned by Mr. Dande have been sufficiently dealt with by the Board as far as any Medical practitioner can possibly do. The conclusion of the Medical Board is clearly based on the medical examination of the Petitioner and the opinion finding the Petitioner not fit for termination of pregnancy at this stage is not based only on the narrow interpretation of the word “mental health” confined to medical terms. The findings of the Psychiatrist clearly refer to the state of mind of the Petitioner. The Psychiatrist has not found any symptoms of pervasive sadness of mood, altered behaviour, irritability or suicidal ideations in the Petitioner. The parameters denoted in Column 3 clearly indicates the opinion of the Psychiatrist on the mental well-being of the Petitioner in the present state.

14) We have also given our consideration to the grounds on which the Petitioner sought permission. The main reason appears to be fear of social stigma in society coupled with her economical condition. In our view, the above grounds are not included in the exceptions where the outer limit of the length of the pregnancy is lifted under the Act. Conscious of the

sufferings that the Petitioner may have to undergo while subjecting her body to the rigors of pregnancy in the last tri-mester, we will address the same later in this Order and alleviate her apprehensions.

15) Mr. Dande has repeatedly questioned the competence of the Medical Board and sought a direction to obtain a second opinion. We are not inclined to accept this request. The Medical Board was constituted in pursuance of our Orders. The members comprising the Board are experts in their respective streams of medical sciences. We have full faith in the competence and expertise of the Members of the Board. Needless to say that we have applied our judicial mind to the opinion of the Medical Board. Our judicial conscience does not permit us to grant permission to the Petitioner to medically terminate the pregnancy at this stage. Permission is accordingly denied.

16) Recognizing the wish of the Petitioner to terminate her pregnancy for fear of social stigma and considering her economic background as averred by her in the Petition, so as to allay her apprehensions, we direct that in the event the baby is born alive, the hospital is required to provide the neonatal care as required. 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.

17) Before parting we do want to express our anguish for the difficult circumstances in which women such as the Petitioner find themselves in, especially in the absence of any effective mechanism to ensure that the biological father shares equal pain, responsibility, societal reproach and social castigation, meted out to women in such cases.

17.1) Be that as it may, exercise of the Court's powers is limited by jurisdictional and legislative constraints. We remain optimistic that proactive measures are put in place by the Government to address such complexities.

18) Petition is accordingly dismissed.

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

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)