



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR**

WRIT PETITION NO. 2319 of 2024

.. Petitioner

..Versus..

The State of Maharashtra through the Chief
Secretary, Public and Family Welfare Department,
and another.

.. Respondents

....

Mrs Priyanka Awathale, Advocate with Ms Alfa Singh, Advocate
for petitioner.

Mr D.V.Chauhan, Government Pleader with Ms N. P. Mehta,
Additional Government Pleader for respondents.

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**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
NITIN W SAMBRE, J.**

DATE : 5th APRIL, 2024.

P.C.

This petition under Article 226 of the Constitution of India has been filed by the petitioner seeking direction to the respondents to allow her to undergo medical termination of her pregnancy on the ground that she is carrying abnormal foetus.

2. The Court considering the fact that pregnancy has exceeded twenty four weeks, passed an order on 03.04.2024. By the said order dated 03.04.2024, the Court directed the Civil

Surgeon to ensure medical examination of the petitioner and forward the report to the Court. In compliance of the said order dated 03.04.2024 the Medical Board at General Hospital, Wardha conducted medical examination of the petitioner and has forwarded its report vide letter dated 04.04.2024, which has been kept on record of this petition.

3. The said Medical Board comprised of nine Doctors and one Matron. The doctors comprising the said Medical Board are from different streams of medicine, which include one Physician, two Gynecologists, one Pediatrician, one Radiologist, one Psychiatrist, one Anesthetist and one Pathologist. As per report of the Medical Board, the petitioner is thirty two weeks pregnant and continuation of pregnancy would involve grave injury to her mental health and significant morbidity to her child, if born.

4. The findings of the Medical Board are that the petitioner is carrying pregnancy of thirty two weeks with fetal abnormality as per sonography, so the continuation of pregnancy will cause grave injury not only to physical and mental health of the petitioner but there are substantial risks that, if the child is born, it may suffer from such physical

abnormalities so as to be seriously handicapped. The Medical Board, thus has recommended that the pregnancy should be terminated. The gist of the report of the Medical Board is quoted hereunder:

"10. Review of available reports and investigations by:

<i>Sr.No.</i>	<i>Report reviewed</i>	<i>Opinion on the findings</i>
<i>1.</i>	<i>Dr.Manisha Nasare</i>	<i>Patient is 32 weeks 0 days pregnant and continuation of pregnancy would involve grave injury to her mental health and significant morbidity to her child if born.</i>
<i>2.</i>	<i>Dr.Priyanka Talwekar</i>	<i>Patient is 32 weeks 0 days pregnant and continuation of pregnancy would involve grave injury to her mental health and significant morbidity to her child if born.</i>
<i>3.</i>	<i>Dr.Sudarshan Harle</i>	<i>Patient is 32 weeks 0 days pregnant and continuation of pregnancy would affect her mental health</i>
<i>4.</i>	<i>Dr.Parag Raut</i>	<i>The patient is moderate to high risk for the procedure.</i>
<i>5.</i>	<i>Dr.Chakor Rokade</i>	<i>The patient blood investigations are within normal limits.</i>
<i>6.</i>	<i>Dr.Swapnil Rathod</i>	<i>On dated 04-04-2024 as per sonography report Single Live intrauterine fetus of AGA 32 weeks 0 days with breech at present scan with polyhydroamnios (AFI-30CM) with skeltal dysplasia (Achondropalsia) with bilateral hypoplastic lungs.)</i>
<i>7.</i>	<i>Dr.Archana Zode</i>	<i>The patient can be taken for the</i>

		procedure under high risk.
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11. Examination of girl/woman done by (name of doctor, specialization and designation):-

1. Dr.Manisha Nasare.
2. Dr.Priyanka Talwekar
3. Dr.Archana Zode
4. Dr. Parag Raut

12. Counselling done by (name and designation):

1. Dr. Sudarshan Harle.

Sr.No.	Investigation done	Key Findings
1.	CBC	Hb 12 TLC 6900, platlet 186000
2.	Blood Group	AB Positive.
3.	Sickling	Negative
4.	LFT	Billirubin Total -0.4, Direct 0.1, SGOT 18.6, SGPT 14.1
5.	KFT	Urea 21.6, Creatinine 0.76
6	HbSAg	Non Reactive
7	HIV	Non Reactive
8	VDMI	Non Reactive
9	RBS	94.1 mg/dl
10	ECG	T wave inversion in lead III

14. Additional findings and observations:-

1. Normal average IQ by Psychiatrist (Dr.Sudarshan Harle)
2. The patient is 32 weeks pregnant with fetal abnormality as per sonography so the continuation of pregnancy will have grave injury to physical and mental health of the patient and there substantial risk that if the child is born it may suffer from such physical abnormalities to be serious handicapped.
3. So this Committee recommended that this pregnancy should be terminated.

15. Physical fitness for termination:

- a. Yes.

16. Recommendation by Medical Board for termination (choose

one and provide any additional recommendations of the panel in the box below if any):

a. Recommended (if yes, please mention the methods): Yes.

b. Not (if no, justification):-

Key recommendations of the panel (if any) with justification:

** As per the Hon'ble Court order dated 3rd April, 2024 the patient is examined on dated 3rd and 4th April, 2024 and the opinion is formed.*

** As per recommendation given by the standard operative protocol by the Rajya Kutumb Kalyan Karyalaya, Pune, the panel recommends that the termination of pregnancy will be done by use of Prostaglandins / Oxytocin but before termination ultrasound guided procedure by a skilled / experienced obstetrician or foetal medicine expert may be required so that foetus is not delivered alive. The Royal College of Obstetricians and Gynaecologist (RCOG) recommend 2-3 ml of strong (15%) potassium chloride (KCl) injection in the foetal heart prior to termination. Foetal demise should be confirm by ultrasound scan after 30 to 60 minutes.*

** As per the Medical Termination of Pregnancy (Amendment) Act, 2021 on 25th March 2021 and standard operating procedure dated 3rd April, 2019 pregnancy beyond 24 weeks can be terminated after the opinion of medical board at District Hospital, Wardha.*

** District hospital Wardha being government organization with all MTP facility upto 24 weeks and beyond 24 weeks in such cases.*

** Continuation of pregnancy would involve grave injury to physical & mental health of patient and substantial risk that if the child is born would suffer from physical abnormalities and significant morbidity but late termination of pregnancy with this procedure may involve the risk to the life of this patient. So the later termination of pregnancy may be done with the high risk consent of this patient and her relatives."*

5. The Medical Termination of Pregnancy Act, 1971 (for short, the MTP Act, 1971) as amended vide Act 8 of 2021 with effect from 24.09.2021, makes provisions for termination of pregnancy by a registered medical practitioner. Section 3(2) provides that a pregnancy may be terminated by a registered medical practitioner where the length of pregnancy does not exceed twenty weeks and that where length of pregnancy is between twenty and twenty four weeks; by two registered practitioners. The pregnancy can be terminated if in the opinion of the registered medical practitioners, continuance of the pregnancy would involve risk to the life of the pregnant woman or grave injury to her physical or mental health; or there is a substantial risk to the child, if born.

6. However, sub-section (2-B) of Section 3 carves out an exception to the provisions of sub-section (2), according to which, sub-section (2) of Section 3 will have no application to termination of pregnancy where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by the Medical Board. Accordingly, Section 3 (2-B) permits termination of pregnancy exceeding twenty-four weeks provided in the opinion of the Medical Board it is diagnosed that the lady is carrying pregnancy having substantial foetal

abnormalities.

7. In view of aforesaid statutory provisions, now that the Medical Board has opined that continuation of pregnancy will have grave injury to physical and mental health of the petitioner and there is substantial risk if the child is born that it may suffer from physical abnormalities leading to the child being seriously handicapped, and further that the petitioner is physically fit for such termination, we direct that the petitioner shall be allowed to terminate her pregnancy at General Hospital, Wardha.

We have been informed that the petitioner is presently admitted at General Hospital, Wardha and therefore we direct that the Management of the Hospital shall take all possible precautions while conducting procedure of termination of pregnancy of the petitioner.

8. Having ordered so, we also notice certain disturbing facts in this petition. As per the averments made in paragraph 9 of the writ petition, the doctors at District General Hospital, Wardha, having considered certain sonography report, were of the opinion that the petitioner may be required to undergo termination of pregnancy considering the fact that she is carrying pregnancy with abnormal foetus, however instead of

referring her to the Medical Board, created under the provisions of the MTP Act, 1971; as per the averments made by the petitioner she was required to seek permission of this Court for termination of her pregnancy. Under the Scheme of MTP Act, 1971 as amended up-to-date and the Rules framed thereunder, there is no such requirement of seeking any permission from the Court by any woman who intends to get her pregnancy terminated even if the pregnancy is beyond twenty four weeks. All what was required to be done, in such a situation, was that the woman ought to have been referred to the Medical Board for seeking its opinion under Section 3(2-B) of the MTP Act, 1971.

9. Sub-section (2-C) of Section 3 of the MTP Act, 1971 mandates that every State Government or Union Territory, as the case may be, shall, by notification, constitute a Board to be called a Medical Board for the purposes of the MTP Act, 1971 to exercise such powers and functions as may be prescribed. As per sub-section (2-D) of Section 3, the Medical Board shall consist of a Gynaecologist; a Paediatrician; a Radiologist or Sonologist; and such other number of members as may be notified in the Official Gazette by the State Government or Union Territory, as the case may be. In addition, certain provisions are

also made in the Medical Termination of Pregnancy Rules, 2003 (for short, MTP Rules). Rule 3-A of the MTP Rules defines powers and functions of Medical Board which allows or denies termination of pregnancy beyond twenty four weeks of gestation period under sub-section (2-B) of Section 3 after due consideration and ensures that the procedure would be safe for the woman and also considering the substantial risk that if the child is born it may suffer from such physical or mental abnormalities which may lead the child to be seriously handicapped.

10. It appears that the petitioner approached the General Hospital, Wardha where the doctor who attended the petitioner was of the tentative opinion that though the petitioner is carrying pregnancy beyond twenty-four weeks, but there is risk to the child, if born. In such circumstances, in accordance with the legal provisions as discussed above, the matter/case ought to have been referred to such Medical Board instead of suggesting her to approach this Court for seeking permission for termination of her pregnancy.

11. The aforesaid facts call upon us to direct the Department of Public Health and the Department of Medical

Education and Drugs of the State of Maharashtra to a formulate Standard Operating Procedure (SOP) which shall be issued to all government hospitals and medical colleges in the State of Maharashtra. The said Standard Operating Procedure shall be prepared by the experts in the field and shall accordingly be notified and circulated amongst all concerned.

12. We expect that Standard Operating Procedure as directed above shall be formulated and notified by the State Government within a period of two months from today.

13. Stand over to 12.06.2024.

14. The learned Government Pleader is requested to not only apprise the authorities concerned about this order but also to use his good offices to ensure that workable Standard Operating Procedure is put in place and implemented so that no one needs to travel to this Court for seeking any permission for termination of pregnancy, if the woman is entitled to do so under the provisions of the MTP Act, 1971 and MTP Rules, 2003.

15. Having regard to the financial condition of the family of the petitioner as her husband is a labourer having very meagre earning, we direct that the entire expenses of the

hospitalization, procedure, medicines, etc., shall be borne by the Management of the General Hospital, Wardha and for that the petitioner shall not be liable to pay any charges.

16. We also request the learned Government Pleader to communicate this order forthwith to the Civil Surgeon, General Hospital, Warhda without waiting for its certified copy.

17. For further continuation of the proceeding of this petition, office is directed to register this petition as a separate Public Interest Litigation.

18. We further direct the office to implead Additional Chief Secretary/Principal Secretary, Department of Public Health as well as Medical Education and Drugs Department, State of Maharashtra as party respondents to the said Public Interest Litigation.

(NITIN W SAMBRE, J.)

(CHIEF JUSTICE)

Andurkar..