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

+ W.P.(C) 2967/2020 & CM No.10300/2020

JYOTSNA SHINGWANI Petitioner

Through: Mr. Vikas Walia, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rajesh Gogna, Advocate for
UOI.

Mr. Anand Verma, Advocate for
AIIMS.

Ms. Mrinalini Sen, Advocate for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **15.04.2020**

1. The present petition has been listed before this Bench in view of the urgency expressed therein.
2. The matter has been heard by way of video conferencing.
3. Issue notice to the respondents.
4. Mr. Rajesh Gogna, learned Standing Counsel accepts notice on behalf of Union of India, Mr. Anand Verma, Advocate accepts notice on behalf of AIIMS and Ms. Mrinalini Sen, Advocate accepts notice on behalf of GNCTD.
5. This is a petition filed under Article 226 of the Constitution of India praying for a direction to the respondents to permit the petitioner to medically terminate her pregnancy and also seeking a declaration for declaring Section 3 (2)(B) and Section 5(1) of the Medical Termination of

Pregnancy Act as ultra vires the Constitution of India.

6. Petitioner is at gestation stage of 23rd week. It is averred in the petition that the petitioner went for a regular medical check up on 25.01.2020 and again on 07.02.2020, when she was advised to undergo a level-II scan once she reached 21 weeks of pregnancy, as a part of a routine check up with respect to the growth of the fetus. Accordingly, the petitioner underwent the level-II scan on 03.04.2020. The result of the scan revealed a large intra-abdominal cyst with multiple septae alongwith mild pericardial effusion and mild hepatomegaly. The differentials for this included duodenal atresia / meconium pseudocyst and intrauterine infections.

7. Thereafter, the petitioner sought opinion of various doctors and got multiple scans / ultrasounds done, which confirmed the said medical position of the fetus. Petitioner and her husband were informed that the child, if born, would require multiple surgeries to cure him and whether the child would be completely cured even after surgeries, is uncertain. It is, however, submitted that the extent of medical condition / abnormality in the fetus cannot be completely ascertained at this stage.

8. Learned counsel for the petitioner contends that the petitioner is about 29 years of age and this is her first pregnancy. Looking at the medical condition of the fetus, it is not advisable that the petitioner continues with the pregnancy and gives birth to a child who may after birth suffer various abnormalities. It is also pointed out that as per further reports the fetus has also been diagnosed as suffering from echogenic bowel and hepatic calcification. The condition of the fetus is thus a cause of concern for the petitioner and her husband and, thus a decision has been taken that it is in the best interest of the mother and the child that the petitioner undergoes medical termination of the pregnancy.

9. Learned counsel for the petitioner, however, submits that there is a

statutory bar in the termination of the pregnancy of the petitioner. Section 3(2)(B) and Section 5(1) of the Medical Termination of Pregnancy Act provides for termination of the pregnancy by a registered medical practitioner only if the length of pregnancy exceeds 12 weeks but does not exceed 20 weeks and for the reasons mentioned in the Section. Learned Counsel submits that since the petitioner is in 23rd week of pregnancy, she is statutorily restrained from undergoing the termination. Learned counsel points out that for this reason, the petitioner has also challenged the vires of the aforesaid Sections.

10. Learned counsel also argues that the Supreme Court and the High Courts in some cases have issued directions permitting medical termination of pregnancy post 20 weeks, where the circumstances so required.

11. Learned counsels for AIIMS, Union of India and the Government of NCT of Delhi, who have appeared on advance copy, submit that they have no objection in examining the petitioner, in order to ascertain the medical condition of the fetus as well as the risk involved in the termination of the pregnancy, at this stage. Mr. Gogna, Standing Counsel appearing for the Union of India has drawn the attention of the Court to the Memorandum issued by the Health Ministry, which provides for constitution of permanent Medical Boards, with experts in the relevant field. The role of these Boards is to respond to the directions of the Court and examine the woman or a minor girl for termination of pregnancy and submit their reports. He submits that directions have been issued to the State Governments and the UTs to ensure that the permanent Medical Boards are constituted.

12. Mr. Gogna further points out that one of the role of these Medical Boards is to determine through the ultrasound machines etc. if the fetal abnormality is substantial to qualify, as either incompatible with life or associated with significant morbidity or mortality in the child, if born. After

the Medical Board has given its opinion the same would then be forwarded to the Court, to enable the Court to take a final decision in the matter.

13. Insofar as the challenge to certain Sections of the MTP Act are concerned, Mr. Gogna submits that the issue of permitting medical termination of pregnancy beyond the statutory period of 20 weeks and up to 24 weeks has been under consideration with the Government and finally a Bill was passed bringing about Amendment to the Act in this regard. The Bill has been passed in the Lok Sabha and presently the Bill is pending in the Rajya Sabha and therefore, the petitioner need not press her challenge to the vires of the statutory provisions.

14. Learned counsel for AIIMS, on instructions, submits that AIIMS is willing to carry out the examination of the petitioner and the fetus and submit a report thereon and to the same effect is the stand of Ms. Mrinalini Sen, learned counsel for the Delhi Government.

15. We have heard learned counsels for the parties. At the outset, we must pen down that the response of all the respondents has been very heartening. Despite the pressure and the burden on the hospitals in the present day time, each of the respondent has graciously offered to examine the petitioner on account of the problems being faced by her. However, a consensus was finally reached between the counsels that the requisite exercise would be undertaken at AIIMS.

16. Accordingly, in the facts and circumstances of the present matter, we deem it fit to direct AIIMS to constitute a Medical Board and examine the petitioner and the fetus, to determine the medical condition of the fetus as well as the petitioner. The entire exercise, as undertaken by the learned counsel for AIIMS, would be completed within a period of three days from today.

17. The Medical Board, besides examining the medical condition of the

petitioner and the fetus, would also examine the following issues :

1. Whether continuance of the pregnancy would involve a risk to the petitioner or would in any manner lead to deterioration of her physical or mental health?
2. Whether there is any risk if the medical termination of pregnancy is performed at this stage?

18. The Medical Board will give its report, which will include the analysis of the medical abnormality of the fetus, along with its opinion, keeping in view the detailed guidelines mentioned in the Memorandum issued by the Central Government, as aforementioned. Learned Counsel for AIIMS is at liberty to carry the report in a sealed cover to the Court, in the event that he is unable to file the same before the next date of hearing, on account of paucity of time.

19. Further directions will be issued based on the report submitted by the AIIMS.

20. List on 20.04.2020.

J.R. MIDHA, J.

JYOTI SINGH, J.

APRIL 15, 2020

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