

(2020) 07 DEL CK 0068

In the Delhi High Court

Case No : Civil Writ Petition No. 4104 Of 2020

Neha Devi

APPELLANT

Vs

Government Of Nct Of Delhi

RESPONDENT

Date of Decision : 14-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 32

Medical Termination of Pregnancy Act, 1971 — Section 3, 3(2)(b), 3(2)(i), 5

Citation : (2020) 07 DEL CK 0068

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Prateek Jalan, J

Bench : Division Bench

Advocate : Sneha Mukherjee, Hetu Arora Sethi, Anand Varma

Final Decision : Allowed

Judgement

,

D.N.Patel, CJ",

1. The proceedings in the matter have been conducted through video conferencing.,

2. This writ petition has been preferred with the following prayers:-,

â??In the light of the facts and circumstances of this case, the Petitioners pray before this Honâ??ble Court as under:-",

a. For a writ of mandamus or any other writ, order, directing the Respondents to allow the Petitioner to undergo Medical Termination of the",

Pregnancy.,

b. For a writ of declaration or any other appropriate writ, order or direction quashing Section 3(2)(b) of the Medical Termination of Pregnancy Act,",

1971 to the limited extent that it stipulates a ceiling of 20 weeks for an abortion

to be done under Section 3, as ultra vires Article 14 and 21 of the",
Constitution of India,"

c. For a declaration to the effect that the expression "save the life of the pregnant woman" in Section 5 of the MTP Act includes "the, protection of the mental and physical health of the pregnant woman" and also incorporates situations where serious abnormalities in the fetus are, detected after the 20th week of pregnancy.,

d. for an order directing the Respondent No.1 to provide necessary directions to the hospital for setting up an expert panel of doctors to assess the, pregnancy and offer MTP to the petitioner and other women in need of the procedure beyond the prescribed 20 weeks limit.,

e. For any other order/direction that this Hon'ble Court may deem fit.,

3. At the outset, learned counsel for the petitioner submits that she does not want to press prayer (b) of the writ petition.",

4. We have heard the learned counsel for the parties.,

5. This matter was listed before us on 10th July, 2020 when we passed the following order:-",

"Proceedings of the matter have been conducted through video conferencing.,

Having heard learned counsel for the petitioner and looking to the facts and circumstances of the case, it appears that this petitioner is in search of",

termination of pregnancy which has now entered into 23rd week. Counsel for the petitioner has taken this Court to paragraphs 8 and 9 to the memo of,

this writ petition and has drawn our attention to the report of the sonography conducted on the petitioner which reflect that there are certain difficulties,

with the foetus in womb of the petitioner.,

We direct the petitioner to join All India Institute of Medical Sciences as a party respondent No.3.,

Issue notice through counsel.,

Ms. Hetu Arora Sethi, learned Standing Counsel accepts notice for respondents No.1 and 2. Mr. Anand Varma, learned counsel accepts notice for",

respondent No.3 - All India Institute of Medical Sciences (AIIMS), New Delhi.",

Taking note of the facts of the case, we consider it apposite to request the Director of All India Institute of Medical Sciences (AIIMS), New Delhi",

" respondent No.3 to constitute a board of at least three doctors to examine

the petitioner. The petitioner shall remain present before the Director,"
AIIMS or such senior doctor or officer of AIIMS as he may specify, on 11th July, 2020 (Saturday) between 10:30 a.m. and 11:00 a.m. We request",
the medical board appointed Director, AIIMS to give a report about the condition of the foetus and as to whether the termination of pregnancy would",
be safe in the case of the petitioner or not. The report of the Medical Board/Committee shall be filed in the Court by the evening of 13th July, 2020.",

The matter is adjourned to 14.07.2020.,

We also permit the personal service of this order on the Director, AIIMS by the petitioner.",

Copy of this order be communicated through electronic mode to the petitioner and to the counsel for the AIIMS.â??,

6. In compliance of the aforesaid order, the petitioner approached the Medical Board constituted by the Director, All Indian Medical Sciences,"

New Delhi at 10:30 a.m. on 11th July, 2020. The said Medical Board has submitted its report dated 11th July, 2020, which reads as under:-",

â??ALL INDIA INSTITUTE OF MEDICAL SCIENCES,

Ansari Nagar, New Delhi â?" 110029",

No. F.2-17/Medical Board/2020-Estt.(H.),

Dated: 11.07.2020,

Â Subject: Constitution of the medical board for medical examination of petitioner Ms. Neha Devi to render an opinion about the condition of the,

foetus and as to whether the termination of pregnancy would be safe in the case of the petitioner or not, including the likely physical & mental",

consequences to the petitioner in both eventualities, in compliance of order dated 10.07.2020 of Honâ??ble The Chief Justice and Honâ??ble Mr.",

Justice Prateek Jalan, High Court of Delhivide W.P.(C.) No. 4104/2020 titled Neha Devi Versus Govt. of NCT of Delhi &Anr.",

*****,

In compliance with the letter No. F. 2-17/Medical Board/2020-Esst,(H.) dated 11.07.2020, Medical board meeting was held on 11.07.2020 at 12:00",

1. Dr. Aparna K. Sharma Addl. Professor, Deptt. of Obs. & Gynae",Chairperson
2. Dr.Bichitra Nanda Patra Assoc. Professor, Deptt. of Psychiatry",Member
3. Dr. Smita Manchanda Assoc. Professor, Deptt. of Radio-diagnosis",Member

1. Dr. Jeeva Shankar Assoc. Professor, Deptt. of Paediatrics", Member
2. Dr. Abhishek Yadav Assoc. Professor, Dept. of Forensic Medicine & Toxicology", Member
3. Dr. Deepali Garg Asstt. Professor, Deptt. of Obs. & Gynae", Member
4. Dr. Reeja Raju Secy. Department of Hospital Administration, Member
5. Dr. Amitesh Khare Department of Hospital Administration, Observer

Ulnar length 27mm = 19 wks 03 days,

Tibial length 28mm = 19 wks 05 days,

There is flaring and defects of posterior element with a solid cystic lesion of size approx.: 23x9mm in overlying lumbo sacral region s/o Open Spina,

Bifida with Meningocele. Anterior indentation of fetal skull giving lemon shape appearance with dilated both lateral ventricles with Dangling Choroid,

Plexus s/o Arnold chiari Malformation.,

Posterior fossa appears small.,

The pulmonary echogenicity was normal with no pulmonary cyst(s) or mass gross diaphragmatic defect.,

The fetal stomach, both kidneys, urinary bladder and other abdominal viscera shows no gross abnormality.",

Right kidney measures 20 x 11mm, Left kidney measures 19 x 10 mm.

8. The other report is dated 3rd July, 2020 (Annexure P-3 to the memo of this writ petition) by Lady Hardinge Medical College and Smt.S.K.Hospital,"

Connaught Place, New Delhi 110011 and which reads as under:-",

Lady Hardinge Medical College and Smt. S.K. Hospital,

Connaught Place, New Delhi-110001",

Consulting Room No. 1,

OUT PATIENT RECORD,

Name: MRS. NEHA DEVI,

Department: Obstetrics and Gynecology,

Dept. No.: 20204155/15574 W/o Sunil Tiwari,

Fees: ₹ 0,

Sex: Female,

Date of Registration: 03.07.2020,

Ext. C,

â?|â?|â?|â?|..Type: General,

â?|â?|â?|No.,

Address: â?|â?|â?|â?|â?|â?|..,

Age: 74 Y,

LMP-27/1/2020,

G3 P1 4 A1 with 22 + 4 wks,

with,

Open spina bifida,

22/6,

IUF, viable",

BPD : 20 + wks.,

Defect of heart ailmentÂ Adv.,

Open spina bifida with meningocele - patient,

communicated that Of 23 x 9 mm Â Spina bifida Â,

is associated with,

In lumbo sacral region Mental + physical in Abnormality 70% of with B/L Lat.
Ventricle 11 mm the case Mental & Physical,

Abnormality remains after,

surgery of bay â?" planover",

Neuro surgery facility is NA,

in KSCH.,

Adv.,

Covid testing,

- F/u in ANC checkup (Monday to Friday),

Sd//-,

3/4,

Reg. by Dr.Manisha (staff),

OF, cephalic",

BPD= 22+5 ; FL = 21+3,

Ventriculo Megaly (+),

01 â?" Post Liq,

Spine -- Meningomyelocele (+),

Adv.,

As pregnancy is > 20 wks.,

Termination can be done only after court orders. Patient explained about taking court permission might take 7-10 days,

Sd/-,

Miss Sneha â?" 9999602308,

Dr. Manisha -â??,

9. Ms. Sneha Mukherjee, learned counsel appearing for the petitioner, categorically states that her client has been made fully aware of the situation,"

including the condition of her foetus and the possible risk in case termination of pregnancy is to be allowed at this stage, and that her client is willing to",

undertake the risk of termination of her pregnancy, but would not desire to allow the pregnancy to continue, given the condition of the foetus.",

10. The issue in controversy is, legally, not res integra. In Tapasya Umesh Pisal v. Union of India, (2018) 12 SCC 57, Tapasya Umesh Pisal,the",

petitioner, who was 24 years of age approached the Supreme Court, under Article 32 of the Constitution of India, seeking permission to undergo",

medical termination of her pregnancy, which had progressed to 24 weeks, as her foetus has been diagnosed with tricuspid and pulmonary atresia, a",

cardiac anomaly. The Supreme Court constituted a Medical Board to examine the situation. The Board reported that the treatment of the abnormality,

in the foetus would require foetal surgery which carried the risk of high mortality, and that even if the surgery were to be successful, such children",

would remain physically incapacitated and had a limited life span. The Supreme Court observed that, except for the time period i.e. the duration for",

which the pregnancy had continued, the case would fall within Section 3(2)(b) of the MTP Act. In the circumstances, the Supreme Court held thus:",

â??8. In these circumstances, it is difficult for us to refuse the permission to the petitioner to undergo medical termination of pregnancy. It is certain",

that the foetus if allowed to born, would have a limited life span with serious

handicaps which cannot be avoided. It appears that the baby will certainly",
not grow into an adult.â??,

11. In *Mrs. X v. Union of India*, (2017) 3 SCC 458 the pregnancy of the petitioner had continued upto 22 weeks, when the foetus had diagnosed as",
suffering from bilateral renal agenesis and anhydramnios. The Medical Board reported that there was risk of intrauterine fetal death/still birth and no,
chance of long term post natal survival, and that there was no curative treatment available for bilateral renal agenesis. The Supreme Court observed",
thus:,

â??8. We have already vide order dated 16-1-2017 [*Meera Santosh Pal v. Union of India*, (2017) 3 SCC 462] upheld the right of a mother to preserve",
her life in view of foreseeable danger in case the pregnancy is allowed to run its full course.,

This Court in that case relied upon *Suchita Srivastava v. Chandigarh Admn.* [*Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC",
(Civ) 570], where a Bench of three Judges held: (SCC p. 15, para 22)",

â??22. â?| a woman's right to make reproductive choices is also a dimension of
â??personal libertyâ? as understood under Article 21 of the,
Constitution.â??,

In these circumstances we find that the right of bodily integrity calls for a permission to allow her to terminate her pregnancy. The report of the,
Medical Board clearly warrants the inference that the continuance of the pregnancy involves the risk to the life of the petitioner and a possible grave,
injury to her physical or mental health as required by Section 3(2)(i) of the Medical Termination of Pregnancy Act, 1971. It may be noted that Section",
5 of the Act enables termination of pregnancy where an opinion is formed by not less than two medical practitioners in a case where opinion is for the,
termination of such pregnancy is immediately necessary to save the life of the pregnant woman.,

9. Though the current pregnancy of the petitioner is about 24 weeks and endangers the life and the death of the foetus outside the womb is inevitable",
we consider it appropriate to permit the petitioner to undergo termination of her pregnancy under the provisions of the Medical Termination of,
Pregnancy Act, 1971.",

We order accordingly.â??,

12. Looking to the judgments of the Supreme Court, cited hereinabove, and in the facts and circumstances of the case including inter alia, the report of",

the Medical Board constituted by the Director, AIIMS, we are of the view that the prayer of the petitioner deserves to be allowed. Accordingly, the",

petitioner is permitted to have her pregnancy terminated, without any further delay.",

13. We express our appreciation for the assistance rendered to the Court by the Director, AIIMS, as well as the Medical Board constituted by him,",

who approached the matter with the urgency it deserved.,

14. The writ petition stands allowed in the above terms.,