

(2019) 12 P&H CK 0257

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 36116 Of 2019 (O&M)

Renu Kumari And Another

APPELLANT

Vs

State Of Ut Chandigarh And Others

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Medical Termination Of Pregnancy Act, 1971 — Section 3, 3(2)(b)(ii)

Citation : (2019) 12 P&H CK 0257

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Anuj Garg, Satish Singla

Final Decision : Disposed Of

Judgement

1. Instant writ petition has been filed seeking issuance of directions as regards medical termination of pregnancy of petitioner No. 1.

2. Writ petition had come up for preliminary hearing before this Court on 12.12.2019. While issuing notice of motion, the following order was passed:-

"Instant writ petition has been filed seeking issuance of directions as regards medical termination of pregnancy of petitioner No. 1.

In support of the prayer made in the petition reliance has been placed upon certain documents at Annexure P-1 (colly) issued by Tricity Healthcare Diagnostic Centre, Sector 47-D, Chandigarh and whereby pursuant to a scan having been done the following impression has been recorded:-

"Small cystic swelling is seen along the posterior aspect of upper thoracic/cervical spinal region measuring 1.6 × 1.2cm likely due to myelomeningocele."

Counsel would submit that upon consultation with the doctor concerned, the petitioners have been informed that the fetus would have very poor chances of surviving.

The period of pregnancy in the instant case is stated to be more than 20 weeks. The embargo envisaged under Section 3 of the Medical Termination and Pregnancy Act, 1971, states petitioner No. 1 in her face.

Notice of motion confined to respondents No. 3 and 4 at this stage, returnable for 17.12.2019.

Mr. Satish Singla, Central Government Counsel, who is present in Court, accepts notice on behalf of respondents No. 3 and 4 and waives service. A complete copy of the writ paper-book already stands furnished to him.

In the meanwhile, a request is made to the Chairperson of the Permanent Medical Board at PGIMER to have petitioner No. 1 examined during the course of the next two days and to furnish an opinion as regards her prayer for medical termination of pregnancy which is beyond 20 weeks.

Copy of this order be furnished to learned counsel for the petitioners under the signatures of the Bench Secretary."

3. During the course of resumed hearing today Mr. Satish Singla, Central Government Counsel, has furnished a report of the Medical Board (undated) and a copy of the same is taken on record as Mark 'A'.

4. Report of the Medical Board reads as follows:-

REVIEW REPORT OF THE MEDICAL BOARD

With reference to the directions received from the Hon'ble High Court dated 12.12.2019 in reference to Court order vide CWP No. 36116 of 2019 received in MS Office on 13.12.2019 patient Renu Kumari was medically evaluated by the Permanent Medical Board at PGIMER, Chandigarh on dated 16.12.2019. following are the observations:-

1. As per ultrasound done on 3.12.19, MRI done on 10.12.19 and current clinical evaluation the period of gestation is 22wks+with single live intrauterine fetus with cystic swelling seen along the posterior aspect of upper thoracic/cervical spinal region measuring 1.6 × 1.2 cm due to myelomeningocele.

2. This is a severe congenital anomaly which is not compatible with normal life.

3. Keeping in view the above, the Permanent Medical Board recommends medical termination of pregnancy at this stage.

Sd/-Sd/-Sd/-

Prof. Bhavneet Bharti MemberProf. Y.S. Bansal MemberProf. Inusha Panigrahi Member

Sd/-Sd/-Sd/-Sd/-

Dr. Gita Devi MemberDr. Arvind MemberDr. Basant Kumar MemberDr. Valliapan M. Member

Sd/-Sd/-

Dr. Manoj Goyal MemberDr. Ruchita Shah Member

Sd/-Sd/-

Dr. Varun Dhir MemberDr. Raman Sharma Convener Member

5. Perusal of the report would reveal that petitioner No. 1 namely Renu Kumari was examined on 16.12.2019 and as per ultrasound done, the period of gestation is 22 weeks+with single live intrauterine fetus with cystic swelling seen along the posterior aspect of upper thoracic/cervical spinal region measuring 1.6 × 1.2 cm due to myelomeningocele.

6. The Board has opined that the afore-noticed is a severe congenital anomaly and which is not compatible with normal life. Accordingly, it has been recommended that medical termination of pregnancy be permitted.

7. Section 3 of the Medical Termination and Pregnancy Act, 1971 reads as follows:

"3. When pregnancies may be terminated by registered medical practitioners.-

1. Notwithstanding anything contained in the Penal Code, 1860 (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

2. Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

3. In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in subsection (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.

4. (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a 4 [mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."

8. In the considered view of this Court, case of the petitioner would fall under Section 3(2)(b)(ii) but for the time period embargo of 20 weeks. The clear opinion given by the Permanent Medical Board constituted at PGIMER, Chandigarh, as per report at Mark 'A' is that on account of the severe congenital anomaly, the foetus is not likely to survive. There would be no basis for this Court not to accept the recommendations made by the Permanent Medical Board and the constitution of which stands approved by the Director, PGIMER, Chandigarh.

9. For the reasons recorded above, the writ petition is allowed.

10. The Director, PGIMER, Chandigarh is requested to get the pregnancy of petitioner No. 1, namely Renu Kumari terminated under the supervision of the Head of the Department (Obstetrics and Gynecology), PGIMER, Chandigarh.

11. Needless to observe that all the necessary facilities for undertaking such procedure be afforded in favour of petitioner No. 1.

12. A copy of this order be furnished to counsel for the parties under the signatures of the Bench Secretary to ensure necessary and immediate compliance.

13. Disposed of.