

MEERA SANTOSH PAL AND ORS.

v.

UNION OF INDIA AND ORS.

(Writ Petition (C) No. 17 of 2017)

JANUARY 16, 2017

[S.A. BOBDE AND L. NAGESWARA RAO, JJ.]

Medical Termination of Pregnancy Act, 1971 – s.3(2)(i) – Woman's right to make reproductive choices and bodily integrity – Writ petition seeking direction to the respondents to allow petitioner no.1 to undergo medical termination of her pregnancy as she apprehended danger to her life, having discovered that her foetus was diagnosed with Anencephaly, a defect that leaves foetal skull bones unformed and is both untreatable and certain to cause the infant's death during or shortly after birth – Held: Report of the Medical Board clearly warrants the inference that continuance of the pregnancy involves risk to the life of petitioner no.1 and a possible grave injury to her physical or mental health as required by s.3(2)(i) of the Medical Termination of Pregnancy Act -- Though, the pregnancy is into the 24th week, having regard to the danger to the life and the certain inability of the foetus to survive extra uterine life, it is appropriate in the interests of justice to permit petitioner no.1 to undergo medical termination of her pregnancy under the provisions of Medical Termination of Pregnancy Act – The overriding consideration is that she has a right to take all such steps as necessary to preserve her own life against the avoidable danger to it, particularly since she has made an informed choice – The exercise of her right seems to be within the limits of reproductive autonomy – Constitution of India – Arts. 21 & 32 – Personal liberty.

Suchita Srivastava and Anr. v. Chandigarh Administration (2009) 9 SCC 1– referred to.

Case Law Reference

(2009) 9 SCC 1

referred to

Para 9

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 17 of 2017.

Under Article 32 of The Constitution of India.

Colin Gonsalves, Sr. Adv., Ms. Sneha Mukherjee, Satya Mitra,

A Advs., with him for the Petitioners.

Ranjit Kumar, SG. R. K. Rathore, Ms. Swaruprana Chaturvadi, G. S. Makker, Nishant Ramakantrao Katneshwarkar, Advs., with him for the Respondents.

The following Order of the Court was delivered

B **ORDER**

C 1. Petitioner No.1 – Meera Santosh Pal, is 22 years old, has approached this Court under Article 32 of the Constitution of India seeking directions to the respondents to allow her to undergo medical termination of her pregnancy. She apprehended danger to her life, having discovered that her fetus was diagnosed with Anencephaly, a defect that leaves foetal skull bones unformed and is both untreatable and certain to cause the infant's death during or shortly after birth. This condition is also known to endanger the mother's life.

2. By order dated 11.1.2017, while issuing notice to the respondents, this Court gave a direction for examination of petitioner no.1 by a Medical Board consisting of the following seven Doctors :

- D
1. Dr. Avinash N. Supe, Director (Medical Education & Major Hospitals) & Dean (G&K) – Chairman
 2. Dr. Shubhangi Parkar, Professor and HOD, Psychiatry, KEM Hospital
 3. Dr. Amar Pazare, professor and HOD, Medicine, KEM Hospital
 - E 4. Dr. Indrani Hemantkumar Chincholi, Professor and HOD, Anaesthesia, KEM Hospital
 5. Dr. Y.S. Nandanwar, Professor and HOD, Obstetrics, KEM Hospitals
 - F 6. Dr. Anahita Chauhan, Professor and Unit Head, Obstetrics & Gynecology, LTMMC and LTMG Hospitals
 7. Dr. Hemangini Thakkar, Addl. Professor, Radiology, KEM Hospital.

G 3. As on 12.1.2017, she was into her 24th week of pregnancy. This is also borne by the report dated 12.1.2017, received from the Director (ME & MH)'s Office, Seth G.S. Medical College & KEM Hospital, Parel, Mumbai – 400 012.

H 4. By its report dated 12.1.2017, the Medical Board has examined petitioner no.1 with specific reference to their special expertise for general, medical, radiological, psychiatric and anaesthetic evaluation. An obstetric evaluation was done by two Obstetricians. Ultrasonography was performed at KEM Hospital on 12.1.2017 by the Additional

Professor, Radiology. The said Board has further reported that obstetric examination shows 24 weeks pregnancy, external ballotment present, fetal parts not well felt with mild polyhydramnios. On internal examination, the cervix is posterior and OS is closed. Ultrasonography diagnosis has revealed a single live fetus with anencephaly with mild polyhydramnios with hypotelorism. A

5. We have been informed that the fetus is without a skull and would, therefore, not be in a position to survive. It is also submitted that petitioner no.1 has undergone psychiatric evaluation. She is reported to be coherent, has average intelligence and with good comprehension. She understands that her fetus is abnormal and the risk of fetal mortality is high. She also has the support of her husband in her decision making. B

6. Upon evaluation of petitioner no.1, the aforesaid Medical Board has concluded that her current pregnancy is of about 24 weeks. The condition of the fetus is not compatible with extra-uterine life. In other words, the fetus would not be able to survive outside the uterus. C

7. Importantly, it is reported that the continuation of pregnancy can gravely endanger the physical and mental health of petitioner no.1 and the risk of her termination of pregnancy is within acceptable limits with institutional back up. D

8. This Court, as at present being advised, would not enter into the medico-legal aspect of the identity of the fetus but consider it appropriate to decide the matter from the standpoint of the right of petitioner no.1 to preserve her life in view of the foreseeable danger to it, in case she allows the current pregnancy to run its full course. The medical evidence clearly suggests that there is no point in allowing the pregnancy to run its full course since the fetus would not be able to survive outside the uterus without a skull. E

9. In *Suchita Srivastava and Anr. vs. Chandigarh Administration* [(2009) 9 SCC 1], a bench of three Judges held "a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution". The Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. The Court observed as follows:- F

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or H

A alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.....”

B 10. The crucial consideration in the present case is whether the right to 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 pregnant woman 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. Though, the pregnancy is into the 24th week, having regard to the danger to the life and the certain inability of the fetus to survive extra uterine life, we consider it appropriate to permit the petitioner to terminate the pregnancy. The overriding consideration is that she has a right to take all such steps as necessary to preserve her own life against the avoidable danger to it.

C 11. In these circumstances given the danger to her life, there is no doubt that she has a right to protect and preserve her life and particularly since she has made an informed choice. The exercise of her right seems to be within the limits of reproductive autonomy.

D 12. In the circumstances, we consider it appropriate in the interests of justice and particularly, to permit petitioner no.1 to undergo medical termination of her pregnancy under the provisions of Medical Termination of Pregnancy Act, 1971. The learned Solicitor General Mr. Ranjit Kumar who took notice on the last date of hearing has not opposed the petitioners prayer on any ground, legal or medical. We order accordingly.

E 13. The termination of pregnancy of petitioner no.1 will be performed by the Doctors of the hospital where she has undergone medical check-up. Further, termination of her pregnancy would be supervised by the above stated Medical Board who shall maintain complete record of the procedure which is to be performed on petitioner No.1 for termination of her pregnancy.

F 14. With the aforesaid directions, the instant writ petition is allowed in terms of prayer (a) seeking direction to the respondents to allow petitioner no.1 to undergo medical termination of her pregnancy.

G 15. Mr. Colin Gonsalves, learned Senior Counsel appearing for the petitioners, submits that the petitioners do not press other prayers in the instant writ petition.

16. We take on record the aforesaid submission made by Mr. Gonsalves, learned counsel appearing for the petitioners.