

MRS. X AND ORS.

v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No. 81 of 2017)

FEBRUARY 07, 2017

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

Constitution of India – Arts. 32, 21 – Medical termination of 24 weeks pregnancy – Sought by pregnant lady-petitioner no.1 – Examination by medical board – Fetus suffering from bilateral renal agenesis (absence of kidneys) and anhydramnios (absence of amniotic fluid) – Risk of death within womb and no chance of long term post natal survival and continuation of pregnancy could endanger physical and mental health of the petitioner – Held: Mother has a right to preserve her life in view of foreseeable danger in case the pregnancy is allowed to run its full course – Right of bodily integrity calls for a permission to allow her to terminate her pregnancy – Report of the Medical Board warrants 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 well as death of fetus outside the womb – Thus, the petitioner permitted to undergo termination of her pregnancy under the provisions of the Act – Medical Termination of Pregnancy Act, 1971 – ss.3(2)(i), 5.

Medical Termination of Pregnancy Act, 1971 – Termination of pregnancy – Sought for by 24 weeks pregnant lady-petitioner No. 1 – Affidavit not sworn by petitioner no.1 but by the doctor-petitioner No. 3 – Effect of – Held: A relator action may not be permitted in a case of this kind – In a given case petitioner no. 1 may be under some misconception or under coercion – However, petitioner no. 1 was examined by the Medical Board about her mental condition – She did not have any psychiatric or emotional problems – Thus, petitioner no. 1 is allowed the relief – However, such action must be supported by affidavits of the petitioner no. 1 herself – Hospital would take her consent before terminating her pregnancy – Affidavit.

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

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Case Law Reference

(2009) 9 SCC 1

referred to

Para 8

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Under Article 32 of the Constitution of India.

Sneha Mukherjee, Satya Mitra, Advs. for the Petitioners.

Ranjit Kumar, S.G., Ms. Sadhana Sandhu, G. S. Makker, Nishant R. Katneshwarkar, Advs. for the Respondents.

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The following Order of the Court was delivered

ORDER

1. Application for non-disclosure of names and detail of petitioner No. 1 and 2 is allowed.

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2. The Petitioner No. 1- Mrs. X is about 22 years' old. She 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. According to her, fetus which is about 22 weeks old on the date of the petition has a condition known as bilateral renal agenesis and anhydramnios. She apprehends that the fetus has no chance of survival and the delivery may endanger her life.

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3. In order to verify the condition of petitioner No. 1, this Court by order dated 03.02.2017 while issuing notice to the respondents directed examination of the petitioner by a medical Board consisting of following seven Doctors :

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1. Dr. Avinash N. Supe, Director (Medical Education & Major Hospitals) & Dean (G&K) – Chairman

2. Dr. Shubhangi Parkar, Professor and HOD, Psychiatry, KEM Hospital

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3. Dr. Amar Pazare, professor and HOD, Medicine, KEM Hospital

4. Dr. Indrani Hemantkumar Chincholi, Professor and HOD, Anaesthesia, KEM Hospital

5. Dr. Y.S. Nandanwar, Professor and HOD, Obstetrics, KEM Hospitals

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6. Dr. Anahita Chauhan, Professor and Unit Head, Obstetrics & Gynecology, LTMMC and LTMG Hospitals

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7. Dr. Hemangini Thakkar, Addl. Professor, Radiology, KEM Hospital.

4. By its report dated 04.02.2017, the Medical Board as constituted by this Court has given its expert opinion upon reviewing the complete history as narrated by the petitioner No. 1 and her brother alongwith all the papers. The petitioner No. 1 was examined by all the Board Members with specific recourse to the specialty.

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5. The learned Solicitor General who appears on behalf of Union of India had the report evaluated by Doctor Veena Dhawan from the Ministry of Health. The said Doctor does not disagree with the findings by the Medical Board and is also in agreement with the proposed action by the Medical Board. The salient features of the report are :

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6. Ultrasonography diagnosis is single live fetus with gestational age of 24 weeks 3 days with bilateral renal agenesis with double outlet right ventricle with ventricular septal defect with two vessel cord with anhydramnios....

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Opinion of Pediatric Surgeon in charge of Birth Defect Clinic :
There is risk of intrauterine fetal death/ still birth and there is no chance of long term post natal survival, and no curative treatment is available at present for bilateral renal agenesis.

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6. There is thus a clear diagnosis of the condition of the single live fetus which is said to have bilateral renal agenesis which means the fetus has no kidneys and anhydramnios which means that there is an absence of amniotic fluid in the womb. Further, there is a clear observation that there is a risk of intrauterine fetal death, i.e. death within womb and there is no chance of a long term post natal survival. What is important is that there is no curative treatment available at present for bilateral renal agenesis.

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7. The Medical Board has opined that the condition of the fetus is incompatible with extra-uterine life, i.e. outside the womb because prolonged absence of amniotic fluid results in pulmonary hypoplasia leading to severe respiratory insufficiency at birth. From the point of view of the petitioner the report has observed risk to the mother since continuation of pregnancy can endanger her physical and mental health.

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A 8. We have already vide order dated 16.01.2017 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 the case of Suchita Srivastava and Anr. vs. Chandigarh
Administration [(2009) 9 SCC 1], where a bench of three Judges held
B “a woman’s right to make reproductive choices is also a dimension of
‘personal liberty’ as understood under Article 21 of the Constitution”. 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
C 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
D necessary to save the life of the pregnant woman.

 9. Though the current pregnancy of the petitioner is about 24th weeks
and endanger to the life and inevitable to the death of the fetus outside
womb, we consider it appropriate to permit the petitioner to undergo
termination of her pregnancy under the provisions of the Medical
E Termination of Pregnancy Act, 1971. We order accordingly.

 10. 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
F procedure which is to be performed on petitioner No.1 for termination
of her pregnancy.

 11. Shri Ranjit Kumar, learned solicitor General rightly points out
that the affidavit in the present case is not sworn by petitioner No. 1
who seeks termination of her pregnancy and is sworn by a Doctor who
is petitioner No.3. We might note that a relator action may not be permitted
G in a case of this kind. There would be various circumstances about which
the Court must be assured of before the order is made. Conceivably, in
a given case petitioner No. 1 may be under some misconception or
under coercion. We do not find that to be case here because Petitioner
No. 1 has been examined by the Medical Board about her mental
H condition. In fact the Board has made a psychiatric evaluation of her

and has stated that the patient is co-operative and coherent and has no psychiatric or emotional problems. Hence we do not propose to deny relief to petitioner No. 1. It is however, made clear that such action must be supported by affidavits of the petitioner No. 1 herself. Needless to state that KEM Hospital will take her consent before terminating her pregnancy.

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12. 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.

Nidhi Jain

Writ Petition allowed.

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