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

% *Date of Decision: 14<sup>th</sup> July, 2020*

+ W.P.(C) 4104/2020

NEHA DEVI ..... Petitioner

Through: Ms. Sneha Mukherjee, Adv.

Versus

GOVERNMENT OF NCT OF DELHI ..... Respondent

Through: Ms. Hetu Arora Sethi, ASC for  
Respondents No.1 & 2.

Mr. Anand Varma, Panel Counsel for AIIMS.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**JUDGMENT**

: **D.N.PATEL, Chief Justice (Oral)**

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

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

“In the light of the facts and circumstances of this case, the Petitioners pray before this Hon’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 20<sup>th</sup> 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 10<sup>th</sup> 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 23<sup>rd</sup> 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 11<sup>th</sup> 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 13<sup>th</sup> 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.”

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 11<sup>th</sup> July, 2020. The said Medical Board has submitted its report dated 11<sup>th</sup> July, 2020, which reads as under:-

**“ALL INDIA INSTITUTE OF MEDICAL SCIENCES  
Ansari Nagar, New Delhi – 110029**

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

Dated: 11.07.2020

**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 Hon'ble The Chief Justice and Hon'ble Mr. Justice Prateek Jalan, High Court of Delhi vide W.P.(C.) No. 4104/2020 titled Neha Devi Versus Govt. of NCT of Delhi &Anr.

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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 Noon in M.S. Office Seminar Room, Ground Floor, AIIMS, New Delhi. The Board consisted of the following:

1. Dr. Aparna K. Sharma - Chairperson  
Addl. Professor, Deptt. of Obs. & Gynae
2. Dr. Bichitra Nanda Patra - Member  
Assoc. Professor, Deptt. of Psychiatry
3. Dr. Smita Manchanda - Member  
Assoc. Professor, Deptt. of Radio-diagnosis
1. Dr. Jeeva Shankar - Member  
Assoc. Professor, Deptt. of Paediatrics
2. Dr. Abhishek Yadav - Member  
Assoc. Professor, Dept. of Forensic  
Medicine & Toxicology
3. Dr. Deepali Garg - Member  
Asstt. Professor, Deptt. of Obs. & Gynae
4. Dr. Reeja Raju - Member  
Secy. Department of Hospital Administration
5. Dr. Amitesh Khare - Observer  
Department of Hospital Administration

M/s. Neha Devi came to the M.S. Office, AIIMS on 11.07.2020 at 10:30 A.M. for the Medical Board as directed by the Hon'ble High Court of Delhi for opinion on the above mentioned

subject. Medical board met in M.S. Office Seminar Room, Ground Floor, AIIMS and Ms. Neha Devi was examined and her medical records were evaluated by the panel of experts in the committee.

**OPINION:**

The Medical board after reviewing the records is of the following opinion:

- The petitioner is at 23 weeks and 1 day of pregnancy by LMP, which corresponds to Ultrasound report.
- **The board members reviewed the ultrasound reports conducted in AIIMS on 11.07.2020. The ultrasound is suggestive of large lumbar myelomeningocele with dilated ventricles likely Arnold Chiari Malformations type II. POG by ultrasound is 22 weeks 6 days. This type of malformation likely to have will have significant morbidities in later life.**
- There is no contraindication from psychiatric point of view at this point of time
- **There is no increased risk if the medical termination of pregnancy is performed at this stage.”**

*(emphasis supplied)*

7. The learned counsel for the petitioner submitted that the petitioner had undergone two more examination and has annexed copies of the reports. The first report is dated 22<sup>nd</sup> June, 2020 of which is at Annexure P-2 of the memo of writ petition and the details of the said report reads as under:-

“Fetal biometry, morphology and genetic sonogram performed. Gravid uterus shows a single live fetus in variable presentation at the time of study.

**FETAL BIOMETRY**

<b>BPD</b>	<b>:</b>	<b>47 mm</b>	<b>20 WEEKS 01 DAY</b>
<b>HC</b>	<b>:</b>	<b>178 mm</b>	<b>20 WEEKS 02 DAY</b>
<b>AC</b>	<b>:</b>	<b>147 mm</b>	<b>20 WEEKS 00 DAY</b>
<b>FL</b>	<b>:</b>	<b>34 mm</b>	<b>20 WEEKS 05 DAY</b>
<b>EFWD</b>	<b>:</b>	<b>346 gms</b>	<b>=/- 12%</b>

Internal os is closed. Cervical length is 32mm.

Placenta is posterior well above the os.

Placenta shows grade -1 changes.

Retroplacental region is clear.

Liquor amni is adequate in amount on this study.

Fetal cardiac activity is well visualized and normal. (**FHR – 149bpm**)

### **FETAL STRUCTURE**

FL / AC	=	0.23 mm (0.20-0.24)
HC / AC	=	1.21mm (1.06-1.25)
FL / HC	=	0.19MM (0.18-0.20)
Humeral length	=	32mm= 20 wks 05 days
Ulnar length	=	27mm=19 wks 03 days
Tibial length	=	28mm= 19wks 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 3<sup>rd</sup> 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 Fees: ₹0  
Department: Obstetrics and Gynecology Sex: Female  
Dept. No.: 20204155/.....15574 W/o Sunil Tiwari

Date of Registration: 03.07.2020 Age: 74 Y

Ext. C

.....Type: General

.....No.

Address: .....

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 ailment

Adv.

Open spina bifida with meningocele -  
communicated that

patient

Of 23 x 9 mm

Spina

bifida

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 – 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 – 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 – 9999602308

Dr. Manisha -”

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:

“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.”

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:

“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 Srivastavav. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570], where a Bench of three Judges held: (SCC p. 15, para 22)

“22. ... 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 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.”

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.

**CHIEF JUSTICE**

**PRATEEK JALAN, J**

**JULY 14, 2020**

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