

SHEETAL SHANKAR SALVI AND ANR.

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v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No. 174 of 2017)

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MARCH 27, 2017

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

Constitution of India – Art.21 – Personal liberty – Woman’s right to make reproductive choices – Medical termination of pregnancy – Petitioner no.1 into her 27 weeks of pregnancy – Fetus diagnosed with Arnold Chairi malformation Type 2 with meningo myelocele with tethered cord – Report of Medical Board stating that the mother’s physical condition was normal and there was no physical risk to the mother, due to continuation or termination of pregnancy but she was anxious about outcome of pregnancy; the fetus had severe physical anomalies which would compromise post natal quality of life and the child would suffer severe physical and mental morbidity on survival and the baby may be born alive and may survive for variable period of time – Writ petition by petitioner no. 1 seeking directions to the respondents to allow her to undergo medical termination of pregnancy – Held: Apparently, it was not possible for the said Medical Board to determine the period of time for which the baby was likely to survive – It also appeared from the report of Medical Board that the baby was not likely to survive like a normal baby – However, in view of the fact that there was no danger to the mother’s life and the likelihood that the baby may be born alive and may survive for variable period of time, in the interests of justice it is considered inappropriate to allow the prayer of petitioner no.1 – In fact, the Medical Board itself had stated that it did not advise medical termination of pregnancy for petitioner no.1 on medical grounds – Permission to terminate the life of the fetus, therefore, not granted.

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CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 174 of 2017.

Under Article 32 of the Constitution of India.

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

Ranjit Kumar, SG, Ms. Sadhana Sandhu, G. S. Makker, Nishant
R. Katneshwarker, Arpit Rai, Advs. for the Respondents.

The following Order of the Court was delivered

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ORDER

1. Petitioner No.1 – Sheetal Shankar Salvi, 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.

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2. By order dated 22.3.2017, 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 :

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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

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

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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

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

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3. Petitioner No.1 is into her 27 weeks of pregnancy. This is also borne by the medical report dated 25.3.2017, received from the Dean & Director (ME & MH)'s Office, Seth G.S. Medical College & KEM Hospital, Parel, Mumbai – 400 012.

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4. It is not in dispute that the fetus of petitioner no.1 has been diagnosed with polyhydramnios with Arnold Chari malformation Type 2

severe hydrocephalus with lumbosacral meningo myelocele and spina bifida with tethered cord. A

5. The Medical Board has submitted its report dated 25.3.2017. On perusal of the said report, we find that the said report contains the following significant features for the purposes of passing this order :

(1) The diagnosis of Arnold Chàiri malformation Type 2 with meningo myelocele with tethered cord has been made on the basis of ultrasonography. B

(2) The mother's physical condition is normal and there is no physical risk to the mother, due to continuation or termination of pregnancy. But she is anxious about outcome of pregnancy. C

(3) The fetus has severe physical anomalies which will compromise post natal quality of life and the child will have severe physical and mental morbidity on survival. D

(4) If the pregnancy is terminated at 27 weeks, the baby may be born alive and may survive for variable period of time. D

6. Apparently, it has not been possible for the aforesaid Medical Board to determine the period of time for which the baby is likely to survive. It also appears from the said report that the baby is not likely to survive like a normal baby. E

7. However, having regard to the fact that there is no danger to the mother's life and the likelihood that 'the baby may be born alive and may survive for variable period of time, we do not consider it appropriate in the interests of justice to direct the respondents to allow petitioner no.1 to undergo medical termination of her pregnancy. In fact, the aforesaid Medical Board has itself stated that it does not advise medical termination of pregnancy for petitioner no.1 on medical grounds. F

8. The only other ground that appears from the observations made in the aforesaid medical report apart from the medical grounds, is that petitioner no.1 is anxious about the outcome of the pregnancy. We find that the termination of pregnancy cannot be permitted due to this reason. G

9. In the facts and circumstances of the case, it is not possible for us to grant permission to petitioner no.1 to terminate the life of the fetus. H

A 10. In view of the above, as at presently advised, we decline the prayer of the petitioners for directing the respondents to allow Petitioner No.1 to undergo medical termination of the pregnancy.

11. Hence; the writ petition is dismissed.

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Devika Gujral

Writ Petition dismissed.