



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13753 OF 2024

XYZ Petitioner

versus

The State of Maharashtra & Anr. Respondents

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- Ms. Meenaz Kakalia, Advocate for Petitioner.
- Ms. M. P. Thakur, AGP for Respondent No.1/State.
- Ms. Purnima Awasti a/w Kapil Kumar Nim, Advocate for Respondent No.2/UOI.

CORAM : SARANG V. KOTWAL &
DR. NEELA GOKHALE, JJ.
DATE : 07th OCTOBER, 2024

PC. :

1. Heard Ms. Meenaz Kakalia, learned counsel for the Petitioner, Ms. Purnima Awasti learned counsel for Respondent No.2/Union of India and Ms. M. P. Thakur, learned AGP for the State of Maharashtra/Respondent No.1.

2. This Petition is filed with the following two prayers :

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NESARIKAR

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“(a) *That this Hon’ble Court be pleased to permit the Petitioner to undergo medical termination of her pregnancy;*

Nesarikar

(b) That this Hon'ble Court be pleased to direct the Respondent No.2 to make suitable changes to form 'E' made under Rule 4-A(2) of the Medical Termination of Pregnancy Rules, 2003 in accordance with the judgment of the Supreme Court in X v. The Principal Secretary, Health and Family Department, Govt. of NCT of Delhi & Anr (2022 7 SCR 686)."

3. The case of the Petitioner mentioned in the Petition is as follows :

The Petitioner is a 23 year old unmarried woman. Ordinarily, she used to reside with her maternal grandmother and grandfather. However, at present, she is residing near Mumbai with her parents and younger brother. She had studied upto matriculation and she is currently unemployed. About 9 years ago, her parents shifted to Mumbai with her brother, in search of employment and the Petitioner continued to stay with her grandparents. Her mother was a househelp and her father was unemployed. The Petitioner's mother had single handedly supported the entire household, financially. On 18/09/2024, the

Petitioner was travelling with her mother in a train from her grandparents' place to her mother's place. She experienced severe pain in her abdomen. On seeking medical opinion and after undergoing a few tests, it was realized that she was pregnant carrying pregnancy of around 20 weeks and 6 days on 25/09/2024. The Petition mentions that the Petitioner's pregnancy was a result of a consensual relationship, and she was no longer in touch with the said person, who continued to live in the same village where the Petitioner used to reside with her grandparents. Since the Petitioner was single and unmarried and since she did not have the physical, mental or emotional capacity to raise a child, she was desirous of terminating the pregnancy. She was advised to visit the JJ Hospital. She immediately went there. She was admitted to the JJ Hospital. She again underwent certain tests. Initially, she was told that the procedure for medical termination of pregnancy would be conducted. Her mother was asked to purchase the necessary pills. However, on 30/09/2024, the Petitioner was informed that since the period of 20 weeks was already over, the doctor would not be able to perform the procedure. The Petitioner was

advised to obtain an order from this Court permitting her to terminate her pregnancy. The Petitioner sought help of another doctor, who made enquiries. He was informed that the consent form provided in the Medical Termination of Pregnancy Rules 2003 required the doctor to specify under which category mentioned in Rule 3-B of the said Rules, the Petitioner would fall, if the pregnancy was between 20 to 24 weeks.

4. In short, the Petitioner is unable to terminate her pregnancy and therefore she has approached this Court for the necessary permission as mentioned in the prayer clause (a).

5. Learned counsel for the Petitioner invited our attention to the relevant provisions under the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'MTP Act') as well as to the provisions of Medical Termination of Pregnancy Rules (hereinafter referred to as the 'Rules'). She also invited my attention to the observations of the Hon'ble Supreme Court made in the case of *X vs. The Principal Secretary, Health and Family Department, Govt. of NCT of Delhi & Anr (2022 (7) SCR 686)*.

6. The gist of the arguments was that the said judgment has interpreted the Rule 3-B of the Rules and it is expressly observed that the case of unmarried woman would also be covered under that particular rule corresponding to the section 3 of the MTP Act. She referred to certain passages and observations from that judgment which are discussed hereinafter.

7. On the other hand, learned AGP appearing for the Respondent No.1 opposed these submissions. She also referred to the same rule 3-B and certain other passages from the same judgment. According to her, the rule 3-B specifies the categories of women who were eligible for termination of pregnancy upto twenty four weeks. In her submissions, the rule 3-B covers certain categories. The change of marital status specifically mentions widowhood and divorce. According to her, it will not extend to cover unmarried women and therefore the Petitioner's case would not fall in any of the categories mentioned under Rule 3-B of the said rules.

8. Learned counsel appearing for the Respondent No.2 UOI referred to the same judgment of the Hon'ble Supreme Court. She submitted that she is also relying on the same judgment and the MTP Act. She submitted that necessary directions be given in accordance with the Act.
9. We have considered these submissions. It is necessary to refer to certain provisions of the Act, which are relevant for passing an order in this case.
10. The Registered Medical Practitioner and termination of pregnancy are defined as u/s 2(d) and 2 (e) of the MTP Act respectively, which read as under:

“2. Definitions – In this Act, unless the context otherwise requires -

(d) ‘registered medical practitioner’ means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in

gynecology and obstetrics as may be prescribed by rules made under this Act.

(e) ‘termination of pregnancy’ means a procedure to terminate a pregnancy by using medical or surgical methods.”

11. The relevant section 3 of the MTP Act reads as follows:

“Section 3. When pregnancies may be terminated by registered medical practitioners.

- (1) Notwithstanding anything contained in the Indian Penal Code (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 twenty weeks, if such medical practitioner is, or
 - (b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are,

of the 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 any serious physical or mental abnormality.

Explanation 1.--For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.--For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

- (2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.
- (2D) The Medical Board shall consist of the following, namely:
- (a) a Gynaecologist;
 - (b) a Paediatrician;
 - (c) a Radiologist or Sonologist; and
 - (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.
- (3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably 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 [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.”

12. Section 3(2)(b) of the MTP Act refers to the length of the pregnancy beyond 20 weeks and upto 24 weeks and to the opinion required to be formed by two registered medical

practitioners. Section 3(2)(b)(i) of the MTP Act requires the opinion to mention that the continuance of the pregnancy would involve a risk to the life of a pregnant woman or grave injury to her physical or mental health. Sub-section 3 of section 3 further explains that in determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

13. Section 6 of the Act empowers the Central Government to make rules to carry out the provisions of this Act. Pursuant to this power, the Central Government has framed the rules known as MTP Rules 2003 referred to hereinabove. The relevant rule is rule 3-B which reads as under:

3-B. Women eligible for termination of pregnancy up to twenty-four weeks.- The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) section 3 of the Act, for a period of up to twenty-four weeks, namely:-

- (a) survivors of sexual assault or rape or incest;
- (b) minors;
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];
- (e) mentally ill women including mental retardation;
- (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and
- (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.

In this particular rule, the relevant sub-rule would be (c) which refer to the change of marital status during the ongoing pregnancy. A specific reference is made to widowhood and divorce. The other important sub-rule is (g) which refers to the humanitarian settings or disaster or emergency situations as may be declared by the Government.

14. These very provisions of the main section and the rules

are discussed and interpreted by the Hon'ble Supreme Court in the aforementioned case *X vs. The Principal Secretary, Health and Family Department* (supra). The relevant paragraphs which are relied by the learned counsel for the Petitioner are paragraph Nos.89 to 94 which are as follows :

“89. Rule 3B(c) states that a “change in the marital status during the ongoing pregnancy (widowhood and divorce)” renders women eligible for termination of their pregnancy under Section 3(2)(b). The impact of the continuance of an unwanted pregnancy on a woman's physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3B(c) is comparable to the rationale for Rule 3B(g) i.e., a change in a woman's material circumstances during the ongoing pregnancy.

90. Rule 3B(c) is based on the broad recognition of the fact that a change in the marital status of a woman often leads to a change in her material circumstances. A change in material circumstance during the ongoing pregnancy may arise when a married woman divorces her husband or when he dies, as recognized by the

examples provided in parenthesis in Rule 3B(c). The fact that widowhood and divorce are mentioned in brackets at the tail end of Rule 3B(c) does not hinder our interpretation of the rule because they are illustrative.

91. A change in material circumstance may also result when a woman is abandoned by her family or her partner. When a woman separates from or divorces her partner, it may be that she is in a different (and possibly less advantageous) position financially. She may no longer have the financial resources to raise a child. This is of special concern to women who have opted to be a homemaker thereby forgoing an income of their own. Moreover, a woman in this situation may not be prepared to raise a child as a single parent or by coparenting with her former partner. Similar consequences may follow when a woman's partner dies.

92. Women may undergo a sea change in their lives for reasons other than a separation with their partner (Rule 3B(c)), detection of foetal "abnormalities" (Rule 3B(f)), or a disaster or emergency (Rule 3B(g)). They may find themselves in the same position (socially, mentally, financially, or even physically) as the other categories of women enumerated in Rule 3B but for

other reasons. For instance, it is not unheard of for a woman to realise that she is pregnant only after the passage of twenty weeks. Other examples are if a woman loses her job and is no longer financially secure, or if domestic violence is perpetrated against her, or if she suddenly has dependents to support. Moreover, a woman may suddenly be diagnosed with an acute or chronic or life-threatening disease, which impacts her decision on whether to carry the pregnancy to term. If Rule 3B(c) was to be interpreted such that its benefits extended only to married women, it would perpetuate the stereotype and socially held notion that only married women indulge in sexual intercourse, and that consequently, the benefits in law ought to extend only to them. This artificial distinction between married and single women is not constitutionally sustainable. The benefits in law extend equally to both single and married women.

93. A recognition of the fact that there may be a change in a woman's material circumstance animates Rule 3B(c), Rule 3B(g) and Rule 3B(f). However, Rule 3B does not enumerate all the potential changes that a woman's material circumstances may undergo. It merely specifies some of the potential changes to a woman's material circumstances, in sub-rules (c), (f) and (g). From the object and purpose of the MTP Act,

its overall scheme, and the categories of women specified in Rule 3B, it is evident that it was not the intention of the legislature to restrict the benefit of Section 3(2)(b) and Rule 3B only to women who may be confronted with a material alteration in the circumstances of their lives in the limited situations enumerated in Rule 3B. Rather, the benefit granted by Rule 3B must be understood as extending to all women who undergo a change of material circumstances.

94. It is not possible for either the legislature or the courts to list each of the potential events which would qualify as a change of material circumstances. Suffice it to say that each case must be tested against this standard with due regard to the unique facts and circumstances that a pregnant woman finds herself in.”

The main conclusion is mentioned in paragraph No.121, which reads as under:

“121. The object of Section 3(2)(b) of the MTP Act read with Rule 3B is to provide for abortions between twenty and twenty-four weeks, rendered unwanted due to a change in the material circumstances of

women. In view of the object, there is no rationale for excluding unmarried or single women (who face a change in their material circumstances) from the ambit of Rule 3B. A narrow interpretation of Rule 3B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution. Article 14 requires the state to refrain from denying to any person equality before the law or equal protection of laws. Prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty- four weeks) from accessing abortion while allowing married women to access them during the same period would fall foul of the spirit guiding Article 14. The law should not decide the beneficiaries of a statute based on narrow patriarchal principles about what constitutes “permissible sex”, which create invidious classifications and excludes groups based on their personal circumstances. The rights of reproductive autonomy, dignity, and privacy under Article 21 give an unmarried woman the right of choice on whether or not to bear a child, on a similar footing of a married woman.”

15. Learned counsel appearing for the Respondent No.1 on

the other hand referred to paragraph No.117 of the said judgment, wherein it was observed that where two constructions of a provision are possible, courts ought to prefer the construction which gives effect to the provision rather than rendering the provision inoperative.

16. Therefore, according to learned counsel for the Respondent No.1 since the rule specifically mentions divorce and widowhood, the Petitioner's case would not be covered under that particular rule.

17. Learned AGP also referred to paragraph No.103 of the said judgment where a reference was made to another judgment in the case of *Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1*. The passage from that judgment mentions that the termination of pregnancy was only permitted when the conditions specified in the applicable statute have been fulfilled.

18. Learned AGP therefore submitted that the conditions are not fulfilled in the Petitioner's case and therefore such permission may not be granted.

19. We have considered these submissions in the light of these provisions and the observations made by the Hon'ble Supreme Court. To our mind, the issue is squarely covered and discussed in paragraph Nos.89 to 94 and the conclusion is clear enough, as mentioned in paragraph No.121 of the said judgment. The Hon'ble Supreme Court has observed that a woman in certain situations may not be prepared to raise the child as a single parent. The women may undergo a sea change in their lives for reasons other than a separation with their partner. If Rule 3B(c) was to be interpreted such that its benefits extended only to married women, it would perpetuate the stereotype and socially held notion that only married women get benefit by law. It was observed that from the object and purpose of the MTP Act, its overall scheme, and the categories of women specified in Rule 3B, it is evident that it was not the intention of the legislature to restrict the benefit of Section 3(2)(b) and Rule 3B only to women who may be confronted with a material alteration in the circumstances of their lives in the limited situations enumerated in Rule 3B. Rather, the benefit granted by

Rule 3B must be understood as extending to all women who undergo a change of material circumstances. There was no rationale for excluding unmarried or single women who face a change in their material circumstances from the ambit of Rule 3B. A narrow interpretation of Rule 3B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution.

20. Thus, in our opinion, the observations of the Hon'ble Supreme Court are clear enough and in the facts and circumstances of the present case those observations are squarely applicable to the Petitioner's case. With the result, if all other conditions are satisfied, the Petitioners should get the benefit of the Act to make a choice to terminate her pregnancy. Since her pregnancy has crossed the threshold of 20 weeks and since it is below 24 weeks, her case would be covered u/s 3(2) (b) of the MTP Act. Therefore, she can be permitted to undergo the procedure for medical termination of pregnancy provided the conditions under this particular provision i.e. 3(2)(b) are

satisfied. This particular provision requires that the opinion has to be given by atleast two registered Medical Practitioners. As mentioned earlier, the Act provides for the definition of Registered Medical Practitioners. Section 3(2-A) of the MTP Act refers to the norms for the Registered Medical Practitioner whose opinion is required for termination of pregnancy at different gestational age.

21. As a result of the above discussions, the following order is passed :

ORDER

- (i) The Petitioner is permitted to medically terminate her pregnancy subject to the opinion of not less than two registered Medical Practitioners of her choice, who fall within the definition of registered Medical Practitioners u/s 2(d) r/w section 3(2-A) of the MTP Act, in respect of the conditions mentioned in section 3(2)(b) of the Act in consonance with the observations of the Hon'ble Supreme Court in the aforesaid judgment of *X vs. The Principal*

Secretary, Health and Family Department, Govt. of NCT of Delhi & Anr. in Civil Appeal No.5802 of 2022, as reported in *2022 (7) SCR 686* as we have discussed above.

- (ii) The procedure shall be followed in accordance with provisions, Rules and Regulations under the MTP Act.
- (iii) As far as the prayer clause (b) is concerned, the Respondent No.1 and Respondent No.2 shall consider making changes in the forms, formats and procedures to be followed in such cases in consonance with the observations made by the Hon'ble Supreme Court in the case of *X vs. The Principal Secretary, Health and Family Department, Govt. of NCT of Delhi & Anr. in Civil Appeal No.5802 of 2022* as reported in *2022 (7) SCR 686*.
- (iv) The Writ Petition is disposed of.

(DR. NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)