

O U T - T O D A Y

ITEM NO.11

COURT NO.8

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.121/2017

SAVITA SACHIN PATIL AND ANR.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

(With office report)

Date : 28/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Sneha Mukherjee, Adv.
Mr. Satya Mitra, Adv.

For Respondent(s) Mr. Ranjit Kumar, Ld. SG
Ms. Sadhana Sandhu, Adv.
Mr. G.S. Makker, Adv.

Mr. A.K. Panda, Sr. Adv.
Ms. Kiran Bhardwaj, Adv.
Mr. M.K. Maroria, Adv.

Mr. Kunal A. Cheema, Addl. Govt. Adv.
Mr. Yogesh K. AHIRRAO, Adv.
Mr. Nishant R. Katneshwarkar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Petitioner No.1 - Savita Sachin Patil, 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.

We are constrained to pass this order being conscious of the fact that any permission at this stage would be irreversible.

By order dated 23.2.2017, 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 :

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
4. Dr. Indrani Hemantkumar Chincholi, Professor and HOD, Anaesthesia, KEM Hospital
5. Dr. Y.S. Nandanwar, Professor and HOD, Obstetrics, KEM Hospitals
6. Dr. Anahita Chauhan, Professor and Unit Head, Obstetrics & Gynecology, LTMMC and LTMG Hospitals
7. Dr. Hemangini Thakkar, Addl. Professor, Radiology, KEM Hospital.

Petitioner No.1 is 37 years old and she is into her 26 weeks of pregnancy as on 25.2.2017. This is also borne by the medical report dated 25.2.2017, received from the Dean & Director (ME & MH)'s Office, Seth G.S. Medical College & KEM Hospital, Parel, Mumbai - 400 012.

It is not in dispute that the fetus of petitioner no.1 has been diagnosed with Trisomy 21, more commonly known as Down Syndrome, a condition that causes severe physical and mental retardation to the fetus.

As in all such cases, two important considerations are involved - (i) danger to the life of the mother, and (ii) danger to the life of the fetus.

The Medical Board has submitted its report dated 25.2.2017. On perusal of the said report, we find that the said report contains the following two significant features for the purposes of passing this order :

(1) As far as the mother is concerned, the report states that "*there is no physical risk to the mother of continuation or termination of pregnancy*";

(2) As far as the fetus is concerned, the report states that "*if the baby is born with Trisomy 21, it is likely to have mental and physical challenges*".

As regards the prognosis, the said medical report clearly does not and possibly cannot, observe that this particular fetus will have severe mental and physical challenges. It states that the "*baby is likely to have mental and physical challenges.*"

In the earlier part of the said medical report, there is no observation made by the aforesaid Medical Board that every baby with Down Syndrome has low intelligence, but it was observed that "*intelligence among people with Down Syndrome is variable and a large proportion may have an intelligence Quotient of less than 50 (severe mental retardation)*".

In any case, it is not possible to discern the danger to the life of petitioner no.1 in case she is not allowed to

terminate her pregnancy.

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.

In view of the above, as it presently advised, we decline the prayer (a) of the petitioners for directing the respondents to allow Petitioner No.1 to undergo medical termination of the pregnancy.

List the matter along with Civil Appeal No.7702 of 2014, for further considerations.

(Sanjay Kumar-II)
Court Master

(Indu Pokhriyal)
Court Master

(Copy of this order be given today)

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Publisher has only added the Page para for convenience in referencing.

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