IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3992 of 2026

XYZ and another	..	Petitioners
Versus		
The Union of India through the Ministry of Health and Family Welfare and another	..	Respondents

...

Ms.Meenaz Kakalia for the petitioners.
Ms.Anusha Amin for respondent no.1 Union of India.
Mrs. M.P. Thakur for respondent no.2.

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ
DATED : 27th MARCH, 2026

ORAL JUDGMENT (Per Bharati Dangre, J)

1. Heard by consent. Rule. Rule is made returnable forthwith.

2. As directed by us, on the previous date, i.e. 26/3/2026, the petitioner no.1 is examined by the Medical Board constituted by Sir J. J. Group of Hospitals and Grant Medical College, Mumbai.

The report of the said Committee is placed before us by Mrs. Thakur, the Government Advocate under the signature of the Medical Superintendent, with the opinions expressed by it's

members i.e. the observation of the Professor of the Head of Department, Radiology, Head of Department Pediatric Surgery, Head of Department Gynecology and Obstetrics.

3. The Committee's opinion is conclusively set out in the ultimate paragraph of the report.

The report being signed by its members along with the Chairman, the Associate Professor of Obstetrics Gynecology Department is taken on record and marked as 'X' for identification.

Though separate observations are recorded by the different members of the Committee, their unequivocal opinion is, recorded thus :-

> "This Medical Board has been duly constituted in compliance with the directions of the Hon'ble High Court and has carefully examined the patient. The Board has also thoroughly reviewed all relevant clinical records, obstetric ultrasonography findings, and expert opinions provided by specialists from their respective fields. The patient under consideration is a 37-year-old elderly Gravida, with a history of two previous caesarean sections and one treated ectopic pregnancy. Obstetric ultrasonography reveals findings suggestive of non-lethal skeletal dysplasia. Although the anomaly is categorized as non-lethal, there exists a substantial risk that, if the child is born alive, it may suffer from significant physical and/or mental abnormalities, resulting in severe handicap and long-term morbidity. In view of the above findings, the Medical Board is of the considered opinion that the fetus is affected by a serious congenital abnormality, and continuation of the pregnancy is likely to result in the birth of a child with significant morbidity. Accordingly, the Board recommends termination of pregnancy, in accordance with the provisions of the Medical Termination of Pregnancy Act, 1971 (as amended in 2021), subject to the permission of this Hon'ble Court. The patient is presently at a gestational age of approximately 33-34 weeks. In view of her obstetric history of two prior caesarean sections, there is a high likelihood that surgical intervention (repeat caesarean section) may be required for delivery. The risks associated with the procedure have been explained in detail to the patient and her relatives. At this gestational age, there is a significant likelihood that the fetus, if delivered now, may be born alive and may require intensive neonatal care. The patient has expressed a clear and informed desire for feticide in utero prior to delivery. The Medical Board respects the autonomy and wishes of the

> patient. Feticide may be considered, subject to the approval of this Hon'ble Court, in accordance with prevailing legal provisions. It is further submitted that the facility and requisite expertise for performing feticide are presently not available at Sir J.J. Hospital, Mumbai. Hence, it is recommended that the procedures of feticide and termination of pregnancy be carried out at a tertiary care centre of the patient's choice, which is adequately equipped with necessary infrastructure, trained fetal medicine specialists, operative facilities, and multidisciplinary support to ensure the safety and well-being of the patient."

4. The Associate Professor of Department of Obstetrics and Gynecology has categorically opined as below :-

> "3. Although the anomaly is categorized as non-lethal, there is a substantial risk of the child being born with significant physical and/or mental abnormalities leading to severe handicap and long-term morbidity. At the current gestational age, there is a considerable likelihood of live birth, necessitating intensive neonatal care.
>
> 4. In view of the above findings, it is to be considered that the fetus is affected by a serious congenital abnormality, and continuation of the pregnancy is likely to result in the birth of a child with significant morbidity.
>
> 5. If the Hon'ble High Court permits, the termination of pregnancy may be carried out in the interest of the patient, in view of the significant risk of severe fetal abnormality and associated morbidity.

5. The Professor and Head of Department of Radiology has given the factual report on the congenital scan giving the Fetal Biometry of 30 weeks of gestation.

In the opinion of Radiologist, a single live intrauterine gestation of age 30 weeks and 1 day (+/- three weeks) with the normal doppler study has revealed the following :-

> -- Severe shortening of all long bones (less than 1st centile).
>
> -- Mild bowing and metaphyseal splaying of some of the long bones, Persistent ulnar deviation of right hand.

> --- Foot is suboptimally evaluated. However soft tissue thickening (6 mm) is noted on the plantar aspect with protuberant heel, convex plantar surface, - possibility of Rocker Bottom foot needs to be considered.
> --- Macrocephaly HC, BPD more than 95th centile)"

6. As per the Professor of Head of Department of Pediatrics based on the USG Scan (dated 26/3/2026) the unborn fetus showing macrocephaly features of skeleton, dysplasia and the opinion from Dr.Reddy is very specific, when he states thus :-

> "Even though the specific type is not known, skeletal dysplasia as a group is associated with multiple complications, necessitating multiple corrective and rehabilitative surgeries. The course of this condition shall render the unborn fetus to severe morbidity and risk of mortality, thus MTP should be considered. As the fetus is 1.8kg, 36 weeks gestation, the baby after delivery would need NICU care which has been explained to parents."

He has thus opined that the above condition carry high morbidity post-natal and medical termination of pregnancy may be considered actively.

The Psychiatry Department has opined that the patient is not suffering from any psychiatry illness.

7. In any case, all the members of the Committee in unison have reached a conclusion that the fetus is affected by serious congenital abnormality and continuation of pregnancy is likely to result in the birth of a child with significant morbidity and it has recommended termination of pregnancy in accordance with the Medical Termination of Pregnancy Act, 1971, subject to the permission of the Court.

As indicated in our earlier order, we also find the justification offered by each of the Member of the Board as to

why the termination of the pregnancy shall be permitted, as it is opined that the anomaly in the fetus is substantial.

8. Ms.Kakalia has invited our attention to the provision of Section 3, sub-section (2) which is substituted by The Medical Termination of Pregnancy (Amendment) Act, 2021 and it permit the pregnancy to be terminated by a registered Medical Practitioner.

Sub-clause 2(b) of the said provision specifically provide thus :-

> "3. **When Pregnancies may be terminated by registered medical practitioners --**
>
> (1) …… ……..
>
> (2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-
>
> (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of 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 physical or mental health ; or
>
> (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped."

Relying upon the aforesaid provision, it is the submission of Ms.Kakaria that when it comes to the diagnosis of substantial fetal anomaly diagnosed by a Medical Board, there is exclusion of provision of sub-section (2) of Section 3, relating to the length of the pregnancy.

We find substance in her submission, as the scheme in Section 3 of the Act permit pregnancy to be terminated, by

registered medical practitioner, on the specified grounds, one of them being the substantial risk that if the child was born alive, it would suffer from any serious or physical or mental abnormality.

9. When this provision is read with Rule 3-B of the Rules of 2003, which has set out the categories of women who are eligible for termination of pregnancy upto 24 weeks, we find inclusion of a particular contingency which reads thus :-

> "**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:-
> (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"

10. Reading of Rule 3A which has set out the powers and functions of medical board, where the powers are specifically conferred and this involve a fatal malformation, we must also take note of clause (i) of sub-section (a) of Rule 3A which reads thus :-

> **"3-A. Powers and functions of Medical Board.—**
> For the purposes of section 3,-
> (a) the powers of the Medical Board shall be the following, namely:-
> (i) to allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2-B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped;"

11. A conjoint reading of the aforesaid provisions would make it evidently clear that when there is substantial risk, that child to be born, would suffer from any physical or mental disability, the pregnancy may be terminated by a registered medical practitioner. The length of pregnancy is irrelevant when such termination is necessitated by the diagnosis of any of the substantial fetal abnormalities diagnosed by a Medical Board.

The report placed before us, when examined in this background, has clearly noted that the Obstetrics Ultrasonography include the findings suggestive of non lethal skeletal dysplasia. However, it is also clarified that though the anomaly is categorized as non-lethal, there exists a substantial risk, that if the child is born alive, it may suffer from significant physical and mental abnormalities, resulting in severe handicap and long term morbidity.

Another factor which is significant to note when the Board has permitted termination of the pregnancy, despite the gestation age being approximately 33 to 34 weeks, is the observation that at this gestational age, there is significant likelihood that the fetus, if delivered now, may be born alive and may require Intensive Neonatal Care.

12. The patient, a mother aged 37 years, and her husband i.e. petitioner no.2, have clearly stated before us in the present petition and have made it clear before the Board to have feticide in utero, prior to delivery and the Board has respected

the autonomy and wishes of the patient, and has permitted feticide, subject to the approval of the Court, in accordance with the prevailing legal position.

As far as the statutory scheme is concerned, we have already made reference to the provisions existing therein including that in the Rules and the counsel for the petitioner would also place reliance upon Guidance note for Medical Boards for Termination of Pregnancy beyond 20 weeks of gestation, they being framed by the Government of India, Ministry of Health and Family Welfare.

These guidelines, apart from the provisions of the Medical Termination of Pregnancy Act, 1971, with reference to the request received from the Hon'ble Supreme Court/High Court for termination of pregnancy beyond the period prescribed in the statute, has set out the procedure for termination, on being directed by the Court, and it has enumerated various steps to be undertaken, which include (a) Counselling of the pregnant woman, (b) Preparatory activities and (c) Stopping fetal, heart beat and what is relevant to note is the following stipulation:-

> "In cases of pregnancy over 24 weeks of gestation, an ultrasound guided procedure and must be performed by an experienced Obstetrician or Foetal Medicine expert only. The Royal College of Obstetricians and Gynaecologists (RCOG) recommends 2-3 ml of strong (15%) potassium chloride (KCI) injection in the foetal heart prior to termination. A repeat injection may be required if asystole has not occurred after 30-60 seconds. Asystole should be observed for at least two minutes and foetal demise should be confirmed by ultrasound scan after 30-60 minutes."

The Guideline has also set out the termination methods.

13. In tune with the aforesaid procedure prescribed, the Medical Board from Sir J.J. Hospital has recommended the termination of pregnancy by examining all the pros and cons and since a clear opinion has emerged that there are substantial fetal abnormalities, we find the termination to be within the four corners of the Act of 1971 and the Rules, and particularly, since the parents to be, have expressed their desire to terminate the pregnancy, when fetal anomalies were evidently seen, on the mother being examined by the Medical Board for termination of Pregnancy at District Hospital, Thane.

14. The opinion expressed by the Board at District Hospital, Thane was "No life threatening abnormality" identified in the fetus and the condition is compatible with post-natal survival although it may require specialised neonatal care.

It is in the wake of this report, which had not specified whether the anomaly is substantial, and would fall within the purview of sub-section (2)(b) of Section 3, we had referred the petitioner to the Medical Board of J.J. Group of Hospitals and we have the opinion before us, which is clearly in favour of termination of fetus, by considering the will and desire of the petitioners, with an opinion being expressed that if the fetus is delivered now, it may be born alive and it would require intensive neonatal care and there exist a substantial risk as the child born alive may suffer from significant physical and/or mental abnormalities, resulting in severe handicap and long term morbidity.

15. In light of this clear-cut opinion expressed by members of the Board, with an expert opinion being separately recorded, by the Department of Obstetrics and Gynecology, specifying that there is a considerable likelihood of live birth and that there is substantial risk of the child born with significant physical and/or mental abnormalities, leading to severe handicap and long term morbidity, we concur with the opinion expressed by the Committee and which has also kept in mind the autonomy and wishes of the patient, who had desired for feticide in utero prior to delivery.

16. The Board recommended that the procedure for feticide and termination of pregnancy shall be carried out at Tertiary Care Center of the patient's choice, as the facility and requisite expertise for performing feticide is not presently available with Sir. J.J. Hospital, Mumbai and necessarily, the procedure of feticide will have to be carried out in a Tertiary Care Center, which necessarily must be compliant with Rule 5 of the Medical Termination of Pregnancy Rules, 2003, so as to facilitate the procedure under ultrasound guidance.

Since the petitioners are desirous of having the procedure of feticide being carried out in a private hospital, it is at their risk and consequences, they are permitted to carry out the procedure in such a hospital chosen by them, and we leave this choice open for the petitioners to exercise.

Considering the advance gestational age, and in light of the report of the Committee from the Medical Board of J.J.

Hospital dated 27/3/2026, we permit the petitioner no.1 to terminate the pregnancy by performing feticide in utero prior to delivery.

17. As we are granting the permission, in the light of the medical opinion placed before us and in view of the specific observation in the reports that it may not pose any danger to the life of the mother, but at the same time, it is the desire of the parents not to give birth to a child, who on being born may suffer from physical and/or mental abnormalities, which may result in severe handicap and long term morbidity.

Once we have granted this permission, it is open for the petitioner to charter the further course of action and we expect it to be done as expeditiously as possible.

Though the learned counsel for the petitioner has also called in question the Form No. A to the Medical Termination of Pregnancy Rules, 2003, and has prayed that Form No. A shall be brought in line with Rule 5(1)(ii) of Medical Termination of Pregnancy Rules, 2003, at this stage, we are not inclined to get into the said issue and we leave the same open to be agitated through appropriate proceedings filed at appropriate time.

Rule is made absolute in the aforesaid terms.

(MANJUSHA DESHPANDE, J) (BHARATI DANGRE, J.)

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