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Case Comment: ABC v State of Maharashtra

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INTRODUCTION

Judgement Date: 20 January 2023

Petitioner: ABC [Age and Address with held for privacy]

Respondent: State of Maharashtra, Through Principal Secretary Public Health Department

Bench: Hon'ble Justice G.S. Patel and Hon'ble Justice S.G. Dige

Constitution & other Statutes Involved: Medical Termination of Pregnancy Act 1971 & The Constitution of India.

Relevant Sections/ Articles: Article 21 of the Constitution of India & Section 3 of MTP Act, 1971.

On 20th January 2023, the Bombay High Court rendered a landmark decision in ABC v State of Maharashtra and Anr¹ which involved a young woman ABC (age and address withheld for privacy) seeking permission for abortion because of foetal abnormalities, beyond the 20-week gestational limit outlined in the Indian Medical Termination of Pregnancy Act, 1971². The

¹ ABC v State of Maharashtra and Anr (2023) SCC OnLine Bom 175

² Medical Termination of Pregnancy Act 1971

Honourable Court held that decision to terminate the pregnancy cannot be left solely to the discretion of a medical board which in this case rejected the petitioner's request for terminating her pregnancy because the gestation period was beyond the legal limit of 20 weeks.

The respondents in the case were the State of Maharashtra, represented by the Principal Secretary of the Public Health Department. The bench hearing the case consisted of Honb'le Justice G.S. Patel and Honb'le Justice S.G. Dige. The case provided a more comprehensive understanding of Section 3³ Article 21⁴. The court recognized a woman's fundamental right to make decisions about her body and reproductive health and that this right includes the right to decide if she wants to continue with her pregnancy. It was held that the medical board could not substitute its judgment for that of the woman and the board's decision must be based on the physical and mental health of the woman.

FACTS OF THE CASE

The Petitioner, ABC, a young woman, approached the Bombay High Court in mid-January 2023 when she was in the 32nd week of the gestation period seeking permission for medical abortion beyond the 20-week limit. On 7th September 2022, when the Petitioner was 14 weeks pregnant, she had a sonography and a foetal abnormality scan. The outcome of this test was normal. A few months later, on 22nd December 2022, the Petitioner underwent follow-up sonography and foetal anomaly scan, by which time, her gestation period was 29 weeks. This test showed that the foetus suffers from multiple anomalies. Among the anomalies noted were microcephaly and lissencephaly. There was mild uteroplacental insufficiency noted.⁵

On 30th December 2022, Petitioner was admitted to the Sassoon General Hospital, Pune, and a Medical Board was constituted as required by the Medical Termination of Pregnancy Act, 1971⁶. As opinion confirmed the diagnosis of anomalies, added the possibility of intellectual disability but said both conditions are not life-threatening. It declined the request for medical abortion due to the advanced gestation period. The court ordered a follow-up opinion in which the Board

³ Medical Termination of Pregnancy Act 1971, s 3

⁴ Constitution of India 1950, art 21

⁵ ABC (n 1)

⁶ Medical Termination of Pregnancy Act 1971

must specifically address the questions of whether a newborn with these abnormalities is likely to require considerable and ongoing medical care for the rest of his or her life and the possible costs associated with these. There must be an assessment if a medical abortion at this time constitutes a hazard to the Petitioner, both physically and emotionally.

On 16th January the record of the medical board was taken on record. It was brought to notice that the condition of the foetus is undisputed, viz. the detection of microcephaly and lissencephaly and the mother has no major medical, obstetric, or psychiatric complications at present. Given the above observations by the medical board faculty, the medical termination of pregnancy was not recommended due to advanced gestational age and due to the abnormality being treatable in government and large municipal corporate hospitals at no cost.

LEGAL ISSUES

The various legal issues raised in the present case are as follows:

- Whether a woman has a right to medical abortion even after the 20-week limit given in The Medical Termination of Pregnancy Act 1971.
- Whether the right to life and personal liberty under Article 21 of the Indian Constitution included the right to make reproductive choices.
- Whether the gestational limit of 20 weeks violated the right to life and liberty under Article 21 of the Indian Constitution.
- Whether the opinion of a medical board formed under the Medical Termination of Pregnancy Act, 1971 in the decision to terminate a pregnancy is binding, and whether can it substitute the decision of a woman.

ARGUMENTS MADE BY THE PETITIONER

The petitioner submits that the suggestions by the medical board are not binding on the court and once a medical report confirms substantial foetal abnormalities, the time limits of up to 20 weeks but less than 24 weeks, and beyond 24 weeks given in the MTP Act simply do not apply. The Act is persistently misread and misunderstood. The statute does not say what is to happen

if late in the pregnancy a foetal abnormality is indeed detected. Section 3(2B)⁷ as amended, reads as 'the provisions of sub-sections (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.'⁸

The statutory Medical Board is required to assess and report: (i) if there is a substantial foetal abnormality; and (ii) whether the medical abortion is safe based on an evaluation of the mother's physical and mental health. In this particular case, she submits, the Medical Board has wholly misdirected itself.⁹ Conditions (i) and (ii) are both satisfied. There are serious or substantial foetal abnormalities. The mother is physically and mentally able to undergo the procedure. The moment those conditions are satisfied, the Board cannot in law, submits, and we think correctly, render any other opinion as to whether the termination should be performed, and certainly not because the baby is bound to be born with abnormalities and severe conditions can be treated or provide medical intervention, even if it is free, only on account of the length of the pregnancy

The petitioner argued that the gestational limit violated her fundamental right to life and personal liberty under Article 21¹⁰ of the Indian Constitution. She further argued that the right to take reproductive decisions was an integral part of the right to life and personal liberty and that the gestational limit infringed upon this right. The petitioner relied on decisions of the Supreme Court of India, including *Suchita Srivastava v Chandigarh Administration*¹¹ and *Pooja Taparia v State of Rajasthan*¹², which recognized a woman's right to make reproductive decisions and emphasized the importance of respecting the autonomy of women.

The Petitioner has said that she and her husband are of very modest means. In these conditions, a rejection of the Petition based only on the suggestions by the Medical Board – in itself contrary to law – would rob the Petitioner of not only her reproductive autonomy but her fundamental right to privacy, her right to self-determination, and her right to choose herself and her body.

⁷ Medical Termination of Pregnancy Act 1971, s 3(2B)

⁸ *Ibid*

⁹ ABC (n 1)

¹⁰ Constitution of India 1950, art 21

¹¹ *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1

¹² *Pooja Taparia v State of Rajasthan* (1977) AIR 1361

The petitioner would be stripped of all agency as a mother, a woman, and most crucially, as a human being capable of bringing a pregnancy to term, if relief were to be denied. Adopting the Medical Board's opinion would consequently force the Petitioner and her husband into an unsatisfactory and painful parenting experience in addition to condemning the foetus to an inferior existence. One cannot even begin to understand the impact on them and their families.

ARGUMENTS MADE BY THE RESPONDENTS

The State argued that the gestational limit was necessary to safeguard the health of the mother and the foetus. The State also submitted that the petitioner's case did not fall within the exceptions outlined in the Act. The State further argued that the Medical Termination of Pregnancy Act, of 1971 was welfare legislation intended to safeguard the health of women and children and that the gestational limit was an essential component of this legislation. Given the above observations by the medical board faculty, the medical termination of pregnancy was not recommended due to advanced gestational age and due to the abnormality being treatable in government and large municipal corporate hospitals at no cost.

COURT'S DECISION

In *ABC v State of Maharashtra and Anr*¹³, the Bombay High Court held that a woman has the right to choose medical abortion beyond the 20-week restriction prescribed under the Medical Termination of Pregnancy Act, 1971 and not the medical board. The Court arrived at this conclusion after examining the relevant constitutional provisions, the Medical Termination of Pregnancy Act, 1971 and the arguments advanced by the parties.

The Court began its analysis by examining the petitioner's right to life and personal liberty under Article 21 of the Indian Constitution. The Court observed that this right includes the right to make reproductive choices and that the right to choose whether to carry a pregnancy to term is an essential aspect of this right. The Court noted that the gestational limit imposed by the Medical Termination of Pregnancy Act, of 1971, interfered with this right and placed an unjustified burden on women seeking a medical abortion.

¹³ ABC (n 1)

The Court also examined the exceptions to the gestational limit outlined in the Act and held that they were narrow and did not cover cases like the petitioners. The Court emphasized that the Act did not contemplate situations where the health of the foetus was jeopardized, and the woman's decision to terminate the pregnancy was based on serious medical grounds. The Court observed that the gestational limit was arbitrary and did not take into account the evolving medical technology that made it possible to detect foetal abnormalities and health risks at later stages of pregnancy.

The Court further observed that the Medical Termination of Pregnancy Act, 1971 was welfare legislation intended to protect the health of women and children. The Court noted that the Act's objective was to provide safe and legal abortion services to women and that the gestational limit was a vital aspect of this legislation. However, the Court held that the gestational limit could not be used to deny women their right to make reproductive choices. The Act should be interpreted in a manner that upholds women's autonomy and dignity.

The Court also rejected the respondent's submission that the gestational limit was necessary to protect the mother and the foetus. The Court held that a woman's decision to medically abort the foetus was a deeply personal and private matter and that the State could not impose its views on her. The Court emphasized that the decision to terminate her pregnancy should be based on her own beliefs, values, and medical advice and that the State could only intervene in exceptional circumstances.

IMPLICATIONS OF THE DECISION

The Bombay High Court's decision in *ABC v State of Maharashtra and Anr* has significant implications for women's reproductive rights in India. The decision recognizes a woman's right to choose termination beyond the 20-week limit prescribed under the Medical Termination of Pregnancy Act 1971, in certain circumstances. This recognition of women's autonomy and dignity is a significant step towards gender equality and reproductive justice in India.

The decision also highlights the need for a more nuanced and inclusive approach to reproductive rights in India. The Medical Termination of Pregnancy Act 1971 was enacted in a different era when medical technology was not as advanced as it is now. The Act needs to be

updated to reflect current medical knowledge and the evolving needs of women. The decision in *ABC v State of Maharashtra and Anr* is a reminder that the law must keep pace with changing times and that outdated legislation cannot restrict women's rights.

The decision also rightly criticizes the role the medical board has taken on itself to provide an opinion rather than an objective assessment. The court acknowledged that reproduction is both biological and political and held that pregnant women should have the freedom to choose if she wants to undergo an abortion, without the permission of a third party. This will significantly contribute to preserving women's decisional and reproductive autonomy

CONCLUSION

The Bombay High Court's decision in *ABC v State of Maharashtra and Anr* is a landmark judgment recognizing a woman's right to terminate the pregnancy beyond the 20-week limit given in the Medical Termination of Pregnancy Act 1971 without the approval from the medical board. The decision is a significant victory for women's reproductive rights in India and a reminder that women's autonomy and dignity must be respected. The decision also underscores the need for a more inclusive and nuanced approach to reproductive

The court's decision in *ABC v State of Maharashtra and Anr* is significant in acknowledging women's agency and autonomy in making decisions regarding their bodies and reproductive health. It is also important in upholding the constitutional guarantee of the right to life and personal liberty, which is inclusive of the right to bodily autonomy and reproductive freedom. This decision has set an important precedent for the protection of female reproductive rights in India and is a step forward in ensuring that abortion is a safe and legal procedure for women.