

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 16TH DAY OF OCTOBER 2023 / 24TH ASWINA, 1945

WP (C) NO. 33438 OF 2023

PETITIONERS:

BI ADVS.
K.G.RAJEESH
C.Y.VINOD KUMAR

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SASTHRI BHAVAN, NEW DELHI,, PIN - 110001
- 2 STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT, SECRETARIAT, THIRUVANANTHAPURAM,, PIN - 695001
- 3 DIRECTOR OF MEDICAL EDUCATION
MEDICAL COLLEGE.P.O., KUMARAPURAM ROAD, CHALAKKUZHI,
THIRUVANANTHAPURAM,, PIN - 695011
- 4 THE SUPERINTENDENT
GOVERNMENT HOSPITAL, ERNAKULAM,, PIN - 682028
- 5 THE SUPERINTENDENT, MEDICAL COLLEGE HOSPITAL,
KALAMASSERY, KOCHI,, PIN - 683503

SMT.VIDYA KURIAKOSE - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners, who are husband and wife, are expecting a child; and the gestational age of the fetus is now 24 weeks. They say that a regular check up, however, disclosed that the “fetus is in a critical condition” and that the prognosis of the heart disease – Hypoplastic Left Heart Syndrome is bad and falls under “substantial foetal abnormality”, as defined under the Medical Termination of Pregnancy Act and the Rules thereunder. They, therefore, seek permission of this Court to terminate the pregnancy.

2. Noticing the specific assertions of the petitioners, this Court passed an order on 11.10.2023, directing the fifth respondent – Superintendent, Government Medical College, Ernakulam, to constitute a Medical Board urgently to examine the first petitioner and file a report before this Court.

3. The afore report is available and I notice therefrom that the Medical Board had the assistance of five experts, namely Dr.Swapna Mohan, Assistant Professor – O&G; Dr.Lakshmy Gupthan, Associate Professor, Psychiatry; Dr.Suny Thomas, HOD Radio Diagnosis; Dr.Cicy Sebastian, HOD Cardiology and Dr.Sindhu Thomas Stephen, Assistant Professor, Paediatrics.

4. The Medical Board has unequivocally reported that the Anomaly Scan done on 15.09.2023 shows Hypoplastic Left Heart Syndrome for the foetus and that this is confirmed by Ultrasound Scan and other germane examinations. They say that, as per the Foetal Echo Report, the baby has a complex congenital heart disease and that *“it carries very poor prognosis with high morbidity and mortality after birth”* (sic). It concludes saying that even if the baby is to survive, it will require multiple palliative procedures; and that even with such, the chance of survival is very low.

5. As a necessary caveat, however, the report then concludes that the mother will face certain risks associated with the procedure – if this Court is to so order - including uterus rupture, hysterectomy and chances of failed pregnancies in future, including placenta praevia, accreta and caesarean section.

6. Noticing the afore report and since any decision to be taken by this Court will have to be done without any avoidable delay whatsoever, I requested Dr.Ganesh Mohan, Superintendent of Government Medical College, Ernakulam, to appear before this Court online and I interacted with him this

afternoon.

7. Dr.Ganesh Mohan has unreservedly said that the risks that have been recorded in the report are those which are associated with any surgery of this nature; and that the chances of the mother having to face conditions like uterus rupture, hysterectomy etc. are less than one in one thousand. He submitted that such risks are inherent in every termination of pregnancy and that there is nothing unusual in the case of the first petitioner herein.

8. Smt.Vidya Kuriakose – learned Government Pleader, submitted that, going by the report of the Medical Board, the foetus certainly seems to be suffering from extreme abnormality; and added that she, therefore, leaves it to this Court to take an apposite decision.

9. The learned counsel for the petitioners submitted that, in the light of the poor prognosis now indicated by the Medical Board, an order has prayed for by his clients is imperative and necessary.

10. I have examined the report of the Medical Board and as already indited above, it states - without any ambiguity - that the

chances of the baby surviving after a full term of pregnancy and of living a full life thereafter are extremely low.

11. As also indicated above, the Medical Board apodictically records that the baby will require multiple palliative procedures and that even with such, its chance of survival is very low.

12. That being said, I further notice from the report of the Medical Board that the psychological condition of the first petitioner has been found satisfactory and that she was found capable of making a decision of her own qua the consequences and the risks associated with the procedure.

13. I am, therefore, of the firm view that this is a fit case where this Court should come to the aid of the petitioners.

14. Resultantly, I allow this writ petition and permit the medical termination of the foetus of the first petitioner; however, only in the Government Medical College, Ernakulam.

15. The Superintendent, Government Medical College, Ernakulam, is hereby directed to assign the Head of the Department, Gynaecology, to do the procedure, if possible tomorrow itself, supported by a very competent team, as

necessary; and file a further report before this Court through the learned Government Pleader.

For this purpose alone, this writ petition would stand listed on 20.10.2023; but clarifying that this writ petition would stand disposed of in the afore manner.

Sd/- DEVAN RAMACHANDRAN

JUDGE

stu

APPENDIX OF WP(C) 33438/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE USG REPORT DATED 9.6.2023
ISSUED TO THE 1ST PETITIONER BY MODERN
DIAGNOSTIC CENTRE, NORTH PARAVOOR
- Exhibit P2 TRUE COPY OF THE REPORT DATED 29.07.2023
ISSUED TO THE 1ST PETITIONER BY MODERN
DIAGNOSTIC CENTRE, NORTH PARAVOOR
- Exhibit P3 TRUE COPY OF THE FETAL ANOMALY SCAN LEVEL 2
ON 15-09-2023 AT DIVISION OF FETAL MEDICINE
AND PERINATOLOGY OF AMRITHA INSTITUTE OF
MEDICAL SCIENCE ISSUED TO THE 1ST
PETITIONER (PATIENT ID 2626434)
- Exhibit P4 TRUE COPY OF THE REPORT DATED 16.09.2023
ISSUED BY MODERN DIAGNOSTIC CENTRE, NORTH
PARAVOOR ISSUED TO THE 1ST PETITIONER
- Exhibit P5 TRUE COPY OF THE ULTRASCAN REPORT DATED 29-
09-2023 ISSUED BY GENERAL HOSPITAL,
ERNAKULAM TO THE 1ST PETITIONER
- Exhibit P6 TRUE COPY OF THE TREATMENT CASE NOTE ISSUED
TO THE 1ST PETITIONER (UHID
T104871809230261) FROM GENERAL HOSPITAL,
ERNAKULAM
- Exhibit P7 TRUE COPY OF THE ULTRASOUND SCAN REPORT
DATED 04-10-2023 ISSUED TO THE 1ST
PETITIONER (R. NO.A-1315/2023-24) BY DR.
NAMBIAR'S ULTRASOUND SCAN CENTRE
- Exhibit P8 TRUE COPY OF THE DOCTORS CASE NOTE ISSUED
FROM THE 5TH RESPONDENT HOSPITAL TO THE 1ST
PETITIONER (UHID T114400310230359)