



2024/KER/32174

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

SATURDAY, THE 4TH DAY OF MAY 2024 / 14TH VAISAKHA, 1946

WP(C) NO. 16583 OF 2024

PETITIONERS:

- 1 xxx
 - 2 xxxx
- BY ADVS.
SIDHARTH O.
SUSANTH SHAJI
ALBIN A. JOSEPH

RESPONDENTS:

- 1 UNION OF INDIA
REP, BY ITS' SECRETARY, MINISTRY OF WOMEN AND
CHILD DEVELOPMENT, SASTHRI BHAVAN,
NEW DELHI., PIN - 110001
- 2 STATE OF KERALA
REP BY ITS' SECRETARY, DEPARTMENT OF CHILD
WELFARE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM DISTRICT., PIN - 695001
- 3 THE DIRECTOR OF HEALTH SERVICES
THE DIRECTORATE OF HEALTH SERVICES, GENERAL
HOSPITAL JUNCTION, THIRUVANANTHAPURAM DISTRICT.,
PIN - 695035
- 4 THE DIRECTOR OF MEDICAL EDUCATION
THE DIRECTORATE OF MEDICAL EDUCATION, MEDICAL
COLLEGE P.O, THIRUVANANTHAPURAM., PIN - 695011
- 5 THE SUPERINTENDENT, MEDICAL COLLEGE HOSPITAL,
KOTTAYAM
MEDICAL COLLEGE PO, GANDHI NAGAR, KOTTAYAM
DISTRICT, PIN - 686008



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6 THE SUPERINTENDENT, TALUK HEADQUARTERS HOSPITAL,
THIRUVALLA
TALUK HEADQUARTERS HOSPITAL, THIRUVALLA
AMBALAPPUZHA - THIRUVALLA ROAD, THIRUVALLA,
PATHANAMTHITTA DISTRICT., PIN - 689101

OTHER PRESENT:

SR. GP. SMT DEEPA NARAYANAN. SR. PANEL COUNSEL
SRI. T.C KRISHNA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 30.04.2024, THE COURT ON 4.05.2024
DELIVERED THE FOLLOWING:



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"C.R."

J U D G M E N T

The petitioners are a married couple. This writ petition has been filed seeking permission for medical termination of pregnancy of the 1st petitioner on the ground of substantial abnormalities of the foetus.

2. The petitioners were married on 20/5/2023. On 29/10/2023, the petitioners after conducting a medical examination found that the 1st petitioner was pregnant. Later, on scanning, certain abnormalities were found on the head and spine of the foetus. According to the petitioners, on subsequent medical consultation, certain substantial deformities and abnormalities were diagnosed in the head, spine and face of the foetus. Therefore, they decided to terminate the pregnancy and approached the 5th respondent hospital on 22/4/2024 and intimated their willingness to terminate the pregnancy. However, the 5th respondent informed that as the gestational age of the foetus was 25 weeks, termination of pregnancy can be done only after obtaining orders from the court. It is in these circumstances,



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that the petitioners have approached this court.

3. I have heard Sri.Sidharth O., the learned counsel for the petitioners, Sri.T.C.Krishna, the learned senior panel counsel appearing for the 1st respondent and Smt.Deepa Narayanan, the learned Senior Government Pleader appearing for respondents 2 to 6.

4. The Medical Termination of Pregnancy Act, 1971 (for short, the MTP Act) deals with the termination of certain pregnancies by registered practitioners. The Act permits licenced medical professionals to perform abortions in specific predetermined situations as provided under the legislation – such as, when there is danger to the life or risk to the physical or mental health of the pregnant women, when pregnancy arises from sex crime or rape or intercourse with lunatic women etc., and when there is substantial risk that the child when born would suffer from deformities and diseases. The MTP Act was amended in 2021 to allow certain categories of women such as rape victims, minors, mentally ill women etc. to obtain abortions up to 24 weeks of gestation, raising it from the previous 20 weeks. On scrutiny of Section 3, with reference to sub-section (2), it is seen



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that medical termination of pregnancy can be permitted up to 24 weeks if the continuance of the pregnancy would involve risk to the life of the pregnant woman or grave injury to her physical or mental health. An exception is carved out by clause (2B) of sub-section (2) of Section 3, as per which provisions of sub-section (2) relating to the length of pregnancy shall not apply to the termination of pregnancy if such termination is necessitated by the diagnosis of any substantial foetal abnormalities by a medical board. Thus, termination of pregnancy can be permitted even if gestational age of the foetus is more than 24 months, if the duly constituted Medical Board certifies that there is substantial foetal abnormalities.

5. The right of a woman or a girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy. Reproductive rights include the right to choose whether and when to have children, the right to choose the number of children and the right to access to safe and legal abortions. The constitutional right of women to make reproductive choices as a part of personal liberty under Article 21 of the Constitution of



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India was firmly recognized by the Supreme Court in the landmark judgment in *K.S.Puttaswamy v. Union of India* [(2017) 10 SCC 1]. The Constitution Bench reiterated the position adopted by the three-judge Bench in *Suchita Srivastava v. Chandigarh Administration* [(2009) 9 SCC 1] which held that the right of a woman to have freedom to reproductive choice is an inseparable part of her personal liberty, as envisaged under Article 21 of the Constitution and that she has sacrosanct right to her bodily integrity. Following *Puttaswamy* (supra), the three-judge Bench of the Supreme Court, recognizing the importance of women's autonomy over her reproductive choices, in *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi* (AIR 2022 SC 4917) held that every woman has an inherent right to secure safe and legal abortions thereby ruling out any sort of discrimination based on marital status. It was held that the rights of reproductive autonomy, dignity and privacy under Article 21 give a woman, both married and unmarried, the right to choose whether to bear a child or not. It was observed that decisional autonomy is an integral part of the right to privacy and the decision to carry the pregnancy to its



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full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman. This ruling recognizes unwanted pregnancy as a life-altering reproductive choice. More recently, a two-judge Bench of the Apex Court in *XYZ v. State of Gujarat & Others* (2023 Livelaw SC 680) took the view that the woman alone has the right over her body and is the ultimate decision maker on the question of whether she wants to undergo an abortion.

6. As per the interim order of this court, a Medical Board was constituted consisting of seven doctors at the Government Medical College Hospital, Kottayam. After examining the 1st petitioner and her child in the womb, the Board submitted a report. The report would show that the 1st petitioner is now in 26th week of pregnancy. In the report, it is stated that the foetus has multiple major congenital anomalies of the brain and spinal cord and there is a high risk of neurodevelopment impairment and associated morbidities and mortality. It is further opined that even though this is not a life-threatening condition, the child is likely to have permanent and significant neurological disabilities and handicaps. Hence, the Board recommended termination of



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pregnancy. It is a case squarely falling within the exception carved out by clause (2B) to sub-section (2) of Section 3 inasmuch as the Medical Board diagnosed substantial abnormalities in the foetus.

7. Since the gestational age of the foetus is 27 weeks now, there is a possibility that the baby may be born alive. As the petitioners are a married couple and it is a case of voluntary pregnancy, they cannot shirk the responsibility of rearing the baby if it is born alive. The learned counsel for the petitioners submitted that the petitioners are prepared to take the responsibility of bringing up the child at their expense if it is born alive.

8. Taking note of the report of the Medical Board and the decisional autonomy of the 1st petitioner about her body and reproductive functions, I deem it appropriate to grant the relief sought for and permit the 1st petitioner to terminate her pregnancy at the Medical College Hospital, Kottayam in the following manner:-

(i) On production of this judgment, the 5th respondent shall take immediate measures for constituting a medical team to



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conduct the procedure and carry out the termination of pregnancy of the 1st petitioner.

(ii) The petitioners shall file an appropriate undertaking, authorising to conduct the surgery at their risk.

(iii) If the foetus is found to be alive at birth, the hospital shall give all necessary assistance including incubation either in that hospital or any other hospital where incubation facility is available in order to ensure that the foetus survives. Further, the baby is to be offered the best medical treatment available so that it develops into a healthy child. The petitioners shall take full responsibility of the baby, offer best medical treatment and rear the child in its best interest.

The writ petition stands disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

APPENDIX OF WP(C) 16583/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE PHOTOSTAT COPY OF THE OBSTETRIC USG REPORT DATED 21.12.2023 ISSUED BY THE CONSULTANT RADIOLOGIST, TALUK HEADQUARTERS HOSPITAL, THIRUVALLA.
- Exhibit P2 TRUE PHOTOSTAT COPY OF THE OBSTETRIC USG REPORT DATED 18.01.2024 ISSUED BY THE CONSULTANT RADIOLOGIST, TALUK HEADQUARTERS HOSPITAL, THIRUVALLA.
- Exhibit P3 TRUE PHOTOSTAT COPY OF THE ANOMALY SCAN REPORT DATED 26.03.2024 ISSUED BY DR. CHINCHU SANTAPPAN, CONSULTANT RADIOLOGIST, PRIME SCANS AND DIAGNOSTICS, THIRUVALLA.
- Exhibit P4 TRUE PHOTOSTAT COPY OF THE TRIMESTER SCAN REPORT DATED 19.04.2024 ISSUED BY DR. ANITHA JOSEPH, FOETAL MEDICINES, FOETAL LOUNGE, KOTTAYAM.
- Exhibit P5 TRUE PHOTOSTAT COPY OF THE OP TICKET DATED 19.04.2024 ISSUED TO THE PETITIONER BY THE MEDICAL COLLEGE HOSPITAL, KOTTAYAM.
- Exhibit P6 TRUE PHOTOSTAT COPY OF THE REQUEST DATED 22.04.2024 SUBMITTED BY THE PETITIONER TO THE 5TH RESPONDENT.