

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

FRIDAY, THE 13TH DAY OF AUGUST 2021 / 22ND SRAVANA, 1943

WP(C) NO. 13622 OF 2021

PETITIONER:

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BY ADV A.ARUNA

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, THIRUVANANTHAPURAM, PIN-695001.
- 2 SECRETARY TO GOVERNMENT
DEPARTMENT OF LOCAL SELF GOVERNMENT (RURAL), SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.
- 3 CHIEF REGISTRAR OF BIRTH AND DEATH,
DIRECTOR OF PANCHAYATH, DIRECTORATE OF PANCHAYATH, PUBLIC
OFFICE BUILDING, MUSEUM-695033.
- 4 DEPUTY DIRECTOR OF PANCHAYATH AND DISTRICT REGISTRAR OF
BIRTH AND DEATH,
ERNAKULAM, SECOND FLOOR, CIVIL STATION, KAKKANADU-682030.
- 5 CHERANALLOR GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY,
SOUTH CHITTOOR ROAD, SOUTH CHITTOOR, ERNAKULAM-682027.
- 6 THE SECRETARY
CHERANALLOOR GRAMA PANCHAYATH,
SOUTH CHITTOOR ROAD, SOUTH CHITTOOR, ERNAKULAM-682027.

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7 THE DEPUTY REGISTRAR GENERAL (CRS),
OFFICE OF REGISTRAR GENERAL OF INDIA,
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, V.S. DIVISION, WEST BLOCK-I,
R.K. PURAM, NEW DELHI-110066.

BY GOVT. PLEADER SRI.M.H.HANIL KUMAR
BY S.KRISHNA, CGSC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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Dated this the 13th day of August, 2021

J U D G M E N T

The concepts of “right of privacy, right of liberty and the right of dignity”, have been the subject of authoritative pronouncements by Constitutional Benches of the Apex Court recently. (See *K.S.Puttaswamy v. Union of India [2017 (10) SCC 1]*; *Navtej Singh Johar and others v. Union of India [AIR 2018 SC 4321]*). One of the facets of the said right pops up for consideration in the present case.

2. The petitioner is a divorcee. The decree, on mutual consent, was passed on 27.11.2020. Thereafter, on 29.01.2021, the petitioner opted to get conceived by In Vitro Fertilization (in short, “IVF”) procedure. Ext.P2 is a copy of the treatment summary issued from the Fertility Centre. The identity of the sperm donor has not been disclosed to the petitioner, and is kept anonymous. In Ext.P2 treatment summary, the reason for

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undergoing the procedure is stated thus:-“single parent”. The concern of the petitioner relates to fulfilment of certain formalities for registration of the birth of the child, on delivery.

3. The format for registration of births and deaths is prescribed by the State of Kerala under the Kerala Registration of Births and Deaths Rules, 1970 (hereinafter referred to as “the Rules”). The form contains columns which require disclosure of the name of the father of the child. The petitioner contends that she cannot be required to provide the name of the father, for reasons more than one viz., (i) The identity of the sperm donor is kept anonymous and has not been and could not be disclosed even to the petitioner, (ii) such requirement intrudes upon her right of privacy, liberty and dignity.

4. Heard Smt.Aruna A., the learned counsel for the petitioner, the learned Government Pleader and the learned Assistant Solicitor General.

5. In *ABC v. The State (NCT of Delhi) (2015) 10 SCC 1*, the Apex Court while dealing with an issue of guardianship held thus:-

“The law is dynamic and is expected to diligently keep pace with time and the legal conundrums and enigmas it presents. There is no gainsaying that the identity of the mother is never in doubt. Accordingly, we direct that if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the Birth Certificate, unless there is a Court direction to the contrary.”

6. Referring to the said judgment, the Ministry of Home Affairs, Government of India, issued directions to the Chief Registrar of Births and Deaths throughout the country, to have the birth of the child of a single parent/unwed mother to be registered showing the name of the single parent in the birth record leaving the name of the other parent blank. A copy of the said

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communication has been produced along with the writ petition as Ext.P5. The relevant portion of Ext.P5 communication is extracted hereunder:-

“Taking into consideration the above direction, you are requested to issue the necessary direction to the concerned registration functionaries for strict compliance of above direction and ensure that no one is denied birth registration of a child of a single parent/unwed mother. In such cases, the name of single parent will be written in the birth record and name of other parent will be left blank.”

7. Requiring the petitioner to leave the column relating to the name of the father in the prescribed form as blank, interferes with the right of dignity, privacy and liberty, grieves the petitioner. The fundamental rights guaranteed to her as a citizen of the country are violated, she contends.

8. The forms for registration of births and deaths have been prescribed under the Rules. The State

Government has prescribed the Rules as is required under the Registration of Births and Deaths Act, 1969 (hereinafter referred to as “the Act”). Section 8(1) of the Act requires the particulars sought for in the forms prescribed by the State Government, to be furnished to the Registrar. The relevant part of the Rule is extracted hereunder :-

“8. Persons required to register births and deaths.—(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16.”

9. The forms prepared in terms of the Rules require furnishing of various informations regarding the father of the child including name, education, occupation. The birth certificate to be issued under Rule 8 of the Rules

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also contains a column for mentioning the name of the father. The certificate of death in terms of Rule 8 of the rules provide for furnishing of the name of the father or the husband; but it does not provide for furnishing of name of the mother. These mandatory fields in the prescribed forms are violative of the fundamental rights of the petitioner, is the argument.

10. The Apex Court has held that, reproductive choice of a woman is a fundamental right encompassed under Article 21 of the Constitution of India. It has been held to be a dimension of “personal liberty” enshrined under Article 21 of the Constitution. The right to procreate as well as to abstain from procreation has been recognized as a colour of the right of personal liberty. In *Suchita Srivastava v. Chandigarh Admn. [2009 (9) SCC 1]*, the Apex Court held thus:-

“There is no doubt that a woman's right to make reproductive choices is also a dimension of “personal liberty” as understood under Article

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21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected.”

11. Referring to the said judgment, the Apex Court in *Devika Biswas v. Union of India and Ors. [AIR 2016 SC 4405]* observed thus :-

“86. This Court recognized reproductive rights as an aspect of personal liberty under Article 21 of the Constitution in Suchita Srivastava v. Chandigarh Administration. The freedom to exercise these reproductive rights would include the right to make a choice regarding sterilization on the basis of informed consent and free from any form of coercion.”

12. In Puttaswamy's case (supra), it was held that personal choice governing a way of life are intrinsic to privacy. It was observed that “privacy” has positive and negative content. The negative content restrains the

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State from intruding upon the rights and personal liberty of a citizen and the positive content imposed an obligation on the State to take all necessary measures to protect the privacy of the individual. The Apex Court proceeded to hold that, one of the connotations of “privacy” includes decisional autonomy which comprehends intimate personal choices such as, those governing reproduction as well as choice expressed in public such as, faith or modes of dress.

13. Expounding on the right of dignity, the Apex Court in Puttaswamy's case (supra) observed:-

“ To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with

its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfilment of dignity and is a core value which the protection of life and liberty is intended to achieve.”

14. It was also observed,

“Reflections of dignity are found in the guarantee against arbitrariness(Article 14), the lamps of freedom(Article 19) and in the right to life and personal liberty(Article 21)”.

15. In ***Navtej Singh Johar v. Union of India [AIR 2018 SC 4321]***, elaborating on the right of dignity, the Apex Court observed thus :-

“Thus, right to live with dignity has been recognized as human right on international front and by number of precedents of Supreme Court and, therefore, constitutional courts must strive to protect dignity of every individual, for without right to dignity, every other right would be rendered meaningless. Dignity is inseparable facet of every individual that invites reciprocative

respect from others to every aspect of individual which he/she perceives as essential attribute of his/her individuality, be it orientation or optional expression of choice. Constitution has ladened judiciary with very important duty to protect and ensure right of every individual including right to express and choose without any impediments so as to enable individual to fully realize his/her fundamental right to live with dignity. ”

16. Human dignity has been held to be an integral part of the Constitution. As stated supra, the right of a woman to make reproductive choices has been recognized in India as a fundamental right. In Puttaswamy's case (supra), it was declared that, a concomitant of the fundamental right of privacy is the right to make choices fundamental to a person's way of living. It cannot be interfered with by the State except for compelling reasons and/or harm caused to other individuals.

17. The right of a woman for reproductive decisions and personal choices having been recognized as a constitutional right, there are instances where single/unwed women choose to have child through Assisted Reproductive Technologies (ART). In the year 2005, the Ministry for Health and Family Welfare, Government of India, issued guidelines with regard to functioning of ART clinics in India. It is titled, *“National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India”*. The guidelines were formulated by the Indian Council of Medical Research (ICMR) and National Academy of Medical Sciences (NAMS). The relevant portion of paragraph 3.5.2 of the guidelines reads thus :-

“3.5.2 There would be no bar to the use of ART by a single woman who wishes to have a child, and no ART clinic may refuse to offer its services to the above provided other criteria mentioned in this document are satisfied. The child thus born will have all the legal rights on the woman or the man.”

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18. Smt.S.Krishna, the learned Central Government Standing Counsel pointed out that, the said regulations are not being effectively implemented as such though it has not been expressly withdrawn. She brought to the notice of this Court that, on the subject, a Bill has been introduced in the Lok Sabha titled, "*The Assisted Reproductive Technology (Regulation) Bill, 2020*". A copy of the Bill has been made available to the Court. A reading of the Bill indicates that it also recognizes the right of a woman of legal age of marriage to approach the ART clinic and avail ART procedure. The duty to maintain confidentiality of the donor etc. as was there in the guidelines is maintained in the Bill. Though it is yet to become a statute, it was adverted to by me only to be convinced that, as of now the rights of a single woman and the aspect of confidentiality is being maintained. Suffice to notice that, rights of a single woman to conceive through ART procedure is recognized and

accepted in the country.

19. Having conceived through ART procedure, the identity of the sperm donor cannot be disclosed except in circumstances as may be compelled for, under law. It falls within the realm of the “right of privacy”. The said right has also been recognized in the guidelines for ART clinics, with very little exceptions. As noticed first above, the identity of the donor is not disclosed to the petitioner. Under the circumstances, there is no rhyme or reason in requiring the petitioner to, provide the name of the father in the form prescribed for registration of birth and death. Requiring the petitioner to leave the column regarding the details of father as blank, the issuance of a certificate of birth or certificate of death leaving the space provided therein regarding the details of the father as blank, necessarily affects the right of dignity of the mother as well as the child. The right of a single woman/unwed mother, to conceive through ART procedures having been

recognized, it is for the State to provide appropriate forms for registration of births and deaths of children born through such procedures, and for issuance of birth/death certificates. In Puttaswamy's case (supra), the Apex Court held thus:-

“The Constitution was drafted and adopted in a historical context. The vision of the Founding Fathers was enriched by the histories of suffering of those who suffered oppression and a violation of dignity both here and elsewhere. Yet, it would be difficult to dispute that many of the problems which contemporary societies face would not have been present to the minds of the most perspicacious draftsmen. No generation, including the present, can have a monopoly over solutions or the confidence in its ability to foresee the future. As society evolves, so must constitutional doctrine. The institutions which the Constitution has created must adapt flexibly to meet the challenges in a rapidly growing knowledge economy. Above all, constitutional interpretation is but a process in achieving justice, liberty and dignity to every citizen.”

20. It was further held that, interpretation of the Constitution cannot be frozen by its original understanding that it must evolve with the felt necessities of time, to meet the aspirations and challenges of the present and future. The concept of conceiving through ART has been foreign to this country a few decades back till the first "*test tube baby*" was born. By the passage of time, evolution of techniques, change in life style and personal choices recognized by the Rule of Law, appropriate modifications/changes/additions/alterations need to be made in Statutes, Rules and the forms prescribed thereunder.

21. As noticed above, the right of a single parent/unwed mother to conceive by ART having been recognized, prescriptions of forms requiring mentioning of name of father, the details of which is to be kept anonymous, is violative of the fundamental rights of privacy, liberty and dignity as discussed supra. It is

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for the State Government to bring out appropriate forms for registration of births and deaths, and also certificates of births and deaths, in such cases. As is always, the "rights" are quite often misused. To settle scores in the 'in-family' feuds, registration in such forms would be sought for. This could be resolved by requiring the applicants to furnish an affidavit that she is a single parent/unwed mother conceived through ART procedure and produce along with the same a copy of medical record in support thereof. To such applicants, a separate form, which does not contain the field regarding the name and other details of the father shall be prescribed. In so far as certificate of death is concerned, it would suffice if in the column where the name of the father or husband is sought for, another entry could be made as that of the mother (like Father / Husband / Mother).

22. The petitioner is in the 8th month of pregnancy. Considering the urgency of the situation, necessary

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steps shall be taken by respondents 1 and 3 to have separate forms prescribed for registration of births and deaths and for issuance of certificates in cases relating to conception through ART procedure of single parent/unwed mother, immediately.

The writ petition is allowed as above. The Advocate General's Office shall take up the issue with the concerned and have the needful done without delay.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge

APPENDIX OF WP(C) 13622/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE JUDGMENT DATED 27.11.2020 IN OP 458/2020 IN THE COURT OF THE FAMILY COURT, KOTTAYAM
- Exhibit P2 TRUE COPY OF THE ART TREATMENT SUMMARY DATED 29.01.2021 OF THE PETITIONER ISSUED FROM CIMAR FERTILITY CENTRE.
- Exhibit P3 TRUE COPY OF THE RELEVANT PAGES OF THE REGISTRATION OF BIRTHS AND DEATHS ACT, 1969.
- Exhibit P4 TRUE COPY OF THE KERALA REGISTRATION OF BIRTHS AND DEATHS RULES, 1999
- Exhibit P5 TRUE COPY OF THE COMMUNICATION DATED 21.07.2015 SENT BY THE DEPUTY REGISTRAR GENERAL (CRS) OFFICE OF REGISTRAR GENERAL OF INDIA, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA TO ALL CHIEF REGISTRAR OF BIRTHS AND DEATHS.
