

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

WP (C) .No.27842 OF 2020 (E)

PETITIONER/S:

- 1 AKHILA KURIAN ALIAS AKHILA ANN BABY
AGED 30 YEARS
WIFE OF KURIAN JOSE, ELENGICAL HOUSE, KOTHAMANGALAM
P.O., ERNAKULAM-686 691.
- 2 KURIAN JOSE,
AGED 33 YEARS
SON OF JOSE KURIAN, ELENGICAL HOUSE, KOTHAMANGALAM
P.O., ERNAKULAM-686 691.

BY ADVS.

SRI.ISAAC THOMAS

SHRI.ALEXANDER JOSEPH MARKOS

SHRI.SHARAD JOSEPH KODANTHARA

RESPONDENT/S:

- 1 THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SASTHRI
BHAVAN, NEW DELHI-110 001.
- 2 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF CHILD WELFARE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 THE DIRECTOR OF HEALTH SERVICES, GENERAL HOSPITAL
JUNCTION, THIRUVANANTHAPURAM-695 035.
- 4 THE DIRECTOR OF MEDICAL EDUCATION,
MEDICAL COLLEGE, KUMARAPURAM ROAD, CHALAKUZHI,
THIRUVANANTHAPURAM-695 015.
- 5 THE DISTRICT MEDICAL OFFICER,
ERNAKULAM DISTRICT, PARK AVENUE, MARINE DRIVE,
ERNAKULAM-682 011.
- 6 THE SUPERINTENDENT, THE GENERAL HOSPITAL, HOSPITAL

ROAD, ERNAKULAM-682 011.

7 THE SUPERINTENDENT, GOVERNMENT MEDICAL COLLEGE-
KOTTAYAM,
GANDHI NAGAR, KOTTAYAM-686 008.

OTHER PRESENT:

SMT.VINITHA.B,GP
ASGI SRI.P.VIJAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 16th day of December 2020

Petitioners are husband and wife, who have approached this Court seeking permission for carrying out medical termination of pregnancy at a gestational age of 34 weeks, producing Exts.P5 to P10 reports pointing out serious abnormalities in the foetus.

2. When the Writ Petition came up for consideration on 14.12.2020 this Court directed the 7th respondent to convene a medical board in order to examine the 1st petitioner and to report before this Court the medical condition of the 1st petitioner as well as the foetus. Accordingly, a medical board was constituted and the 1st petitioner was examined.

3. Smt.B.Vinitha, the learned Government Pleader, made available the medical report furnished by the Superintendent of the Government Medical College, Kottayam, which would show that the medical board was convened on 15.12.2020 with the following members :

"Chairman: Dr. Lissamma George, Professor & HOD, Dept. of O&G, GMC, Kottayam

PARTICIPANTS

- 1. Dr.Beenakumari.R, Addl.Professor, O&G*
- 2. Dr.M.V.Radhamani, Addl.Professor, O&G*
- 3. Dr.Sajini.B, Addl.Professor, O&G*
- 4. Dr.Veerendrakumar.M, Addl. Professor, Paediatrics*
- 5. Dr.Renju Raveendran., Professor & HOD, Forensic Medicine*
- 6.Dr. Rekha Mathew, Asst. Professor, Psychiatry*
- 7. Dr.Arun.P.Ajith, Asst.Professor, Radio diagnosis.*

The report is as follows:

The medical board has examined the first petitioner & observed the following facts.

Primi gravida, married 2½ years, non consanguineous marriage, spontaneous conception.

LMP: 19/04/2020., EDC: 26/01/2021. Gestational age 34 weeks 2 days.

No history of maternal comorbidities. Mother diabetic. History of antenatal check up at Marsleeva Medicity Hospital, Pala. Injection TT 2 doses taken. On examination conscious, well oriented, no pallor or edema, Pulse 80/minute BP 140/80mm of Hg.

Per abdomen uterus 34 weeks, breech, mobile. FHS good, 140/minute, liquor adequate.

USG (15/12/20) at Govt. Medical College, Kottayam. Single live intra uterine foetus, 35 weeks 4 days. Breech presentation, estimated foetal weight 2644 gm. Placenta posterior low lying covering internal os.

Foetal brain shows non visualization of corpus callosum with dilated lateral ventricles & prominent high up third ventricle, with a large well defined cyst in the region of midline.

Findings suggestive of corpus callosum agenesis with hydro cephalus and inter hemispheric cyst/Schizencephaly

Her mental status examination - she has no past or family history of psychiatric disorders.

On examination of her mental status she is conscious, oriented, aware of her condition and the baby's condition & she is mentally sound to take decision regarding her pregnancy.

From the above findings the medical board jointly has come to the following conclusions:

1. The foetus is having serious developmental brain anomalies affecting long term quality of life in the form of recurrent seizures, cognitive dysfunction & global developmental delay. Hence there there is an indication for MTP.

2. Since the gestational age is more than 34 weeks there is a possibility of survival of baby at birth.

3. Since the petitioner is having placenta previa, there is a chance of excessive bleeding during delivery".

4. It is seen that the gestational age as on today is 35 weeks and 5 days. Learned counsel for the petitioners relying on the judgments of the Division Bench of the Calcutta High Court reported in **Suparna Debnath and another vs. State of West Bengal and others**: 2019 KHC 2644, judgment of this Court in **Neethu Narendran and another vs. State of Kerala and others** : 2020 (3)

KHC 157, the judgment dated 14.10.2019 in **WP (C) No.26890/2019** and the judgment of the Division Bench of the High Court of Bombay in **WP (L) No.4491/2020** dated 22.10.2020 argued that under Article 21 of the Constitution of India, the 1st petitioner is having every right to decide on the question of continuance of her pregnancy, which is a right to live with human dignity also and hence she has to be permitted to undergo medical termination of pregnancy. It is also stated that the petitioners are willing to take the risk on account of the same.

5. On the other hand, the learned Government Pleader argued that when the pregnancy has reached the stage of 35 weeks, there is every possibility that the child will be born alive, as pointed out by the medical board. It is pointed out that even if there is a normal delivery, the Child Welfare Committee would be ready to take care of the child and at this stage permission for medical termination would affect the right to life of the child in the womb. She also pointed out that nobody has a right to commit suicide and a foeticide cannot be permitted at this stage when its growth is almost complete. It is also pointed out that there is risk for the life of both the foetus as well as the mother. It is argued that even as per the MTP amendment Bill 2020, termination is permissible only upto 24 weeks and there is no proposal for its permission irrespective of the gestational age.

6. Even though the Medical Board has come to the

conclusion that the foetus is having serious developmental brain anomalies, it has found the possibility of survival of baby at birth and that there are chances of excessive bleeding during delivery. However, there is no recommendation for termination of pregnancy. It would appear that they have left the decision to this Court.

7. Though the learned counsel for the petitioners pointed out that the petitioners are willing to take a risk, in none of the judgments relied on by Sri. Isaac Thomas, the gestational age had exceeded 32 weeks. Now it is a question of only some more days left for the full development of the foetus. Therefore, I am of the view that the stage at which permission can be granted has crossed the limits. Moreover, I have already dismissed W.P.(C).No.18610/2020 where gestational age was 31 weeks.

Therefore, the Writ Petition is dismissed.

Sd/-

P.V.ASHA

JUDGE

rkc

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF FIRST EARLY PREGNANCY SCAN REPORT CARRIED OUT AT MAR SLEEVA MEDICITY, PALAI DATED 08.06.2020.
- EXHIBIT P2 TRUE COPY OF THE OBSTETRIC ULTRASOUND SCAN CARRIED OUT ON THE 1ST PETITIONER AT MAR SLEEVA MEDICITY, PALAI DATED 18.07.2020.
- EXHIBIT P3 TRUE COPY OF REPORT OF THE ULTRASOUND SCAN DATED 18.08.2020 CARRIED OUT ON THE 1ST PETITIONER AT MAR SLEEVA MEDICITY, PALAI.
- EXHIBIT P4 TRUE COPY OF TARGETED SCAN FOR FOETAL MORPHOLOGICAL ANOMALY DETECTION (4D) REPORT DATED 03.09.2020.
- EXHIBIT P5 TRUE COPY OF THE THIRD TRIMESTER OBSTETRIC SCAN CARRIED OUT ON 1ST PETITIONER ON 04.12.2020.
- EXHIBIT P6 TRUE COPY OF CIMAR FERTILITY CENTRE REPORT DATED 04.12.2020.
- EXHIBIT P7 TRUE COPY OF COMMUNIQUE ISSUED BY CIMAR FOR THE BENEFIT OF THE 1ST PETITIONER'S CONSULTING GYNECOLOGIST, DATED 05.12.2020.
- EXHIBIT P8 TRUE COPY OF AMRITA INSTITUTE OF MEDICAL SCIENCES (AIMS) SCAN REPORT DATED 07.12.2020.
- EXHIBIT P9 TRUE COPY OF WRITTEN COMMUNICATION DATED 11.12.2020 ISSUED BY AMRITA INSTITUTE OF MEDICAL SCIENCES TO THE 1ST PETITIONER'S CONSULTING GYNAECOLOGIST.
- EXHIBIT P10 TRUE COPY OF RENAI MEDICITY, PALARIVATTOM, MEDICAL REPORT DATED 11.12.2020.
- EXHIBIT P11 TRUE COPY OF JUDGMENT DATED 13.11.2020 OF THIS HON'BLE COURT IN WPC NO.24031 OF 2020 OF THUSHARA GEORGE AND ANR. V. THE UNION OF INDIA & ORS.
- EXHIBIT P12 TRUE COPY OF THIS HON'BLE COURT'S JUDGMENT DATED 26.06.2020 IN WPC 11726 OF 2020 IN DHANYA HARI & ANR. V. THE UNION OF INDIA & ORS.