



2023:KER:68037

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

WP(C) NO. 36490 OF 2023

PETITIONERS:

1 XXX
XXXXX

2 XXX
XXXX

BY ADVS.
AKASH S.
GIRISH KUMAR M S

RESPONDENTS:

1 THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SASTHRI
BHAVAN, NEW DELHI, PIN - 110001

2 STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, MINISTRY OF CHILD WELFARE, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

3 THE DIRECTOR OF HEALTH SERVICES, DIRECTORATE OF
HEALTH SERVICES GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM, PIN - 695035

4 THE DIRECTOR OF MEDICAL EDUCATION, MEDICAL COLLEGE,
KUMARAPURAM ROAD, CHALAKUZZHI, THIRUVANANTHAPURAM,
PIN - 695015

5 THE SUPERINTENDENT, THE GOVERNMENT MEDICAL COLLEGE
AND HOSPITAL, HMT COLONY, KALAMASSERY, ERNAKULAM,
PIN - 683503

6 AMRITA INSTITUTE OF MEDICAL SCIENCES AND RESEARCH
REPRESENTED BY ITS MANAGING DIRECTOR, PONEKKARA,
ERNAKULAM, PIN - 682041

SMT. VIDYA KURIAKOSE-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioners are ‘parents-to-be’ with their second child; and the former among them is stated to be in advanced stage pregnancy of 32 weeks. They say that they have definite advice that the baby is suffering from very grievous abnormalities; and that even if the pregnancy is allowed to continue, the baby would have serious complications, which would not allow a normal life. They say that, therefore, that they have been constrained to approach this Court under the provisions of Medical Termination of Pregnancy Act, 1971.

2. Noticing the specific assertions of the petitioners, on 03.11.2023, when this matter was considered for admission, I passed the following order.

The learned Deputy Solicitor General of India for respondent No.1 and the learned Government Pleader for respondent Nos.2 to 5 will obtain instructions in this matter.

2. Sri.Manoj Chandran – learned counsel, appears for respondent No.6. The petitioners will serve a copy of this writ petition on Sri.Manoj Chandran today itself.

3. Since a medical evaluation of the 1st petitioner is extremely imperative and cannot brook any delay, I asked the learned Government Pleader when a suitable Medical Board can be constituted by the 5th



respondent – Superintendent of the Government Medical College and Hospital, Ernakulam. She submitted that, if the 1st petitioner is ready, it can even be done on 04.11.2023.

4. Sri.Akash Sathyanandan – learned counsel for the petitioners, in response, submitted that the 1st petitioner will appear before the Medical Board, involving a competent Psychiatrist at 10 a.m. on 04.11.2023.

5. I, therefore, direct the 5th respondent to constitute a suitable Medical Board involving a competent Psychiatrist; with a concomitant order to the 1st petitioner to appear before the 5th respondent – Superintendent, at 10 a.m. on 04.11.2023.

List for Report of the aforesaid Medical Board on 06.11.2023.

3. Smt.Vidya Kuriakose – learned Government Pleader, has made available the Medical Board Report of the 1st petitioner, which is extracted as under:

Medical board held on 04.11.2023 (W.FC No 16490 of 20230) in the Superintendent's Office Control room. Government Medical College Hospital, Ernakulam.

Name: Arya Mohandas, 33 Years

1. Opinion of Dr. Rajeswari Pillay HOD-0&G.GMCIL-Ekm
G2 P1L1 Previous Caesarean Section, LCB-7 years,
LMP: 29.03.2023

ANC at Thodupuzha Private hospital and uneventful antenatal period; identified as intracranial lesion at 31 weeks. MRI done to confirm diagnosis. Intracranial Cystic Teratoma,? Meningocele, with mass effect on brain, Proptosis/Extracranial extension also.

Given the above anomalies; there is possibility of baby having facial and cranial abnormalities.

However, she is a case of previous Caeserean; at present 32 weeks, there may be risk of inducing labour due to scar on uterus; she may require caeseran with the complications



associated. As the baby is 32 weeks, there is a chance that baby may be born alive and may require care in neonatal ICU. The above has been explained in detail to Mrs. Arya Mohandas and her husband Mr. Prasanth P.

2. Opinion of Dr. Peter.P.Vazhayil, HOD I/e- Paediatrics, GMCH – Ekm

As the baby has reached 32 weeks and 1.5 kg according to scan, it is likely that the baby may be born alive. The MRI scan of the foetus show a cystic lesion with extracranial extension with mass effect to the adjacent brain and the possibility of a cystic neoplasm, which can cause substantial risk to the baby if the child is born alive. The lesion can also cause serious neurological abnormalities including respiratory depression to the extent that baby may require ventilator care. This has been explained to the parents.

3. Opinion of Dr. Juliet. R. John, Associate Professor, Radiodiagnosis Dept GMCH – Ekm

All obstetric scans were done at Smitha Memorial Hospital, Thodupuzha and fetal MRI was done at Amrita Institute of Medical Sciences, Kochi.

G2 P1L1

LMP: 29/03/2023

Dating Scan was done on 15/05/2023

Single live intrauterine gestation of 6 weeks and 3 days maturity.

EDD by USG: 05/01/2024

NT Scan was done on 27/06/2023

Single live intrauterine gestation of 13-14 weeks maturity.

NT was within normal limits.

EDD by USG: 31/12/2023

Anomaly scan 2D done on 22/08/2023

Single live intrauterine gestation of 21 weeks maturity No evidence of detectable gross congenital anomalies. Liquor was adequate.

Growth scan done on 25/10/2023

Single live intrauterine gestation of 30-31 weeks maturity.



Intracranial cystic lesion seen in right frontal region protruding extracranially in the right infraorbital and maxillary region through a tiny defect? Meningocele ? Encephalocele ? Frontoasal/Frontoethmoidal-

Dysmorphic foetal face due to diffuse subcutaneous thickening in the right side of face-likely edema.

Fetal MRI done on 01/11/2023

Single live intrauterine gestation.

Right middle cranial fossa extra axial cystic lesion with extracranial extension into right infratemporal fossa with a nodular solid component causing mass effect on brain.

Primary differential is cystic neoplasms as cystic teratoma.

Meningocele or Encephalocele is the second possibility. Rare possibilities of cystic low flow malformation or extracerebral neuroglial heterotopia with associated cyst also to be considered.

4. Opinion of Dr.Lekshmy Gupthan-Associate professor Psychiatry Dept, GMCH Ekm

After history taking and detailed mental status evaluation, there is nothing to suggest that Mrs. Arya Mohandas is incapable of making a decision on her own.

However in view of the past history suggestive of depressive disorder and current depressive symptoms following the stressor, she is advised to seek psychiatric consultation and management at the earliest. The above has been explained to Mrs. Arya Mohandas and her husband.

There is a high possibility that the continuation of pregnancy can adversely affect her mental health in view of the above mentioned factors.

Final Medical Board Opinion

1) The continuation of pregnancy may not cause any risk to the life of mother or her physical health. But there is a high possibility that the continuation of pregnancy can adversely affect her mental health.

2) According to the available fetal MRI report, there is substantial risk that the baby is likely to have neurological & respiratory abnormalities, if the child is born alive.

3) In view of the advanced stage of pregnancy and patient



being a case of previous caeseran, induction of labour may not be successful and she may need a repeat Caesarean Section with the complications associated.

4) The Medical process best suited is induction of labour with precautions for previous caeseran scar on uterus and if necessary may have to proceed with Caesarean Section. As she has completed 32 weeks of gestation and as fetal weight is 1.5 kg as per Growth Scan done on 25/10/23 there is possibility that the baby may be born alive.

5) In view of the past history suggestive of depressive disorder and current depressive symptoms following the stressor, she is advised to seek psychiatric consultation and management at the earliest.

4. Today, this Court called for an interaction with Dr.Ganesh Mohan, Superintendent of the Government Medical College, Ernakulam and Dr.Geetha Nair – Chairperson of the Medical Board; and they were gracious enough to appear online.

5. Dr.Ganesh Mohan assisted this Court impeccably by giving all options that are available – both to the 1st petitioner and the fetus. He affirmed that the condition of the baby is such that the prognosis is not very favourable; and that, as far as the mother is concerned, she has a past history of depressive disorder, leading to the possibility of her mental health being seriously affected, if the pregnancy is continued. He, however, added that the pregnancy will not cause any risk to the life of the 1st petitioner.



He also added that, according to the available MRI Report, the baby is likely to have severe neurological and respiratory abnormalities, but that since the gestation is now 32 weeks and the fetal weight is 1.5 K.G. - as per the growth scan, there is a possibility that the baby may be born alive, but that his/her life may be severely constrained.

6. Dr.Ganesh Mohan, thereafter explained that, since the 1st petitioner had her first baby delivered through a Cesarean section (C-Section), thus causing an inevitable scar on her uterus, the termination of pregnancy sought for by her in this Writ Petition cannot be allowed through traditional methods; and that it is better to take the foetus/baby out through another C-Section. He submitted that, this is because, on account of the previous C-Section suffered by her, induction of labour may not be successful and it is possible that termination of pregnancy may fail. He was rather affirmative that if this Court is to find in favour of the petitioners, then it will be better that a C-Section is ordered, so that the baby can be taken out and that there is a chance up to 70%, that he/she will be alive; adding that in such event, the best



possible care can be given by the hospital through the Neo-natal ICU. He, however, was doubtful whether the child will have a continued life or not.

7. The afore explanation offered by Dr.Ganesh Mohan, juxtaposed by the report of the Medical Board above extracted, clearly leaves no choice for this Court, or to the petitioners/parents.

8. I am, therefore, of the firm view that, taking note of the mental health of the mother, which is vital to the child, even if he/she is to be born alive, and respecting her autonomy with respect to her physiological and psychological requirements, I deem it appropriate to order this Writ Petition in the following manner:

a) The request of the petitioners for medical termination of pregnancy is allowed; however, only at the Government Medical College Hospital, Ernakulam.

b) The Chairperson of the Medical Board – Smt.Geetha Nair, is requested to oversee the processes with respect to the afore direction; and she and her team would be at full liberty to take a call on how to go on with it, including by performing a C-



Section, if it is found to be the most rational one to do in the given circumstances.

c) If the baby is to be born alive, then all care and protection would be given; and depending upon the prognosis, it is left to the Medical Board to decide in what manner further action will need to be taken forward.

d) For the afore purpose, I direct the 1st petitioner to get admitted in the Government Medical College Hospital, Ernakulam, forthwith – if possible, today itself; and Dr.Ganesh Mohan is requested to give her full assistance for this purpose, to ensure that the processes are completed without any avoidable complications, with necessary support being given.

e) A final report in this regard shall be placed before this Court on 13.11.2023.

I clarify that even though this Writ Petition is disposed of through this judgment, the matter will be placed before this Court on 13.11.2023, solely to see the afore report and to take any further action, as may be required.

I request Dr.Ganesh Mohan and Dr.Geetha Nair to be present



before this Court online on 13.11.2023, should any further clarifications is inevitable.

RR

Sd/ -
DEVAN RAMACHANDRAN
JUDGE



APPENDIX OF WP(C) 36490/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE AADHAAR CARD OF THE 1ST PETITIONER , BEARING NO.6047 8152 3213
- Exhibit P2 TRUE COPY OF THE AADHAAR CARD OF THE 2ND PETITIONER, BEARING NO.7771 0143 7589
- Exhibit P3 TRUE COPY OF THE RADIOLOGY INVESTIGATION REPORT OF THE 1ST PETITIONER AT THE SMITA MEMORIAL HOSPITAL AND RESEARCH CENTRE, THODUPUZHA DATED 25.10.2023
- Exhibit P4 TRUE COPY OF THE REPORT OF THE FOETAL MRI SCAN CONDUCTED ON THE 1ST PETITIONER AT THE 6TH RESPONDENT HOSPITAL DATED 01.11.2023