

(2016) 09 KL CK 0044

In the High Court Of Kerala

Case No : Writ Petition (Crl.).No. 3 of 2016 (S)

Basheer

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Constitution of India, 1950 — Article 21, Article 226

Citation : (2016) 4 KerLJ 321 : (2016) 4 KLT 677

Hon'ble Judges : Mr. C.K. Abdul Rehim and Mr. Shaji P. Chaly, JJ.

Bench : Division Bench

Advocate : Sri. A. Abdul Kharim and Sri. M. Sreekumar, Advocates, for the Respondent No. 6; Sri. Jawahar Jose, SC, S.B.T, for the Respondent No. 7; Sri. K.I. Abdul Rasheed, ADGP and Sri. P.S. Abdul Kareem, Govt. Pleader, for the Respondent Nos. 1 to 3, 8 and 9; Sri.

Final Decision : Disposed Off

Judgement

Mr. C.K. Abdul Rehim, J. - Unprecedented history and development makes the above writ petition unique among those cases in which writ of Habeas Corpus was sought for as a relief. Father of a female infant, namely-Aliya Fathima, aged 9 months only, had approached this court with an unusual complaint that his wife, who is the mother of the baby and his father-in-law are denying treatment to the baby, who requires an immediate liver transplantation. Averments are that, the petitioner married the 5th respondent on 23-06-2013 and the child Aliya Fathima was born out of the wedlock on 13-04-2015. The child was diagnosed of having "Biliary Atresia" for which liver plantation is the only remedy suggested considering the critical situation. The child was treated at the 6th respondent hospital (subsequently impleaded). Even though the petitioner took registration in the Hospital to find out a prospective donor and also remitted a sum of Rs. 3,00,000/-, which amount he had received from the "Chief Minister's Distress Relief Fund", the respondents 4 & 5 had refused to provide necessary follow up treatment to the baby, is the allegation. It is stated that the 5th respondent had left the company of the petitioner along with the baby and

started residing with the 4th respondent, who is her father. The petitioner during that time was employed in Gulf countries. On account of illness of the child he came back from on 10-12-2015. But due to the matrimonial discord, he was not allowed to see the child or to make arrangements for her continued treatment. It is also alleged that the respondents 4 & 5 are collecting money from the public as donations/contributions for the treatment of the child by issuing paper publications, but they are attempting to misappropriate such amounts collected. Even though the petitioner submitted complaints to the police authorities as well as to the authorities of the Jama-ath concerned, no action was taken. It is contended that respondents 4 & 5 are illegally keeping the baby Aliya Fathima under detention against the interest and welfare of the child, in a manner denying treatment to her critical illness. Hence this court was approached seeking a writ of Habeas Corpus for directing production of the baby and to issue appropriate directions.

2. When the above writ petition came up for admission on 04-01-2016, we directed the 3rd respondent to conduct an enquiry regarding whereabouts of the child and the 5th respondent. He was also directed to ascertain as to whether the child is being provided with continued treatment. On 08-01-2016, the learned Government Pleader appearing on behalf of respondents 1 to 3 submitted on instructions that, due to the matrimonial disputes the baby is being denied of any proper treatment, despite proper counselling given from the 6th respondent hospital to the parents about the worsening health condition of the child. A certificate obtained from the 6th respondent hospital was produced, which revealed that the child is suffering from "extrahepatic biliary atresia" with features of biliary stasis and cirrhosis. The certificate indicated that the only curative therapy available is transplantation of the liver. The report would indicate that the team for liver plantation available at the 6th respondent hospital is fully involved in the management of the child and in providing counselling to the family. Further it is stated that on follow up examination it was revealed that the condition of the child has been deteriorated of having a de-compensated cirrhosis liver. It is mentioned that the child was lastly admitted in the hospital only on 03-12-2015 and that no medical attention is given to the baby thereafter.

3. Since the above said report revealed an alarming situation that life of an infant aged 9 months is at stake due to the disputes and disharmony of her parents, we felt it as a fit case where the extra ordinary discretionary jurisdiction need to be invoked in order to protect the life of the child, which is a very fundamental and basic right which she possess, despite her inability to express about the infringements on such rights or despite her inability to take any steps to protect such right. From the situation prevailing it was felt that, this is a fit case where the jurisdiction of "parens patriae" need be exercised. Under given fact situation this court realised the need to direct drastic steps with imminent interventions in order to save the life of the baby Aliya Fathima. Hence this court suo motu impleaded the 6th respondent hospital as well as the 7th respondent Bank, wherein the contributions received in the name of the baby was deposited. The

2nd respondent-Commissioner of Police, Thiruvananthapuram City was directed to take immediate steps to get the baby admitted in the 6th respondent hospital. The 6th respondent was directed to take follow up actions towards their endeavour to materialise the liver plantation. The 7th respondent was also directed not to permit withdrawal of any amounts in deposit in favour of the minor child. Thereafter the progress of the treatment of Aliya Fathima was monitored by this court by issuing appropriate orders from time to time.

4. Initially the 7th respondent informed that there existed a balance of Rs. 1,30,537/- in the account. The medical certificate issued from the 6th respondent hospital indicated that a total expenditure of about Rs. 15,00,000/- is required for the surgery. Based on interference of this court the 6th respondent had shown a gesture of charity and offered to undertake the surgery at a consolidated package of Rs. 10,00,000/-. But the Herculean task was to find out a matching donor, for which persistent attempts continued from the side of the team at the 6th respondent hospital. The State Government was alerted about the situation and appealed for exploring possibilities of providing further financial assistance for treatment of the baby. The petitioner submitted that an amount of Rs. 50,000/- obtained from a charitable organisation was remitted to the 6th respondent hospital. He promised to mobilise a further sum of Rs. 2,00,000/- and to deposit the same with the 7th respondent Bank, which he had deposited later. The State Government came up with a humanitarian approach and offered a further sum of Rs. 2,00,000/- over and above the amount of Rs. 3,00,000/- paid from the "Chief Minister's Distress Relief Fund". Ultimately the 6th respondent succeeded in finding out a non-related matching donor namely, Smt. Sree Ranjini P.V. from Thirumala, Poojapura, who voluntarily come forward to donate the organ. But there arose hindrance with respect to getting requisite permissions from the "Authorisation Committee" constituted by the State Government. This court again interfered to expedite the formalities and an order was issued on 23-02-2016 directing prompt and immediate steps, after impleading the "Authorisation Committee" as additional 8th respondent. The 6th respondent hospital was directed to submit the requisite application supported by all the necessary documents. The committee was directed to process the application and to give clearance with respect to the organ donation within 5 days. The very fortunate development in between was that the rift between the parents of Aliya Fathima melted down and both of them united in taking care of the medical needs and care and protection of the child. The "Authorisation Committee for Human Organ Transplantation" had granted No-objection Certificate for the organ donation of Smt.Sree Ranjini P.V. to baby Aliya Fathima, through its proceedings dated 31-03- 2016. By the grace of God Almighty the medical team could successfully complete the transplantation surgery, which spread over through the entire night between 6th and 7th April, 2016. Meanwhile it was brought to notice of this court that the District Program Manager of NRHM, functioning under the Health Department of the State Government had come forward to provide financial assistance under "Arogya Kiranam Project" in order

to reimburse expenses of the liver plantation surgery and with respect to the follow up treatments required. Under such circumstances the said authority was impleaded as additional 9th respondent. The 6th respondent was directed to submit the necessary documents to the additional 9th respondent for getting reimbursement of the expenses. The Law Officers of the State Government of this court, especially the Additional Director General of Prosecution, Mr. K.I. Abdul Rasheed and his team had done prompt and expeditious interference in the matter to ensure all possible assistance from the State Government. It was promised before this court that the 9th respondent had undertaken to reimburse the future expenses related to continued treatment of Aliya Fathima at the 6th respondent hospital itself as a special case, under the "Arogya Kiranam Project".

5. After successful completion of the surgery, the child was discharged from the hospital. One among us could find out time to make a visit to the child at the 6th respondent hospital, on the date of her discharge. We could gather from the counsel appearing that the child is now keeping good health and is continuing the follow up treatments. There is no complaint subsisting regarding the alleged illegal detention or confinement against the welfare of the child. Hence the reliefs sought for in this writ petition has become infructuous.

6. It is with great satisfaction of rendering all possible equitable reliefs that this court could part with the case. We feel that this is an appropriate case where extending hands of judiciary become inevitable under given circumstances, we could do the maximum possible. In a report submitted by the 6th respondent it is informed to this court that there was a total receipt of Rs. 15,42,246/- from various sources, including the amounts received under the "Arogya Kiranam Project" and also amounts provided by the Kerala Social Security Mission. The total bills with respect to the inpatient and out patient treatments of the baby as on today comes to Rs. 12,63,299.87. The 6th respondent had informed this court that a surplus amount of Rs. 2,78,946.13 is outstanding as balance, available for future treatment of the child. The 7th respondent informed this court that as on today a total balance of Rs. 4,41,458/- is outstanding credit in the account maintained in the name of the child. Thus, we are happy that, while parting with the case we could ensure that an amount of Rs. 7,20,404.13 could be set apart as secured for the future treatments of baby Aliya Fathima.

7. While closing the matter this court direct the respondents 6 & 7 to take necessary steps to secure the above said amount of Rs. 7,20,404.13 along with any other contributions or interest accrued thereon, for the future treatment of the child Aliya Fathima. The 7th respondent is directed to release the amounts under deposit only on the basis of request submitted by the 6th respondent hospital. The 6th respondent is directed to make any such request only after utilising the amounts kept as balance outstanding in credit of the account of the patient, Aliya Fathima. It is made clear that any of the parties in the above case will be at liberty to seek appropriate directions if found required from this court in future, by filing application for reopening the case.

8. Before parting with we record our great appreciation to all those who rendered active participation and co-operation at various stages of the case in achieving the goal of saving the life of an infant aged 9 months. We record our special appreciation to the Management and the medical team of the 6th respondent hospital, to the voluntary non-related donor Smt. Sree Ranjini P.V., the State Government and its officials in the Health Department, the authorities at the Medical College who is part of the "Authorisation Committee", the team of Law officers who attended the case, the 7th respondent Bank and all others concerned for having rendered valuable and active assistance and for their co-operation. We conclude with the hope that such unprecedented interventions from the judiciary may save more valuable human lives in future.