
(2021) 02 KL CK 0092
In the High Court Of Kerala
Case No : Writ Petition (C) No. 4562 Of 2021

Fathima N And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Medical Termination Of Pregnancy Act, 1971 — Section 3, 3(2)(b), 4, 5

Citation : (2021) 02 KL CK 0092

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : T.R. Rajan, Vinitha B

Final Decision : Allowed

Judgement

1. The petitioners, who are husband and wife, have filed this Writ Petition producing Exts.P2 and P3 medical reports seeking a direction to the respondents to carry out medical termination of the 1st petitioner's pregnancy. The scan reports would show severe abnormalities to the fetus. The gestation average age of the fetus was 23 weeks as on 17.02.2021.

2. When the matter came up for admission on 22.02.2021 this Court passed an interim order, in the light of the Government Order dated 31.12.2020

directing the additional 5th respondent to constitute a Medical Board and to examine and report the medical condition of the petitioner and the fetus.

Thereafter, Smt. Vineetha.B, the learned Government Pleader, has made available the report of the medical board which would show that the medical

board was convened on 23.02.2021 with the following members:

1. Dr. A Santhosh Kumar, Superintendent, SATH, Govt.Medical College, Trivandrum,

2. Dr.Sreekumari R, Professor and Head, Dept. of O & G, Govt.Medical College, Trivandrum,

3. Dr.Geetha M I, Associate Professor, Dept. of O & G, Govt.Medical College, Trivandrum

4. Dr. Radhika S, Associate Professor, Neonatology Dept., Govt. Medical College, Trivandrum

5. Dr.Priyasree J, RMO, SAT Hospital, Govt. Medical College, Trivandrum.â??

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

â??24 year old G2P1L1, previous CS, T EDC, 16-6-21, T GA: 23 weeks 6 days, on 23/2/2021, requesting MTP in view of fetal anomalies.

Patient was referred to us at 20 weeks 5 days from Victoria Hospital, Kollam in view of USS showing severe oligamnios and low lying

placenta. She also had a USS done at 17 week 1 day which showed CTEV. A repeat USS to look for anomalies and placental localization

was advised and patient reported on the casualty with USS on the same day.

Opinion of the Medical Board

1. Neonatology Opinion : Missing of oligohydramnios, fetal B/C CTEV and fetal bladder extrophy noted will need postnatal surgical

interventions for correction. Prognosis is guarded.

2. Fetal medicine opinion : the scan findings is consistent with bladder/cloacal extrophy with oligamnios; survival is more than 90%;

however the new born may require extensive corrective surgeries and some amount of urinary diversion cloacal extrophy. The prognosis

remains guarded.

3. Obstetrician Opinion : In view of guarded prognosis given by the Medical Board the consensus is to conduct MTP.â??

4. The report of the medical Board, also shows that grave abnormalities have been found in the fetus. As per Section 3(2) (b)of the Medical

Termination of Pregnancy Act 1971, termination of pregnancy is permissible where the length of the pregnancy exceeds twelve weeks but does not

exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that (i) the continuance of the

pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or (ii) there is a substantial risk

that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. As per Section 5 of the Medical

Termination of Pregnancy Act, termination of pregnancy is permissible even in cases where the period of gestation exceeds the period prescribed in

Section 3 and 4 of the Act, which reads as follows:

5. S.3 and S.4 when not to apply. - (1) The provisions of S.4 and so much of the provisions of sub-section (2) of S.3 as relate to the

length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a

pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such

pregnancy is immediately necessary to save the life of the pregnant woman.

5. The Apex Court has in similar circumstances, in the judgment in *Sarmishtha Chakraborty v. Union of India*: (2018) 13 SCC 339, permitted

termination of pregnancy when the gestational age was 26 weeks, in view of the recommendation of the medical board and the medical report

revealing the threat of severe mental injury to the woman and to the multiple complex problems to the child, if born alive, involving complex cardiac

corrective surgery stage by stage after birth, in the event of continuation of the pregnancy. In *Meera Santosh Pal v. Union of India*: (2017) 3 SCC 462

also permission was granted when the pregnancy crossed 24 weeks, in view of the medical reports pointing out the risk involved. This Court also in

ABC v. Union of India : 2020(2) KHC 526, permitted termination of pregnancy in order to save the life of the pregnant woman, who was in physical

as well as mental trauma. In the judgment reported in *Neethu Narendran v. State of Kerala*: 2020(3)KHC 157 also this Court permitted termination of

pregnancy when gestational age crossed 23 weeks. In view of the medical report furnished in the present case, I deem it necessary to permit

termination of pregnancy of the 1st petitioner.

6. Therefore, having regard to the urgency involved in the matter, there shall be a direction to the 5th respondent to see that the termination of

pregnancy of the 1st petitioner is carried out at the earliest, by competent doctors in accordance with the provisions of the Medical Termination of

Pregnancy Act, 1971, its rules and all other rules, regulations and guidelines prescribed for the purpose.

The Writ Petition is allowed accordingly.