

**(2021) 03 KL CK 0173**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 6489 Of 2021**

Mariyamma And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

---

**Date of Decision : 16-03-2021**

**Acts Referred:**

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

**Citation : (2021) 03 KL CK 0173**

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

**Bench : Single Bench**

**Advocate : C. Harikumar, Renjith Rajappan, Anand Gokuldas, Princy Xavier**

**Final Decision : Allowed**

---

## **Judgement**

1. The mother and husband of Smt.Reena Mol, have filed this writ petition seeking a direction to the respondents to carry out medical termination of her pregnancy pointing out Ext.P2 scan report.

2. When the matter came up for consideration on 12.03.2021, this Court had directed examination of the medical condition of Smt. Reena and to furnish a report through the learned Government Pleader.

3. Smt.Princy Xavier, the learned Government Pleader, has made available the report of the medical board which would show that the medical board was convened on 15.03.2021 with the following members:

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

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

3. Dr. Sujatha T.L, Professor, Dept. of O & G, Govt. Medical College, Trivandrum.

4. Dr. Shankar, Professor, Dept. of Pediatrics (Genetics), Govt. Medical College,

Trivandrum.

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

6. Dr. Rajani Raju, Asst. Professor, Dept. of Psychiatry, Govt. Medical College, Thiruvananthapuram.

7. Dr. Priyasree. J, RMO, SAT Hospital, Govt. Medical College, Trivandrum."

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

"Fetal medicine consultation done USG detailed report is bilateral proximal femoral dysplasia with unusual facies syndrome which can cause significant morbidity to the child.

Neonatology Opinion: Guarded prognosis, high morbidity extend of which can be determined only by detailed postnatal evaluation.

Pediatric Geneticist: This condition of bilateral proximal femoral dysplasia of severe variety is associated with significant long term disabilities. Facial dysmorphism suggest genetic syndrome also, which may be associated with mental retardation. After knowing this patient is under psychological stress and requesting for MTP.

Psychiatry Opinion: Patient has significant psychological distress due to the anomalies of the baby and wishes to terminate the pregnancy. There is no psychiatric contra indication for the procedure as she is capable of giving consent. Considering the severe anomalies of the baby and the patients psychological distress, she may be taken up for MTP.

Gynaecologist Opinion: In view of gestation age 23 weeks in addition to the usual risk like hemorrhage, sepsis, risk of blood transfusion etc, there is a chance of failure of Medical methods of termination and in such cases hysterotomy may be needed. So also this is a case of previous cesarean section, hence chances of scar rupture is there.

Since she has crossed 20 weeks of pregnancy, seeking a court directive for extended period for termination."

4. The report of the medical Board, would show 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 and opinion furnished in the present case, I deem it necessary to permit termination of pregnancy of Smt. Reena Mol.

6. Therefore, having regard to the urgency involved in the matter, there shall be a direction to the additional 4th respondent to see that the termination of pregnancy of Smt.Reena Mol, the daughter and wife respectively of the petitioners 1 and 2, is carried out at the earliest point of time, 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.