

(2020) 04 KAR CK 0073

In the Karnataka High Court

Case No : Writ Petition No. 6701 Of 2020 (GM-RES)

Praneetha

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 28-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2020) 04 KAR CK 0073

Hon'ble Judges : B.M. Shyam Prasad, J

Bench : Single Bench

Advocate : Vikram G, Ramesh Joish, Unnikrishnan

Final Decision : Allowed

Judgement

B.M. Shyam Prasad, J

1. The petitioner has filed this petition for permission to medically terminate her pregnancy under the medical care and supervision of Dr. Shefali Tyagi

at Cloudnine (M/s Kids Clinic India Private Limited) Bellandur Village, Varthur Hobli, Bangalore. The petitioner's case is that she is married to

Mr. Anil Kumar Ganappa. She is in the family way, and in the 22nd week of pregnancy she underwent ultrasound tests to ensure that the fetus was

healthy. The ultrasound scan revealed Congenital Pulmonary Airway Malformation with evolving Hydrorps and Polyhydramnious. She has

secured a second opinion with M/s Kids Clinic India Private Limited (Cloudnine). She is advised even at M/s Kids Clinic India Private Limited

(Cloudnine) to undergo another scan. The second scan also indicated anomalies viz., the lungs have not developed properly, there is no blood

supply to the intestine and there was an abnormality in the heart. The Doctors at M/s Kids Clinic India Private Limited (Cloudnine) have also

opined that the baby would not survive on delivery and therefore the pregnancy has to be medically terminated. The different scans and the opinions

of the doctors are obtained in the 22nd week of pregnancy. The petitioner is advised that the medical termination of the pregnancy would be in the

interest of the child to be born as well as in the interest of the petitioner.

2. This Court on 24.4.2020, after hearing the counsel for the petitioner, the learned Additional Government Advocate for respondent No. 1 and 2 and

Sri Unnikrishna, the learned standing counsel for the Union of India - the respondent No.2, directed the respondent No.3 to constitute an Expert

Committee to examine the petitioner and submit a report of this court. The petitioner volunteered to appear before the Expert Committee at the

earliest. Pursuant to this order of the Court, the third respondent has appointed an Expert Committee comprising of Medical Superintendent, Professor

and Head of the Departments of Obstetrics and Gynaecology, Paediatrics, Radiology, Psychiatry, Paediatric Surgery and medicine with Vanivilas

Hospital, Victoria Hospital, PMSY Hospital, BMCRI, Bengaluru.

3. The learned Additional Government Advocate, with the permission of this Court, has placed on record the report of the Expert Committee. The

Expert Committee has affirmed that the petitioner is in the 25th week of pregnancy and the presence of Fetal Ascites and Heterotaxy Syndrome,

Multiple Anechoic Cystic areas and the likely CCAM -2. The final opinion of the Expert Committee is as follows:

"If the baby is born at term or preterm outcome would be worse due to congenital cystic adenomatoid malformation and fetal ascites.

However if the patient and the family feels the mental trauma of delivering such a baby, option of termination of pregnancy could be

considered."

4. The Hon'ble Supreme Court in Sucheta Srivatsava and another v. Chandigarh Administration (2009) 9 SCC 1 has held that a woman's

right to make reproductive choices is also a dimension of her personal liberty as understood under Article 21 of the Constitution, and considering this

proposition, the Hon'ble Supreme Court in the later decision in Meera Santosh Pal and others v. Union of India (2017) 3 SCC 462 and others

has held the reproductive rights of women include the entitlement to carry a pregnancy to its full term, to give birth to a healthy baby and to raise

children, and if continuance of the pregnancy involves not only risk to the life of the pregnant woman and also a possible grave injury to her physical or mental health, it would be appropriate to permit the pregnant woman to terminate the pregnancy observing that the overriding consideration is that a pregnant woman has right to take all such steps as are necessary to preserve her own life against avoidable dangers. This Court, as asserted by the learned counsel for the petitioner, in similar case in Writ Petition No. 55411 of 2018 disposed of on 17th December 2018 has permitted a pregnant woman to medically terminate the pregnancy after the 22 weeks of pregnancy.

5. In the light of the law as regards the right of a pregnant woman to medically terminate her pregnancy to preserve her own life against all dangers, the fact that the petitioner immediately after coming to know about the anomalies in the growth of the foetus and the consequential difficulties if the baby is born has obtained multiple opinions, and the unanimous medical opinions that it would be advisable for the petitioner to medically terminate the pregnancy, and in view of the opinion of the Expert Committee constituted by this Court, this Court is of the considered view that the petition should be allowed permitting the petitioner to medically terminate the pregnancy subject to terms. Therefore, the following order:

(a) The petition is allowed, and the petitioner is permitted to undergo, at her cost, risk and consequence, medical termination of her pregnancy under the supervision of Dr. Shefali Tyagi at Cloudnine (M/s Kids Clinic India Private Limited) Bellandur Village, Varthur Hobli, Bangalore in a hospital of her choice which has the necessary facilities;

(b) The concerned doctors shall take necessary measures to ensure the safety of the petitioner's health, but it is observed that the doctors (both private and government doctors) who have put their opinion on record shall have the immunity in the event of any litigation arising out of this petition; and

(c) The registry is directed to send a copy of this order to the learned counsel for the petitioner by email with necessary authentication, and all the concerned, including the approved medical centres shall act upon such authenticated copy of the order.