



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. (MD) .No.22414 of 2017

M.Manimegalai

...Petitioner

Vs.

1.The Secretary to Government,
Health and Family Welfare (AA1) Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk,
Chennai - 600 010.

3.The Dean,
Tirunelveli Medical College and Hospital,
Tirunelveli.

4.The Chairman,
Annai Velankanni Nursing Home,
No.1/112, Simasinayanar Street,
Murugankurichi,
Palayamkottai,
Tirunelveli District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 4th respondent to terminate the pregnancy of the petitioner based on their report dated 19.11.2017 and certificate dated 02.12.2017.

For Petitioner : Mr.K.Gokul

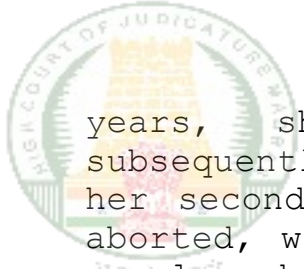
For Respondents : Mr.M.Alagathevan,
Special Government Pleader
for R.1 to R.3
Mr.N.Rahamadullah for R.4

O R D E R

By consent, the writ petition is taken up for final disposal at the admission stage itself.

<https://hcservices.courts.gov.in/hcservices> of the case, as averred in the affidavit, are as follows:

2.1. According to the petitioner / Manimegalai, aged about 32



years, she married one Muthupandian on 05.09.2016 and subsequently, got pregnant. It is her specific claim that this is her second pregnancy and her first pregnancy, unfortunately, got aborted, within a short period. Thereafter, the petitioner was in regular check-up with one, Dr.Kavitha Muthukrishnan, who, in turn, gave a report that the petitioner was suffering from Oligohydramnios (Low Amniotic Fluid / Grossly Reduced Liquor) and referred her to the fourth respondent hospital for better treatment.

2.2. Pursuant to the same, the petitioner got herself admitted in the fourth respondent hospital on 07.10.2017 and thereafter, special care was given to her by the hospital authorities. During the course of check-up, the Doctors found that the Oligohydramnios of the petitioner got worse and after a detailed study, they gave a finding that the foetus has LETHAL anomalies and the baby cannot be alive, after its birth, thereby, advised the petitioner for termination of pregnancy.

2.3. Since the petitioner is in the 22nd week of her pregnancy, the fourth respondent hospital has not come forward to terminate the pregnancy, instead, has given a letter dated 06.12.2017, seeking permission for termination. Aggrieved over the same, the petitioner is before this Court.

3. The learned Counsel for the fourth respondent Hospital affirmed the contentions of the learned Counsel for the petitioner and has submitted that as the petitioner has crossed 20 weeks, the hospital authorities are not in a position to terminate the pregnancy of the petitioner, on their own.

4. Heard both sides and perused the documents placed on record.

5. A perusal of the typed set of papers would show that the petitioner, at any point of time, had not approached the authorities/official respondents herein, but had marked a copy of the representation dated 04.12.2017 sent to the fourth respondent and on the very next day, i.e., 05.12.2017, filed the present writ petition, because of the urgency involved in this matter.

6. It is relevant to reproduce hereunder the letter of the fourth respondent hospital / Annai Velankanni Nursing Home dated 06.12.2017:

"This is to certify that Mrs.Manimegalai, Age 32 years, W/o. Mr.Muthupandian, residing at No.46/37, N.T.Pattayam, Nangunari (Tk), Tirunelveli, is my patient. She is G2P0L0 is pregnant 22 weeks and the fetus shows shortening off all long bones, bilateral enlarged and cystic kidneys by ultrasound examination. This fetus has LETHAL anomalies and the baby cannot be alive after birth therefore she is advised for



termination of pregnancy as early as possible.

The LETHAL anomalies are

1. Skeletal Dysplasia
2. Bilateral polycystic kidney

We request your kind permission for termination of pregnant as she has closed 20 weeks."

7. It would be appropriate to refer to Section 3 of the Medical Termination of Pregnancy Act, 1971, which reads as follows:

"3. When Pregnancies may be terminated by registered medical practitioners:-

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner:-

(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is,
or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are.

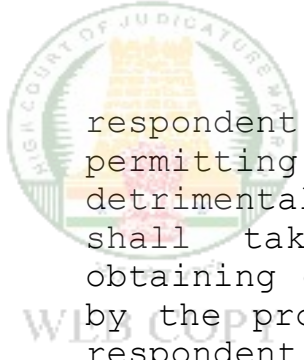
Of opinion, formed in good faith, that,-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury 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."

8. It is pertinent to mention here that though the Act mandates that for termination, length of pregnancy should not exceed twenty weeks, the Hon'ble Apex Court in W.P. (Civil) No. 855 of 2017 dated 08.09.2017 had observed that if a pregnant women, whose pregnancy length exceeds twenty weeks, seeks termination of pregnancy, on medical grounds, the same shall be referred to a medical board, who shall examine her and render assistance to the Court.

9. A perusal of the letter of the fourth respondent dated 06.12.2017, (extracted supra) would reveal that even if the foetus is permitted to be delivered, it cannot survive after its birth. In the circumstances, the third respondent herein / Dean, Tirunelveli Medical College and Hospital, is hereby directed to examine the petitioner, immediately and in the event of the third



respondent coming to a conclusion that there is no point in permitting the foetus to grow further and its growth is detrimental to the life of the petitioner, the third respondent shall take a suitable decision, regarding abortion, after obtaining opinion from the Medical Board, if need be, as mandated by the provisions of law, referred to above. In case the third respondent decides to abort the baby, the health condition of the petitioner should be borne in mind.

10. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Health and Family Welfare (AA1) Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk,
Chennai - 600 010.

3.The Dean,
Tirunelveli Medical College and Hospital,
Tirunelveli.

+1cc to Mr.K.GOKUL,Advocate,SR.91390

+1cc to M/S.Special Government Pleader,SR. 91398

W.P. (MD) .No.22414 of 2017
07.12.2017

GK

KK/SV MMS/SAR 2/08.12.2017/ 4P- 6C