

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2019

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Petition No. 16011 of 2019

S. Jeyanthi

.. Petitioner

Versus

1. Union of India
represented by its Secretary
Ministry of Law and Justice
A-Wing, Shastri Bhavan
New Delhi - 110 001
2. Ministry of Health and Family Welfare
represented by its Secretary
A-Wing, Nirman Bhavan
New Delhi - 110 001
3. The State of Tamil Nadu
represented by its Chief Secretary
Namakkal Kavignar Maaligai
Fort St. George, Chennai - 600 009
4. Health & Family Welfare Department, Tamil Nadu
represented by its Secretary
Secretariat, Fort St. George
Chennai - 600 009

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to allow the petitioner to undergo medical termination of the petitioner's pregnancy under the provisions of Medical Termination of Pregnancy Act, 1971.

For Petitioner :Mr. S. Rajasekar

For Respondents:Mr. M. Karthickeyan

Additional Government Pleader for RR3 and 4

ORDER
(Order of the Court was made by R. SUBBIAH, J)

The petitioner has filed this writ petition seeking to issue a Mandamus to the respondents to permit her to undergo medical termination of the child in her womb as contemplated under the provisions of Medical Termination of Pregnancy Act, 1971.

2. The petitioner was married to one Arun Mahalingam on 02.02.2015 and due to such wedlock, a daughter was born on 06.03.2016. While so, on 08.01.2019, the petitioner discovered, through a home pregnancy test, that she was pregnant with a second child and this was also confirmed by medical tests. When the petitioner underwent regular tests in the hospital for such pregnancy, she was informed by the Doctor attached to Razack Hospital, Rathinapuri, Kayalpatnam, Tuticorin District that the antenatal scan report dated 11.05.2019, done during her 18th week of pregnancy, disclosed that the single life foetus seemed to have Dilated Ventricles. To confirm this, the petitioner was asked to undergo further tests after two or three weeks. Accordingly, after two weeks, the petitioner underwent medical examination at Trichy, where she stayed, which disclosed that the foetus was suffering from severe congenital defects and that the growth of the foetus was becoming worse day by day. The petitioner also contends that the subsequent medical examinations undergone by her disclosed that there are severe abnormalities in the foetus such as (i) dilated Ventricles (ii) cardiac anomalies (iii) overlapped fingers (iv) polyhydramnios. Therefore, Dr. Chitra attached to Lalitha Nursing Home, Trichy opined on 04.06.2019 that it would be better to terminate the foetus as soon as possible. The same was the opinion given by Dr. Giri Selvan, attached to Annai Velankanni Nursing Home, Tirunelveli on 07.06.2019. According to the medical experts, the child in the womb suffered severe complications and may not have normal life in case of his or her birth. Further, in the event of birth of the child, it would require to undergo multiple and extensive surgeries with remote chance of survival. The petitioner therefore apprehend that even if the child is born, it will have severe abnormalities and would require multiple surgeries for survival and even those surgeries, if performed, would not result in his or her longevity. Therefore, the petitioner intends to terminate the pregnancy at the earliest stage, however, as the foetus in the womb had crossed the 20 week cycle, the petitioner has approached this Court with this writ petition.

3. In the affidavit filed in support of the writ petition, the petitioner had specifically stated that she is willing to undergo any further medical tests or consultation before any Medical Board that may be constituted by this Court for

assessing the medical condition of the child in the womb. She has also stated that her husband, who is living in France, has assessed and verified the medical reports and he is also willing to give his consent for terminating the pregnancy.

4. When the writ petition was taken up for hearing by the learned single Judge of this Court on 11.06.2019, the petitioner was directed to appear for a medical examination before the Dean, Thoothukudi Government Medical College Hospital, Thoothukudi with a further direction to the Dean, Thoothukudi Government Medical College Hospital, Thoothukudi to constitute a medical board to examine the petitioner's health condition. The Dean, Thoothukudi Government Medical College Hospital, Thoothukudi was also directed to submit a report to this Court in a sealed Cover. Accordingly, the petitioner appeared before for examination and a report was also submitted in a sealed cover and the same was also taken on record by the learned single Judge. Subsequently, when the writ petition was taken up for hearing, the learned single Judge directed the Registry of this Court to obtain appropriate orders from the Honourable Chief Justice to post this case before the Division Bench of this Court as per roaster by office order dated 13.06.2019. This is how this writ petition is listed today before this Court.

5. We have heard the submissions of the learned counsel for both sides and perused the materials placed on record, including the report dated 13.06.2019 of the Dean, Thoothukudi Government Medical College Hospital, Thoothukudi. On perusal of the report dated 13.06.2019, it is seen that the Dean, Thoothukudi Government Medical College Hospital, Thoothukudi had constituted a medical board consisting of Pediatrician, Neurosurgeon, Neurologist and Cardiologist, Obstetrician. The medical report dated 11.05.2019 given by Razack Hospital, Tuticorin, report dated 04.06.2019 by Lalitha Nursing Home, Trichy and the report dated 07.06.2019 given to the petitioner by Annai Velankanni Nursing Home, Tirunelveli were also taken into account by the Medical Board. After subjecting the petitioner to various medical tests, the Pediatrician had opined that in view of the multiple congenital anomalies, patient may be advised to undergo medical termination of pregnancy. The same was the opinion given by the Neurosurgeon. The cardiologist who examined the petitioner also opined that in view of multiple cardiac anomalies with associated anomalies of renal, CNS system, the patient (petitioner) may be given the choice of medical termination of pregnancy. The Obstetrician also opined that the termination of the pregnancy at this stage is required. It was also observed that as there are chances of scar dehiscence or scar rupture during the process of normal labour and the patient (petitioner) is a post caesarian pregnancy with associated polyhydramnios, she may need an emergency laparotomy. Ultimately, based on the opinion given by

the medical team, it was opined that the petitioner, who is in the 26 weeks + 6 days of pregnancy with multiple anomalies with polyhydramnios, has to undergo medical termination of her pregnancy. When the medical board constituted by the Dean of the Thoothukudi Government Medical College Hospital, Thoothukudi had given an expert opinion suggesting that the growth of the foetus is either very weak or it is confronting several medical anomalies and recommended for aborting the pregnancy, this Court is not inclined to simply discard or ignore the recommendations made by the medical expert.

6. The Honourable Supreme Court had an occasion to consider a similar case where it had issued direction for termination of pregnancy in the 24th weeks in Tapasya Umesh Pisal, Vs Union of India reported in (2018) 12 Supreme Court Cases 57, wherein it was held as follows:

"8. In these circumstances, it is difficult for us to refuse the permission to the petitioner to undergo medical termination of pregnancy. It is certain that the foetus if allowed to born, would have a limited life span with serious handicaps which cannot be avoided. It appears that the baby will certainly not grow into an adult.

9. In view of the above, we consider it appropriate in the interests of justice and particularly, to permit the petitioner to undergo medical termination of her pregnancy under the provisions of Medical Termination of Pregnancy Act, 1971. Mr. Ranjit Kumar, learned Solicitor General appearing for the respondents, has not opposed the petitioner's prayer on any ground, legal or medical. We order accordingly.

10. The termination of pregnancy of the petitioner will be performed by the Doctors of the hospital where she has undergone medical check-up. Further, termination of her pregnancy would be supervised by the abovestated Committee/Medical Board who shall maintain complete record of the procedure which is to be performed on the petitioner for termination of her pregnancy.

11. With the aforesaid directions, the instant writ petition is allowed in terms of prayer (a) seeking direction to the respondents to allow the petitioner to undergo medical termination of her pregnancy."

7. Similarly, the Division Bench of the Calcutta High Court had an occasion to consider the plea of a petitioner seeking permission to abort the pregnancy when it was in the 26th week. In that case also, the medical experts, on examination of the petitioner therein, opined that the child in

the womb was found to be confronting high risk with amniocentesis and the ultrasonography also confirmed it to be a case of Down syndrome along with possibility of esophageal artesia and cardiac abnormality. The learned single Judge of the Calcutta High Court refused to grant permission to the petitioner therein and on appeal, the Division Bench reversed the order passed by the learned single Judge in their order dated 18.02.2019 rendered in the case of (Suparna Debnath and another vs. State of West Bengal) wherein it was held as follows:-

"So far as the foetus of the unborn child is concerned, recognition of eugenic grounds as a ground for termination of pregnancy is apparent from Section 3 (2) (b (ii)). If this pregnancy is allowed to complete its full term, its effect will be devastating; both to the mother and the child. The medical board's report dated 24th January 2019 has clearly stated grave abnormalities which includes chromosomal anomaly (Trisomy 21), gastrointestinal malinformation (esophageal artesia with or without tracheo-esophageal fistula) and cardiac abnormality. The new-born baby, apart from surgery, will have to undergo a prolonged and complicated neonatal course due to complication of pre-maturity as well as congenital malinformation and the outcome of which is unpredictable. It is palpably evident that the foetus in the instant case can neither evolve or develop further naturally to reverse the abnormalities already detected by medical science and produce a quality of life once the child is born, which is clear from the report of the medical board. The mother's personal life and liberty, as understood under Article 21 of the Constitution of India, is inextricably linked with that of the unborn child and will continue even after she gives birth to the child. However, her life is paramount at this stage. No foetus can evolve or develop naturally if the mother's life is not supported. The statute has clearly provided for the mother's health, strength and also life. There cannot be any manner of doubt whatsoever that in the facts of the instant case if the pregnancy is allowed to continue and the mother gives birth to the child, not only the child but the mother will have a compromised existence. Her quality of life - as it stands today - cannot be the same. Her right to live with dignity will also be squarely affected....."

8. In the present case, the petitioner's pregnancy has crossed the 26 week mark. The medical experts clearly and categorically opined that even if the child in the womb is born,

it's survival will be medically remote as it has to confront numerous surgeries and even then they could not predict about it's longevity. Such a conclusion is based on numerous medical examination to which the petitioner was subjected to. Even when the pregnancy of the petitioner was in the 20th week, the medical examination disclosed severe abnormalities in the foetus and recommendations were made for aborting the pregnancy. The subsequent tests revealed the abnormalities have escalated day by day, leaving little or no scope for a normal birth of the child. The petitioner also made repeated consultations and check up to ensure or to correctly assess the so-called abnormalities developed in the womb owing to which the delay had occurred. In such circumstances, if the pregnancy is not ordered to be aborted, the petitioner would be subjected to mental trauma and hardship. Above all, the continuance of the pregnancy until the birth of the child, would certainly cause grave injury and mental stress on the petitioner. Therefore, we are of the view that if the pregnancy is allowed to complete its full term, its effect will be devastating, both on the petitioner and the child to be born. When the medical board has opined that the growth of the foetus is either weak or it is confronting severe abnormalities including cardiac malfunction, interest of justice requires that the prayer of the petitioner has to be allowed permitting her to terminate the pregnancy without any loss of time.

9. Accordingly, we allow the writ petition with a direction to the respondents to allow the petitioner to undergo medical termination of her pregnancy in an institution of her choice. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary
Ministry of Law and Justice
A-Wing, Shastri Bhavan
New Delhi - 110 001
2. The Secretary,
Ministry of Health and Family Welfare
A-Wing, Nirman Bhavan
New Delhi - 110 001

3. The Chief Secretary,
Namakkal Kavignar Maaligai
Fort St. George,
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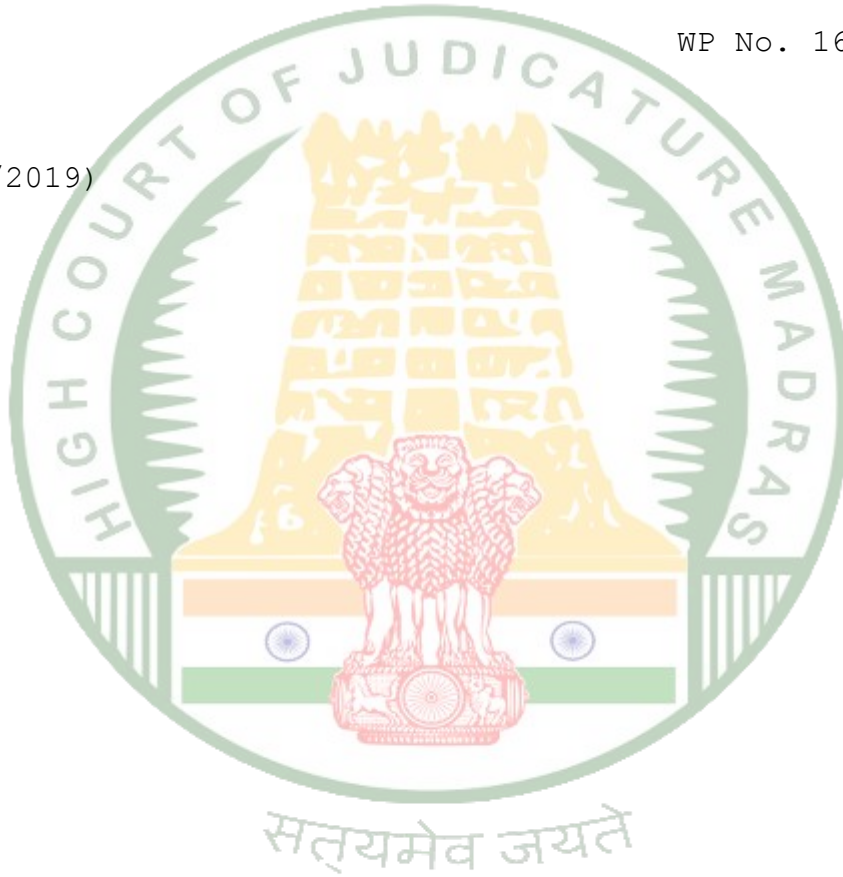
4. The Secretary,
Health & Family Welfare Department, Tamil Nadu
Secretariat, Fort St. George
Chennai - 600 009

+1cc to Mr.S.Rajasekar, Advocate, S.R.No.48845

WP No. 16011 of 2019

SR(CO)

RRS(17/06/2019)



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