IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 09TH DAY OF DECEMBER 2020 / 18TH AGRAHAYANA, 1942

OP (FC).No.4 OF 2020

AGAINST THE ORDER IN I.A.NO.1782/2019 IN OP 1068/2019 OF FAMILY COURT, NEDUMANGAD

PETITIONER/ COUNTER PETITIONER :

ACHUTHAN PILLAI,
AGED 84 YEARS, S/O.LATE NEELA KANDA PILLAI,
RESIDING AT LALU BHAVAN, CHERIYATHOLICODE,
DAIVAPURA POST, THENNOOR VILLAGE, NEDUMANGAD TALUK,
THIRUVANANTHAPURAM DISTRICT - 695 563.

BY ADVS.
SRI.G.P.SHINOD
SRI.GOVIND PADMANAABHAN
SHRI.AJIT G ANJARLEKAR

RESPONDENT/ PETITIONER :

DEEPA,
AGED 41 YEARS, D/O.ACHUTHAN PILLAI,
LALU BHAVAN, CHERIYATHOLICODE, DAIVAPURA POST,
THENNOOR VILLAGE, NEDUMANGAD TALUK,
THIRUVANANTHAPURAM DISTRICT - 695 563,
PRESENTLY RESIDING AT MELATHIL VEEDU,
VENJARAMOODU, NELLANAD VILLAGE,
THIRUVANANTHAPURAM DISTRICT-695 606.

BY ADV. SRI.M.R.SARIN

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 09.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 9th day of December 2020

Bechu Kurian Thomas, J.

Status of the respondent, as the daughter of the petitioner was questioned by the respondent in her objection filed in O.P.No.1251/2017 on the files of the Family Court, Nedumangad. Treating the said objection as the cause of action and her paternity having been questioned, respondent instituted O.P.No.1068/2019 before the Family Court, Nedumangad seeking for a declaration that the respondent is the daughter of the petitioner and for other consequential reliefs.

2. In the said original petition filed by the respondent before the Family Court, she filed IA.No.1782/2019 seeking to conduct a DNA test on the original petitioner before us on the ground that he is the father of the respondent herein. An objection was filed contesting the claim for DNA test, stating that the original petition itself is not maintainable as it is barred by *res judicata* and *estoppel*. It was also pointed out that there was no reason to even seek for a declaration of paternity and that the application was filed with other

motives.

3. The Family Court by order dated 18.11.2019, which is produced as Ext.P7, allowed the application and directed DNA test of the parties to the case be conducted at Rajiv Gandhi Institute of Bio-Technology, Thiruvananthapuram and directed the parties to appear on 16.12.2019 at 10.00 a.m. The relevant part of the order impugned before us is as follows :-

> *"In the result, DNA test of the petitioner and the counter petitioner is allowed and which will be conducted at Rajiv Gandhi Institute of Bio-Technology, Thiruvananthapuram and for that both parties shall appear before the Director, Rajiv Gandhi Institute of Bio-Technology, Thiruvananthapuram at 10.00 a.m.on 16.12.2019. The costs of examination shall be met by the petitioner. After conducting the DNA test, the Director is requested to forward a report to this Court on or before 30.12.2019. The non-examination of the parties for any reason including non-appearance of any of them, failure to pay the fee for the examination etc. also may be communicated before the above date.*
>
> *Send a copy of this order to the Director along with the required documents to be produced by the parties".*

4. The present original petition is filed challenging the aforesaid order. We have heard Adv.Ajit G.Anjarlekar, the learned counsel for the petitioner as well as Adv.M.R.Sarin, the learned counsel for the respondent.

5. Adv.Ajit G.Anjarlekar vehemently submits that the direction to conduct the DNA test on the petitioner is improper especially since such a test is to be conducted only if the same is warranted under the facts of the case. He further pointed out that in view of Ext.P6, the question of paternity of the respondent can no longer arise for consideration. It was also submitted that the claim of the respondent is not bona fide and the same will cause great hardships to the petitioner.

6. Adv.M.R.Sarin, on the other hand, contends that the allegation of *resjudicata* or *estoppel* are all totally baseless as no decision have been taken by any court of law on the question of paternity of the petitioner and hence respondent was entitled to seek such a declaration. In such a declaration, it is only a requirement, especially in the light of the modern advancement of technology that the DNA test be conducted. The conduct of a DNA test need not be prevented by the respondent, especially since the question for

consideration before the court is about the paternity and technology has advanced to such an extent that a DNA test could reveal to a great level of exactitude, the paternity of persons.

7. The learned counsel for the petitioner relied upon the judgment in **Goutam Kundu v State of West Bengal and Another [(1993) 3 SCC 418]** and contended that the Family Court failed to appreciate that DNA test is not conducted as a matter of course or routine and the test should be directed to be carried out only in cases of eminent need.

8. On a consideration of the facts and circumstances arising in the case as discussed above, we find that when the Family Court is called upon to decide the paternity of the parties and the best evidence available to prove the paternity in the prevalent times is the DNA test the impugned order needs no interference. Conduct of DNA test has got various facets. Even an invasive technology may not be required to test the DNA of a person. In such circumstances, we are at a loss to identify reason for the petitioner to object to the conduct of such a test. The original petition lacks merit.

9. Before concluding we notice that this original petition has been pending for almost one year and the date fixed by the Family Court for conduct of the test has already lapsed. Since the

circumstances have changed, especially due to the Covid-19 pandemic, it may not be safe for the octogenarian original petitioner before us to be compelled to present himself before public institution, for taking samples.

In such circumstances, we direct the Director, Rajiv Gandhi Institute of Bio-Technology, Thiruvananthapuram, to depute a competent staff of his institution to take a sample from the original petitioner before us (Sri.Achuthan Pillai) from his residence at 11.00 a.m.on 10.01.2021. The respondent herein (Smt.Deepa) shall be present at the residence of Sri.Achuthan Pillai for taking her sample also and also to identify the original petitioner. The expenses for such measures and tests shall be paid by the respondent before the said date at the office of the Director of Rajiv Gandhi Institute of Bio-Technology. The original petitioner shall make himself available in the address shown in the cause title of this case for collecting sample as mentioned above. Other directions issued in Ext.P7 order dated 18.11.2019 shall stand and be binding upon the parties.

The original petition is therefore without any merit and is hence dismissed, with the aforesaid direction.

The Registry of this Court shall forward a copy of this order to the Director of Rajiv Gandhi Institute of Bio-Technology,

Thiruvananthapuram for compliance. Respondent is also permitted to serve a copy of this judgment on the aforesaid officer.

Sd/-
S.V.BHATTI, JUDGE

Sd/-
BECHU KURIAN THOMAS, JUDGE

RKM

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF OP NO.1068 OF 2019 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, NEDUMANGADU.**
EXHIBIT P2	**A TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, NEDUMANGADU IN IA NO.1782/2019 IN OP NO.1068 OF 2019.**
EXHIBIT P3	**A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE FAMILY COURT, NEDUMANGADU IN IA NO.1782/2019 IN OP NO.1068 OF 2019.**
EXHIBIT P4	**A TRUE COPY OF OP NO.1251/2017 FILED BY THE RESPONDENT AND HER MOTHER BEFORE THE FAMILY COURT, NEDUMANGADU.**
EXHIBIT P5	**A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE FAMILY COURT, NEDUMANGADU IN OP NO.1251/2017.**
EXHIBIT P6	**A TRUE COPY OF THE JUDGMENT DATED 05.07.2019 IN OP NO.1251/2017 OF THE FAMILY COURT, NEDUMANGADU.**
EXHIBIT P7	**A CERTIFIED COPY OF THE ORDER DATED 18.11.2019 IN IA NO.1782/2019 IN OP NO.1068 OF 2019 OF THE FAMILY COURT, NEDUMANGADU.**
EXHIBIT P8	**A TRUE COPY OF DOCUMENT NO.29/2017 REGISTERED IN SRO, NEDUMANGADU EXECUTED BY THE PETITIONER IN FAVOUR OF THE RESPONDENT AND HER MOTHER.**
EXHIBIT P9	**A TRUE COPY OF THE RATION CARD ISSUED TO THE PETITIONER.**