

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.9992 of 2020

and

W.M.P.No.12144 of 2020

S.Sachin Narayan
S/o.J.Satyanarayana
D14/1, 2nd Main Road
VV Mohalla, Mysore
Karnataka - 570 002.

...Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary
Health and Family Welfare Department
Fort St.George,
Chennai-600 009.

2.Royal Care Super Specialty Hospital Ltd.,
Rep. by its Managing Director
1/520, Neelambur
Sulur Taluk
Coimbatore - 641 062.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to terminate the pregnancy of the petitioner's wife namely, S.S.Sreenidhi at the 2nd respondent hospital.

For Petitioner : Mr.A.V.Radhakrishnan

For Respondents: Mr.K.Govindasamy,
Special Government Pleader for R1

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O R D E R

This matter is taken up for hearing through Video Conferencing mode.

2. Mr.K.Govindasamy, learned Special Government Pleader takes notice for the 1st respondent. In view of the urgency involved in this writ petition, notice to the 2nd respondent is dispensed with.

3. The petitioner seeks for a Mandamus to direct the respondents to terminate the pregnancy of the petitioner's wife namely, S.S.Sreenidhi at the 2nd respondent hospital.

4. The case of the petitioner is as follows:

The petitioner is the husband of Mrs.S.S.Sreenidhi, 29 years old female. She was admitted at BGS Apollo Hospital, Mysore with fever, altered sensorium and seizures on 16.07.2020. Thereafter, she was transferred and admitted at Royal Care, Super Speciality Hospital on 23.07.2020. She is 24 weeks pregnant. She has an Auto-Immune Encephalitis (Severe Brain Fever), a serious and life-threatening condition. She is having frequent fits; she is drowsy, confused, irritable disoriented and could not remember or recall anything. Her MRI Brain confirms this diagnosis. She has to be given an injection namely, Rituximab which would be harmful to the unborn child. Delaying this injection would cause a permanent neurological injury which will result in persistent vegetative state. She will lose her memory and she cannot lead a normal life. She cannot look after her children. Therefore, the consultant neurologist of the 2nd respondent Hospital and the team of doctors of the hospital of the 2nd respondent are of the opinion that the continuance of the pregnancy would involve a risk to the life of the pregnant woman and if treatment is given to save the pregnant woman, it would endanger the unborn child also and therefore, they are of the opinion that termination of the pregnancy of the petitioner's wife namely, S.S.Sreenithi is the only option to save her and therefore, they require necessary permission from this Hon'ble Court to terminate her pregnancy, since they do not have powers or authority under the provisions of Medical Termination of Pregnancy Act, 1971, since the length of pregnancy has exceeded 20 weeks as per Section 3 of the Act, 1971. The 2nd respondent hospital is an approved hospital as per the provisions of Medical Termination of Pregnancy Rules, 2003. The Hon'ble Supreme Court in the case of Meera Santosh Pal Vs. Union of India, reported in (2017) 3 SCC 462, has held that, in order to save the life of the pregnant woman, permission was granted to terminate the pregnancy even though it has crossed 20 weeks. The Hon'ble Supreme Court in the case of Tapasya Umesh Pisal Vs. Union of India, reported in (2018) 12 SCC 57, has permitted the termination beyond the period mentioned in Section 3 of the Act, 1971 taking into consideration of the disease

suffered by the foetus. The petitioner's wife had already given birth to a male baby on 30.09.2016. This is her 2nd pregnancy. In order to save the life of the petitioner's wife, the only medical course available is to do medical termination of the pregnancy as per the medical advice of the medical specialists. The consultant neurologist has also given a certificate dated 25.07.2020 to that effect. Therefore, an urgent order is to be obtained for immediate medical termination of the pregnancy of the petitioner's wife.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the 1st respondent.

6. The above narrated facts would disclose grave urgency involved in this matter. The 2nd respondent Hospital through its Consultant Neurologist, Dr.V.Arul Selvan, issued a certificate dated 25.07.2020 which is extracted hereunder.

"TO WHOMSOEVER IT MAY CONCERN

This is to confirm Mrs.S.S.Sreenidhi, 29 years old female, admitted in the hospital on 23.07.2020. She had fever, altered sensorium and seizures on 16.07.2020 and admitted at BGS Apollo Hospital, Mysore. She is 24 weeks pregnant. She has auto immune encephalitis (severe brain fever), a serious and life threatening conditions. She is having frequent fits. She is drowsy, confused, irritable, disoriented and could not remember and recall anything. Her MRI brain confirms this diagnosis. She needs to be given injection Rituximab, which is harmful to the unborn child. Delaying this injection will cause a permanent neurological injury, which will result in persistent vegetative state. She will lose her memory could not lead normal life, could not look after her children. She will be dependent on career for the rest of her life. We will be grateful, if you could kindly consider, these facts and permit as to do medical termination of pregnancy.

Thanking you,
Yours Sincerely

Dr.V.Arul Selvan MD, DM (Neuro), MRCP (UK), CCST, FRCP
(London & Edin)
Consultant Neurologist."

7. When this matter was taken up for admission in the morning the learned Special Government Pleader is directed to verify the material facts. Accordingly, the matter is taken up again at 2.15 p.m.

8. Mr. K. Govindasamy, learned Special Government Pleader, based on instructions received from the Director of Medical Services and the Joint Director of Health and Family Planning, Coimbatore, submitted that going by the facts and circumstances, the opinion of the Neuro Surgeon is to be first obtained and thereafter, the Medical Pregnancy Termination Committee have to examine the petitioner's wife and if they are satisfied that termination of pregnancy is to be done, the same can be done by the 2nd respondent Hospital which is having approval under the provisions of Medical Termination of Pregnancy Rules, 2003.

9. In this case, the Consultant Neurologist has already certified that medical termination of pregnancy is to be done. Therefore, considering the urgency involved in this matter and taking note of the fact that the petitioner's wife is in a very serious condition, the following order is passed in this Writ Petition.

(a) The Medical Pregnancy Termination Committee, Coimbatore Government Medical College and Hospital, shall examine the petitioner's wife by tomorrow (30.07.2020)

(b) If the said Committee is satisfied that pregnancy has to be terminated, based on the opinion given by the Consultant Neurologist dated 25.07.2020, then the 2nd respondent Hospital shall perform the termination of pregnancy under the supervision of the said Committee after obtaining the consent from the patient if she is conscious or from the guardian viz., the petitioner herein.

10. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi/mk

To

1.The Secretary
Government of Tamilnadu,
Health and Family Welfare Department
Fort St.George,
Chennai-600 009.

2.The Managing Director,
Royal Care Super Specialty Hospital Ltd.,
1/520, Neelambur
Sulur Taluk, Coimbatore - 641 062.

3. The Dean,
Government Medical College and Hospital,
Coimbatore.

+1 cc to M/s.A.V.Radhakrishnan Advocate sr25533

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