



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2021**

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THE HONOURABLE MR.JUSTICE **V. PARTHIBAN**

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W.P(MD) No.6332 of 2021

K.Thirumal Raj

.. Petitioner

Vs

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Dean,
Government Medical College Hospital,
Thoothukudi,
Thoothukudi District.

.. Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to medically terminate the petitioner's wife(Muthumari's) pregnancy, by considering the representation dated 16.03.2021, within a stipulated time fixed by this Court.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.C.Ramesh,
Special Government Pleader

O R D E R

The case of the petitioner herein is that on 01.12.2016, he was married to one Muthumari and according to the averments made in the affidavit, Muthumari, the wife of the petitioner became pregnant in the month of August 2020, for the first time after the marriage took place in 2016 and she was taken to the Urban Primary Health Centre at Thoothukudi for medical check up. During the medical check up undergone by the petitioner's wife, no scan was done at the time of the fifth month of pregnancy. On 06.03.2021, the Antenatal III Trimester Scan was taken and the scan report shows that a single live fetus has some problems as mentioned below.

a) Single, Live, Intrauterine fetus of 26-27 weeks' gestation, in Cephalic presentation.

b) Fetal lateral ventriculomegaly; deformed spine with neural tube defect in lower dorsal/upper lumbar level.

c) Short right Femur; absent right Fibula; bowing of Right Tibia; Right Talipes equinovarus.



2. On receipt of the above report, the petitioner's wife went to the Doctor of the second respondent Hospital and they were informed by the Doctor that there was a major problem and it was likely that the child would not be born normally. The petitioner's wife admitted in the Hospital for taking treatment. The petitioner had sent a representation dated 16.03.2021 to the second respondent hospital to terminate the pregnancy of the petitioner's wife, medically. However, the Doctor insisted to get a direction from this Court, for such procedure. Hence, the petitioner is before this Court.

3. Earlier, when the matter was listed for hearing, the learned Special Government Pleader was directed to get a report from the second respondent Hospital with regard to the medical condition of the petitioner's wife and termination of the pregnancy of the petitioner's wife and particularly with regard to the possibility of undertaking surgery, considering the safety of the petitioner's wife and also considering the guidelines/regulations as provided under the Medical Termination of Pregnancy Act, 1971. In response to the direction, a report from a duly constituted Committee of the second respondent Hospital has been produced before this Court today, which reads as under:-

Key recommendation of the Panel (if any) with justification:

Based on the above examination findings, investigations and recommendations given by the experts of the permanent medical board, the petitioner Mrs. Muthumari, 23/F, Primi, with GA:30 weeks with multiple lethal fetal anomalies - B/L ventriculomegaly, kyphoscoliosis of dorsolumbar spine, B/L CTEV, Short Right lower limb with short femur and absent tibia fibula to undergo Medical Termination of Pregnancy in an institution.

4. In pursuance of the opinion of the Committee and also in consonance with the provisions of the Medical Termination of Pregnancy Act, 1971, this Court is inclined to allow this Writ Petition.

5. In fact, this Court finds that under similar circumstances, the learned judge of this Court recently passed an order on 05.02.2021 in W.P.(MD) No.2077 of 2021, after referring to Section 3(2) (a)(ii) of the Medical Termination of Pregnancy Act, 1971. The relevant portions are extracted hereunder:-

2. The petitioner got married to one Saravanan and became pregnant. The scan results of the petitioner indicate that the fetus has certain anomalies. As a result of which, the child to be born will have serious cardiac issue. It appears that the



petitioner was advised to terminate the pregnancy. Since the petitioner is a young woman and this being her first pregnancy, the petitioner could not make up her mind immediately. That is led to delay and by now, gestation age has crossed 20 weeks. When the petitioner approached the second respondent, the second respondent had made it clear that they have to necessarily follow the procedure laid down in Medical Termination of Pregnancy Act, 1971. Since the petitioner apprehends that this may cause further delay, she rushed to this Court.

3.The learned Additional Government Pleader had taken the trouble to obtain quick instructions. He fairly states that the respondents would abide by the orders of this Court. Section 3(2)(a)(ii) of the Medical Termination of Pregnancy Act, 1971, reads as follows:

"When pregnancies may be terminated by registered medical practitioners:

(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.
"

4.The case on hand appears to be fall within the said parameters. However, the requisite opinion in this regard must be formed by the duly constituted board. I, therefore, direct the second respondent herein to constitute a medical board as contemplated by the aforesaid statute and refer the case of the petitioner to the said Medical Board. If the Medical Board after examining the petitioner comes to the conclusion that the child unborn would have a cardiac abnormalities as indicated above, it would permit termination of pregnancy of the petitioner. After the said Medical Board gives the clearance, the termination of the petitioner's pregnancy will be performed immediately and of-course, the Doctor will ensure that the petitioner's life is not in danger.

6.In view of the above, the following directions are issued to the second respondent Hospital.

- 1) The second respondent is requested to carry out necessary surgical procedure on the petitioner's wife, Mrs.Muthumari, after obtaining consent letter/s from the petitioner and his wife and after following the usual protocol/formality in the conduct of such operation for terminating the pregnancy in terms of



Section 3(2)(a)(ii) of the Medical Termination of Pregnancy Act, 1971.

2) The Dean of the Hospital is requested to depute competent Doctors, to perform the required surgery on the petitioner's wife on 25.03.2021 or any other immediate possible day or date for the above purpose.

7. The Writ Petition is disposed of as above. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Dean,
Government Medical College Hospital,
Thoothukudi,
Thoothukudi District.

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-13197[F] dated
24/03/2021)

W.P(MD) No.6332 of 2021
24.03.2021

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