

HIGH COURT OF KERALA

Bench: Honorable Mr. Justice Devan Ramachandran

Date of Decision: 18th December 2023

Case Title: WP(C) NO. 40518 OF 2023

XXX Petitioners

Versus

Union of India

The State of Kerala

The Director of Health Service

The District Medical Board, Ernakulam

The Principal, Govt. Medical College, Kochi

The Superintendent, SAT Medical College Hospital,

ThiruvananthapuramRespondents

Legislation and Rules:

Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971,

Subject:

Request for termination of a pregnancy under the Medical Termination of Pregnancy Act, 1971, due to suspected foetal abnormalities - "Bilateral Enlarged Echogenic Kidneys with micro cysts."

Headnotes:

Medical Termination of Pregnancy Act, 1971, Section 3(2)(b) - Only permits termination for substantial foetal abnormalities, as diagnosed by a competent Medical Board.

Initial Concerns and Reports – Petitioners' apprehension based on reports suggesting potential foetal abnormalities - "Bilateral Enlarged Echogenic Kidneys with micro cysts" [Exts.P1, P2, P3; Para 2].

Court's Interim Orders – Directed evaluation by District Medical Board, Government Medical College, Kochi, and subsequent evaluation by an expert Board at SAT Hospital, Thiruvananthapuram [Paras 3-4].

Medical Board Evaluations – Government Medical College, Ernakulam, and SAT Hospital, Thiruvananthapuram reports suggested non-lethal anomaly, recommending pregnancy continuation [Para 5].

Court's Final Decision – Denial of petition for medical termination, considering the advanced gestation stage (30 weeks) and non-lethal nature of the suspected foetal abnormality [Paras 6-10].

Referred Cases: None

Representing Advocates:

Petitioners: Cibi Thomas, C.J. Solomon, E.G. Ambily

Respondents: Vidya Kuriakose (for R2 to R5), Deputy Solicitor General of India (for R1)

JUDGMENT

Statutorily, under the mandate of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 ('Act' for short), it is only in cases where the foetus has substantial abnormalities diagnosed by the competent Medical Board, can the termination of pregnancy be sought for.

2. The petitioners are wife and husband and they apprehend that the foetus which the first among them is carrying, may be suffering from substantial abnormalities. They appear to be harbouring this apprehension on account of Exts.P1, P2 and P3 reports and say that they indicate "Bilateral Enlarged Echogenic Kidneys for the foetus, with presence of micro cysts in both of them". They assert that, therefore, if the pregnancy is to be now continued, it will lead to

difficult prognosis for the child, particularly if it is to be born with grave abnormalities.

3. Noticing the afore fear of the petitioners, as impelled in this writ petition, this Court passed an order on 05.12.2023 to the following effect:

“The learned Government Pleader – Smt.Vidya Kuriakose, takes notice on behalf of respondents 2 to 5. The learned Deputy Solicitor General of India takes notice on behalf of the 1st respondent.

2. Smt.Vidya Kuriakose submitted that if the petitioners are agreeable, the first among them can be evaluated by the 4th respondent – District Medical Board to be constituted by the Government Medical College. She submitted that even though the Superintendent of the said hospital is not in the party array, this Court may issue directions to him to do so, taking note of the urgency projected by the petitioners. She added that if the petitioners are agreeable, then the evaluation can be done at 11 A.M. on 08.12.2023.
3. Sri.Cibi Thomas, learned counsel appearing for the petitioners agreed to the afore.

In the afore circumstances, I direct the 2nd petitioner to mark appearance before the Superintendent of the Government Medical College, Kochi at 11 A.M. 08.12.2023; with a consequential direction to the said Authority to constitute a Medical Board and evaluate the condition and file a report before this Court on 11.12.2023.”

4. Thereafter, on seeing the report of the Medical Board constituted by the Government Medical College Hospital, Ernakulam, which recommended that 1st petitioner be evaluated by a further expert Board consisting of fetal medicine experts, geneticists and paediatric nephrologist which is available only in the SAT Hospital, Medical College Campus, Thiruvananthapuram, a subsequent order was issued on 12.12.2023 as under:

“The learned Government Pleader has made available a Report of the Medical Board, constituted by the Government Medical College Hospital, Ernakulam.

2. Before I go into the merits of the contents of the said Report, I notice that the Board has entered into an opinion - after finding that the medical termination, as requested, may not be necessary - that a further Report from an Expert Board, consisting of a Foetal Medicine Expert, Geneticists and Paediatric Nephrologist would be apposite. They say that such experts are available at the SAT Medical College Campus, Thiruvananthapuram.
3. In the afore circumstances, I suo motu implead the
Superintendent, SAT Medical College Hospital,

Thiruvananthapuram, as an additional respondent and record that the learned Government Pleader will obtain instructions on his behalf.

4. The Superintendent of the SAT Medical College Hospital, Thiruvananthapuram, is directed to constitute a Medical Board in terms of the afore.
5. The petitioner will appear before the said Board at 11 a.m. on 14.12.2023.”

5. The reports from the two Medical Boards, namely that of the Government Medical College, Ernakulam and the SAT Hospital, Thiruvananthapuram, have been received and the opinion therein are extracted as under for ease of reference:

Government Medical College Hospital, Ernakulam Conclusion:

“It is preferable to continue the pregnancy as it is not a lethal anomaly and RCAD syndrome (renal cyst and diabetic syndrome) diagnosed by genetic study is a multisystemic disorder with significant phenotypic heterogeneity. The renal disease is highly variable from mild to severe renal impairment which can be assessed only after the birth of the baby. Opinion may be taken from a board if needed which includes foetal medicine expert, geneticists and paediatric nephrologist. At present all these experts are available at SATH, Medical College Campus, Thiruvananthapuram.”

SAT Hospital, Thiruvananthapuram Conclusion:

“The Medical Board convened in the presence of fetal medicine specialist, paediatric nephrologist, clinical geneticist and neonatologist opined that in view of the genotypic abnormality evidenced on whole exome sequencing, there can be a wide range of phenotypic abnormalities with variable penetrance ranging from mild to severe variety. However, the present ultra sound findings suggest only renal abnormality but with normal amount of liquor which cannot be considered as a lethal anomaly endangering the life of new born.”

6. It is evident and obvious from the afore two reports that it is the specific opinion of the experts and doctors that the foetus is not suffering from lethal anomaly; and that the renal cyst and diabetes syndrome diagnosed by genetic study, is a multisystemic disorder which is variable from mild to severe renal impairment, which can be assessed only after the birth of the baby.

7. In fact, as luculent from the afore extracted report, the Medical Board constituted by the SAT Hospital, Thiruvananthapuram concludes affirmatively that, in view of the genotypic abnormality

evidenced, there could be a wide range of phenotypic abnormalities with variable penetrance, ranging from mild to severe variety; but that the ultra sound finding suggests only renal abnormality, which cannot be considered as a lethal anomaly endangering the life of the new born baby.

8. Indubitably, the opinion of the experts is conclusively that the foetus is doing well, though may be born with a renal abnormality, however, without any definiteness as to the scale which would present, varying from mild to severe.

9. Apodictically, therefore, this is not a case where this Court can accede to the request of the petitioners, particularly when the foetus has attained the gestation of 30 weeks. It is common knowledge that, at this time, the foetus is fully formed, able to distinguish between the voice of his/her mother and father, building bone strength and preparing to breath for the life outside the womb.

10. In fact, being presumably aware of the reports as afore, Sri.Cibi Thomas – learned counsel for the petitioners, also conceded that his clients are much more satisfied today, with the condition of their foetus being now clear; and that they were, otherwise, in the dark as to the prognosis of the disease identified earlier.

In the afore circumstances, this Court is left without any other option, but to close this writ petition without any further orders.

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