

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**FRIDAY, THE 8<sup>TH</sup> DAY OF APRIL 2022 / 18TH CHAITHRA, 1944**

**WP(C) NO. 12037 OF 2022**

**PETITIONER/S:**

1      XXXX      XXXX

2      XXXX      XXXX

BY ADVS.  
AKASH S.  
A.MEGHA

**RESPONDENT/S:**

- 1      UNION OF INDIA  
REPRESENTED BY ITS SECRETARY,  
MINISTRY OF WOMEN AND CHILD DEVELOPMENT,  
SASTHRI BHAVAN, NEW DELHI, PIN - 110001
- 2      STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,  
MINISTRY OF CHILD WELFARE, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3      DIRECTOR OF HEALTH SERVICES  
GENERAL HOSPITAL JUNCTION,  
THIRUVANANTHAPURAM, PIN - 695035
- 4      DIRECTOR OF MEDICAL EDUCATION  
MEDICAL COLLEGE, KUMARAPURAM ROAD,  
CHALAKUZHI, THIRUVANANTHAPURAM, PIN - 695015
- 5      THE SUPERINTENDENT  
THE GOVERNMENT MEDICAL COLLEGE,  
ACADEMIC BLOCK, EAST YAKKARA, PALAKKAD  
PIN - 678013

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 08.04.2022, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J.**

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W.P.(C) No. 12037 of 2022

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Dated this the 8<sup>th</sup> day of April, 2022

**JUDGMENT**

The 1<sup>st</sup> petitioner is the wife of the 2<sup>nd</sup> petitioner and she is aged 26 years. The 2<sup>nd</sup> petitioner husband is aged 36 years. After their marriage, no children born in their wedlock. The 1<sup>st</sup> petitioner started treatment and became pregnant. Now the pregnancy of the 1<sup>st</sup> petitioner is almost 30 weeks. When the pregnancy completed 21 weeks a scan was conducted with the assistance of medical practitioners and there was no problem to the pregnancy at that time. Subsequently when the scan was conducted on 26.03.2022 during the 29<sup>th</sup> week of pregnancy, some complications were found. Ext.P4 is the scan report. It will be better to extract the impression in Ext.P4 report.

*“Impression.*

*Single viable intrauterine gestation of gestational age 29 + 1 week in breech presentation complicated by hydrocephalous & over distended urinary bladder.”*

2. It is the case of the petitioners that because of the complications mentioned in Ext.P4, they decided to terminate the pregnancy. In the MRI Scan, it reveals that the foetus is suffering from grade IV intraventricular hemorrhage and existence of a porencephalic cyst, both indicating towards hydrocephalus. This would mean that the foetus is suffering from bleeding inside the skull and has probably led to the cavities in brain being filled with the blood. The report also suggested that the foetus is associated with high chance of morbidity and the foetus is suffering from severe anemia, dilated ventricles and distorted cerebellum. Hence, this writ petition is filed with following prayers:

*“ a. issue a writ of mandamus or any other appropriate writ. direction or order directing the respondents to*

*allow the Petitioner to undergo Medical Termination of Pregnancy at the earliest.*

*b. issue a writ of mandamus or any other appropriate writ, direction or order directing the Respondents 3 to 5 to take immediate steps to examine the Petitioner and to permit her to undergo Medical Termination of Pregnancy at the earliest.*

*c. grant such other reliefs which this Honourable Court may deem fit and proper in the interest of justice.”*

3. Heard the learned counsel for the petitioner and the learned Government Pleader. I also heard the learned ASGI.

4. When this writ petition came up for consideration on 05.04.2022, this Court passed the following order:

*Admit.*

*2. The Assistant Solicitor General of India takes notice for the 1<sup>st</sup> respondent. The Government Pleader takes notice for respondents 2 to 5.*

*3. There will be an interim order directing the 5<sup>th</sup> respondent to constitute a Medical Board in Palakkad to examine the 1<sup>st</sup> petitioner and to advice on:*

- (i) Whether the continuance of the pregnancy would involve risk to the life of the pregnant woman or of grave injury to her mental and physical health;*
- (ii) Whether there is a substantial risk that if the child were born, it would suffer from serious physical or mental abnormalities and if so, the nature of abnormalities;*
- (iii) Whether, having regard to the advanced stage of pregnancy, there is any danger (other than usual danger which arises even in spontaneous delivery of the end of full term) if the pregnant mother is permitted to undergo induced pregnancy at present stage.*
- (iv) The medical process best situated to terminate the pregnancy and the possibility of child being born alive; and*
- (v) Any other issues, which the Medical Board regards relevant in such matters.*

*Post on 08.04.2022”*

5. Today, the learned Government Pleader made available the report of the Medical Board. It will be better to extract the medical board report itself.

*“Medical Board has taken the detailed history and complete physical examination of the patient, along with verification of all the investigation records and previous treatment records of the patient Mrs.xxxxxxxxxxxxxxx, 26 years and arrived at following conclusion.*

*1. Continuation of the pregnancy would involve risk to life of pregnant women and grave injury to her physical health due to possibility of intrauterine death and its complications (like sepsis and coagulation failure) and also increased operative interferences and its complications (like anaesthetic complications and intra and postoperative complications like haemorrhage, injury, sepsis etc)*

*Continuation of the pregnancy would involve grave injury to her mental health, due to adjustment disorder with depressive symptoms and risk for suicide.*

*2. If the child were born, it would suffer from serious physical and mental abnormalities like cerebral palsy, Hydrocephalus. Mental retardation. developmental delay, convulsions and even death.*

*3. With regard to the advanced stage of pregnancy, there is no increased risk or danger other than usual danger which arises even in spontaneous delivery at the end of full term. If the pregnant woman is permitted to undergo induced labour at this stage, there is a slightly*

*increased risk of failure of induction compared to term., leading to operative interferences in mother.*

*4. The medical process best suited to terminate this pregnancy would be mechanical method (using foley's catheter) along with medical methods like prostaglandins. But if the presentation of the fetus changes, there is a slightly increased chance of operative delivery.*

*5. No other relevant issues with regard to this matter. Except for complete antenatal investigations along with HbA1C and monitoring and control of blood sugar and psychological counseling.”*

6. From the medical board report, it is clear that the continuation of pregnancy involve risk to life of pregnant women and grave injury to her physical health due to possibility of intrauterine death and its complications (like sepsis and coagulation failure) and also increased operative interferences and its complications (like anaesthetic complications and intra and postoperative complications like haemorrhage, injury, sepsis etc). It is also stated in the report that if the child is born, it would suffer from serious physical and mental

abnormalities like cerebral palsy, hydrocephalus, mental retardation, developmental delay, convulsions and even death.

7. Admittedly, the pregnancy is almost completed 30 weeks. The medical board report says that there is chance for complication to the 1<sup>st</sup> petitioner and the child in the womb.

8. God is the creator. None can do anything against the wish of Almighty. The Medical Termination of Pregnancy Act, 1971 permits termination of pregnancy in certain situation. The Medical Termination of Pregnancy Act permits termination of pregnancy if the length of pregnancy exceeds 20 weeks but does not exceeds 24 weeks. But Section 3(2B) says that the provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities



diagnosed by a Medical Board. In this case, the medical board found that there is abnormality diagnosed to the foetus.

9. It is a sad case where the petitioners got a child after their prayers and treatment. The 1<sup>st</sup> petitioner became pregnant, but as per medical records, it is found that if the child is born, it would suffer from serious physical and mental abnormalities like cerebral palsy, hydrocephalus, mental retardation, developmental delay, convulsions and even cause death. As I observed earlier, this Court cannot give a seal to terminate a living child in the womb. But when the statute allows to do the same in certain situation, this Court has to invoke the jurisdiction with prayers because God is the creator and destroyer. Let the God forgive this couple for this termination of pregnancy and let the God give them a child as they wish. This is a fit case in which this Court has to invoke the

jurisdiction in the light of the medical board report, which is extracted above.

Therefore, this writ petition is allowed in the following manner:

1. The 5<sup>th</sup> respondent is directed to terminate the pregnancy, in accordance to the Medical Termination of Pregnancy Act, within one week from the date of receipt of a copy of this judgment.
2. Registry will issue this judgment without disclosing the identity of the petitioners. Registry is also directed to make consequential changes in the website to see that, the identity of the petitioners are not disclosed.

sd/-

**P.V.KUNHIKRISHNAN**  
**JUDGE**

das

**APPENDIX OF WP(C) 12037/2022**

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE AADHAR IDENTITY CARD OF THE 1ST PETITIONER
Exhibit P2	TRUE COPY OF THE AADHAR IDENTITY CARD OF THE 2ND PETITIONER
Exhibit P3	TRUE COPY OF THE ULTRA SONOGRAPHIC OBSTETRIC SCAN REPORT AT THE SABINE HOSPITAL AND MEDICAL RESEARCH CENTRE PVT. LTD., MUVATTUPUZHA, ERNAKULAM (SABINE HOSPITAL) ON 02.02.2022
Exhibit P4	TRUE COPY OF THE OBSTETRIC SCAN REPORT FROM ASWINI SPECIALITY HOSPITAL DATED 26.03.2022
Exhibit P5	TRUE COPY OF THE TRIMESTER SCAN REPORT FROM THE AIMS DATED 30.03.2022
Exhibit P6	TRUE COPY OF THE MRI SCAN REPORT DATED 31.03.2022PERFORMED AT THE AIMS