



2025:KER:19768

WP(C) NO. 8514 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.S.DIAS

MONDAY, THE 10TH DAY OF MARCH 2025 / 19TH PHALGUNA, 1946

WP(C) NO. 8514 OF 2025

PETITIONER:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADVS.
GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
MANU SRINATH
LIJO JOHN THAMPY
NIVEDITA MUCHILOTE
RIYAS M.B.

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF HEALTH
AND FAMILY WELFARE, NEW DELHI, PIN - 110001
- 2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, HEALTH AND FAMILY
WELFARE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 GENERAL HOSPITAL, ERNAKULAM
HOSPITAL ROAD, MARINE DRIVE, ERNAKULAM, KERALA
REPRESENTED BY ITS MEDICAL SUPERINTENDENT, PIN -
682011
- 4 HEAD OF DEPARTMENT
DEPARTMENT OF OBSTETRICS AND GYNECOLOGY, GENERAL



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HOSPITAL, HOSPITAL ROAD, MARINE DRIVE, ERNAKULAM,
KERALA, PIN - 682011

5 GOVERNMENT MEDICAL COLLEGE, ERNAKULAM
HMT ROAD, HMT COLONY, NORTH KALAMASSERY,
KALAMASSERY, KOCHI, KERALA REPRESENTED BY ITS
MEDICAL SUPERINTENDENT., PIN - 683503

6 HEAD OF DEPARTMENT
DEPARTMENT OF OBSTETRICS AND GYNECOLOGY,
GOVERNMENT MEDICAL COLLEGE, ERNAKULAM HMT ROAD,
HMT COLONY, NORTH KALAMASSERY, KALAMASSERY, KOCHI,
KERALA, PIN - 683503

OTHER PRESENT:

DSGI - SRI.T.C.KRISHNA,
GP.SMT. VIDHYA KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



C.S.DIAS,J

W.P (C) No.8514 of 2025

Dated this the 10th day of March, 2025

JUDGMENT

The petitioner is in the 31st week of pregnancy with her second child. The petitioner conceived her second pregnancy in July 2024. She was undergoing regular ultrasound scans and check-ups. Until February 2025, Exts.P1 to P4 ultrasound reports confirmed that the foetus was normal. It was in Ext.P5 ultrasound report dated 10.02.2025 that, for the first time, it was indicated that the foetus suffers from severe abnormalities. The petitioner consulted with multiple reputed medical institutions, who have all opined that if the foetus is born, it will suffer from severe mental and physical disabilities. As per Exts.P6 and P7, the two key structures, namely cavum septum pellucidum and corpus callosum, are absent in the foetus's brain, which suggests that a part of the brain is not fully developed. The continuing of the pregnancy is causing immense mental and physical distress to



the petitioner and would result in the birth of a child with severe abnormalities, leading to a lifetime of challenges for both the child and the petitioner's family. The petitioner seeks permission for the medical termination of her pregnancy.

2. Heard; Sri. George Varghese Perumpallikuttiyil, the learned counsel for the petitioner, the Smt. Vidya Kuriakose, the learned Government Pleader.

3. When the writ petition came up for consideration on 04.03.2025, the petitioner was referred to the Medical Board of the Government Medical College Hospital, Ernakulam, on 05.03.2025.

4. On 07.03.2025, the learned Government Pleader handed over a copy of the medical report of the four-member Medical Board, comprising of the (i) Associate Professor of Dept. of OBG (ii) Professor and HOD, Dept. of Radiodiagnosis (iii) Associate Professor, Dept. of Paediatrics and (iv) Assistant Professor, Dept. of Psychiatry.

5. The Medical Board, in their report dated 05.03.2025,



has, inter-alia, certified that as per the foetal ultrasound reports, there is a substantial risk that the baby will likely have neurological abnormalities if born alive. It is also stated that given the advanced stage of pregnancy and the patient has undergone a caesarean section for the previous pregnancy, induction of labour will not be carried out, and she will need a repeat caesarean section with all the associated surgical and anaesthetic complications. Furthermore, as the patient has completed 30 weeks of gestation as of 25.02.2025, there is a possibility that the baby may be born alive with all the complications of pre-term birth.

6. The learned Counsel for the petitioner submitted that the petitioner is prepared to proceed with the termination of pregnancy at a super-speciality hospital. The proposed medical intervention involves administering an intracardiac injection to the foetus, which will effectively end its life, and thereafter, the termination can be carried out. This intervention is posited to avert the possibility of the baby being born alive. He placed



reliance on the Government of India guidelines that are referred to by the Hon'ble Supreme Court in A (Mother of X) v. State of Maharashtra [(2024) 6 SCC 327] to support his submission.

7. The termination of pregnancy is governed by the Medical Termination of Pregnancy Act, 1971 ('Act', in short) and the rules framed thereunder. The Act is a progressive legislation that regulates how pregnancies can be terminated.

8. Section 3 of the Act spells out the conditions to be satisfied to terminate a pregnancy, which reads as follows:

"S.3 - When pregnancies may be terminated by registered medical practitioners.—

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner, —

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner, is or (b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty - four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the opinion, formed in good faith, that—

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or (ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used



by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2. — For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) 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.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely: (a) a Gynaecologist; (b) a Paediatrician; — (c) a Radiologist or Sonologist; and (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."

9. It is also necessary to refer to the Medical Termination of Pregnancy Rules, 2003, which reads as follows:



“3A. Powers and functions of Medical Board.—For the purposes of section 3,— (a) the powers of the Medical Board shall be the following, namely:- (i) to allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped”;

10. The position of law can therefore be summarised thus:

Length of the pregnancy	Requirements for termination
Up to twenty weeks	Opinion of one RMP in terms of Section 3(2)
Between twenty and twenty-four weeks	Opinion of two RMPs in terms of Section 3(2) read with Rule 3B.
Beyond twenty-four weeks	If the termination is required to save the life of the pregnant woman, the opinion of one RMP in terms of Section 5
	If there are substantial foetal abnormalities, with the approval of the Medical Board in terms of Section 3(2B) read with Rule 3A(a)(i)

11. Besides the above statutory safeguards, the Ministry of Health and Family Welfare, Government of India, has issued a comprehensive 'Guidance Note for Medical Boards for Termination of Pregnancy Beyond 20 weeks of Gestation', dated



14th August 2017. The Note stipulates that it is the responsibility of the Medical Board to ascertain whether the foetal abnormality is substantial enough to qualify as either incompatible with life or associated with significant morbidity or mortality of the child if born. Determining substantial foetal abnormalities should be based on a thorough review of the patient's medical records. The Medical Board should conduct additional investigations as may be necessary. It should base its decision on concrete medical evidence and expert evaluations, including reviewing the available documents and performing additional diagnostic tests to confirm the presence and extent of congenital abnormalities. The objective of the Note is to ensure that the decision to terminate the pregnancy is made with the utmost care and consideration of the potential outcomes and quality of life of the child.

12. In **Suchita Srivastava v. Chandigarh Admn.** [(2009) 9 SCC 1], a three-judge Bench of the Hon'ble Supreme Court, has held that the right to make reproductive choices is a facet of Article 21 of the Constitution and that the consent of the pregnant



person in matters of reproductive choices and abortion is paramount.

13. In **XYZ v. State of Gujarat** (2023 SCC Online SC 1573), the Hon'ble Supreme Court held that the Medical Board or the High Court cannot refuse termination of pregnancy merely on the ground that the gestational age is above the statutory prescription. It is held as follows:

“19. The whole object of preferring a Writ Petition under Article 226 of the Constitution of India is to engage with the extraordinary discretionary jurisdiction of the High Court in exercise of its constitutional power. Such a power is vested with the constitutional courts and discretion has to be exercised judiciously and having regard to the facts of the case and by taking into consideration the relevant facts while leaving out irrelevant considerations and not vice versa.”

14. The Hon'ble Supreme Court in **A v. State of Maharashtra** [(2024) 6 SCC 327] has held as under:

“ 28. The powers vested under the Constitution in the High Court and this Court allow them to enforce fundamental rights guaranteed under Part III of the Constitution. When a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. In doing so the court relies on the opinion of the Medical Board constituted under the MTP Act for their medical expertise. The court would thereafter apply their judicial mind to the opinion of the Medical Board. Therefore, the Medical Board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts



would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person. Therefore, a Medical Board must examine the pregnant person and opine on the aspect of the risk to their physical and mental health.

29. The MTP Act has removed the restriction on the length of the pregnancy for termination in only two instances. Section 5 of the MTP Act prescribes that a pregnancy may be terminated, regardless of the gestational age, if the medical practitioner is of the opinion formed in good faith that the termination is immediately necessary to save the life of the pregnant person. Section 3(2-B) of the Act stipulates that no limit shall apply on the length of the pregnancy for terminating a foetus with substantial abnormalities. The legislation has made a value judgment in Section 3(2-B) of the Act, that a substantially abnormal foetus would be more injurious to the mental and physical health of a woman than any other circumstance. In this case, the circumstance against which the provision is comparable is rape of a minor. To deny the same enabling provision of the law would appear prima facie unreasonable and arbitrary. The value judgment of the legislation does not appear to be based on scientific parameters but rather on a notion that a substantially abnormal foetus will inflict the most aggravated form of injury to the pregnant person.....

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32. This highlights the need for giving primacy to the fundamental rights to reproductive autonomy, dignity and privacy of the pregnant person by the Medical Board and the courts. The delays caused by a change in the opinion of the Medical Board or the procedures of the court must not frustrate the fundamental rights of pregnant people. We therefore hold that the Medical Board evaluating a pregnant person with a gestational age above twenty-four weeks must opine on the physical and mental health of the person by furnishing full details to the court”.



15. In the matter before us, the ultrasound reports — Exts.P6 and P7 — together with the Medical Board report unambiguously demonstrate that there exists a considerable risk that the baby will be born with neurological abnormalities if born alive. However, it is further noted by the Medical Board that, given that the petitioner has completed 30 weeks of gestation, there remains a possibility that the infant could be delivered alive. Consequently, there is a decisive basis to hold that the petitioner is eligible to get her pregnancy terminated, irrespective of the gestation age, in view of Section 3 (2-B) of the Act, as the foetus presents with substantial abnormalities that the Medical Board has confirmed.

16. Yet, the complexity arises from the fact that the petitioner is in the advanced stage of pregnancy, having previously undergone a caesarean section during her last childbirth. In light of the said medical history, the induction of labour cannot be carried out; thus, the petitioner would have to undergo a caesarean section for this delivery again. But, this procedure



carries the inherent risk of the baby being born alive.

17. To address this dilemma, the learned Counsel for the petitioner proposed that the foetus be administered with an intracardiac injection, which would lead to its demise before proceeding with the termination of pregnancy.

18. In *Indulekha Sreejith v. Union of India and Others* (2021 (5) KHC 269), this Court has explicitly affirmed that an unborn child possesses a fundamental right to life under Article 21 of the Constitution of India.

19. Now that the gestation period has progressed beyond 32 weeks, the Medical Board's opinion is that there is a likelihood of the baby being born alive and that the unborn child also has the right to life; I decline permission for the termination of life through an intracardiac injection. Should the petitioner and her husband remain unwilling to take care of the infant, if it is born alive, they shall surrender the baby to a childcare institution or a specialised adoption agency, as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, to place the baby in



adoption. Additionally, I am also not inclined to permit the petitioner to undergo termination in a hospital of her choice.

19. After a comprehensive evaluation of the facts, the materials on record and the well-settled principles of law on the subject, especially considering the recommendations of the Medical Board, I am satisfied that the writ petition is to be party allowed by directing the 4th respondent to terminate the petitioner's pregnancy.

In the aforementioned circumstances, I dispose of the writ petition by passing the following directions:

- (i) The petitioner's prayer to permit iatrogenic foetal demise of the foetus is declined.
- (ii) The petitioner's request to have the termination of pregnancy in a hospital of her choice is rejected.
- (iii) On the petitioner producing a copy of this judgment, the 4th respondent shall take immediate measures for constituting a medical team to conduct the termination of the petitioner's pregnancy.



- (iv) The medical team shall, in their discretion and best judgment, adopt the best procedure recommended in the medical science to terminate the pregnancy and save the life of the petitioner.
- (v) The petitioner and her husband shall file an undertaking authorising the 4th respondent to terminate the pregnancy at their risk and cost. They shall also undertake that if the baby is born alive and they do not want the baby, they will unconditionally surrender the baby to a childcare institution/specialised adoption agency, as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, for being placed in adoption.
- (vi) The District Child Protection Officer shall counsel the petitioner and her husband on the surrender process before the execution of the undertaking.
- (vii) If the foetus is born alive, the hospital shall render



all the necessary assistance, including incubation and treatment at any super-speciality, to ensure that the foetus survives. The baby shall be offered the best medical treatment, and the petitioner and her husband shall take full responsibility and bear the expenses for the baby till it is surrendered.

- (viii) The Registry is directed to mask the names and details of the parties in the judgment to ensure privacy.

Sd/-
C.S.DIAS,
JUDGE

rmm



APPENDIX OF WP(C) 8514/2025

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ULTRASCAN REPORT DATED 09.09.2024, CONDUCTED AT HOLY CROSS MULTISPECIALITY HOSPITAL, ADOOR, CONFIRMING NORMAL FETAL DEVELOPMENT AT 6 WEEKS
- Exhibit P2 TRUE COPY OF THE ULTRASCAN REPORT DATED 21.10.2024, CONDUCTED AT HOLY CROSS MULTISPECIALITY HOSPITAL, ADOOR, CONFIRMING NORMAL FETAL DEVELOPMENT AT 12 WEEKS
- Exhibit P3 TRUE COPY OF THE PRENATAL FIRST TRIMESTER SCREENING SUMMARY DATED 21.10.2024, CONDUCTED AT HOLY CROSS MULTISPECIALITY HOSPITAL, ADOOR, INDICATING NO ABNORMALITIES AT 12 WEEKS
- Exhibit P4 TRUE COPY OF THE ULTRASCAN REPORT DATED 19.12.2024, ISSUED BY HOLY CROSS MULTISPECIALITY HOSPITAL, ADOOR, CONFIRMING NORMAL FETAL HEALTH AT 22 WEEKS
- Exhibit P5 TRUE COPY OF THE ULTRASOUND REPORT DATED 10.02.2025 ISSUED BY HOLY CROSS MULTISPECIALITY HOSPITAL, ADOOR
- Exhibit P6 TRUE COPY OF THE OB 2X3 TRIMESTER SCAN REPORTS DATED 15.02.2025 ISSUED BY LIFELINE SUPERSPECIALITY HOSPITAL, PATHANAMTHITTA
- Exhibit P7 TRUE COPY OF THE OB 2X3 TRIMESTER SCAN REPORTS DATED 25.02.2025 ISSUED BY SRADHA FETAL MEDICINE UNIT, DEPARTMENT OF OBG, SAT HOSPITAL & CHILD DEVELOPMENT CENTER, THIRUVANANTHAPURAM