

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28th DAY OF APRIL 2020

BEFORE

THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD

WRIT PETITION NO.6701/2020 (GM-RES)

BETWEEN

MRS. PRANEETHA
W/O ANIL KUMAR GANAPA
AGE ABOUT 32 YEARS
RESIDING AT PASHMINA WATER FRONT,
T1 FLAT 4C BHATTARAHALI
OLD MADRAS ROAD
BENGALURU – 560049.
.. PETITIONER

(BY SRI.VIKRAM G, ADVOCATE)

AND

1. STATE OF KARNATAKA
DEPARTMENT OF HEALTH
AND FAMILY WELFARE
VIKASA SOUDHA
BENGALURU - 560001
REPRESENTED BY ITS
PRINCIPAL SECRETARY

2. UNION OF INDIA
DEPARTMENT OF HEALTH
AND FAMILY WELFARE
ROOMS NOS.211-D NIRMAN BHAWAN
NEW DELHI - 110011
REPRESENTED BY ITS SECRETARY.
3. VANI VILAS HOSPITAL
REPRESENTED BY
MEDICAL SUPERINTENDENT
K R ROAD
BENGALURU – 560002. .. RESPONDENTS

(BY SRI.RAMESH JOISH, AGA FOR R1& R3; SRI.
UNNIKRISHNAN FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE DIRECTION/PERMISSION TO THE PETITIONER TO MEDICALLY TERMINATE HER PREGNANCY, THE LENGTH OF WHICH HAS EXCEEDED 22 WEEKS UNDER THE MEDICAL CARE AND SUPERVISION OF DR. SHEFALI TYAGI AT CLOUD 9, (KIDS CLINIC INDIA PVT LTD) SITUATED AT BELLANDURU VILLAGE, VARTHUR HOBLI, BANGALORE.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has filed this petition for permission to medically terminate her pregnancy under the medical care and supervision of Dr. Shefali Tyagi at Cloudnine (M/s Kids Clinic India Private Limited) Bellandur Village, Varthur Hobli, Bangalore. The petitioner's case is that she is married to Mr. Anil Kumar Ganappa. She is in the family way, and in the 22nd week of pregnancy she underwent ultrasound tests to ensure that the fetus was healthy. The ultrasound scan revealed *Congenital Pulmonary Airway Malformation with evolving Hydorps and Polyhydramnious*. She has secured a second opinion with M/s Kids Clinic India Private Limited (Cloudnine). She is advised even at M/s Kids Clinic India Private Limited (Cloudnine) to undergo another scan. The second scan also indicated anomalies viz., *the lungs have not developed properly, there is no blood*

supply to the intestine and there was an abnormality in the heart. The Doctors at M/s Kids Clinic India Private Limited (Cloudnine) have also opined that the baby would not survive on delivery and therefore the pregnancy has to be medically terminated. The different scans and the opinions of the doctors are obtained in the 22nd week of pregnancy. The petitioner is advised that the medical termination of the pregnancy would be in the interest of the child to be born as well as in the interest of the petitioner.

2. This Court on 24.4.2020, after hearing the counsel for the petitioner, the learned Additional Government Advocate for respondent No. 1 and 2 and Sri Unnikrishna, the learned standing counsel for the Union of India - the respondent No.2, directed the respondent No.3 to constitute '*Expert Committee*' to examine the petitioner and submit a report of this court. The petitioner volunteered to appear before the Expert

Committee at the earliest. Pursuant to this order of the Court, the third respondent has appointed an Expert Committee comprising of Medical Superintendent, Professor and Head of the Departments of Obstetrics and Gynaecology, Paediatrics, Radiology, Psychiatry, Paediatric Surgery and medicine with Vanivilas Hospital, Victoria Hospital, PMSY Hospital, BMCRI, Bengaluru.

3. The learned Additional Government Advocate, with the permission of this Court, has placed on record the report of the Expert Committee. The Expert Committee has affirmed that the petitioner is in the 25th week of pregnancy and the presence of *Fetal Ascites and Heterotaxy Syndrome, Multiple Anechoic Cystic areas and the likely CCAM -2*. The final opinion of the Expert Committee is as follows:

“If the baby is born at term are preterm outcome would be worse due

to congenital cystic adenomatoid malformation and detel ascites.

However if the patient and the family feels the mental trauma of delivering such a baby, option of termination of pregnancy could be considered.”

4. The Hon’ble Supreme Court in ***Sucheta Srivatsava and another v. Chandigarh Administration***¹ has held that a woman’s right to make reproductive choices is also a dimension of her personal liberty as understood under Article 21 of the Constitution, and considering this proposition, the Hon’ble Supreme Court in the later decision in ***Meera Santosh Pal and others v. Union of India***² and others has held the reproductive rights of women include the entitlement to carry a pregnancy to its full term, to give birth to a healthy baby and to raise children, and if

¹ (2009)9 SCC 1

² (2017)3 SCC 462

continuance of the pregnancy involves not only risk to the life of the pregnant woman and also a possible grave injury to her physical or mental health, it would be appropriate to permit the pregnant woman to terminate the pregnancy observing that the overriding consideration is that a pregnant woman has right to take all such steps as are necessary to preserve her own life against avoidable dangers. This Court, as asserted by the learned counsel for the petitioner, in similar case in Writ Petition No. 55411 of 2018 disposed of on 17th December 2018 has permitted a pregnant woman to medically terminate the pregnancy after the 22 weeks of pregnancy.

5. In the light of the law as regards the right of a pregnant woman to medically terminate her pregnancy to preserve her own life against all dangers, the fact that the petitioner immediately after coming to know about the anomalies in the growth of the foetus

and the consequential difficulties if the baby is born has obtained multiple opinions, and the unanimous medical opinions that it would be advisable for the petitioner to medically terminate the pregnancy, and in view of the opinion of the Expert Committee constituted by this Court, this Court is of the considered view that the petition should be allowed permitting the petitioner to medically terminate the pregnancy subject to terms. Therefore, the following order:

- (a) The petition is allowed, and the petitioner is permitted to undergo, at her cost, risk and consequence, medical termination of her pregnancy under the supervision of Dr. Shefali Tyagi at Cloudnine (M/s Kids Clinic India Private Limited) Bellandur Village, Varthur Hobli, Bangalore in a hospital of her choice which has the necessary facilities;

(b) The concerned doctors shall take necessary measures to ensure the safety of the petitioner's health, but it is observed that the doctors (both private and government doctors) who have put their opinion on record shall have the immunity in the event of any litigation arising out of this petition; and

(c) The registry is directed to send a copy of this order to the learned counsel for the petitioner by email with necessary authentication, and all the concerned, including the approved medical centres shall act upon such authenticated copy of the order.

Sd/-

JUDGE

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