

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 1<sup>ST</sup> DAY OF APRIL 2022 / 11TH CHAITHRA, 1944

WP(C) NO. 11306 OF 2022

**WRIT PETITIONER:**

XXXXX

X

BY ADVS.

K.P.PRADEEP

T.T.BIJU

T.THASMI

M.J.ANOOPA

**RESPONDENTS:**

- 1 UNION OF INDIA  
REPRESENTED BY SECRETARY,  
MINISTRY OF WOMEN AND CHILD DEVELOPMENT,  
SHASTRI BHAVAN, NEW DELHI - 110 001.
- 2 STATE OF KERALA  
REPRESENTED BY THE SECRETARY,  
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695 001.
- 3 DIRECTOR OF MEDICAL EDUCATION  
MEDICAL COLLEGE, KUMARAPURAM RD., CHALAKKUZHI,  
THIRUVANANTHAPURAM - 695 011.
- 4 STATION HOUSE OFFICER/INSPECTOR OF POLICE  
MANGALAMDAM POLICE STATION, ALATHUR,  
PALAKKAD - 678 706.  
Email.shomldmpkd.pol@kerala.gov.in
- 5 SUPERINTENDENT  
GOVERNMENT MEDICAL COLLEGE HOSPITAL, THRISSUR,  
MULAKUNNATHUKAVU, THRISSUR - 680 596.
- 6 DISTRICT CHILD WELFARE COMMITTEE,  
THRISSUR, GOVERNMENT CHILDREN'S HOME,  
RAMAVARMAPURAM P.O,

THRISSUR - 680 631  
REPRESENTED BY ITS CHAIRPERSON.

BY ADVS.

SMT. VIDYA KURIAKOSE, GOVERNMENT PLEADER  
SRI. S. MANU, ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 01.04.2022, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

**W.P.(C)No. 11306 of 2022**

**Dated this the 1<sup>st</sup> day of April, 2022**

**JUDGMENT**

The above writ petition is filed with the following prayers:

*"(i) To call for the records leading to issue Ext.P1 and P2 reports and to issue a writ of mandamus or any other appropriate writ or writs or order or direction permitting the petitioner's minor daughter to undergo medical termination of her pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971 and to issue consequential directions to the 5<sup>th</sup> respondent, to conduct such termination procedure, in accordance with law, forthwith.*

*(ii) Grant such other relief, in the interest of justice, which this Hon'ble Court deems fit in the facts and circumstances of the case . "[SIC]*

2. When this writ petition came up for consideration on 30.03.2022, this Court passed the following order:

*"Admit.*

*ASGI takes notice for R1. Government  
Pleader takes notice for R2 to R6.*

*There will be an interim order directing the  
2<sup>nd</sup> respondent to constitute a Medical Board  
immediately and examine the stage of  
pregnancy of the petitioner's minor daughter  
and file a report before this Court forthwith."*

3. Based on the same, the Medical Board was constituted and examined the minor girl. The Medical Board submitted a report. It will be better to extract the report dated 26.03.2022 itself:

**"GOVERNMENT MEDICAL COLLEGE HOSPITAL  
MULAMKUNNTHUKAVU, THRISSUR – KERALA – 680 596  
MEDICAL BOARD REPORT**

**Members participated**

**Dr.Radha.Prof.Obstetrics & Gynaecology**

**Dr.Shafiq Ahamed.M, Asst.Prof. Of Paediatrics**

**Dr.Bejohn Johnson Kunnath, Prof.CAP Paediatric  
Surgery**

**Dr.Raini K.P., Asso..Prof.of Radiodiagnosis**

**Ref:- Letter No.90/2022/OBG/dated24/03/2022**

XXX

XXX

Unit: OBG I, Gestational Age: 26 Weeks 4 days.(as per USG dated 21/03/2022).

Reported to OBG 1 OPD with complaints of Abdominal Distension.

On examination found to be 26 weeks pregnant which confirmed by ultrasonography.

Guardians requested for medical termination of pregnancy on 22/03/2022.

Since the gestational age is above 26 weeks, it was decided to form a medical board to decide on medical termination of pregnancy.

The medical board was convened with above members on 26/03/2022 at 11.00 A.M. at New Medical College Hospital, Thrissur, and the following decision were taken.

- 1) The fetus is 26 weeks of gestational age, and is free from congenital anomalies as per the ultra sound scan. The chance of survival of the baby of this level of maturity is high.
- 2) The mother is found to be have Anemia and epistaxis, which need further evaluation. If found to be due to correctable cause there is no contraindication to continue pregnancy.
- 3) Considering the age of the mother and social circumstances medical termination of pregnancy may be considered after obtaining permission for the same from the court of law.

SUPERINTENDENT

Date: 26/03/2022

Govt. Medical College Hospital"

4. In the Medical report, it is stated that the fetus is 26 weeks of gestational age, and is free from congenital anomalies as per the ultra sound scan. It is also stated that the chance of survival of the baby of this level of maturity is high. In such circumstances, this Court is not in a position to order termination of pregnancy. In a similar situation, this Court passed an order in W.P.(C)No.7503/2022. The same order can be passed in this writ petition also.

Therefore, this writ petition is disposed of in the following manner:

- i. The 5<sup>th</sup> respondent is permitted to do the needful in accordance to the Medical Termination of Pregnancy Act. It should be done within one week from the date of receipt of a copy of this judgment. If the 5<sup>th</sup> respondent needs any expert medical assistance from any other specialists, the 5<sup>th</sup> respondent can request the Director of Health Services, and the Director of Health Services will do the needful forthwith.*
- ii. If the baby born alive, the 5<sup>th</sup> respondent will do the*

*needful in accordance to law. It is declared that if the newborn is alive, then the 5<sup>th</sup> respondent and the hospital concerned will have to assume full responsibility to ensure that such child is offered best medical treatment available in the circumstances in order that it develops into a healthy child.*

*iii. It is also declared that if the parents of the child are not willing to or not in a position to assume the responsibility of the child, then the State and its agency will have to assume full responsibility of such child and offer such child medical support and facilities as may be reasonably feasible, adhering always to the principle of best interests of such child as well as the statutory provisions in the Juvenile Justice Act.*

*iv. If any request is given by the Investigating Officer who is investigating the criminal case in this matter, the authorities will take the tissue for DNA test.*

Sd/-  
**P.V.KUNHIKRISHNAN**  
**JUDGE**

**APPENDIX OF WP(C) 11306/2022**

PETITIONER EXHIBITS

EXHIBIT P1            TRUE COPY OF OBSTETRIC REPORT OF THE  
                          GIRL ON 21/3/2022 AT 5TH RESPONDENT  
                          HOSPITAL.

EXHIBIT P2            TRUE COPY OF THE REPORT DATED  
                          25/3/2022 OF THE 4TH RESPONDENT TO  
                          THE 5TH RESPONDENT.

RESPONDENTS EXHIBITS :NIL

//TRUE COPY//

PA TO JUDGE