

AARUSHI DHASMANA

v.

UNION OF INDIA AND OTHERS
(Writ Petition (Civil) No.232 of 2012)

APRIL 10, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Human rights – Craniopagus Twins (CTs), two minor girls 'S' and 'F' – Parental consent not forthcoming either for investigation or for surgical operation – Duty of the Court – Right to life – Right to bodily integrity – Wardship Jurisdiction – Exercise of – Application of "least detrimental test" – Held: The Court has to adopt a balancing exercise – First and foremost consideration of the Court is "welfare of the children", which overrides the views or opinions of the parents – Parents of 'S' and 'F' are against carrying on any investigation as well as surgical operation but, 'S' and 'F' being ward of the Court, the Court has got a responsibility to find out whether it is possible to save both and if not, at least one, for which investigations are necessary – Intrinsic value of both 'S' and 'F' is equal, but when medical investigation is carried on, a balance sheet has to be drawn up of the advantages and disadvantages which flow from the performance or the non-performance of a surgical treatment – If the balance shifts heavily in favour of one, that has to be accepted, otherwise, both will sink and die – Proper medical investigation could not be carried out by the medical team of AIIMS, mainly, because of the parental opposition – Medical team of AIIMS could not come out with a solution, they were apprehensive of the fact that the investigations had their own risk and had also opined that detailed medical treatment would be possible only after thorough investigation – No positive direction can be given in the absence of an expert medical opinion indicating that either of 'S' and 'F' can be saved due to surgical

A operation or at least one – Directions issued considering the facts and circumstances of this case — Constitution of India, 1950 – Article 21.

B Craniopagus Twins (CTs) are conjoined twins fused at the cranium. The Supreme Court, in the instant writ petition, was concerned with the fate of Saba and Farha, Craniopagus Twins (CTs) both female aged 15 years, and their survival, unless subjected to surgical separation.

C The AIIMS Medical Team stated in its report about the risk involved in the operation to separate Saba and Farah which according to the Medical Team can be elaborated only after detailed investigations, at AIIMS, added to that it has been stated that the investigations have their own risks. The State of Bihar and the Central Government, D however, have extended their fullest support in meeting the expenses for the surgical treatment. AIIMS have also expressed opinion that they would carry out the investigations but for the unwillingness of the parents and the family members.

E Disposing of the writ petition, the Court

F HELD: 1. Medical law: Barring a few exceptions, as a general rule, the conduct of investigations and performance of medical operation on a person, without his or her consent is unlawful. This Court, in this case, is however, concerned with two minor girls, conjoint twins, faced with a situation where their parental consent is not forthcoming either for investigation or for the surgical operation. [Para 10] [380-D-E, F]

G *F. v. West Berkshire Health Authority (Mental Health Act Commission intervening)* [1989] 2 All E.R. 545 – referred to.

H 2. Right to life: Right to life is guaranteed under Article 21 of the Constitution of India, so also the right to

bodily integrity. In the absence of any medical report, it cannot be said as to whether both Saba and Farah could be saved or either of them. There can also be conflict of interests between the CTs that is Saba and Farha, in such situation the Court has to adopt a balancing exercise to find out the least detrimental alternative. This Court is not in a position to undertake that exercise in the instant case, because there is no medical report stating that if CTs are subjected to surgical operation, one of them might survive. If there is an authentic medical report that the life of one could be saved, by surgical operation, otherwise both would die, this Court would have applied the “least detrimental test” and saved the life of one, even if parents are not agreeable to that course. Every life has an equal inherent value which is recognised by Article 21 of the Constitution and the Court is duty bound to save that life. [Paras 11, 12] [380-G-H; 381-B-D]

3. Parents consent and duty of the Court:

3.1. In the instant case, both, parents, as well as the brother are against shifting Saba and Farah to AIIMS, New Delhi for further investigation and also for further surgical operation. They believe, the same is risky and both might not survive. However, Saba and Farah are now wards of this Court and this Court is exercising Wardship Jurisdiction as well. The first and foremost consideration of the Court is “welfare of the children”, which overrides the views or opinions of the parents. [Paras 13, 15] [381-D-E; 382-E-F]

3.2. In the instant case, since Saba and Farah’s parents are against carrying on any investigation as well as surgical operation but, being Saba and Farah are ward of this Court, this Court has got a responsibility to find out whether it is possible to save both and if not, at least one, for which investigations are necessary. Each life has an inherent value in itself and the right to life

A guaranteed under Article 21 of the Constitution is of general nature to apply to both Saba and Farah. Intrinsic value of both Saba and Farah is equal, but when medical investigation is carried on, a balance sheet has to be drawn up of the advantages and disadvantages which flow from the performance or the non-performance of a surgical treatment. If the balance shifts heavily in favour of one, that has to be accepted, otherwise, both will sink and die. [Paras 16, 17] [383-G-H; 384-A-B, C-D]

C *Gillick v. West Norfolk and Wisbech Area Health Authority* (1985) 3 All E.R.; *Re Z (a minor) (freedom of publication)* [1995] 4 All ER 961 and *Re B (a minor) (wardship: medical treatment)* [1981] (1990 3 ALL E.R. 927 – referred to.

D Lack of Medical Report

E 4.1. Proper medical investigation could not be carried out by the medical team of AIIMS, mainly, because of the parental opposition. What they wanted is financial help for the maintenance of both Saba and Farah. Financial help, of course, has to be extended to them since parents are coming from poor circumstances, but when the lives of both are stake, can one not save the life of at least one. Medical team of AIIMS could not come out with a solution, they were apprehensive of the fact that the investigations had their own risk and had also opined that detailed medical treatment would be possible only after thorough investigation. [Para 18] [384-D-F]

G 4.2. Nobody is concerned with the pain and agony CTs are undergoing, not even the parents, what they want is financial help as well as palliative care. No positive direction can be given in the absence of an expert medical opinion indicating that either of them can be saved due to surgical operation or at least one. Directions H issued considering the facts and circumstances of this

case. [Para 19] [384-G-H; 385-A]

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Case Law Reference:

[1989] 2 All E.R. 545 referred to Para 10

(1985) 3 All E.R. referred to Para 13

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[1995] 4 All ER 961 referred to Para 14

[1981] (1990 3 ALL E.R. 927 referred to Para 15

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 232 of 2012.

C

Under Article 32 of the Constitution of India.

S.K. Chauhan, Mehul Milind Gupta, R.P. Gupta, Suman Gupta for the Appellant.

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Siddharth Luthra, Indira Jaisingh, ASGs, Krishna Kumar, Anita Shenoy, Gargi Khanna, Sushma Suri, Devika Sehgal, Sonam Anand, Rohit Sharma, Gopal Singh, Manish Kumar, Mehmood Pracha, Sumit Babbar for the Respondents.

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The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. We are, in this case, concerned with the fate of Saba and Farha, Craniopagus Twins (CTs) and their survival, unless subjected to surgical separation.

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2. Saba and Farha, CTs, both female, are minors, togetherness, of course, will not bring joy to them or to their parents, to the family members or the people at large who happen to see them or heard about them. The doors of this Court have been knocked by a good Samaritan and since this Court has a fundamental duty to look after the interest of minor children, especially when they are CTs, fighting for their lives. We spent sleepless nights to find out a solution. Seldom society cares or knows the mental and psychological trauma, in such

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A situations, Judges undergo, especially, when they are called upon to decide an issue touching human life, either to save or take away.

B 3. We are in this case concerned with lives of two minor girls, placed in an unfortunate, calamitous and infelicitous situation. CTs are conjoined twins who are fused at the cranium. Medical science says that at least 25% of the CTs may survive and can be considered for a surgical separation, especially due to advances in medicine, including brain imaging, neuro-anaesthesia and neuro surgical techniques, but risk is always there.

D 4. We were informed, both Saba and Farha had earlier attended to by Dr. Benjmin Carson, a U.S. Specialist who had noticed that they shared a vital blood vessel in the brain and that Farha had two kidneys while Saba had none. Earlier also medical experts had ruled that separating Saba and Farha would require 5 or 6 operations over nine months, but each stage held a one-in-five chance that either of the girls might die. Consequently, the family had decided to go against any operation, even though it was reported that crown prince of Abu Dhabi, Sheikh Mohammed bin Zayed, offered to meet the entire medical expenses.

F 5. We heard the matter on 30.7.2012 and directed the Chief Secretary of Bihar to make arrangements to bring CTs to AIIMS, New Delhi by an Air Ambulance. Direction was also given to constitute a medical team to examine them and to take up further follow up action. Arrangements were also made to take parents along with them at the expenses of the State for their treatment. The parents were, however, not agreeable to that arrangement but only wanted financial assistance to look after CTs.

H 6. The AIIMS medical team, New Delhi in compliance of this Court order dated 21.8.2012 reached Patna on 21.10.2012 to examine CTs. After examining, they submitted

the following report dated 31st October, 2012 before this Court, A
which reads as under:

"As per the Supreme Court orders in Writ Petition (Civil) No.232 of 2012 and instructions of the AIIMS administration, the following doctors team from AIIMS visited Patna, Bihar on 21.10.2012 to examine the conjoint twins Saba and Farah both female age 15 years D/o Rabia Khatoun. B

1. Prof. M.V. Padma, Professor of Neurology C
2. Prof. Arvind Chaturvedi, Professor of Neuro-anaesthesia
3. Dr. S.K. Kale, Additional Professor of Neuro-surgery D

After discussion with Mr. S. Luthra, Additional Solicitor General, the report submitted earlier is elaborated as under:

According to the brother of the patients one of the twins does not have kidneys, and the twins between their brain have one common sagittal sinus (biggest vein). There is no evidence/investigation to either prove or disprove these statements made by the brother. E

1. The risk involved in the operation to separate the conjoint twins (Craniopaguys) Saba and Farha cannot be elaborated without investigations. The statements made by the brother regarding kidneys and the sagittal sinus also need extensive investigations. F G
2. The investigations will have to include CT scan, MRI, MRI Angiography, 4Vessel IA DSA and investigations for other organ functions, and can be H

A performed by experts at AIIMS.

3. These investigations have their own risks.
4. The parents and the brother are not willing to take any risk including the risk involved in investigations.

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5. A detailed medical report is not possible without investigations.

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The brother and the parents handed over a written submission requesting for financial help and palliative care. This submission was attached in the earlier report.

	Signature	Signature	Signature
D	Prof. M.V. Padma Prof. of Neurology AIIMS, New Delhi	Prof. A. Chaturvedi Prof. of Neuro- anaesthesia, AIIMS New Delhi,	Dr. S.S. Kale Addl. Prof. Neuro- Surgery AIIMS, New Delhi"

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7. We find when the medical team of AIIMS visited to Patna on 21.10.2012 to examine the CTs they were served with a letter by the mother of the CTs, Rabia Khatoun. The letter reads as follows:

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"To
The Enquiry Committee (Medical Team)
AIIMS,
New Delhi.

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Sub: Help of monthly pension for conjoint sisters Sabaa and Farha -reg.

Sir,

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It is requested that we do not want our daughters to get operated because operation is very risky and we do

not want to take risk. There are lot of expenses involved for my daughters – food and medicines etc. I request that monetary help of Rs.8000/- may be given to my each daughter. The financial condition of my home is not good. I have big family of ten members. We need help as we don't have any means of livelihood.

I am sure that that you will consider my request seriously. I will forever remain indebted to you. My one son has been looking after both the sisters & family by borrowing money as there is no mean of livelihood. He is still unemployed. He may be helped in getting employment so that both the sisters are taken care of.

Yours faithfully,
Sd/-

(Rabia Khatoon)

Moh. Samanpura, Raja Bazaar,
P.O. BP College, PS Shastri Nagar,
Distt. Patna-800014
Mob. 9308566555"

8. Above facts would clearly indicate that the medical team of AIIMS could not make any proper investigation of the CTs. They opined that the investigation would involve CT Scan, MTI, MRI angiography, 4Vessel IA DSA etc. which could be performed only at AIIMS. They also expressed the view that those investigations have their own risks and that since the parents and brother were not willing to take any risk, including the risks involved in the investigation, it would not be possible to make detailed medical report without proper investigations of the CTs.

9. The case of Saba and Farha give rise to various questions about the rights of the minors, their right to life, their inter-se rights, inherent value of lives, right to bodily integrity, balancing of interests, best interest standards, parents views, courts' duty, doctors duty etc. The questions raised above are inter-connected and inter-related and have their roots in

A medical law, family law, criminal law and human rights law. Should we go for the best interest of Saba and Farah, or either of them? Can a Court override the wishes of the parents when we apply the best interest standard for saving the life of at least one?

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Medical Law

10. The AIIMS Medical Team has stated in its report dated 21.10.2012 about the risk involved in the operation to separate Saba and Farah which according to the Medical Team can be elaborated only after detailed investigations, at AIIMS, added to that it has been stated that the investigations have their own risks. The State of Bihar and the Central Government, however, have extended their fullest support in meeting the expenses for the surgical treatment. AIIMS have also expressed opinion that they would carry out the investigations but for the unwillingness of the parents and the family members. Barring a few exceptions, as a general rule, the conduct of investigations and performance of medical operation on a person, without his or her consent is unlawful. In *F. v. West Berkshire Health Authority (Mental Health Act Commission intervening)* [1989] 2 All E.R. 545 at 564 Lord Goff while adopting the words of Cardozo has stated "Every human being of adult years and sound mind has a right to determine what shall be done with his own body". We are, in this case, however, concerned with two minor girls, conjoint twins, faced with a situation where their parental consent is not forthcoming either for investigation or for the surgical operation.

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Right to Life:

11. Right to life is guaranteed under Article 21 of the Constitution of India, so also the right to bodily integrity. We are, in this case, not in a position to say, in the absence of any medical report, as to whether both Saba and Farah could be saved or either of them. Let us pose the following questions to ourselves: Is it in Saba's best interest that she be separated

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from Farah? Is it Farah's best interest that she be separated from Saba? Both Saba and Farah are dear to us, but in a situation where both in the absence of surgical separation might die, and in case of a surgical operation, one would survive, is there not a duty on the Court to save at least one.

12. There can also be conflict of interests between the CTs that is Saba and Farha, in such situation the Court has to adopt a balancing exercise to find out the least detrimental alternative. We are not in a position to undertake that exercise in the instant case, because there is no medical report before us stating that if CTs are subjected to surgical operation, one of them might survive. If there is an authentic medical report before us that the life of one could be saved, due surgical operation, otherwise both would die, we would have applied the "least detrimental test" and saved the life of one, even if parents are not agreeable to that course. Every life has an equal inherent value which is recognised by Article 21 of the Constitution and the Court is duty bound to save that life.

Parents consent and duty of the Court

13. Both, parents, as well as the brother are against shifting Saba and Farah to AIIMS, New Delhi for further investigation and also for further surgical operation. They believe, the same is risky and both might not survive. In *Gillick v. West Norfolk and Wisbech Area Health Authority* (1985) 3 All E.R. The Court held that "the common law has never treated the parental rights and powers as sovereign or beyond review or control.

14. We may also refer to an off-repeated passage of Bingham MR in *Re Z (a minor) (freedom of publication)* [1995] 4 All ER 961 at 986:

"I would for my part accept without reservation that the decision of a devoted and responsible parent should be treated with respect. It should certainly not be disregarded or lightly set aside. But the role of the court is to exercise

- A an independent and objective judgment. If that judgment is in accord with that of the devoted and responsible parent, well and good. If it is not, then it is the duty of the court, after giving due weight to the view of the devoted and responsible parent, to give effect to its own judgment.
- B That is what it is there for. Its judgment may of course be wrong. So may that of the parent. But once the jurisdiction of the court is invoked its clear duty is to reach and express the best judgment it can.
- C That is the law. That is what governs my decision. That is what I am desperately trying to do. I do not discern any very significant difference between the law, as set out above, and the Archbishop's fifth overarching moral consideration which he expresses in these terms:
- D "Respect for the natural authority of parents requires that the courts override the rights of parents only when there is clear evidence that they are acting contrary to what is strictly owing to their children."
- E 15. Saba and Farah are now wards of this Court and we are exercising Wardship Jurisdiction as well. Law of this land has always recognised the rights of parents with their wards/minors and first and foremost consideration of the Court is "welfare of the children", which overrides the views or opinions of the parents. In *Re B (a minor) (wardship: medical treatment)* [1981] (1990 3 ALL E.R. 927 was a case where a child was born suffering from Down's Syndrome and an intestinal blockage, required an operation to relieve the obstruction if she was to live more than a few days. Doctor opined that if the operations were performed, the child might die within a few months but it was probable that her life expectancy would be 20 to 30 years. Parents, though, it would be kinder to allow her to die rather than live as a physically and mentally disabled person, consequently, refused to consent for the operation. The local authority made the child a ward of court and when a surgeon decided that the wishes of the parents should be
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respected, they sought an order authorising the operation to be performed by other named surgeon. Lord Templeman said:

"Counsel for the parents has submitted very movingly.... That this is a case where nature has made its own arrangements to terminate a life which would be fruitful and nature should not be interfered with. He has also submitted that in this kind of decision the views of responsible and caring parents, as these are, should be respected, and that their decision that it is better for the child to be allowed to die should be respected. Fortunately or unfortunately, in this particular case the decision no longer lies with the parents or with the doctors, but lies with the court. It is a decision which of course must be taken in the light of the evidence and views expressed by the parents and the doctors, but at the end of the day it devolves on this court in this particular instance to decide" 1990 (3) All E.R. 927 at 929.

Lord Dunn also said:

"I have great sympathy for the parents in the agonising decision to which they came. As they put it themselves: "God or nature has given the child a way out." But the child now being a ward of court, although due weight must be given to the decision of the parents which everybody accepts was an entirely responsible one thing what they considered was the best, the fact of the matter is that this court now has to make the decision. It cannot hid behind the decision of the parents or the decision of the doctors; and in making the decision of this court's first and paramount consideration is the welfare of this unhappy little baby." (1990) 3 All E.R. 927 at 929.

16. We are faced with the same situation in this case, since Saba and Farah's parents are against carrying on any investigation as well as surgical operation but, being Saba and Farah are ward of this Court, this Court has got a responsibility

A to find out whether it is possible to save both and if not, at least one, for which investigations are necessary.

B 17. We are adopting such standards because each life has an inherent value in itself and the right to life guaranteed under Article 21 of the Constitution is of general nature to apply to both Saba and Farah. But what about the inherent value of life of one, who can survive due to surgical separation. Is it not necessary to save inherent value of the ward who may survive not the other. Intrinsic value of both Saba and Farah is equal, but when medical investigation is carried on, a balance sheet has to be drawn up of the advantages and disadvantages which flow from the performance or the non-performance of a surgical treatment. If the balance shifts heavily in favour of one, that has to be accepted, otherwise, both will sink and die.

D **Lack of Medical Report**

E 18. We are, in this case, concerned with a situation where a proper medical investigation could not be carried out by the medical team of AIIMS, mainly, because of the parental opposition. What they wanted is financial help for the maintenance of both Saba and Farah. Financial help, of course, has to be extended to them since parents are coming from poor circumstances, but when the lives of both are stake, can we not save the life of at least one. Medical team of AIIMS could not come out with a solution, as already indicated, they were apprehensive of the fact that the investigations had their own risk and had also opined that detailed medical treatment would be possible only after thorough investigation.

G 19. We are sorry to note that nobody is concerned with the pain and agony CTs are undergoing, not even the parents, what they want is financial help as well as palliative care. No positive direction can be given in the absence of an expert medical opinion indicating that either of them can be saved due to surgical operation or at least one. Considering the facts and

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circumstances of this case, we are, however, inclined to give the following directions: A

1. Civil Surgeon, Medical Centre, Patna should periodically carry on the medical examination of both Saba and Farah and send periodical reports, at least quarterly to AIIMS and AIIMS would make their own suggestion based on the investigation which is being conducted by the medical team from Patna. B
2. The State of Bihar is directed to meet the complete medical expenses for the treatment of both Saba and Farah and also would pay a consolidated amount of Rs.5,000/- monthly to look after both Saba and Farah. C
3. CTs condition as well as the treatment given to them, be reported to this Court every six months. D
4. The State of Bihar is directed to move this Court for further directions, so that better and more scientific and sophisticated treatment could be extended to Saba and Farah. E

With these directions, this writ petition is disposed of.

B.B.B.

Writ Petition disposed of.