

GAHC010222882022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7025/2022

SEEMA CHAKRABARTY AND ANR
W/O- BHASKAR BHATTACHARJEE @ BASHKAR BHATTACHARJEE, R/O-
WARD NO. 12, SILCHAR TOWN, P.S. SILCHAR SADAR, DIST.-CACHAR,
ASSAM

2: BHASKAR BHATTACHARJEE @ BASHKAR BHATTACHARJEE
S/O- LT. SAMARESH KUMAR BHATTACHARJEE
R/O- WARD NO. 12
SILCHAR TOWN
P.S. SILCHAR SADAR
DIST.-CACHAR
ASSA

VERSUS

UNION OF INDIA AND 5 ORS
REP. BY ITS SECY. TO GOVT., DEPTT. OF HEALTH AND FAMILY WELFARE,
SOUTH BLOCK, NEW DELHI- 110001

2:MINISTRY OF HEALTH AND FAMILY WELFARE
REP. BY ITS SECY.
UNION OF INDIA
NIRMAN BHAWAN
C WING
NEW DELHI- 110001

3:NATIONAL MEDICAL COMMISSION
REP. BY ITS CHAIRMAN
POCKET 14
SECTOR 8
DWARAKA PHASE-1
NEW DELHI- 110077

4:STATE OF ASSAM

REP. BY ITS CHIEF SECY. OF GOVT.
SECRETARIAT
DISPUR- 781006

5:THE SECRETARY
DEPTT. OF HEALTH AND FAMILY WELFARE
SECRETARIAT
DISPUR- 781006

6:THE DIRECTOR
ASSAM STATE MEDICAL COUNCI

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

23-01-2023

Heard Shri A. Ahmed, learned counsel for the petitioners.

Under very peculiar circumstances, the doors of this Court under Article 226 of the Constitution of India have been approached.

Before going to the issue and the relief prayed for, it would be beneficial to extract the facts of the case in brief.

While the petitioner No. 1 is the wife, the petitioner No. 2 is her husband and they got married on 25.05.2010. However, they had some difficulties in bearing a child for which necessary doctors were consulted even to the extent of IVF technology. However even the said technology was not successful and they have finally decided to go for surrogacy procedure for birth of a child. Accordingly, the necessary experts were consulted and the process was initiated in December, 2021.

In the meantime, ***the Surrogacy Regulation Act, 2021*** came into effect from 25.12.2021 as per which the question of permission for undergoing such process has arisen. The petitioner claims that though the Act has come into force, the

necessary Committees under the Act including the appropriate authority under Section 35 are yet to be constituted in the State of Assam. This Court had also taken the assistance of the learned Advocate General Assam, Shri D. Saikia, who appeared and apprised the Court that though notification for appropriate authority has been issued, the subsequent appointments of Members are yet to be done and therefore the Act, as such is yet to be functional in so far as the State of Assam is concerned in the regard of granting a permission. The petitioners are accordingly left with no other alternative but to get the procedure done in any other State where the Act has come into force for all practical purpose.

Shri Ahmed, the learned counsel for the petitioners has submitted that the petitioners intend to get the procedure done in the State of West Bengal wherein the Act is fully applicable. The learned counsel submits that though the State of West Bengal is not a party respondent in this case, an observation from this Court that the necessary permission as admissible by the Act cannot be granted by the State of Assam due to non-completion of the procedure concerned may be made which would have the petitioners to pursue the remedy.

Shri Ahmed, learned counsel also expresses that the process cannot wait for an indefinite period as the age of the petitioners are also crucial in this matter.

Shri K. Gogoi, learned CGC submits that it is however the respective State Counsel which is required to appoint an appropriate Authority with regard to the permission amongst other formalities.

Learned CGC further submits that the petitioners should not have any difficulty in pursuing their remedy in another State as the requirement is only to become a citizen of India and only for a difficulty that the Act has not come into full application in the State of Assam, they are required to go to another State.

The aforesaid submission is also endorsed by Shri D. P. Borah, the learned Standing Counsel, Health and Family Welfare Department who has submitted that though an Authority has been notified, the Members are yet to be appointed and

therefore the said Authority is yet to be functional.

Under the aforesaid facts and circumstances, this Court is of the considered opinion that in view of the fact that the State of Assam is yet to come to a stage whereby the requirements under the Act of 2021 may be granted moreso with regard to the permission and therefore the petitioners shall not have any embargo in pursuing the remedy in any other State including the State of West Bengal which can be considered by the respective States subject to fulfillment of the other provisions of the Act.

The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant