



Serial No. 11
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 462 of 2024 with
MC(WPC) No. 216 of 2024

Date of order: 25.03.2025

Smti. Silbania Lyngdoh, Age - 50 years
W/o Shri Wandonbok Jyrwa
R/o Mawlynrei Rynjah, Shillong,
East Khasi Hills District, Meghalaya.

...Petitioner

- Versus -

1. Union of India through the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi – 110011.
2. The State of Meghalaya through the Secretary, Department of Health & Family Welfare, Government of Meghalaya, Secretariat, Shillong – 793001.

...Respondents

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner	:	Mr. N. Syngkon, Adv. with Ms. L. Phanjom, Adv.
For the Respondents	:	Dr. N. Mozika, DSGI with Ms. K. Gurung, Adv. [For R1] Ms. R. Colney, GA [For R2] Mr. S. Sarma, Adv. with Mr. C. Chakrawarty, Adv.

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes |



Note: For proper public information and transparency, any media reporting this judgment is directed to mention the composition of the bench by name of judges, while reporting this judgment/order.

ORDER: (per the Hon'ble, the Chief Justice) (Oral)

The Institute of Human Reproduction (IHR) a unit of Geonka Nursing Home Private Limited, Guwahati refused to perform In Vitro Fertilisation (IVF) on the writ petitioner as she was just over 50 years of age and Section 21(g)(i) of the Assisted Technology (Regulation) Act, 2021 did not permit a woman of over the age of 50 years to undergo the procedure. She sought for orders of the Court to perform the procedure.

Earlier, this Court had passed interim orders asking the hospital to furnish an expert report. It did furnish a report but it was very negative as far as the petitioner was concerned. It pointed to a high risk factor for her.

In our order dated 4th March, 2025 we made, inter alia, the following observation.

“If the Act has permitted this procedure to be performed on a woman of one day short of 50 years of age, subject to normal or special condition of health or risk that a particular patient may be exposed to, it needs detailed explanation as to how after one year or so, the procedure will become so imminently dangerous for that woman that it cannot be performed. A better approach would be to evaluate patient wise, considering her special and general health condition and attending risk factors, allowing a reasonable margin in terms of age.”

We passed an interim order in line with the interim order dated 24th March, 2023 passed by the Calcutta High Court in a similar writ



petition [*WPA No.1592 of 2023-Saswati Mohury & anr v. Union of India & ors.*] to the following effect.

“Thus, the material placed before the Court and the balance of convenience unmistakably show that the petitioners have made out a case for interim relief. The preparation for Assisted Reproductive Technology should be permitted to start as further delay may frustrate the petitioners’ long-standing wish to have a child. There shall accordingly be an interim order permitting collection of the sperm of the petitioner no. 2 for preparation of the embryo with a donor eggs. The embryo shall be preserved till disposal of the writ petition. The direction is given on Dr. Shiuli Mukherjee of the Fertility Center mentioned in paragraph 13 of the writ petition. Dr. Mukherjee is permitted to conduct requisite tests and procedures in aid of the interim order.

Further, the constitutionality of section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 raises important issues on identity, fragmentation of social units and certain inalienable rights and must be decided after the respondents are given an opportunity to file their affidavits. The respondent Ministry of Health and Family Welfare shall bring its objection on record by way of an affidavit-in-opposition within 3 weeks from date; reply within 2 weeks thereafter. The affidavit shall also address the challenge to section 21(g) of The Assisted Reproductive Technology (Regulation) Act, 2021 as being ultra vires Articles 14 and 21 of the Constitution.

List this matter after 5 weeks. Parties shall be at liberty to mention the matter any time before that.”

Now, learned counsel for the petitioner submits that this interim order was sought to be carried out by the hospital but they found the egg of the petitioner as well as the sperm of the husband to be non-productive and inactive.



In that view of the matter, there is no point in hearing out this very contentious issue. It would serve no purpose at all for the reason that the procedure would become fulfilment of a passion and experimentation for birth of a child which neither has any connection with the petitioner or her husband. Stretching the Act for experimentation purpose will be the last thing in the mind of this Court.

This writ petition is, accordingly dismissed.

MC(WPC) No. 216 of 2024 is disposed of.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice