



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-07-2026

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THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

**WP No. 25862 of 2026
and WMP.No.28250 of 2026**

1. M.Kala Muthumari
W/o.K.M.Palaniswamy,
No.15, Kasthuribaai Veethi, kuhalur, kugalur,
Erode, Tamilnadu – 638313.
2. K.M.Palaniswamy
S/o.Muthusamy,
no.15, Kasthuribaai Veethi, kuhalur, kugalur,
Erode, Tamilnadu - 638313.

..Petitioner(s)

Vs

1. National Assisted Reproductive Technology
and Surrogacy Board,
Rep. by its Chairperson, Ministry of Health and
Family Welfare, Room No.156-A, Nirman
Bhavan, New Delhi-110011, India.
2. State Assisted Reproductive Technology and
Surrogacy Board,
Rep. by its Chairperson, Directorate of Medical
and Rural Health Services (DMS) Complex,
Anna Salai, Teynampet, Chennai - 600006,
Tamilnadu.
3. Garbba Rakshambigai Fertility Centre
No.4, 6th Cross Street, United India Colony,
Kodambakkam, Chennai-600024.

..Respondent(s)



Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Mandamus, directing the respondents 2 and 3 to permit embryo transfer using embryos created in 2017.

For Petitioner(s): Mr.Prakash Gokalney

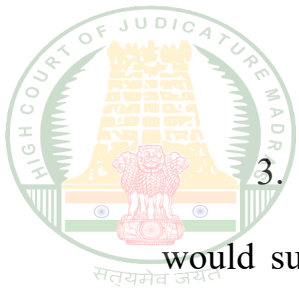
For Respondent(s): Mr.K.K.Muralidharan, standing counsel for R1
Mr.P.Elaya Rajkumar,
Govt Counsel for R2 and R3

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus, directing the respondents 2 and 3 to permit petitioner to undergo embryo transfer using embryos created and cryopreserved in 2017.

2. Brief facts:

Second petitioner is employed as a Professor in a private college in the State of Karnataka and first petitioner is his wife, who is a home maker. Their marriage was solemnized on 11.09.2014 under the provisions of the Hindu Marriage Act, 1955. Owing to certain biological complications, petitioners were not blessed with children. Consequently, they underwent In Vitro Fertilisation (IVF) treatment in the year 2017. Pursuant to which viable embryos were created and cryopreserved during sometime in 2017. One Embryo transfer was attempted but was unsuccessful, while the remaining embryo could not be utilized due to clinical and personal reasons.



3. Petitioners now proposes to proceed with the embryo transfer and would submit that their physical condition is clinically stable to undergo the procedure. However, the third respondent vide letter dated 04.06.2026, refused to carry out the procedure on the premise that second petitioner herein has crossed the upper age limit of 55 years, prescribed under Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter referred to as “ART Act”). In the above circumstances, petitioners have approached this Court by way of the present Writ Petition.

4. Before proceeding further, it may be relevant to extract Section 21(g) of the ART Act, which reads as under:

(iii) Section 21(g) the clinics shall apply the assisted reproductive technology services,-

(i) to a woman above the age of twenty-one years and below the age of fifty years;

(ii) to a man above the age of twenty-one years and below the age of fifty-five years;

5. It may be relevant to note that the above Act came into force with effect from 20.01.2022. It is the case of petitioner that the refusal on the part of the third respondent to carry out the procedure is without jurisdiction inasmuch as he would submit that it has been clarified by the Hon’ble Supreme Court in the case of **Vijaya Kumari S. & Another vs. Union of India**, W.P.(C) No.331 of



2024, decided on 09.10.2025, reported in [2025 INSC 1209] that the criteria relating to age limit would only apply prospectively and there is no intent expressed by the Parliament to give it a retrospective effect. In this regard, it would be relevant to refer to the following portion of the judgment:

“15.9 We therefore hold that creation of embryos and freezing of the same is crystallization of the said process as it clearly demonstrates the intention of the couples ie., intending couples, in the instant cases. The earlier stages, namely, (I) Visit to surrogacy clinic, (ii) Counselling of the patient, (iii) Obtaining of the various permissions / certificates from Appropriate Authorities under Section 4 of the Act, (iv) Extraction of gametes of Stage A, are no doubt part of surrogacy procedure but are stages prior to the crystallization of the intention of the couple to undertake a surrogacy procedure an interpretation we are giving in the context of age barriers. Therefore, when there was no age restriction at the stage of creation of embryos and freezing them i.e., prior to the enforcement of the Act, when the intending couples are at the threshold of Stage B, the age restriction under the Act cannot be permitted to operate retrospectively on such intending couples as in the present cases so as to frustrate not just the surrogacy procedure but also their right to have a surrogate child or become parents, the latter being a constitutional right under Article 21 of the Constitution.”



6. Secondly, this Court also finds that first petitioner is well within the prescribed age limit. It may be relevant to take note of the judgment of the Division Bench of the Delhi High Court, wherein under similar circumstances, it was held that where petitioners are not seeking initiation of fresh IVF cycle or creation of fresh embryos after crossing the statutory age threshold, but are merely seeking continuation of an already initiated reproductive process involving pre-existing cryopreserved embryos, such a request cannot be rejected solely on the ground that parties have subsequently crossed the age limit prescribed under Section 21(g) of the ART Act. It was further held that the utilisation of embryos cryopreserved at a time when the parties were admittedly within the prescribed age limit cannot be denied merely because they have crossed the age threshold subsequently. In this regard, it may be relevant to extract the following observations:

“12. The Petitioners' herein, are not seeking initiation of a fresh IVF cycle after having crossed the statutory age limit prescribed under Section 21(g) of the ART Act. Rather the admitted factual position is that the treatment process had already commenced while the Petitioners were within prescribed statutory age limits. At the relevant time, when the embryos were retrieved, created and cryopreserved on 7-3-2026 Petitioner 1(female) was aged 49 years 11 months and 14 days old and, therefore, squarely fulfilled the eligibility criteria under Section 21(g) of the ART Act. It is also not disputed that six embryos were created and cryopreserved pursuant thereto, out of which one embryo was utilised during the FET Procedure undertaken on 7-3-2026. Presently, five cryopreserved embryos belonging to the Petitioners continue to remain preserved with the Hospital.

13. At this stage, it is significant to note that the Petitioners are not seeking creation or extraction of fresh embryos after



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crossing the statutory age threshold. The request of the Petitioners' is confined to utilisation of the very same embryos which had already been retrieved at a point when Petitioner 1 undisputedly satisfied the statutory age requirement. As on date, Petitioner 1 is stated to be 50 years 2 months of age where as Petitioner 2 is stated to be 54 years old. However, the embryos presently sought to be utilised are those which came to be created during subsistence of permissible statutory age and pursuant to a process initiated under medical supervision.

14. The aforesaid distinction, in the considered opinion of this Court, assumes considerable significance while interpreting the scope and application of Section 21(g) of the ART Act. The present case, therefore, concerns continuation of an already initiated reproductive process involving pre-existing cryopreserved embryos and not commencement of a fresh ART procedure dehors the statutory framework.

15. The cryopreserved embryos in question are not merely preserved biological material in abstract but are intrinsically connected with the Petitioners' reproductive autonomy, decisional privacy and their constitutional protected choice relating procreation and family life.

16. The Supreme Court in the case of Suchita Srivastava (*supra*) recognised reproductive choice as an inseparable facet of personal liberty under Article 21 of the Constitution. Similarly, in Justice K.S. Puttaswamy (*supra*), decisional autonomy and privacy in matters concerning family, procreation and bodily integrity were held to be constitutionally protected interests. These constitutional principles necessarily require that statutory provisions regulating ART procedures receive a purposive interpretation that advances constitutional freedoms while preserving the regulatory object sought to be achieved by the enactment.

17. The Punjab Haryana High Court in Sarabjit Kaur (*supra*) while interpreting the provisions of the ART Act observed that the primary purpose of the enactment is to regulate and supervise ART clinics and banks so as to prevent misuse and unsafe practices. The statutory framework ought not to be construed in a manner defeating the very object underlying the legislation. The restrictions which are not expressly



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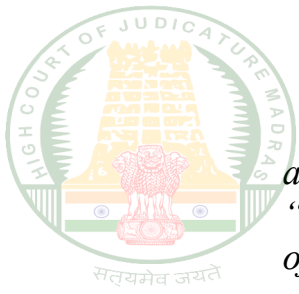
contemplated under the statute cannot be imported so as to defeat access to ART procedures. The reasoning adopted in Sarabjit Kaur also assumes significance inasmuch as the statutory framework imposes age restrictions individually upon a woman and a man and not upon “commissioning couple” as a composite unit. The legislative scheme does not contemplate any joint or collective age restriction for a “commissioning couple.”

18. Further, the Calcutta High Court in Shaymoli Saha (supra) upon analysing the definitions of “woman”, “patient” and “commissioning couple” under the ART Act, had observed that the statute does not prescribe any composite age criterion for a “commissioning couple” and that such a restriction cannot be judicially imported into the statute.

19. The aforesaid line of reasoning has also found acceptance in subsequent decisions including Vanaja v. Union of India, Ambiki Balan v. Union of India, Union of India v. Devayani S. The Division Bench of Kerala High Court in Devayani S. specifically observed that although the parliamentary Standing Committee had considered introduction of a “combined age” criterion for couples, the legislature consciously did not incorporate any such composite age restriction within the enacted provisions of the ART Act. The Court further held that where the statute prescribes age thresholds separately for a woman and a man under Section 21(g), Courts cannot read into the statute an additional restriction not expressly contemplated by the legislature.

20. Through a different lens, the aforesaid reasoning also finds support in the text of the provision. Section 21(a) of the ART Act, at its highest, require the commissioning couple, which is to “avail” assistive reproductive technology to be compliant of the requirements of the Act. Section 2(e) of the ART Act further defines “commissioning couple” as a couple who “approach” a clinic providing assisting reproductive technology.

21. Thus, it is the time that the benefits of the technology are availed and when the couple approaches, that the limitations and conditions of age, if at all, are to be considered. Section 21(h) further requires a discharge certificate to be issued to the “commissioning couple” i.e. which is the couple as they were at the time they approached the clinic, stating the details of the



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assisted reproductive technology procedure performed on the “commissioning couple”. It is, therefore, the case, that the text of the provision, also, support the purposive interpretation rendered by the Courts.

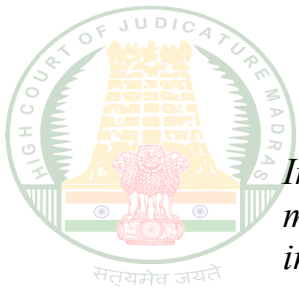
22. A brief reliance may also be placed on GP Singh’s Principles of Statutory Interpretation, which has noted that while selecting out of different interpretations “the Court will adopt that which is just, reasonable and sensible rather than that which is none of the hose things”. A construction giving rise to an anomaly ought to be avoided.

23. This Court is conscious of the decisions relied upon by the Respondents including Pankaj Kumar Das and Kavitha Anand, wherein, emphasis has been laid upon the legislative policy underlying the age restrictions prescribed under Section 21(g) of the ART Act. There can be no disagreement with the proposition that the statutory age limits are founded upon legitimate considerations relating to maternal health, ethical regulation and child welfare.

24. However, in the facts of the present case, concerns relating to maternal health and welfare of child though legitimate and substantial, stand safeguarded. The Petitioners had already undergone medical evaluation, counselling and requisite treatment under expert supervision before commencement of the ART process. The material on record would indicate that the Petitioners were declared medically fit for undergoing the procedure.

25. The Respondents have not placed any medical opinion indicating that utilisation of the existing cryopreserved embryos would pose any immediate or exceptional medical risk beyond the general policy concerns underlying the enactment.

26. The distinction between initiation of a fresh ART cycle after crossing the statutory age threshold and continuation of an already commenced treatment involving existing cryopreserved embryos cannot be lost sight of. The Punjab and Haryana High Court in the case of Pushpa v. Union of India, recently, while coming across a case where the petitioner-wife had crossed the age of 50 years, permitted continuation of IVF treatment noting that the issue stood covered the earlier decision in Sarbjit Kaur.



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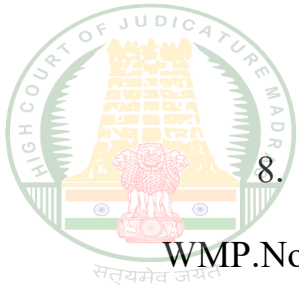


In the opinion of this Court, the latter category stands on a materially different footing and warrants a purposive interpretation consistent with constitutional protections available to reproductive choice and decisional autonomy.

27. This Court is also conscious of the fact that reproductive rights and access to parenthood in the contemporary constitutional jurisprudence cannot be reduced to purely technical or pedantic application of statutory conditions divorced from factual context in which such rights are asserted. The ART Act is fundamentally regulatory in character. The object of the enactment is to ensure ethical and safe ART practices and not to create insurmountable barriers defeating legitimate continuation of treatment processes already lawfully undertaken.

28. In view of the peculiar facts of the case, this Court is of the considered opinion that denial of permission to utilise the remaining five cryopreserved embryos solely on account of the Petitioners having marginally crossed age threshold of the ART process would not subserve the object of the ART Act.”

7. In the light of the above discussion, the embryos have been admittedly preserved some time in the year 2017 i.e., prior to the ART Act, the age criteria stipulated therein would have no applicability. In the circumstances, it is open to the third respondent Hospital to evaluate the medical condition and fitness of petitioners before undertaking the embryo transfer procedure. The third respondent shall proceed unless, in its considered opinion, the same poses any immediate or exceptional medical risk to either of petitioners beyond the general policy concerns underlying the enactment.



8. This Writ Petition stands disposed of on the above terms. No costs.

WMP.No.28250 of 2026 is ordered.

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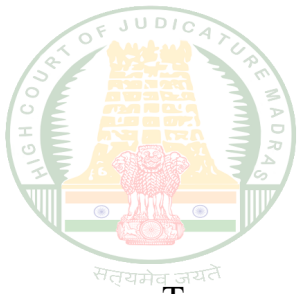
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Index: Yes/No

Speaking/Non-speaking order

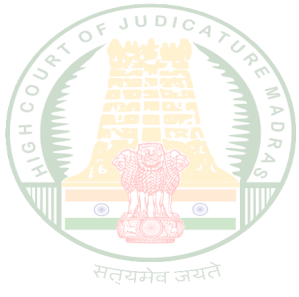
Neutral Citation: Yes/No

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To

1. National Assisted Reproductive Technology and Surrogacy Board,
Rep. by its chairperson, ministry of health and family welfare, room no.156-A, Nirman bhavan, new delhi-110011, India.
2. State assisted reproductive technology and surrogacy board,
Rep. by its chairperson, Directorate of medical and rural health services (DMS) Complex anna salai, teynampet, chennai - 600006, Tamilnadu.
3. Garbba Rakshambigai Fertility Centre
no.4, 6th cross street, united india colony,
kodambakkam, chennai-600024.



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MOHAMMED SHAFFIQ, J.

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