

21.06.2022
Ct. 5
D/L 13
ab

WPA 10810 of 2022

Smt. Lakshmi Majhi & Anr.

-Vs-

State of West Bengal & Anr.

Mr. Jagabandhu Mondal,
Mr. Nirmalendu Bera

... for the petitioners

Ms. Sutapa Sanyal,
Mr. Anand Farmania

... for the State

The petitioners pray for an appropriate permission of the State Board under 'The Surrogacy (Regulation) Act, 2021', for undergoing In Vitro Fertilization Process, IVF for having a baby. The records show that the petitioners' son of about 29 years was murdered and the petitioner no. 1 being of 53 years, underwent mental agony and thereafter wanted to have a child through IVF procedure. An application made to the Secretary, Department of Health on 1st May, 2022 has not been responded to.

Section 4(ii) of the Surrogacy (Regulation) Act, 2021 stipulates that no surrogacy or surrogacy procedure shall be conducted or performed except for the following purposes, which includes under Proviso 4(ii)(a) of the Act that for a couple of Indian origin or an intending woman who intends to avail surrogacy,

certificate of recommendation from Board will have to be made. Under Section 26 of the Act, the Board has been named as the State Assisted Reproductive Technology and Surrogacy Board. The composition and constitution of Board can be found in Sections 26 and 27 of the Act. Section 4 of the Act does not mention any further procedural requirements, which are to be fulfilled before permission can be granted by the Board.

Hence, this Court is of the view that the Board being the respondent no. 2 herein, should be directed to consider the case of the petitioner no. 1 within all medical parameters and the statutory requirements under the Surrogacy (Regulation) Act, 2021 as well as any other related Act and take a decision in the matter within a period of four weeks from today. In the event the Board finds that the petitioner no. 1 is physically and financially suited to undergo IVF procedure, the Board shall take steps to give permission and appropriate recommendation to the petitioner no. 1 within a further period of two weeks from the date on which such decision is taken. The petitioners shall make all the documents available before the Board for taking of decision by the Board.

WPA 10810 of 2022 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)

