

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SHRI JUSTICE ANIL KUMAR JUKANTI**

WRIT PETITION NO: 34895 OF 2023

Between:

1. Sri V. Naga Venkata Krishna, S/o: Sri V. Subba Rao, Aged. 46 years, Occ. Employed, R/o LIG B440, 2nd Floor, Dream Nest Residency, A.S. Rao Nagar, Hyderabad - 500062.
2. Smt V. Vijaya Sree, W/o V. Naga Venkata Krishna, Aged. 46 years, Occ. house wife, R/o LIG B440, 2nd Floor, Dream Nest Residency, A.S. Rao Nagar, Hyderabad - 500062.

...PETITIONERS

AND

1. The Union of India, Rep. by its Secretary, Ministry of Law and Justice, 4th Floor, A-Wing, Shastri Bhawan, New Delhi - 110011.
2. Ministry of Health and Family Welfare, Rep. by its Secretary, Nirman Bhawan, New Delhi - 110011.
3. The State of Telangana, Rep. by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat, Hyderabad.
4. The Additional Director, ART and Surrogacy, DME Building, Third Floor, Koti, Hyderabad.
5. The District Medical Health Officer, Medchal-Malkajgiri District Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or orders more particularly one in the nature of writ of Mandamus to set aside the amendment made to Form-2 1 ((d)(I)) of The Surrogacy (Regulation) Rules 2022 of the corresponding Rule 7 of The Surrogacy (Regulation) Act 2021 vide notification No. GSR 179 (F) dt.14-03-2023, prescribing and substituting the words "Couple undergoing Surrogacy must

have both gamete from the intending couple and donor gametes is not allowed." Which, prior to substitution read as: "(d) the fertilization of a donor oocyte by the sperm of the husband." as it is arbitrary and in violation of the principles of natural justice under Article 14 of the Constitution of India and in violation of the petitioners' right to parenthood under Article 21 of the Constitution of India and consequently allow the petitioners to use a donor Oocyte/Egg for the fertilization by the sperm of the Petitioner No. 1 for surrogacy.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of the amendment i.e., paragraph 1(d) in Form 2 which is the consent of the Surrogate mother and Agreement for surrogacy (Regulation) read with Rule 7 of the Surrogacy (Regulation) Rules 2022 made under the Surrogacy Act and allow the Petitioners to proceed with the process of Surrogacy using a donor Oocyte/Egg in the interest of justice pending disposal of the above Writ petition.

Counsel for the Petitioners: MS. RACHNA S WADDEPALLI

**Counsel for the Respondent No.1 and 2: GADI PRAVEEN KUMAR,
Dy. SOLICITOR GEN. OF INDIA**

**Counsel for the Respondent No.3 to 5: MS. K. MAHALAKSHMI, ASSISTANT
GOVERNMENT PLEADER FOR HEALTH,
MEDICAL AND FAMILY WELFARE
DEPARTMENT**

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION No.34895 of 2023

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Ms. Rachna S. Waddepalli, learned counsel for the petitioners.

Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondents No.1 and 2.

Ms. K.Mahalakshmi, learned Assistant Government Pleader for Health, Medical & Family Welfare Department for respondents No.3 to 5.

2. Learned Deputy Solicitor General of India has invited the attention of this Court to the order dated 05.12.2023 passed by the Supreme Court in W.P (Civil).No.756 of 2022 and submits that the issue with regard to the validity of the amendment to the Surrogacy (Regulation) Rules, 2022, is already pending adjudication before the Supreme Court.

3. In view of the fact that the validity of the amendment to the Surrogacy (Regulation) Rules, 2022, is under challenge before the Supreme Court, learned counsel for the petitioners seeks leave of this Court to withdraw the writ petition with the liberty to approach the Supreme Court.

4. Accordingly, the writ petition is dismissed as withdrawn with the liberty as aforesaid.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

//TRUE COPY//

SD/- K.AMMAJI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

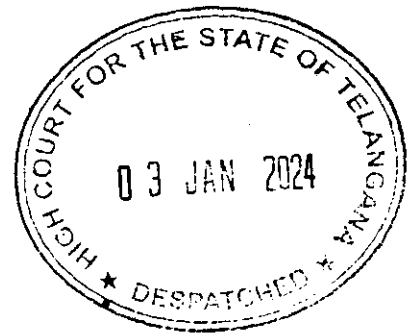
1. One CC to M/s. Rachna S Waddepalli, Advocate [OPUC]
2. One CC to Sri Gadi Praveen Kumar, Dy. Solicitor Gen. of India, Deputy Solicitor General of India [OPUC]
3. Two CCs to GP for Health, Medical and Family Welfare Department, High Court for the State of Telangana, at Hyderabad [OUT]
4. Two CD Copies

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GJ

V. J.

HIGH COURT

DATED:29/12/2023



ORDER

WP.No.34895 of 2023

**DISMISSING THE WRIT PETITION AS WITHDRAWN
WITHOUT COSTS.**

⑦ VLV
3/1/24