

AD-14
Ct No.09
05.03.2024
TN

WPA No. 508 of 2024

Bratin Kumar Jha and another
Vs.
Union of India and others

Mr. Kushal Paul
.... for the petitioners

Mr. Rudrajyoti Bhattacharya,
Ms. Debjani Ghosal
.... for the UOI

Mr. Amal Kr. Sen, Ld. AGP,
Mr. Lal Mohan Basu
.... for the State

1. A fair stand has been taken by the State in this matter.
2. Learned counsel for the petitioners contends that due to an amendment in the Surrogacy (Regulation) Rules, 2022 (for short “the 2022 Rules”), the petitioners were not being permitted to use donor gametes for the purpose of going for surrogacy, intending to have a baby by such process.
3. However, learned counsel for the State hands over a Notification dated February 21, 2024 vide G.S.R. 119(E) as per which the latest amendment in the said 2022 Rules provide that the couple undergoing surrogacy must have both gametes from the intending couple. However, in case when the District Medial Board certifies that either husband or wife constituting the intending couple suffers from any

medical condition necessitating use of donor gamete then surrogacy using donor gamete is allowed, subject to the condition that the child to be born through surrogacy must have at least one gamete from the intending couple.

4. In the present case, the petitioners have already been certified twice by the District Medical Board as per learned counsel for the petitioners. Hence, there cannot be any further impediment in the petitioners-couple going for surrogacy with a donor gamete.
5. It is further submitted by the petitioners that the embryo is now being held by the respondent no.3. Learned counsel for the petitioners hands over a communication dated March 04, 2024, whereby it was indicated that the respondent no.3 had decided to surrender its registration as a surrogacy clinic and had already initiated the documentation in that regard.
6. In such view of the matter, there cannot be any impediment in the respondent no.3 handing over the embryo to the petitioners for the purpose of the petitioners undertaking due procedure for surrogacy.
7. Accordingly, WPA No. 508 of 2024 is disposed of by directing the respondent no.3 to hand over the embryo-in-question to the petitioners or to any other agency/institution/fertility centre/clinical facility as designated by the petitioners, within a week from the

date of communication of this order to the said respondent.

- 8.** Upon so having been handed over, the petitioners are permitted to go for surrogacy with a donor gamete in terms of the amended Rule 1(d) of the Surrogacy (Regulation) Rules, 2022, as amended till date.
- 9.** The parties shall act on the server copy of this order without insisting upon prior production of a certified copy thereof.
- 10.** There will be no order as to costs.
- 11.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)