

August 5, 2024
Sl. No.A 13
Court No.9
s.biswas

WPA 6454 of 2024

Subrata Deb and another
vs.
The Union of India and others

Mr. Arindam Das
Ms. Priyanka Patra

... for the petitioners

Mr. Animesh Mukherjee

... for the Union of India

Ms. Sonal Sinha
Mr. Avishek Prasad

... for the State

1. Practically, the petitioners seek amendment of the law. The petitioners pray for a direction by court, relaxing the age limit prescribed under the Assistant Reproductive Technology (Regulation) Act, 2021. Section 21(g) provides that clinics shall provide the assisted reproductive technology services to a woman above the age of 21 years and below the age of 50 years and to a man above the age of 21 years and below the age of 55 years.
2. The petitioners contend that the age limit is restrictive and the right of the couple to have a baby through the process permitted under the law, was denied.
3. The prayer is to allow the petitioners to proceed with the In Vitro Fertilization process. The petitioners rely on the decision of the Hon'ble Apex Court dated December 19, 2022. Several writ petitions filed by couples undergoing or

intending to undergo the assisted reproductive services were disposed of. The Hon'ble Supreme Court passed the following directions:

“Based on the above discussion, the following directions are issued:

- (i) Those among the petitioners who were undergoing ART services as on 25.01.2022 shall be permitted to continue their treatment.
- (ii) The National Board shall alert the Central Government about the need for having a re-look at the upper age limit prescribed in Section 21(g) of the Act.
- (iii) The National Board shall also bring to the notice of the Central Government the requirement of including a transitional provision in the ART Act.
- (iv) The above directions shall be complied by the National Board within three months of receipt of a copy of this judgment.
- (v) Those among the petitioners who are yet to commence their ART treatment shall await the decision of the Central Government on the upper age limit and the transitional provision.
- (vi) The liberty of the petitioners to approach this Court at a later stage, if so necessitated, is reserved.”

4. The learned advocate for the Union of India submits that the law is still in force. The ‘relook’, as directed by the Hon'ble Apex Court with regard to extension of upper age limit, has not been taken.

5. The learned advocate for the state respondents submits that the case of the petitioners is barred under the provision of ART Act. Two attempts of the petitioners on earlier occasions have failed. This is not a case that the third attempt was ongoing when the law had come into force. It is not a transitional case.
6. Under such circumstances, no order can be passed in the writ petition by the High Court directing the authorities to violate the statute. Mandamus cannot be issued. Pursuant to the order passed by the Hon'ble Apex Court no age relaxation has been granted. The case of the petitioners does not appear to be covered by the said directions. Unless, the central government by legislation, changes the age limit, no orders can be passed.
7. The writ petition is accordingly disposed of.
8. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)