

22nd May,
2024
(AK)
18

W.P.A 14095 of 2024

Smt. Shampa Nandi and another
Vs.
The State of West Bengal and others

Mr. Krishna Pada Pal
Mr. Kamal Krishna Pathak
Mr. Souvik Maji

...for the petitioners.

Mr. Biswabrata Basu Mallick, Ld. AGP
Ms. Mrinalini Majumdar

...for the State.

1. The petitioners are a married couple under the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter referred to as “the 2021 Act”)
2. The date of birth of the petitioner no.1, who is the wife, is January 1, 1973 as per her Aadhaar Card and as per her Admit Card for the West Bengal Board of Secondary Education Examinations, January 4, 1974.
3. Thus, the petitioner no.1 has barely crossed the age of 50 years.
4. On the other hand, the date of birth of the petitioner no.2-husband as per his Aadhaar Card is July 22, 1969 and thus, he is running 55 years of age.

5. The couple was refused the services under the 2021 Act on the ground that they are overage.
6. Heard learned counsel for the parties.
7. It transpires from Section 21(g) of the said Act that the said technology services shall be applied to a woman above the age of 21 years and “below the age of 50 years” whereas the man has to be above the age of 21 years and “below the age of 55 years”.
8. In the present case, learned counsel for the petitioners places reliance on a certificate issued by the concerned clinic, annexed at page-37 of the writ petition, wherein it has been indicated that five embryos of the petitioner no.1 have been preserved in Cryolocks and she is mentally and physically fit for embryo transfer and to carry on pregnancy for successful outcome.
9. The date of the certificate is April 17, 2024.
10. Insofar as the petitioner no.2-husband is concerned, the question which is to be decided is whether the embargo in Section 21(g) of the Act applies to a man who is running the age of 55 years.
11. The bar is couched in a language so that the man has to be ‘below’ the age of 55 years at the relevant juncture.
12. The said expression can be construed in two ways – first, that at the relevant juncture, the man has not

yet touched the age of 55 years and secondly, that the man has not yet completed 55 years of age.

13. Since the object and purpose of the 2021 Act is to regulate and supervise the booming trend of couples availing of Assisted Reproductive Technology, the interpretation of the concerned Section ought to be made in a liberal manner, in order to extend the benefit sought to be advanced by the Act to the subjects of the Act and its target groups.
14. In the present case, the petitioners have had two miscarriages previously and desperately seek a child, for which the services under the 2021 Act have been sought to be availed.
15. Thus, a liberal interpretation ought to be given to Section 21(g).
16. In view of the above observations, since the petitioner no.2 has not yet completed the age of 55 years from his date of birth, it has to be construed that he is still below the age of 55 years as required under Section 21(g)(ii) of the 2021 Act.
17. Moreover, since the petitioner no.1-wife has barely crossed the upper age limit and has five embryos already preserved, particularly in view of the certificate given by the concerned clinic that she is otherwise physically and mentally fit for embryo transfer and to carry on pregnancy, I do not find

any reason to prevent the petitioners from going for such services.

18. Accordingly, in view of the above observations, WPA 14095 of 2024 is disposed of by permitting the petitioners to approach the respondent-Clinic and/or any other clinic competent to provide such services, to avail of Assisted Reproductive Technology Services from the said clinic.
19. As and when so approached, the said clinic shall act on a server copy of this order and ensure that the benefit of the said procedure is given to the petitioners at the earliest.
20. There will be no order as to costs.
21. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)