



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11021 OF 2024

1. Ratnakar Vitthalrao Chidrawar
2. Mukta Subhash Deshatwar
3. Chetana Yogesh Kachewar
4. Yogesh Chandrakant Kachewar ..Petitioners

Vs.

1. The Union of India,
2. The State of Maharashtra,
3. Indira IVF Hospital Pvt. Ltd. ..Respondents

Mr.Pramod Kulkarni, Advocate for petitioners
Mr.A.N.Patale, Advocate for respondent no.1
Mr.S.J.Salgare, AGP for respondent no.2

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : OCTOBER 21, 2024**

ORDER :-

This Writ Petition, under Article 226 of the Constitution of India, has been filed with the following main reliefs :-

B) The Honourable Court be pleased to grant permission to the petitioner no.1 and 2 to go through the surrogacy procedure and the petitioner no.3 to be the gestational carrier with Indira IVF Hospital Pvt. Ltd., Pune, i.e. respondent no.3.

C) By an appropriate order of this Hon'ble Court, the petitioner nos.1 and 2 be granted

parentage and custody of children born out of surrogacy according to the Surrogacy Agreement dated 12/04/2023.

2. Heard learned counsel for the petitioners and learned AGP for respondent no.2 – State.

3. Petitioner no.1 is husband of petitioner no.2. Petitioner no.3 is sister of petitioner no.2, while petitioner no.4 is husband of petitioner no.3. Both petitioner nos.1 and 2 proposed to undergo the surrogacy procedure according to the established law. Petitioner no.3 (sister of petitioner no.2) is ready to act as gestational carrier of the child to be born through surrogacy. All the petitioners have entered into an agreement to that effect.

4. Petitioner nos.1 and 2 did not have any child born of their wedlock and have tried to conceive for more than 15 years. Since petitioner no.2 could not conceive naturally, to undergo the procedure of In Vitro Fertilization (IVF), they approached a registered and licensed clinic under the supervision of Dr. Amol Lunkad of Indira IVF Hospital Pvt. Ltd., Pune. After having undergone the treatment at the aforesaid IVF centre for years together, the couple (petitioner nos.1 and 2) suffered failure of 09 IVF cycle, which resulted into

recurrent implantation failure. The same compelled the couple to undergo the surrogacy procedure as an advanced treatment for infertility.

5. Learned counsel for the petitioners relied on (i) the judgment of this Court in the case of **XYZ and anr. Vs. The Union of India and ors. (Writ Petition No.10108 of 2023 decided on 09.02.2024) with connected matter**; and (ii) an interim order passed by the Apex Court in the case of **Arun Muthuvel Vs. Union of India and ors., 2023 SCC OnLine SC 1862**.

6. We have perused the relevant provisions of the Surrogacy (Regulation) Act, 2021 and the Surrogacy (Regulation) Rules, 2022 ("Rules of 2022", for short) as well. The petitioners have placed on record the consent of the surrogate mother in the prescribed Form 2. The petitioners have also placed on record Consent of the Surrogate Mother and Agreement for Surrogacy in terms of Form 2, prescribed in view of Rule 7 of the Rules of 2022. They have also placed on record their marriage certificates.

7. We have carefully perused the surrogacy agreement and

the consent of the surrogate mother. Same is in consonance with the format given under Rule 7 of Rules of 2022. We have also perused the certificate issued by the Medical Officer of District Board, Civil Surgeon, Pune, in Form 12, stating therein:-

“ I have medically examined the couple and hereby certify that Mrs. Mukta Subhas Deshatwar (Chidrawar) wife of Mr.Ratnakar Vithalrao Chidrawar suffers Failure of 09 IVF Cycle recurrent implantation failure (Medical condition and require to undergo surrogacy procedure as an advanced treatment for infertility).”

8. In view of the above, we allow the Writ Petition in terms of the following order:-

O R D E R

(i) If the petitioners otherwise fulfill all other conditions mentioned under the Surrogacy (Regulation) Act, 2021 and the rules thereunder, they are entitled to proceed with the process of surrogacy at a Government/Medical Council recognised surrogacy centre.

(ii) Parties are directed to act upon in terms of the Surrogacy Agreement dated 12.04.2024.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP