



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2024

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.23771 of 2024
WMP.Nos.26012 to 26014 of 2024

1. Subbulakshmi
2. S.Seenivasan

... Petitioners

Vs.

1. The Union of India,
Rep. By its Secretary,
Ministry of Health & Family Welfare,
Sasthri Bhavan,
New Delhi-110 001.

2. State of Tamil Nadu,
Rep. By its
Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai.

3. The Director/Appropriate Authority,
Directorate of Medical and Rural Health Services,
No.359, DMS Complex, 361, Anna Salai,
Chennai-6.



4. The Joint Director of Health Service/

District Medical Board,

Office:166, North Beach Road,

Fisheries Campus, Thoothukudi-1.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records on the file of the 3rd respondent in Na.Ka.No.8899/NiPi7/1/2023 dated 04.03.2024 to quash the same as ultravires to the surrogacy (Regulation) Act, 2021 and the Surrogacy (Regulation) Rules, 2022.

For Petitioner : Mr.K.V.Sanjeevkumar

For Respondents : Mr.E.Sundaram, G.A. RR2 to 4

Mr.Rajesh Vivekananthan, Dy.S.G R1

ORDER

The Writ Petition has been filed seeking to quash the order passed by the 3rd respondent in Na.Ka.No.8899/Nipi7/1/2023 dated 04.03.2024 to quash the same as ultravires to the Surrogacy (Regulation) Act, 2021 and the Surrogacy (Regulation) Rules, 2022.

2. The case of the petitioners is that the first petitioner is the wife of the second petitioner and their marriage took place in the year 2017. Due to health issues of the first respondent, they decided not to have a child and in the year 2023, they decided to go for Surrogacy. Unless the petitioners get permission from the 3rd and 4th respondents, the Hospital may not be in a



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position to permit them to have a child through Surrogacy, for which, the petitioners made application before the respondents 3 & 4 and the same was not considered. Hence, the petitioners filed a writ petition before this Court in W.P.no.32529/2023 and this Court vide its order dated 29.01.2024 directed the respondents to consider their representation. Thereafter, the third respondent has directed the petitioner to undergo medical examination and to get a fitness certificate from the Institute of Obstetrics and Gynecology and Government Hospital for Women and children, Egmore. Accordingly the first petitioner had undergone the medical procedure, based on which, the hospital issued medical report that she is not eligible to conceive. Hence, the 3rd respondent has issued eligibility certificate for intending couple under I7A of Surrogacy Rules on 07.02.2024 the same is valid for an year till 06.02.2025. Such being the position, the third respondent who is the appropriate authority as notified by the State Government under Section 35 of the Surrogacy Regulation Act by its proceedings dated 04.03.2024 has prescribed certain additional requirements not contemplated either under the Surrogacy Regulation Act. Challenging the said proceedings, the petitioner has filed the present writ petition seeking to quash the same.



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3. The learned counsel for the petitioners submitted that the 3rd respondent failed to see that when the Act and Rule does not prescribe that the surrogate mother must obtain her eligibility certificate from her district where she resides the surrogate mother is authorized to obtain her eligibility certificate from the authority where the surrogacy procedure takes place. It would suffice the requirement under the Act if the eligibility certificate is obtained from the appropriate district level authority where the surrogacy procedure is to be carried out. It is very difficult to get surrogate mother since the age limit has been fixed for the surrogate mother, between 25 to 35 years and the petitioners have found out a surrogate mother. According to the learned counsel, if the respondents issue the eligibility certificate as per the norms prescribed in the Surrogacy Act, 2021 and Surrogacy Regulation Rules 2022 in Form 17B, the petitioners can process the procedure through the hospital. Hence, the learned counsel prays to set aside the impugned order and allow this petition.

4. The learned Government Advocate submitted that the certificate has to be obtained from the District Medical Board under explanation to Section 4(iii)(a) to mean Medical Officer under the Chairpersonship or chief



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Medical Officer or Chief Civil Surgeon or Joint Director of Health Services of the District and comprising of atleast two other specialists, the Chief Gynecologist or Obstetrician and Chief Pediatrician of the District. Therefore, the order impugned passed by the 3rd respondent is proper.

5. Heard the learned counsel for the petitioners and the learned Government Counsel appearing on behalf of the respondents and perused the materials available on record.

6. The facts of the case are not in dispute. The petitioners have obtained fitness certificate under form-17A of the Surrogacy Regulation Act on 07.02.2024. The Surrogacy mother has to obtain a fitness certificate where she is residing and also the petitioners have obtained an Aadhar Card, nativity certificate and NOC from her family members including her husband. While so, the third respondent vide order dated 04.03.2024, insisted the petitioners to obtain Form-17 Eligibility Certificate for intending couple, form-17b Eligibility Certificate for Surrogate Mother and Form 11 Certificate of Essentiality for intending couple. According to the petitioner, this is not prescribed as one of the requirement under the Surrogacy Act and Rules formed by the Government.



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7. A perusal of the impugned order dated 04.03.2024 passed by the third respondent, would only indicate that the third respondent had reproduced the provisions of Section 17 of the Act. As per the said Procedure, a form 17 Certificate of Essentiality for intending couple has to be obtained to the District Level Medical Committee. Similarly, an eligibility certificate for surrogate mother has to be obtained where she resides. In the impugned order the third respondent has only reproduced the requirements which is mandated under Surrogacy Act and Rules in obtaining a form-17(b) for the Surrogate Mother. Therefore, it cannot be said that the third respondent had prescribed a new condition which does not contain in the Act and Rules.

8. In fact, the third respondent did not mention that the application of the petitioners is rejected. The third respondent in the impugned order, has only rendered the requirements contemplated under the Act and Rules and the petitioners have to comply with the same. Even though the petitioners expressed certain difficulties to get an eligibility certificate for surrogate mother, this Court does not accept the said contention. They must be followed certain Rules which was formed by the Government and also the



same has been mentioned in the impugned order issued by the third respondent. Therefore, this Court cannot grant a relief sought for by the petitioners. It is made clear that as and when the petitioners fulfilled the requirements contemplated under the Act and Rules, the third respondent shall consider the issue and pass appropriate orders on merits and in accordance with law.

9. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

21.08.2024

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To

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Sasthri Bhavan,
New Delhi-110 001.

M.DHANDAPANI,J.

Rli

2. State of Tamil Nadu,
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