

D/L 4
05.02.2025
Court No.14
PRADIP

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 946 of 2025

Jolly Sarkar Talukdar & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Anik Banerjee
Mr. Sourav Mondal
Mr. A. Alim

...for the Petitioners.

Mr. Biswabrata Basu Mallick
Mr. Sayan Ganguly

...for the State.

Mr. Shaunak Ghosh
Mr. S. Ray

...for the private respondent.

1. Affidavit of service filed in Court today is taken on record.
2. The petitioners intend to avail the benefit under the Assisted Reproductive Technology (Regulation) Act, 2021, but are unable to do so because of the age restriction as mentioned therein.
3. The petitioner no. 2, husband has crossed the maximum age limit prescribed for availing benefit under the Act. The clinic with which the petitioners have registered themselves, are not permitting the petitioners to avail the said benefit as the petitioner no. 2 has been found to be age barred.
4. Learned advocate appearing on behalf of the petitioners relies on the judgment delivered by this Bench on **22nd November, 2024** in **WPA 23776 of 2024** in the matter of **Shyamoli Saha & Anr. Vs. State of West Bengal & Ors.** wherein the Court took note of the judgment delivered by a coordinate Bench of this Court in **WPA 12154 of 2023** in the matter of **Sanchita Ghosh & Anr. Vs. Union of India** and in **WPA**

9232 of 2024 in the matter of **Sudarshan Mandal & Anr.**
Vs. State of West Bengal & Ors.

5. The Court held that the couple would be entitled to avail the benefit of Assisted Reproductive Technology as one of the parties qualify on the upper age limit stipulated in Section 21(g) of the Act, irrespective of the fact that the other spouse does not.
6. The Court directed the clinic to provide the facility to the petitioners.
7. As in the instant case it appears that, the petitioner no. 2 being the husband has crossed the upper age limit but the petitioner no. 1 wife is within the prescribed age limit, accordingly, the ratio laid down by the Court in the matter of **Shyamoli Saha** (supra) will be applicable in the facts and circumstances of the instant case.
8. The respondent no. 4, namely, Rashmita Fertility is directed to permit the petitioners to avail the benefit under the Assisted Reproductive Technology Service.
9. The writ petition stands disposed of.
10. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Amrita Sinha, J.)