



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 957 OF 2025
IN
WRIT PETITION NO. 11021 OF 2024

1. Ratnakar Vitthalrao Chidrawar
Age: 49 years, Occu.: Teacher,
R/o Sai Sadan Niwas,
Old Pump House Road, New Mondha,
Neglur, Dist. Nanded
2. Mukta Subhash Deshatwar
Age: 37 years, Occu.: Housewife,
R/o Sai Sadan Niwas,
Old Pump House Road, New Mondha,
Neglur, Dist. Nanded
3. Chetana Yogesh Kachewar
Age: 33 years, Occu.: Housewife,
R/o 13-8, Vidya Nagar Road,
Shreenagar Colony, Selu,
Dist. Parbhani
4. Yogesh Chandrakant Kachewar
Age: 33 years, Occu.: Service,
R/o 13-8, Vidya Nagar Road,
Shreenagar Colony, Selu,
Dist. Parbhani

..APPLICANTS

VERSUS

1. The Union of India
Through its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi
2. The State of Maharashtra
Through its Secretary
Ministry of Health and Family Welfare

3. Indira IVF Hospital Pvt. Ltd.
Office No.201 to 207, 2nd Floor,
Office No. 301, 3rd Floor, Anand Emerald,
Sakore Nagar, Near Symbiosis College,
New Airport Road, Viman Nagar, Pune

..RESPONDENTS

....
Mr. P.A. Kulkarni, Advocate for applicants
Ms. U.S. Bhosle, A.G.P. for respondent no.2
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 22nd JANUARY, 2025**

PER COURT :

1. This application has been moved for addition of relief in terms of Clause (C) of the original writ petition, no. 1121 of 2024. The applicants had filed the said writ petition with the following reliefs :-

- “(A) This petition may kindly be allowed.*
- (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. the Respondent No.3.*
- (C) By an appropriate order of this Hon’ble Court, the Petitioner No.1 and 2 be granted parentage and custody of children born out of surrogacy according to the Surrogacy Agreement dated 12/04/2023.*
- (D) Any other just and equitable relief to which the present petitioners are liable may be granted in their favour.”*

2. This Court, vide order dated 21st October, 2024, allowed the said writ petition as under :-

- “(i) If the petitioner 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 center.

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

3. Although, in our view, Clause No.(ii) referred to hereinabove of the order dated 21st October, 2024 passed in the said writ petition implies / covers the relevant prayer sought in this application, we propose to allow the application as the medical institute at which the applicants are undergoing IVF treatment have sought for a specific order in terms of Section 4(iii)(a)(II) of the Surrogacy (Regulation) Act, 2021. For better appreciation, relevant portion of Section 4 is reproduced below :-

“4. Regulation of surrogacy and surrogacy procedures. - On and from the date of commencement of this Act, -

(i) ...

(ii) ...

(iii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or initiated, unless the Director or in-charge of the surrogacy clinic and the person qualified to do so are satisfied, for reasons to be recorded in writing, that the following conditions have been fulfilled, namely :-

(a) the intending couple is in possession of a certificate of essentiality issued by the appropriate authority, after satisfying itself, for the reasons to be recorded in writing, about the fulfillment of the following conditions, namely :-

(I) ...

(II) an order concerning the parentage and custody of the child to be born through surrogacy, has been passed by a Court of the Magistrate of the first class or above on an application made by the intending couple or the intending woman and the surrogate mother, which shall be the birth affidavit after the surrogate child is born;”

4. In the case in hand, Applicant Nos.1 and 2 would be the parents of the child to be born through surrogacy, while Applicant No.3 has agreed to be the surrogate mother. Applicant No.4 is the husband of Applicant No.3. The surrogacy agreement has been duly executed between Applicant Nos. 1 and 2 on one hand and Applicant Nos.3 and 4 on the other.

5. In view of the aforesaid provisions [Section4(iii)(a)(II)], the concerned medical institute / clinic whereat the surrogate child would be born and surrogate mother and her husband as well shall handover custody of the child, to be born through surrogacy, to Applicant Nos. 1 and 2, who would be the parents (biological so to say) of that child. With this, the application stands disposed of.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)