



W.P.No.18103 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.05.2025

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No.18103 of 2025 &
WMP.Nos.20254 & 20255 of 2025

1. Amudhavalli
2. T.K.Balakrishnan ... Petitioners

Vs.

1. The Principal Secretary,
Health & Family Welfare Department, Chennai.
2. The Director,
Directorate of Medical and Rural Health Services,
Chennai.
3. The Joint Director,
Medical and Rural Health Services, [Room No.406],
4th Floor, District Collectorate Campus,
Salem – 636 001. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records on the file of the respondents relating to the Order dated 07.04.2025 of the third respondent in Na.Ka.No.11027/thi va 2/2024 and to quash the same and to



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consequently direct the respondents to process the application of the petitioners dated 23.12.2024 and to permit the petitioners to take the further steps and undergo the further procedures under the provisions of The Surrogacy [Regulation] Act, 2021.

For Petitioners ... Mr.T.SaiKrishnan

For Respondents ... Mrs.Sneha
Spl. Counsel – R1 & R2

Mr.K.Tippusultan,
Government Advocate – R3

ORDER

The petitioners are couple. They entered into matrimony and from the wedlock a son was born to them. Unfortunately, the son passed away due to massive cardiac arrest on 09.02.2023. As the petitioners had nothing to look forward, they were in deep depression. It was then the idea of surrogacy struck them. Invoking The Surrogacy [Regulation] Act, 2021, the petitioners filed an application on 23.12.2024. On the date of the filing the application, the first petitioner was aged about 50 years and second petitioner was aged about 55 years.

2. After processing the applications, the petitioners were called upon



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to appear before the District Medical Board on 03.03.2025. The petitioners submitted themselves to the Board and under went examination and produced all the necessary medical records before the authorities.

3. By way of the impugned Order dated 07.04.2025, the petitioners were informed that the first petitioner, on the date of examination by the Medical Board, was aged 51 years and the second petitioner was aged 56 years and therefore, they are not within the range fixed under The Surrogacy [Regulation] Act, 2021. Challenging the said Order, the present Writ Petition.

4. I heard Mr.Saikrishnan, for the writ petitioner and Mrs.Sneha, Special Counsel for the respondents 1 and 2 and Mr.K.Tippusultan, learned Government Advocate for the third respondent.

5. Mr.Saikrishnan, urges that the cut off date must be treated on the



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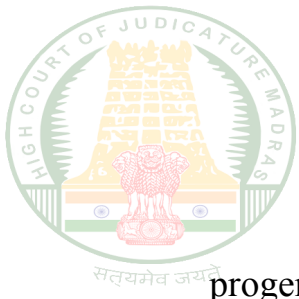
date of filing of the application and not on the date of examination.

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6. Mrs.Sneha and Mr.Tippusulthan in unison would state that the impugned Order is perfect since on the date of examination, the petitioners had crossed the aged fixed under The Surrogacy [Regulation] Act, 2021.

7. Whether there can be any age restriction at all for surrogacy is the subject matter of the proceedings before the Supreme Court in **Arun Muthuvel Vs.Union of India and others in Writ Petition [Civil] No.756 of 2022**. The Supreme Court has placed the matter for final hearing on 22.07.2025.

8. The Act itself states that the persons should not had crossed the age of 50 and 55. However, the Act does not mention whether the age must be reckoned on the date of application or on the date of medical examination. The purpose of the legislation is to provide a route for childless couples or couples who are entitled to seek for surrogacy for the purpose of obtaining a



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progeny. In other words, it should be interpreted as beneficial legislation in favour of childless couples. If such an interpretation is given, the date of birth should be reckoned on the date of application and not on the date of medical examination. This is because, the administrative delays that will be faced by the respondents while examining a couple. It can occur even after a few months of filing the application. The delay caused in examination of the petitioners or similarly placed persons, should not be placed at their door steps. Interpreting the Act, as it stands today, I hold that the date on which the application has been made, should be treated as cut off date for the purpose of the age. Having come to the conclusion, I have no other option than to quash the proceedings of the respondents.

9. At this stage, Mrs.Sneha, states that if the petitioners appear before the Medical Board on 21.05.2025, further steps in pursuance of the application that was made on 23.12.2024 would be taken. Mr.Saikrishnan states that the petitioners would present themselves before the Joint Director of Medical Services, Salem, the third respondent on the aforesaid date.



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10. Accordingly, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

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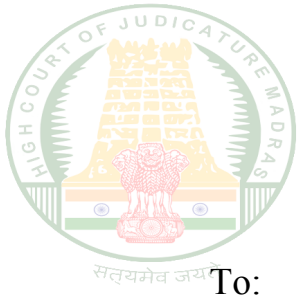
Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

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To:

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V.LAKSHMINARAYANAN,J.

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