



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-08-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 26975 of 2025

AND

WP No. 27020 OF 2025

1.X

2.Y

Petitioner(s)

Vs

1. State Of Tamil Nadu
Rep. By Its Principal Secretary To
Government, Health And Family
Welfare Department,
Secretariat, Chennai.

2.The Director
Directorate Of Medical And Rural
Health Service,
No.359, DMS Complex, 361,
Anna Salai, Chennai-600 006.



3.The Joint Director Of Health Service
/ District Medical Board

O/o.Joint Director Of Health Service,
No.359, Dms Complex, 361,
Anna Salai, Chennai- 600 006.

4.Joint Director Of Health Services
District Medical Board, District
Collector Office,
Grand Southern Trunk Rd,
Chengalpattu, Venbakkam,
Tamil Nadu- 603 111.

5.Z

Respondent(s)

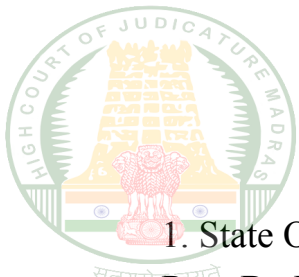
WP No. 27020 of 2025

1. Gg Hospital
Rep Managing Director,
Dr.Priya Selvaraj,
No.6E, Nungambakkam High Road,
1A, Dr. Thirumurthy Nagar,
1st Street, Chennai- 600 034.

2.X

3.Y

Petitioner(s)



Vs

1. State Of Tamil Nadu

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Respondent(s)

**WP No. 26975 of 2025****PRAYER**

Directing Respondents 1 to 4 to condone the petitioners' procedural lapse in not obtaining a parental order mandated under Section 4 (iii) (a) (II) of the Surrogacy (Regulation) Act, 2021 with respect of the ongoing pregnancy of the 5th Respondent who is the surrogate mother to the petitioners and this Court may be pleased to further issue a parental order in favour of the petitioners in the best interest of the unborn children.

WP No. 27020 of 2025**PRAYER**

Directing Respondents 1 to 4 to condone the procedural lapse in verification of the parental order mandated under section 4 (iii) (a) (II) of the Surrogacy (Regulation) Act, 2021 with respect of the ongoing pregnancy of the 5th Respondent who is the surrogate mother to the 2nd and 3rd Petitioners and this Court may be pleased to further issue a parental order in favour of the 2nd and 3rd Petitioners in the best interest of the unborn children.

In both writ petitions

For Petitioner(s): Ms.A.Shabnam Banu

For Respondent(s): Mr.E.Sundaram
Government Advocate for R1-4
Mr.N.Naren Gautam for R5

COMMON ORDER

The writ petitions came up for hearing on 29.07.2025 and this Court passed the following order,

“W.P.No.26975 of 2025 has been filed by the commissioning/intending parents to direct the respondents 1 to 4 to condone the procedural lapses on the part of the petitioners in not obtaining a



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parental order mandated under section 4(iii)(a)(II) of the Surrogacy (Regulation) Act 2021 (for brevity, hereinafter referred to as 'Act').

2. W.P.No.27020 of 20205 has been filed by the hospital along with the commissioning parents/intending parents seeking for a similar relief.

3. The case of the petitioners is that they got married on 15.11.2015. The 1st petitioner was diagnosed with Endometrial Adenocarcinoma in the year 2016 and hence, she underwent multiple treatments. The 1st petitioner was neither able to conceive naturally, nor IVF proved to be successful. Hence, the 2nd petitioner approached the treating hospital during the year 2021 to discuss the treatment options for her medical condition. The 1st petitioner was referred to an Oncologist. She underwent total hysterectomy on 17.11.2021 which rendered the 1st petitioner medically unfit to conceive or carry children.

4. In the light of the above development, the 1st and 2nd petitioners decided to opt for gestational surrogacy.

5. The petitioners were informed by the treating hospital that as per the Act, the surrogate mother was required to be genetically related to the intending couple. The petitioners found that the said condition was running contrary to Section 4(ii)(a) of the Act and therefore, they approached the Apex Court seeking for clarification. Ultimately, the Union of India issued a clarification and the petitioners were directed to approach the District Medical Board and State Appropriate Authority for issuance of Essentiality Certificate and complete the related



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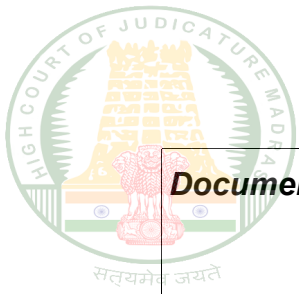
procedures as prescribed under the Act to avail surrogacy services.

6. Accordingly, the petitioners submitted an application to the District Medical Board and the State Appropriate Authority on 16.05.2023 to initiate the surrogacy procedure. Pursuant to the same, the petitioners were issued with Form 17 and Form 17-B on 01.08.2023. Upon completion of formalities, the treating hospital proceeded with the embryo transfer on 06.11.2023, however on 17.11.2023, it was confirmed that the embryo transfer was unsuccessful.

7. The petitioners, therefore, decided to pursue surrogacy once again by using the second petitioner's gametes and donor oocytes. In the meantime, the Act came into force and the Rules were also framed. The relevant provision effectively bar the use of the donor gametes and donor oocytes in gestational surrogacy. This notification was challenged before the Apex Court and the Apex Court was pleased to pass an order dated 06.02.2024 permitting the petitioners to proceed with the surrogacy using donor eggs. In the light of this permission granted by the Apex Court, the petitioners started the procedure to begin surrogacy.

8. The relevant certificates and forms that were submitted and the procedure that was adopted by the petitioners is tabulated in paragraph 9 of the affidavit filed in support of the writ petition and for an easy understanding, the same is extracted hereunder:

Document Type	issued By	Document No./Certificate No.	Date
Certificate of Essentiality (Section	Director, IOG & Govt. Hospital for Women &	NA	02.02.2024



Document Type	issued By	Document No./Certificate No.	Date
4(iii)(a)(I)	Children, Egmore		
Application Form (Form 1)	Submitted to Appropriate Authority	NA	29.08.2024
Consent of Surrogate Mother & Agreement (Form 2)	Surrogate Mother & Appropriate Authority	NA	14.11.2024
Certificate of Eligibility for Intending Parent (Form 17)	Appropriate Authority	08/3171 A2/2024	14.11.2024
Medical Fitness Certificate of Surrogate Mother	GG Hospital	NA	09.12.2024
Altruistic Surrogacy Agreement	Executed between Petitioners and Surrogate Mother	NA	14.12.2024
Certificate of Eligibility for Surrogate Mother (Form 17B)	Appropriate Authority	S.M. 012/2024	16.12.2024
Insurance Policy – Care Health Insurance	Care Health Insurance Ltd.	95993160	22.01.2025 to 21.01.2028
Insurance Policy – Bandhan Life Insurance	Bandhan Life Insurance Ltd.	TREETM73 7459681	21.01.2025 to 20.01.2028

9. Section 4(iii) (a)(I) of the Act mandates obtaining parental order from the Court of Magistrate of the First Class or above before the surrogacy



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process. However, the treating hospital failed to adhere to this mandatory procedure and straight away went ahead with the embryo transfer, as a result of which, the surrogate mother became pregnant. By the time, this defect was identified, the surrogate mother was 11 weeks pregnant. This was informed to the petitioners by the hospital through communication dated 30.05.2025. Thus, the procedure adopted became illegal and apart from the petitioners, the surrogate mother faced predicament since she became pregnant with twins and if the process is not approved, the surrogate mother has to give birth to the child and also take care of the child. It is under these circumstances, the present writ petitions came to be filed before this Court.

10. When these writ petitions came up for hearing on 23.07.2025, this Court directed the learned Govt. Advocate appearing on behalf of the respondents 1 to 4 to get a position note from the Director of Medical and Rural Health Services. Accordingly, a position note has been filed before this Court. On carefully going through the same, it is seen

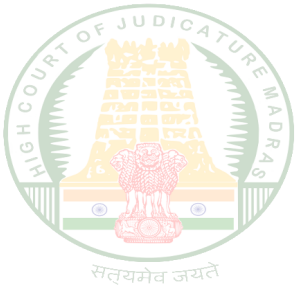


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that the treating hospital is a registered and licensed surrogacy clinic and they have proceeded further with the surrogacy process without obtaining a parental order and the certificate of essentiality and thereby had violated the rules framed under the surrogacy Act. As per the position note, the surrogate mother is presently 17 weeks pregnant with twins. According to the learned counsel appearing on behalf of the 5th respondent who is the surrogate mother, she is presently 19 weeks pregnant with twins.

11. During the course of hearing, the format of one of the parental order passed by a competent Court was placed before this Court. On carefully going through the same, it is seen that the concerned Court satisfies itself that intending parents do not have any child either born naturally or through adoption or through surrogacy and due to the medical condition are incapable of having a child naturally and therefore the same necessitates surrogacy. The court also satisfies itself that the lady who is going to bear the child is willing to become the surrogate mother for that couple. Apart from that, the concerned



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Court satisfies itself that in case, the surrogate mother is married, consent of the husband is also taken. The surrogate mother must also give a statement to the effect that she will not claim the parental custody of the child/children so born in future and that the birth certificate can be granted in favour of the intending parents. The intending parents must also give a statement to the effect that they will not abandon the child/children so born, for any reasons whatsoever. All the parties must also undertake that there is no commercial surrogacy involved in the matter. The court must also be satisfied that insurance coverage has been given to the surrogate mother. Apart from that, the court must also be satisfied that the intending parents have been granted certificate of medical indication and certificate of eligibility by the Medical Board. After satisfying itself regarding all these requirements, the parentage order is passed and the court declares that the intending parents will be declared as a lawful parent of the child/children to be born and the order will be treated as the birth affidavit after the child is born.



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12. *A careful reading of section 4(III)(a)(ii) of the Act makes it clear that a parental order is mandatory which has to be passed by a Court of 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. Thus the Court merely satisfies itself regarding the procedure followed and also satisfies itself after examining the intending parents and the surrogate mother.*

13. *The treating hospital, ought to have complied with the mandatory requirement and if for some strange reasons, the hospital thought that permission granted by the Apex Court in the application filed by the petitioners can be construed as a parenting order, that is clearly a mistake on the part of the treating hospital and from the position note, it is made clear that already action has been initiated against the hospital for violating the Rules and Regulations of the Act.*

14. *On the one hand, the interest of the*



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intending parents is involved and on the other hand, the right and autonomy of the surrogate mother is hanging in a balance. Apart from that, the surrogate mother is now 17 weeks/19 weeks pregnant with twins. Therefore, it also involves the right of the unborn child. Under such circumstances, when the same is pitted against the non compliance of the mandatory procedure under the Act, this Court has to necessarily lean in favour of protecting the interest of the petitioners/intending parents, surrogate mother and the unborn child. This Court must also exercise its Parens Patriaa jurisdiction in a case of this nature.

15. In view of the above, if this Court is able to examine the petitioners/intending parents and the surrogate mother and record their statements and ensure that all the other procedures have been followed, this Court can pass the parental order. This is, in view of the fact that the concerned provision apart from giving the jurisdiction to the Magistrate of First Class, has also give the jurisdiction for Courts above that Court. Obviously, in a fit case, High Court can also pass such orders in the interest of the parties



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concerned. The vast powers that are available to this Court under Article 226 of Constitution of India can also be exercised in a fit case of this nature.

16. In the upshot of the above discussion, this Court is inclined to pass the parental order after examining the petitioners/intending parents and the 5th respondent/surrogate mother and after satisfying itself that all the other procedures are followed. The procedure that has been followed in this case has already been tabulated and extracted supra.

17. To enable this court to pass an order, the petitioners/intending parents and the 5th respondent who is the surrogate mother are directed to be present before the Additional Master III on 01.08.2025 at 2.15 p.m.

18. The Additional Master III shall proceed further to examine the parties and record their statements. The same shall be placed before this Court and will thereafter, pass the parental order.

19. It is made clear that this order will not be cited as a precedent in any other case where the parties have proceeded further with the surrogacy



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process without getting the parental order. On the peculiar facts of this case and on considering the fact that the procedure involved is yet to percolate into the system and there is lack of awareness, this case is taken as a test case and orders are passed.

20. It is also made clear that in so far as the action that has been initiated against the hospital by the authorities, it is left open to the authorities to issue notice to the hospital and the hospital can submit their explanation to the authorities. The notice issued to the hospital and the explanation given by the hospital shall be placed before this court. Considering the same, orders will be passed by this Court while disposing of these writ petitions.

21. Post these writ petitions under the caption for passing final orders on 07.08.2025 at 2.15 .p.m.”

2. Pursuant to the above order, the matter was listed before the learned Additional Master No. III for recording the evidence and for marking the documents on 01.08.2025. On that day, the petitioners and the 5th respondent were present before the learned Master, and they filed proof affidavits, which



were taken as their depositions. That apart, Ex.P1 to P8 were marked. On

completion of the recording of the evidence and the marking of documents, the

writ petitions were listed for hearing before this Court today.

3. As was indicated in the earlier order passed on 29.07.2025, this Court is inclined to take note of the evidence recorded from the parties and the documents marked as Exhibits and pass the parentage order.

4. The 1st petitioner has stated in the proof affidavit that she was married to the 2nd petitioner on 15.11.2015 and due to various medical conditions, was not able to conceive a child. Hence, they decided to undergo the surrogacy process and undertake treatment at the GG Hospital. The certificate of essentiality has been marked as Ex.P1. Form II, which includes the consent of the surrogate mother dated 14.11.2024, has been marked as Ex.P2. The certificate of eligibility for the intending parents in Form 17 dated 14.11.2024 has been marked as Ex.P3. The medical fitness certificate of the surrogate mother dated 09.12.2024 has been marked as Ex.P4. The altruistic surrogacy



agreement between the petitioners and the surrogate mother dated 14.12.2024

has been marked as Ex.P5. The certificate of eligibility for the surrogate mother

in Form 17B dated 16.12.2024 has been marked as Ex.P6. The certificate of

insurance dated 22.01.2025, which is valid up to 21.01.2028, has been marked

as Ex.P7. The other insurance policy for the period from 21.01.2025 to

20.01.2028 has been marked as Ex.P8.

5. The 2nd petitioner has also filed a proof affidavit reiterating whatever was deposed by the 1st petitioner.

6. The 5th respondent, who is the surrogate mother, has also filed a proof affidavit. She has stated that she had known the petitioners for a period of 9 years and was aware of their struggles to conceive a child naturally. She was also aware of the fact that the 1st petitioner underwent a total hysterectomy, due to which she was incapable of having any child of her own. Therefore, the petitioners approached the 5th respondent, and they came to a mutual understanding, and the 5th respondent agreed to become a surrogate mother. It is



further stated that the husband of the 5th respondent has also consented to the same. The 5th respondent has spoken about the agreement entered into between the parties on 14.12.2024, where the 5th respondent consented to being the petitioners' surrogate, and she took a decision on her own, taking into consideration the interest and welfare of the petitioners and not due to any commercial reasons. The 5th respondent has stated that she has subjected herself to this process with a sole intention to hand over the children upon their birth to the petitioners, and there is absolutely no ulterior motive behind this process, and the 5th respondent does not wish to have a child for herself.

7. Considering the statements recorded from the respective parties and also the documents that have been marked as Exhibits P1 to P8, this Court is inclined to pass the parentage order. The intending couple, namely petitioners 1 and 2, are hereby declared as the lawful parents of the children to be born, as per the Surrogacy Regulation Act, 2021. This parentage order will be treated as a birth certificate after the children are born.



8. The above parentage order shall form part of the order passed in the main writ petitions.

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9. This Court while passing the earlier order on 29.07.2025, directed the hospital, who are the petitioners in W.P.No.27020 of 2025 to submit their explanation for the notice that was issued by the authorities to the hospital on the ground that the hospital ought not to have proceeded with the surrogacy process without getting the parentage order.

10. For the show cause notice dated 25.07.2025 issued by the Directorate of Medical and Rural Health Services, Chennai, the hospital has given a reply dated 31.07.2025. The hospital has taken a stand that the compliance process under the Act involves multiple levels of documentation, approvals, and verifications and this requires coordination across various departments, including legal, administrative, medical, and ethics committees. Hence, compliance with the mandate prescribed under the Act is not solely dependent upon a single individual or a physician but involves a vast network of persons.



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It is further stated that as of March 2023, the District Medical Board in Tamil Nadu was not constituted, even though the Act came into force on 25.01.2022, and in the absence of a District Medical Board, many couples could not even commence the surrogacy process even if they were fully in compliance with the Act. It required a judicial process which ultimately reached the Hon'ble Apex Court, and orders were passed. The hospital has admitted the fact that there was a procedural lapse in this case, since there was a bona fide misinterpretation of the order passed by the Hon'ble Supreme Court in I.A.No.265857 of 2023, which the hospital genuinely believed to be the parentage order, and that the same would be sufficient to initiate the surrogacy process.

11. In view of the same, the hospital has stated that there was no intentional violation of the procedure prescribed under the Act and it was a case of wrong understanding of the order passed by the Court.

12. As was observed by this Court in the earlier order dated 29.07.2025, this Court found that the multiple procedures involved are yet to percolate into



the system and there is lack of awareness. As a result, there was a wrong interpretation by the hospital by treating the order passed by the Apex Court as a parentage order. The hospital did not realize the fact that a parentage order is an independent order passed by the Court after recording the statements of the intending parents and the surrogate mother along with all the relevant documents.

13. In view of the same, this Court is inclined to direct the Directorate of Medical and Rural Health Service, Chennai to close the show cause notice issued against the hospital.

14. An additional affidavit has been filed by the hospital pointing out to the problems faced in understanding and complying with the mandate under the Act. For better appreciation, the relevant portion is extracted hereunder,

“A. Absence of detailed operational guidelines

- Section 4 of the Surrogacy Act projects as a central provision. However, the steps to be followed in order



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to obtain the requisite certificates required to commence and complete the surrogacy process are ambiguous and the chronology is not narrated. This is further substantiated by the fact that in the SCN dated 25.07.2025 issued by the 2nd respondent, it is alleged that the intending couple has not obtained the essentiality certificate which itself is incorrect as the Appropriate authority themselves are unaware that in the absence of an essentiality certificate which is granted upon submitting Form-1, the next step being the Eligibility certificate (Form-17) could not have been issued by the Appropriate authority.

B. Section 4 does not specify during which stage a parental order should be obtained. Particularly, if it should be after obtaining the essentiality certificate or prior to obtaining the eligibility certificate. The parental order ideally should come as a last step after all formal procedures are carried out enabling the intending couple to approach the Magistrate of a First Class or 'above' seeking a parental order which bestows parentage. However, the same has not been elaborated in the



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Surrogacy Act and has been placed as section 4 (iii)(ii) only as a mandate. A standard operating procedure ought to be introduced by the 2nd respondent.

C. The Appropriate authority themselves relied on several clarifications issued as notifications by the Union of India during the course of the pending legal proceedings before the Hon'ble Supreme Court and amendments were effected in the Surrogacy Act accordingly. The Surrogacy Act is still being fine tuned in many aspects.

D. It is pertinent to point out that as of March 2023, the District Medical Board in Tamil Nadu was not constituted even though the Surrogacy Act came into effect on 25.01.2022 while the same ought to have been done within 90 days from the implementation of the Surrogacy Act. In the absence of the District Medical Board many couples could not even commence the surrogacy process even if fully in compliance with the Act. Further, a writ petition was filed before the Hon'ble Madras High Court in Priya Darshini & Another vs State of Tamil Nadu and others



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(2023 SCC OnLine Mad 2005) seeking for an issuance of an eligibility certificate due the absence of a District Medical Board constituted in Tamil Nadu. Further, pursuant to the orders of the Hon'ble Madras High Court, Tamil Nadu had constituted its District Medical Board effectively in April 2023.

E. Further in the said judgment, reference was taken to a Notification in U.11019/255/2022-HR dated 06.01.2023 which elaborated on the Appropriate authority under the Surrogacy Act which at that point of time was not constituted at the District level and the same in itself was an obstruction to the surrogacy process.

F. While this was the situation of the Govt authorities such as the Appropriate authority who act as parent bodies, it was only by way of awareness and by virtue of a Court order that the District Medical Boards were constituted. The same liberty and condonation could also be extended to the treating hospital who was then newly manoeuvring with the changing scenario and adopting the newly



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implemented procedures. The medical institutions and the Appropriate authority under the Surrogacy Act regulating this procedure are duty bound to adopt corrective measures for better transparency.

G. Surrogacy procedure can be conducted anywhere in India- *The Surrogacy Act is silent on the place at which the surrogacy process can be undertaken. Vide a Notification in U.11019/255/2022-HR dated 06.01.2023, the Government of India allows surrogacy procedures to be performed at any place which runs contrary to the objective of the Surrogacy Act. Allowing surrogacy procedures to take place at any location without regulation defeats the focal objective of the Surrogacy Act which is to:*

- 1. Prevent exploitation of surrogate mothers;*
- 2. Ensure ethical, safe, and regulated practices in surrogacy;*
- 3. Promote altruistic surrogacy and eliminate commercial surrogacy;*
- 4. Provide legal protection to the child, surrogate, and intending couple.*



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5. Prevention of illegal commercial arrangements or trafficking under the guise of surrogacy.

H. Despite the absence of a centralised verification protocol and the absence of a uniform checklist or format for verifying compliance with eligibility criteria under Section 4, the treating hospital has acted in good faith. The lacuna in implementation only contributes to the oversight.

I. Public duty and legal obligation of Hospitals as duty bearers - *The treating hospital is responsible for dealing with statutory and ethical obligations under the ART Act, Surrogacy Act and Medical Council Guidelines. The treating hospital needs legal clarity to issue documents like discharge summaries or birth affidavit related information, register the birth properly with municipal authorities and transfer custody of the child lawfully. Amidst this procedure, clarity by the Appropriate authority on the chronology of steps to be undertaken are vital.*

J. Boundaries between ART and surrogacy



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procedures overlapping -While Assisted Reproductive Technology (ART) and surrogacy are legally and medically treated as separate processes, in practice they are often interlinked or overlap in significant ways. The same clinic undertakes the same processes for fertility treatments and surrogacy arrangements. The procedure that is appropriate under the ART Act is not permitted under the Surrogacy Act even though there is an overlap. The treating hospitals face difficulties as both Acts regulate fertility related procedures, but do not clearly demarcate where ART ends and surrogacy begins, especially when ART procedures (like IVF) are used in surrogacy arrangements.

K. Lack of stipulation of timelines - The Acts lack joint operational timelines even though section 4 (iii) specifies that no surrogacy procedure shall be initiated until the conditions are fulfilled. Whether the ART procedures can proceed while surrogacy approvals are pending is unclear. There is no mandate to halt ART procedures if surrogacy approvals are



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delayed due to the overlap in the procedures.

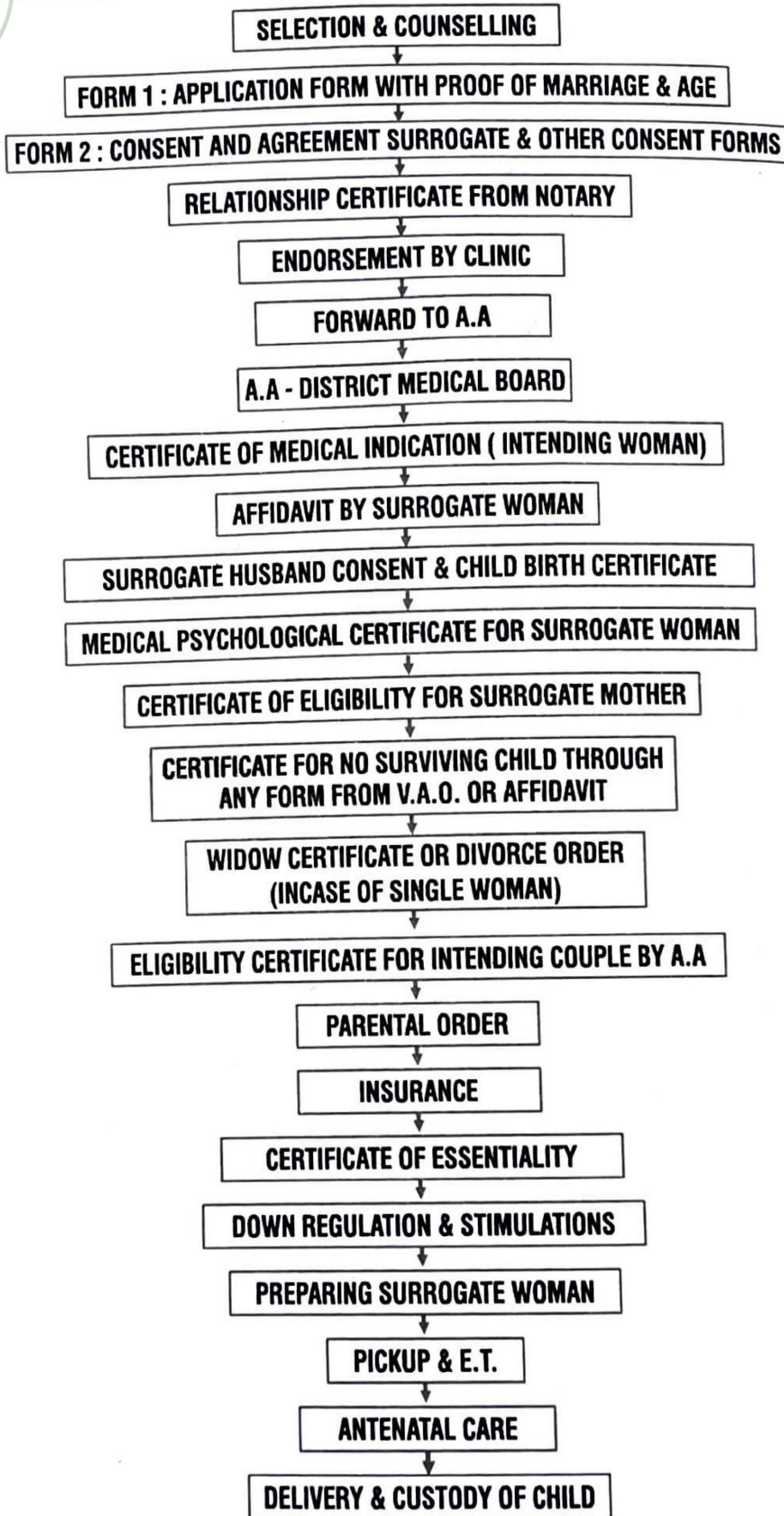
L. Doctrine of Lex Specialis (overriding effect of two statutes): *If both Acts apply, Surrogacy Act should govern the process but the overlap must be clear. The ART procedure (embryo creation) was lawfully conducted under existing ART regulations. However, the subsequent steps were later interpreted as falling under the Surrogacy Act. The grey area with respect to a uniform implementation has led to a bonafide error which requires regulatory measures.”*

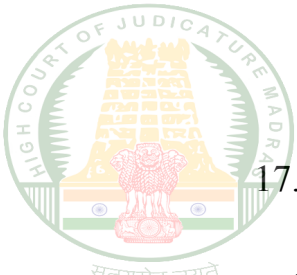
15. The complexity of the procedures involved under the Act has been explained in the additional affidavit by the hospital only to demonstrate the fact that they are cumbersome and there is a potential lack of awareness.

16. For easy understanding, the procedures to be adopted under the Act are given by way of a flow chart hereunder,



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17. The above flow chart gives an easy understanding with a step-by-step process that has to be followed in order to comply with the provisions of the Act.

18. This Court expects that the Joint Director, Directorate of Medical and Rural Health Service/District Medical Board, will take a cue from this order and come up with a booklet that stipulates the step-by-step process to be adopted to comply with the mandate under the Act, and it must be uploaded on the website so that hospitals involved in this process are made aware of their responsibilities. This direction shall be completed within a period of four weeks from the date of receipt of a copy of this order.

19. In the light of the above discussions, the writ petitions are allowed in the above terms. No costs. Consequently, the connected miscellaneous petitions, if any, are closed.

08-08-2025

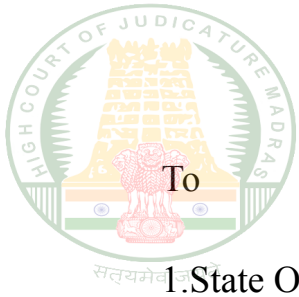
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Index: Yes

Speaking

Internet: Yes

Neutral Citation: Yes



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