



W.P.(MD).No.3633 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.02.2025

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).No.3633 of 2025
and
W.M.P.(MD).No.3589 of 2025

Panner Selvan

.. Petitioner

Vs.

- 1.The Principal Secretary,
Health and Family Welfare Department,
Chennai.
- 2.The Director,
Directorate of Medical and Rural Health Service,
Chennai.
- 3.The Joint Director,
Joint Director of Health Service,
D.No.166, North Beach Road, Fisheries Campus,
Thoothukudi - 628001.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the 1 and 2 respondents to consider the representation dated 28.11.2024 and 05.02.2025, sent a reminder representation to the respondents.



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For Petitioner : Mr.K.Jerish Neeraj

For Respondents : Mr.A.Kannan
Additional Government Pleader

ORDER

The Writ Petition seeks for Mandamus, directing the respondents 1 and 2 to consider the petitioner's representations dated 28.11.2024 and 05.02.2025.

2. The petitioner claims that he is a former Military Officer, who had served the nation in the Kargil war. He married one Thanga Vijaya on 23.03.1994. From the wedlock, a boy child was born, by name, Mugesh. All was well with the family till about early September 2023. Mugesh suffered an accident and succumbed to his injuries on 04.09.2023. This left his parents distraught.

3. As they have nothing to look forward in their lives, since their only son passed away, the petitioner and his wife decided that they would attempt to have another child through artificial insemination. The petitioner pleads, he approached several fertility centres, but his efforts were in vain. While he was certified as healthy and fit to get a progeny, the same could not be stated regarding his wife.



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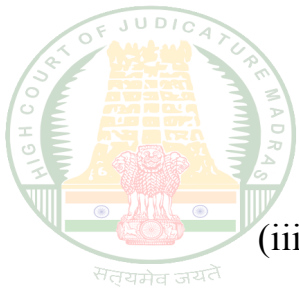
4. It was then, it struck the couple that they go in for a child through surrogacy. Hence, they gave a representation to the respondents 2 and 3 to accord them appropriate approval as required under the Surrogacy (Regulation) Act of 2021 (hereinafter referred to as 'Act'). Since the application was kept pending, they have approached this Court by way of a Mandamus to dispose of the representation.

5. When the matter came up for admission, I requested Mr.A.Kannan, learned Additional Government Pleader to get instructions from the Joint Director of Health Services, Thoothukudi.

6. The learned Additional Government Pleader also produced the written instructions. The written instructions state the following:

(i) The petitioner and his wife being above the age band of 26 to 55 and 23 to 50 years respectively, they do not fulfil the age requirement as required under Section 4(iii)(c)(i) of the Act.

(ii) The petitioner and his wife have not yet been certified by the District Medical Board;



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(iii) The petitioner has not established that he is not seeking surrogacy for commercial purposes;

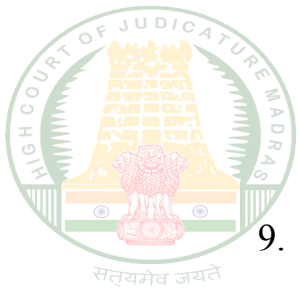
(iv) Approval has to be obtained from the appropriate authority prior to proceeding for surrogacy in terms of Section 4(ii)(a) of the Act;

(v) The petitioner has not provided any proof that the surrogate mother fulfils the requirements as required under Section 4(iii)(b)(i) of the Act; and

(vi) Finally, that the petitioner has to establish that he will not abandon the child born through surrogacy.

7. When the age criterion was pointed out to the petitioner, the learned counsel brought to my notice, the record of proceedings of the Supreme Court of India in *Arul Muthuvel Vs. Union of India and others* in *W.P.(Civil) No.756 of 2022* dated **07.01.2025** and **11.02.2025**. He states that the constitutional validity of the age limitation under the Surrogacy (Regulation) Act has been challenged before the Supreme Court and that the Supreme Court is considering the interim relief vis-a-vis the age bar in the said proceedings. Hence, he pleads that the petitioner may be permitted to proceed with the surrogacy.

8. I have carefully considered the submissions of both sides.

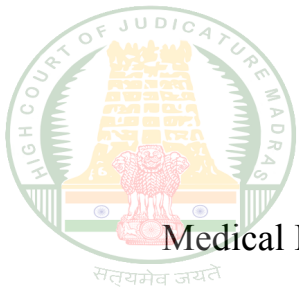


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9. Here is an unfortunate case where a war hero and a veteran, who has served this nation, has undergone a personal tragedy. He has lost his only son, who was undergoing his higher education in a reputed institution. As the couple did not have any other children to take care of them in their old age, they desired to take the surrogacy route to get an offspring.

10. If I were to put the age limitation against the petitioner and dismiss the Writ Petition and at a later date, the Supreme Court were to grant some relief to the persons similarly situated in the aforesaid proceedings, then the petitioner would have to start the whole process again. The petitioner and his wife are financially well provided for and they have also approached the appropriate authority in November 2024. In case they are found to be medically unfit by the Board, even if the age limit is relaxed by the Supreme Court, it would not be of use to the petitioner. Hence, I requested Mr.Kannan to get instructions whether the respondents will be willing to constitute a Medical Board to examine the fitness of the petitioner and his wife.

11. Mr.Kannan, considering the situation and the background of the petitioner, has been able to persuade the Department of Medical and Rural Health Services to constitute a Board. The Department has constituted a



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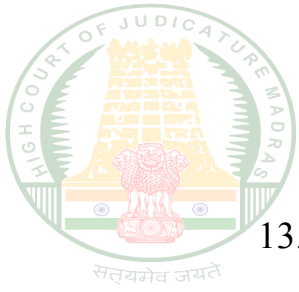
Medical Board consisting of the following persons:

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- (i) Dr.R.Mercy Rodrigo, M.D., (O & G).,
Professor and HOD of O & G,
Government Thoothukudi Medical College Hospital,
Thoothukudi District.
Mobile No.8122182071; and
- (ii) Dr.M.Vanitha, M.D., (O & G),
Associate Professor of O & G,
Government Thoothukudi Medical College Hospital,
Thoothukudi District, Mobile No.9443452473;

to examine the petitioner and his wife in terms of Section 4(iii)(b)(c) of the Surrogacy (Regulation) Act. The date for examination of the couple has been fixed as 26.02.2025 at 10.00 AM and the venue being the Government Medical College and Hospital at Thoothukudi.

12. The petitioner assures this Court that he and his wife will present themselves before the Medical Board on that date without insisting on a separate notice from the Medical Board for their appearance. The Medical Board shall consider the eligibility of the petitioner and his wife and submit its report to the appropriate authority. The further processing of the application of the petitioner will be on the basis of the orders to be passed by the Supreme Court as regards the age limit in W.P.(Civil)No.756 of 2022.



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13. In view of the above observations, the Writ Petition is disposed of.

This Court places on record its appreciation to Mr.A.Kannan, learned Additional Government Pleader for taking all the efforts so that a couple can get succour in their old age. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

21.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

- 1.The Principal Secretary,
Health and Family Welfare Department,
Chennai.
- 2.The Director,
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- 3.The Joint Director,
Joint Director of Health Service,
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V.LAKSHMINARAYANAN,J.

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