



2025:DHC:10100



\$~99

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision : 10.11.2025+ **W.P.(C) 16795/2025**

APEKSHITA KALA & ANR.

.....Petitioner

Through: Mr. Vikas Kumar, Advocate.

versus

DISTRICT MEDICAL BOARD & ANR.

.....Respondents

Through: Ms. Harshita Nathrani, Advocate.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition has been filed by the petitioners, who are a married couple residing in Kamloops, British Columbia, Canada. It is submitted that the petitioners got legally married on 10.02.2015 and have no biological children. The petitioners have been working and residing in Canada since 2022.
2. The petitioners filed an application dated 20.08.2024 before the District Medical Board, South District, Delhi seeking a 'Certificate of Medical Indication for Gestational Surrogacy' under Section 4(iii)(a)(I) of the Surrogacy (Regulation) Act, 2021 read with Rule 14 (a) of the Surrogacy (Regulation) Rules, 2022.
3. Alongside, they also filed an application seeking permission to attend the Board's proceeding through virtual hearing under Section 5(3) and 5(4)(a) of the Surrogacy (Regulation) Act, 2023.



2025:DHC:10100



4. Learned counsel for the petitioners have expressed difficulty in appearing physically due to their residence and employment in Canada, citing logistical difficulties in obtaining urgent leave approvals and high costs of international travel at short notice. However, the respondent no.1 (District Medical Board) issued a meeting notice dated 24.10.2024 directing the petitioners to be physically present before the District Medical Board on 04.11.2024. The petitioners via e-mail dated 28.10.2024 reiterated their request to appear virtually. Despite this, the respondent no.1 refused the petitioners' request without issuing any speaking order.

5. On 04.11.2024, the authorised representative of the petitioners appeared before the Board and expressed their genuine inability to appear in-person, and reiterated the request for virtual appearance. However, the petitioners again received a meeting notice on 17.12.2024, mandating physical appearance of the petitioners. On the said date, the authorised representative of the petitioners again appeared before the Medical Board and reiterated the request for virtual appearance which was again refused orally and without a reasoned order.

6. Subsequently, on 07.03.2025, the petitioners received a 'Rejection Certificate' from the District Medical Board bearing No. CDMO/SD/Surr./DMB/2024/9319, *inter alia*, stating as under:-

"The applicant did not appear before the District Medical Board on the scheduled dates of the meeting. The board opined that the couple have been given ample opportunities and were absent, hence decided to reject the application due to absentia.

Therefore, their application for Medical Indication certificate under Surrogacy (Regulation) Act, 2021 is rejected due to absentia.

The applicant may file a fresh application for issuance of Medical Indication certificate under Surrogacy (Regulation) Act, 2021 in future, if desire so."



7. Learned counsel for the petitioners contends that the aforesaid rejection order is arbitrary, non-speaking and violative of the principles of natural justice. The petitioner confines themselves to seeking that they be permitted to appear virtually before the District Medical Board. Reliance in this regard is placed on Section 5(3) and 5(4) of the Surrogacy Regulations, 2023 which reads as under:-

“5. The time and place of the meetings of the State Board and the procedure to be followed for the transaction of business at such meetings and the number of Members which shall form the quorum under sub-section (1) of Section 29:

XXX

(3) The meeting of the State Board may conduct virtually or physically on such date, place and venue as decided by the Chairperson of the Board.

(4) (a) The Member Secretary of the State Board shall issue notice of every meeting of the State Board to every Member of the Board not less than fifteen days before the date of meeting.

(b) The Member Secretary shall issue, with the notice of the meeting an agenda containing the business to be brought before the State Board in the scheduled meeting:

Provided that in exceptional circumstance, the Chairperson of the State Board may dispense with the requirement of notice before the prescribed period for meeting of the Board.....”

8. The petitioner also relies upon certain precedents and also the fact that in another districts of Delhi, the concerned District Medical Boards are permitting virtual appearance of the concerned applicants thereof. In this regard, specific reliance is placed on the meeting notices issued by the District Medical Officer (South-East) and District Medical Officer (East). The same has been annexed as Annexure P-20 to the present petition.

9. Learned counsel for the respondents opposes the present petition on the ground that the Section 5(3) and 5(4) of the Surrogacy Regulations, 2023



2025:DHC:10100



which permits virtual appearance are applicable only to the proceedings before the State Board and not before the District Medical Board.

10. Learned counsel for the respondents also emphasises the necessity of physical interaction to obviate the possibility of any kind of exploitation.

11. This Court is not persuaded to accept the aforesaid contentions of the respondents.

12. A bare perusal of the statutory provisions reveal that the mandate of the District Medical Board under Section 4(iii)(a) of the Surrogacy (Regulation) Act, 2021 is limited. In the opinion of this Court, there is no reason why the District Medical Board should not take a pragmatic view of the matter and permit the petitioners to appear virtually especially since the remit of the District Medical Board under Section 4(iii)(a) of the Surrogacy (Regulation) Act, 2021, is primarily to examine the relevant medical record to ascertain as to whether the petitioners are eligible for issuance of a 'Certificate of Medical Indication' in their favour.

13. Further, while conducting the necessary exercise under Section 4(iii)(c) of the Surrogacy (Regulation) Act, 2021, all further/remaining aspects would be duly considered, including for the purpose of allaying any apprehension/s as regards exploitation etc. As such, the District Medical Board need not insist on physical presence of the petitioners, at this stage. As noticed, the very nature of the exercise before the District Medical Board is such that it is largely predicated on perusal of the relevant medical record. In case any interaction/ clarification is required from the petitioners, a virtual interaction would suffice. Importantly, it is noticed that this is the prevalent practice in other districts in Delhi, as is apparent from the meeting notices annexed as Annexure P-20 to the present petition.



2025:DHC:10100



14. There is also no rationale as to why the District Medical Board should not equip itself in conducting virtual hearings as is mandated for the State Board under Section 5(3) and 5(4) of the Surrogacy Regulations, 2023.

15. In the circumstances, the present petition is allowed, the impugned order dated 07.03.2025 is set aside, and the petitioners are permitted to appear and participate in the proceedings before the District Medical Board virtually. The concerned authorised representative of the petitioners would appear physically before the District Medical Board with the entire medical records.

16. The District Medical Board is directed to revisit/re-examine the matter and take a suitable decision upon examination of the concerned medical records and after virtual interaction/s with the petitioners. Let an endeavour be made to carry out the aforesaid exercise as expeditiously as possible, and preferably during the next sitting of the District Medical Board.

SACHIN DATTA, J

NOVEMBER 10, 2025/uk