

S/L 29
14.01.2026
Court. No. 25
pp

WPA 19776 of 2025

Smt. Bula Santra & Anr.
Vs.
The Union of India & Ors.

*Ms. Deblina Lahiri,
Mr. Debashis Sarkar,
Mr. Mrinmoy Chatterjee*

...for the Petitioners.

*Mr. Partha Ghosh,
Mr. Amal Kumar Datta*

...for the Union of India.

1. The petitioners have filed the present writ application praying for allowing the petitioner no.1 to approach an Assisted Reproductive Technology for obtaining the services authorized clinic for the purpose of employing assisted reproductive technology services in order to conceive a child.
2. The petitioner nos.1 and 2 are the couple out of the marriage between the petitioner nos.1 and 2. One male child was born on 17th April, 2004, namely Sayandip Santra and another child is at present 18 years, who is physically and mentally challenged. The elder son of the petitioners died at the age of 28 years on 10.12.2024. As one of the children of the petitioners is a physically and mentally challenged, and accordingly the petitioners have decided to have another child. The petitioners had approached the doctor but it is found that the petitioner no.2, the husband is 58 years and the petitioner no.1, the

wife is 47 years and as such, it is not possible for the petitioner no.1 to conceive another child.

3. As per the advice of the well-wishers and family members of the petitioners, the petitioners have decided to visit an infertility clinic to conduct the process of IVF. On medical checkup on 23rd July, 2025, the doctor has opined that the petitioner no.1 is eligible for pregnancy, but his husband is 58 years and as such, permission from the Court is required for further treatment to adopt IVF process.
4. The petitioners submit that the benefit of assisted reproductive technology is denied on the ground that the petitioner no.2 is over-aged in terms of Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021. Accordingly, the petitioners have filed the present application.
5. The petitioners have relied upon a judgment in the case of **Sanchita Ghosh and Another vs. Union of India and Others** passed in WPA 12154 of 2023 dated 8th April, 2024 wherein the similar question was arose before this Court and this Court held that in the event one of the spouses is eligible under Section 21(g) and the other is not, it will be at the option of the clinic whether or not to use the gamete donated by the ineligible spouse in the process of assisted reproductive technology. This Court has held that Section 21(g) and its sub-clauses, read harmoniously with the definition clause as stipulated in Section 2 of the 2021 Act, can give complete meaning and a wide expanse to the said Act, in

consonance with the contemplation of the Preamble of the Act. Accordingly, Section 21(g) of the 2021 Act creates no unreasonable discrimination between married and unmarried women in availing assisted reproductive technology and, thus, passes the test of constitutionality.

6. The petitioners have relied another judgment in the case of **Shyamoli Saha and Another vs. State of West Bengal and Others** reported in **2024 SCC Online Cal 10379**, wherein the similar question was arose and the Coordinate Bench of this Court held that the medical report of the lady suggests that she is physically fit to hold the embryo which means that the lady is eligible to avail ARTS both age wise as well as health wise.
7. The petitioners have further relied upon a judgment in the case of **Union of India vs. Devayani S. and Others** reported in **2025 SCC Online Kerala 11786**, wherein the Hon'ble Division Bench of the Kerala High Court held that we are of the considered opinion that the age restriction in the case of women mentioned in Section 21(g)(i) is applicable to all the six circumstances mentioned above, since that age restriction is prescribed considering the risk to maternal health, if the pregnancy is below or above the age suggested by the expert stakeholders and also the health of the child to be begotten, especially when the woman availing the ART procedure is the biological mother who has to carry the child in his womb, unlike that in the case of surrogacy. At the same time, the age restriction in the case of men prescribed under Section 21(g)(ii) of the ART Act, it can

only be said that the same is applicable only to the circumstance of using his male gamete (sperm), either as one among the commissioning couple or as a third-party male gamete provider. When the ART Act does not provide composite age criteria for the commissioning couple, or Section 21(g) of the ART Act does not speak about the age criterion there in as applicable to the persons approaching the ART clinic as a commissioning couple, prescribing such age restriction on mere assumptions is unwarranted and against what is intended by the legislature. A court of law cannot read between the lines when the statute is clear on this aspect. While considering all these aspects, we agree with the finding of the learned Single Judge that the classification of a married woman and a single woman differently, when they approach the ART clinic, either as one among the commissioning couple or as a single woman, would put married woman at an unfair disadvantage when compared to single woman. The learned Single Judge rightly found that the parliament never intended such an inequitable classification within a benevolent statute like the ART Act.

8. Learned Counsel for the respondents has raised objection and submits that the petitioners have challenged the *vires* of the Act, and as such requires sometimes to make appropriate submission. He further submits that the respondents have also filed an appeal against the order of the coordinate Bench of this Court and the same is pending before the Appellate Court.

9. Heard the learned counsel for the respective parties.
10. This Court finds that the petitioners have not challenged any *vires* of the Act. The petitioners have prayed for the benefit of the judgment passed by this Court in the similar matter. As regards the appeal is concerned, this Court finds that based upon the order of the learned Single Bench of the Kerala High Court relying upon the order passed by the coordinate Bench of this Court (*supra*), the learned Single Bench of Kerala High Court has passed an order. Challenging the said order, an appeal was preferred. The Appellate Court affirmed the order of the learned Single Judge which was passed taking into consideration of the judgment passed by this Court as mentioned above.
11. The petitioner no.1 is aged about 47 years. She is coming under the category of 21(g). The petitioners had two children. Out of the two, one had expired at the age of 28 years on 10.12.2024 and the another is mentally challenged. The petitioners have the capacity to look after the children and they had been to the hospital and to have the IVF process. Doctor has opined that the petitioner no.1 is eligible for pregnancy, but for the said process an order of the Court is required.
12. Considering the above, this Court finds the petitioner no.1 is coming under the purview of Section 21(g) as the petitioner no.1 is 47 years. Accordingly, this Court holds that the petitioners will be entitled to have the benefit of assisted productive technology and can approach an appropriate clinic for having such services in view of the

fact that one of the two spouses that is the petitioner no.1 qualifies on the upper age limit as stipulated in Section 21(g) of 2021 Act, irrespective of the fact that the other spouse does not so qualify.

13. If the petitioners approaches, the concerned clinic shall, within the contemplation of the Act, assist the petitioners to have the benefit of assisted reproductive technology services with or without gamete of the petitioner no.2 at the discretion of the clinic.
14. WPA 19776 of 2025 stands disposed of.
15. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Krishna Rao, J.)