

S/L 11
06.01.2026
Court. No. 25
suvayan

WPA 26524 of 2025

Biswanath Baidya & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Sounak Bhattacharya
Mr. Chandra Nath Sarkar
Mr. Sounak Mandal
Mr. Anirban Saha Roy
Mr. Abhrup Halder
Ms. Bipasha Bhattacharyya

...for the petitioners.

Mr. Sirsanya Bandopadhyay
Ms. Tapati Samanta

...for the State.

1. The instruction filed by the State be kept with the record.
2. The petitioners have filed the present writ application praying for a direction upon the respondents to provide the petitioners with the necessary permissions and services to avail the Assisted Reproductive Technology through IVF procedure in terms of the provision of the Assisted Reproductive Technology (Regulation) Act, 2021. The petitioner no. 1 is aged about 57 years and the petitioner no. 2 is aged about 52 years. The marriage between the petitioner no. 1 and the petitioner no. 2 was solemnized on April 22, 1996. In the wedlock between the petitioners a girl child namely Supriti Baidya was born on August 25, 1998 but unfortunately on June 5, 2025 the girl child passed away.
3. After the death of the child and as per the advice of the elderly members of the family the petitioners have contacted the office of the respondent no. 4 who is the

consultant doctor of the petitioners and on examination of the petitioners, the consultant doctor namely Dr. G. B. Dutta has opined that “age limit does not permit for IVF”. Subsequently, the petitioners have contacted another doctor namely Dr. Debdeep Das on September 8, 2025 and on examination of the petitioners the doctor have opined that “the patient is clinically fit as per all reports and examinations, no apparent cardiac abnormality (consulted from Dr. Koushik Ghosh), opinion regarding IVF should be taken from gynecologist (Dr G. B. Dutta) as ages is inappropriate for IVF”.

4. Learned counsel for the petitioners submits that as per the Section 21 (g) of the Assisted Reproductive Technology (Regulation) Act, 2021 the clinics shall apply the assisted reproductive technology services,
 - (i) to a woman above the age of twenty one years and below the age of fifty years;
 - (ii) to a man above the age of twenty one years and below the age of fifty five years.
5. Learned counsel for the petitioners submits that though the husband that is the petitioner no. 1 is about the age of 55 years but the petitioner no. 2 the wife is aged about 52 years i.e. below the age of 57 years and as such she can be allowed to go for the IVF procedure.
6. Learned counsel for the petitioners have relied upon the judgment in the case of ***Shyamoli Saha and another vs. The State of West Bengal and others*** passed in WPA 23776 of 2024 dated November 22, 2024 wherein the co-ordinate Bench of this Court taking into

consideration of the age of the wife has allowed the petitioners to get the benefit of Assisted Reproductive Technology as one of the parties qualify on the upper age limit stipulated in Section 21(g), irrespective of the fact that the other spouse does not.

7. Learned counsel for the petitioners have further relied upon the judgment in the case of ***Sudarsan Mandal and another vs. The State of West Bengal and others*** passed in *WPA 9232 of 2024* dated April 26, 2024 wherein the another co-ordinate Bench of this Court granted liberty to the petitioners to approach the respondent no. 4 an Assisted Reproductive Technology Clinic, for obtaining services authorized of the said clinic for the purpose of employing assisted reproductive technology services in order to conceive a child.
8. The petitioners have further relied upon the judgment in the case of ***Sanchita Ghosh and another vs. Union of India and others*** passed in *WPA 12154 of 2023* dated April 8, 2024 wherein the co-ordinate Bench of this Court by interpreting Section 21(g) has held that the petitioners will be entitled to have the benefit of assisted reproductive technology services 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), irrespective of the fact that the other spouse does not so qualify.
9. The petitioners have further relied upon the judgment in the case of ***Union of India vs. Devayani S and***

others passed by the Hon'ble Division Bench of Kerala High Court in *WA No. 2009 of 2025* dated November 6, 2025 wherein the Hon'ble Division Bench of the Kerala High Court held that :

“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 circumstances 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.”

10. Considered the submissions made by the learned counsel for the parties. Perused the judgment passed by the co-ordinate Bench of this Court as well as the Division Bench of the Kerala High Court and the document relied by the

petitioners in the present case, this Court finds that though the petitioner no. 1 being the husband is the upper age limit who is aged about 57 years but the petitioner no. 2 that is the wife within the age limit i.e. aged about 52 years as prescribed under Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021.

11. This Court finds that the petitioner no. 2 is entitled to avail the facility of Assisted Reproductive Technology Service. The petitioners are hereby granted liberty to approach respondents no. 4, an Assisted Reproductive Technology Clinic, for obtaining the services authorized of the said clinic for the purpose of enjoying assisted reproductive technology in order to conceive a child. If the petitioners approached, the respondents no. 4 shall take steps in ensuring that the petitioners can avail such services by means of use of gametes donated by third party donor.
12. WPA 26524 of 2025 is disposed of.
13. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)