

28.04.2026
Court No.25
D/L No.25
S. Gayen

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 29498 of 2025

Debdulal Bandyopadhyay & Anr.
Versus
Union of India & Ors.

Mr. Siddhartha Sarkar
Mr. Khadijatul Kubra
Mr. Sourav Gupta

...for the Petitioners

Mr. Kalyan Kr. Chakraborty
Mr. Subrata Santra

...for the Union of India

1. The petitioners have filed the present writ application praying for a direction upon the respondent No.6 to allow the petitioners to undergo IVF/ART procedure.
2. Learned counsel for the petitioners submits that the marriage between the petitioner No.1 and the petitioner No.2 was solemnized in the year 2013. After the marriage, the petitioners were under medical treatment as the petitioner No.2 is not conceiving the child. He submits that the respondent No.6 has conducted all the clinical tests of the petitioners and found the normality. It was found that the petitioner No.2 is not in a position to conceive for the last several years but fit to go for the Assistant Reproductive Technology through IVF but the petitioner No.1 is overage. Accordingly, they advised the petitioners to take order

from the competent authority to conduct the procedure.

3. Learned counsel for the petitioners submits that the age of the petitioner No.1 is 55 and the petitioner No.2 is 43. He submits that the Section 21(g)(i) provides that a woman above the age of twenty-one years and below the age of fifty years and the Section 21(g)(ii) provides that a man above the age of twenty-one years and below the age of fifty-five years. The petitioner No.1 is overage who is more than fifty-five years.
4. Learned counsel for the respondent No.6 submits that the petitioners have undergone all clinical tests and found that the petitioners No.1 is overage and as per Section 21(g)(ii), the respondent No.6 cannot allow the petitioner No.1 to go for the ART procedure and the respondent No.6 is not in a position to conduct the ART procedure without the order of the Court.
5. Heard the learned counsel for the respective parties and perused the materials on record. This Court finds that after marriage between the petitioner No.1 and the petitioner No.2, they have continuous under medical treatment and it was found that the petitioner No.2 is not in a position to conceive child and as such they have been to the ART procedure but the petitioner No.1 is overage in terms of Section 21(g)(ii). The Coordinate Bench of this Court in the case of ***Sudarsan Mandal & Anr. vs. State of West Bengal & Ors.*** reported in

2024 SCC OnLine Cal 4031 has considered the provision of Section 21(g)(ii) and held that Section 21(g) makes no difference between a woman who approaches a clinic for taking resort to such technology individually and a woman who is one of the spouses of a commissioning couple approaching a clinic for similar purposes. It is further held that the bar under Section 21(g)(ii) does not come into play at all. Although the petitioners together make a commissioning couple, for all practical purposes it is the petitioner no.2 (who comes within the permissible age limit) who will have active participation in the process, since the sperm as well as oocyte of third-party donors will be used and the assisted reproductive technology shall be applied on the petitioner no. 2.

6. Considering the above, this Court finds that the petitioners have already undergone the clinical tests and the respondent No.6 has certified that the petitioner No.2 can go for the ART procedure but due to the overage of the petitioner No.1, the respondent authorities have not conducted the same.
7. As it is already been held by this Court that there is no bar under Section 21(g)(ii) and thus the writ petitioner is disposed of by granting to the petitioners to approach the respondent No.6 and assisted reproductive technology clinic for obtaining of service apprised the said clinic for the purpose of assisted

reproductive technology services in order to conceive a child. If the petitioners approach the respondent No.6, the respondent No.6 shall take steps in ensuring that the petitioners can avail such services by means of use of gametes donated by third-party donors.

8. Accordingly, **WPA 29498 of 2025** is **disposed of**.
9. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.
10. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all formalities.

(Krishna Rao, J.)