



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2026

WEB COPY

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

WP No. 9378 of 2026 and WMP.No.10109 of 2026

1. Vijaya Lakshmi
2. Vijay Anand

Petitioner(s)

Vs

1. State Of Tamil Nadu
Rep. by its, Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat Chennai.

2.The Director
The Directorate of Medical and Rural Health
Service, No.359, DMS Complex,
361 Anna Salai, Chennai-600 006

3.Joint Director of Health /District Medical Board
O/o. Joint Director of Health Service,
Tiruvallur. District.

Respondent(s)

PRAYER: Petition filed under Article 226 of Constitution of India, directing the Respondents to issue the Eligibility Certificate under the Surrogacy (Regulation) Act 2021 by considering the petitioners application dated 29.02.2024.

For Petitioner(s): Mr.K.V.Sajeevkumar

For Respondent: Ms.M.Sheela
Standing Counsel

ORDER

WMP.No.10109 of 2026 has been filed seeking to permit the petitioners to file a single writ petition. This petition is ordered on payment of single court fee.



2. This petition has been filed for a direction, directing the respondents to issue the Eligibility Certificate under the Surrogacy (Regulation) Act 2021 by considering the petitioners application dated 29.02.2024.

3. It is the case of the petitioners that they are husband and wife got married on 06.06.1999 and had begotten a female child in the year 2005 named Navya A.V. However, she was diagnosed with blood cancer and died on 16.06.2021. Thereafter, from 09.10.2021, they approached for hospital for IVF treatment, however, owing to age factors and other health issues, procedures were not successful, therefore, they opted for surrogacy and approached the second respondent and submitted application on 29.02.2024 for getting necessary permission under the Surrogacy Act, 2021. After 8 months, the second respondent sent a communication dated 22.10.2024 directing the petitioners to appear before the Government Hospital for Women and Children, Egmore for expert opinion, however, due to non availability of experts, the test were not taken and the procedures were dragged. However, later on 19.07.2025 reports were given to them and third respondent kept the file pending without any action. Hence, seeks for a direction to consider their application dated 29.02.2024.



4. The learned standing counsel for the respondents submitted that Surrogacy (Regulation) Act came into existence with effect from 25.01.2022 and the Eligibility Certificate will be issued by the authority under Section 4(iii) (c)(I) of the Act only if a person has not crossed the age of 50 years (in case of female) and 55 years (in case of male) on the day of certification, however, the first petitioner has crossed the cut off age and now she is aged 51 years, hence, seeks for appropriate orders.

5. Heard both sides and perused the materials placed on record.

6. Admittedly, the facts in the present case are not in dispute. The petitioners have been married in the year 1999 and begotten a girl child in the year 2005. However, unfortunately, their girl child died in the year 2021 owing to Blood Cancer. Immediately, they started to take IVF treatment in the year 2021 itself and thereafter, they have given an application to the second respondent on 29.02.2024 for surrogacy. At that time, the petitioner has not crossed the cut off age, i.e., 50 years.

7. This Court is of the definite view that though the petitioners were actively endeavouring in the surrogacy process, the official respondents sitting on file without undertaking the proper procedures as mandated under law in issuing Eligibility Certificate, that delay cannot be put against the innocent



intending couple/petitioners.

WEB COPY

8. It is to be noted that the petitioners have made the application for permission under the Surrogacy Act as early as on 29.02.2024 itself. It is not the case of the respondents that as on date of the application, the petitioners have crossed the cut-off age. It is only for this purpose the 90 days time limit is fixed for disposing of the application by the authority under Section 36(h) of the Act. The appropriate authority under Section 36(h) of the Act ought to have considered the application filed by the petitioners/intending couple within a period of 90 days and passed orders, whereas, such action was not undertaken by the official respondents as mandated under the Act. Thus, the delay in passing order under Section 36 of the Act by the official respondents has resulted in the first petitioner crossing the cut off age and the Act being a welfare legislation enacted to benefit couples bereft of the ability to conceive children, has to be given life to benefit the intending couple and the because of the delay on the part of the respondents, the benefit granted to such persons cannot be taken away. In this regard, it is relevant to note that this Court in the case of *Priyadarshini vs. State of Tamil Nadu* made in *WP(MD)No.4714 of 2023* dated 31.03.2023 while dealing with a similar case has held that even those who are eligible under the Act are not able to have their treatment procedures done because the concerned authorities are unaware of the



procedures to be followed. Further, it was held as follows:-

*The Act specifies that the intending couple should be within the age limit of 23-50 years (female) and 26-55 (male) on the day of certification. This means that couples who have already been struggling to have a child for many years and who have to painfully accept that their only way to have a child may be via surrogacy now also have the added burden of getting these procedures done before they run out of time to have a baby. **So, the procedure to enable them to undergo surrogacy must be fast tracked. Otherwise, the right given by the statute will be frustrated by bureaucratic delay and the intending couple may never be able to have their own biological child.***

Emphasis supplied

9. In view of the above, the petitioners being well within the cut off age limit on the date of application, they are entitled for consideration for the procedure prescribed under the Act. Therefore, there shall be a direction to the respondents to issue the Eligibility Certificate under 4(iii)(c)(I) of the Surrogacy (Regulation) Act, 2021 within a period of four weeks from the date of receipt of a copy of this Order, without referring to the age limit of the first petitioner, since the second petitioner has not crossed the age of 55 as mandated under the Act in accordance with the procedures laid down under the Act and Regulations.

10. Accordingly, this writ petition stands disposed of. No costs.



11-03-2026

dhk

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1.The Principal Secretary to Government,
State of Tamil Nadu
Health and Family Welfare Department,
Secretariat Chennai.

2.The Director
The Directorate of Medical and Rural
Health Service, No.359, DMS
Complex, 361 Anna Salai,
Chennai-600 006

3.Joint Director of Health /District
Medical Board
O/o. Joint Director of Health Service,
Tiruvallur. District.



WEB COPY

WP No. 9378 of 2026



M.DHANDAPANI J.

dhk

WP No. 9378 of 2026

11-03-2026