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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2026

CORAM

THE HON'BLE MS. JUSTICE P.T. ASHA

WP No. 43398 of 2026

CNR:{HCMA012457012026}

AND
WMP NO. 48718 OF 2026

1. A.Suresh
2. Vadivambikai S

..Petitioner(s)

Vs

1. Union Of India
   Through the Secretary,
   Ministry of Health and Family Welfare,
   Nirman Bhavan, New Delhi – 110011.

2. The State of Tamilnadu,
   Through the Principal Secretary, Health and
   Family welfare Department, Fort St.George,
   Chennai – 600009.

3. The National Assisted Reproductive
   Technology and Surrogacy Board,
   Ministry of Health and Family Welfare,
   Nirman Bhavan, New Delhi - 110011.

4. The State Assisted Reproductive Technology
   and Surrogacy Board, Tamilnadu,

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Office of the Director of Medical and Rural
Health Services, Chennai - 600006.

5. The District Health Office,
219, Race Course Road, Coimbatore,
Tamilnadu - 641018.

..Respondent(s)

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to exempt the petitioners from the age bar as prescribed under section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 by treating us as eligible patients, notwithstanding the marginal age excess of 4 months and 23 months and to receive, consider and process our application for assisted reproductive technology treatment forthwith and issue the certificate of medical Indication.

For Petitioner(s): Ms.Dhakshayini Venkatesh

For Respondent(s): M/s.J.V.Sakthi Balalrishna,
Government Advocate

Order

This writ petition has been filed seeking a direction to the respondents to exempt the petitioners from the age restriction prescribed under section 21(g) of the Assisted Reproductive Technology (Regulation)

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Act, 2021 by treating them as eligible patients, notwithstanding the marginal age excess of 4 months in respect of the 1st petitioner and 23 months in respect of the 2nd petitioner and consequently to receive, consider and process their application for assisted reproductive technology treatment forthwith and issue the certificate of medical Indication.

2. It is the case of the petitioners is that they got married on 06.09.1998 and have no living child biologically or through adoption. Owing to difficulties in conceiving naturally, the petitioners approached a fertility centre namely Sudha Women, Child Care and Fertility Center for undergoing Assisted Reproductive Technology treatment. The petitioners submit that they have been undergoing infertility treatment continuously since 2008, even prior to the coming into force of the Assisted Reproductive Technology (Regulation) Act, 2021, on 25.01.2022. However, on 14.02.2026, the petitioners were advised to continue with the procedure only after obtaining permission from the competent Court. Pursuant to the same, on 28.02.2026 the 2nd petitioner underwent the medical tests referred by the fertility center. Subsequently, upon cardiology review on 23.03.2026, the second petitioner was found to have no active complaints and was advised to continue with the IVF treatment.

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Since the first petitioner is presently aged about 55 years and four months and the second petitioner is aged about 51 years and 11 months, the Sudha Fertility Centre informed the petitioners that appropriate permission from the Court would be required before proceeding with the treatment. Therefore, the petitioners have approached this Court seeking the aforesaid relief.

3. Heard the learned counsels on the either side and perused the record.

4. From the documents submitted, it is seen that the petitioners have been undergoing infertility treatment continuously since 2008 i.e. for about 14 years. This treatment has been commenced even prior to the coming into force of the Assisted Reproductive Technology (Regulation) Act, 2001 which places a cap on the age of the couple. The petitioners have also been clinically certified to be eligible to avail ART procedure. Barring the age criteria in all other respects, the petitioners qualify for undergoing the ART procedure. As already submitted the petitioners attempt to conceive a child has started as early as in the year 2008 and in the

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meantime, the Act has come into force. The Honourable Supreme Court in its judgement in the case of ***Vijayakumari vs Union of India WP (C). No. 331 of 2024*** had considered the age criteria prescribed in the Act and held that the crystallisation of the intention of the couple to partake in the assisted reproductive technique had to be considered. Therefore, the petitioners are only continuing the procedure. The Act seeks to regulate unethical practices and this cannot be used as tool to set at naught the treatment process already adopted.

5. Therefore, considering the fact that the petitioners had commenced the IVF process, which constitutes an Assisted Reproductive Technology (ART) procedure, even prior to the coming into force of the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter referred to as the "ART Act"), their intention to undergo the ART procedure can be said to have crystallised prior to the commencement of the said Act.

6. Therefore, when they commenced the treatment process prior to the coming into force of the ART Act they were well within the age limits

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prescribed under Section 21 (g) of the said Act, this writ petition is allowed with a direction to the 5th respondent to evaluate the medical condition and fitness of the petitioners before proceeding with the ART proceedure. The 5th respondent shall also evaluate the possible psychological and hormonal impacts that the procedure and the subsequent pregnancy could have on the 2nd petitioner. The examination shall also take into consideration the health of the unborn baby being born to the 2nd petitioner who is now aged 51 years. The aforestated Fertility Clinic shall proceed with the procedure only if in its considered opinion the same would not pose any medical risk to the petitioners beyond the general policy concerns that underlie the enactment. The Writ petition is disposed off with the above directions. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

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