



CWP-6818-2025

-1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(202-1)

CWP-6818-2025

Sarbjit Kaur and another

... Petitioners

Versus

State of Punjab and others

... Respondents

Judgment Reserved on	Judgment Pronounced on	Judgment Uploaded on	Whether only the operative part of the judgment is pronounced	Whether the full judgment is pronounced
07.11.2025	22.01.2026	22.01.2026	No	Yes

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Anmol Partap Singh Mann, Advocate and
Mr. Navjot Singh Sidhu, Advocate for the petitioners.

Mr. Harinder Pal Singh Ishar, Addl. A.G., Punjab.

Mr. Amanjot Singh Sidhu, Advocate for
Mr. Gurjeet Singh, Advocate for respondent No.4.

SUVIR SEHGAL, J.

1. This petition has been filed, *inter alia*, for issuance of a writ, in the nature of certiorari for quashing order dated 06.02.2025, Annexure P-8, passed by the State Appellate Authority-respondent No.2, whereby petitioners have been denied access to Assisted Reproductive Technology (ART).
2. Petitioners are a married couple. Petitioner No.1 is 47 years of age and petitioner No.2 has crossed the age of 56 years. Two children were born out of their wedlock, a daughter, who was married in the year 2020 and a son, who tragically expired on 07.07.2024, because of jaundice. Petitioner No.1 reached menopause four years earlier and is not able to conceive a child. The couple

**CWP-6818-2025****-2-**

approached Dr. Yogeshwar Sood, Gynecologist-respondent No.4, but were informed that they could not be given ART treatment as petitioner No.2 had crossed the threshold age of 55 years and is debarred under Assisted Reproductive Technology (Regulation) Act, 2021 (for short “the ART Act”). Petitioners filed a writ petition pressing for the services under the ART Act and a response, Annexure P-6, was filed by respondent No.4, wherein he stated that both petitioners are healthy and can undergo In Vitro Fertilization (IVF) treatment. The writ petition was disposed of vide order dated 12.12.2024, Annexure P-7, with a direction to respondent No.2 to treat the writ petition as a representation and to take a decision thereon in the light of statutory provisions as well as judicial precedents. Vide the impugned order, Annexure P-8, respondent No.2 has rejected the case of the petitioners on the following grounds:-

- i. Petitioner No.2 has crossed the upper age prescribed under the ART Act and judgments relied upon by the petitioners are in the process of being challenged by the Government of India;
- ii. Petitioner No.1, Sarabjit Kaur has reached menopause and as no oocyte is available for fertilization, IVF would have to be carried out by the doner oocyte which is not permissible under the ART Act;
- iii. Petitioner No.1 will be a high-risk case of conception after menopause and high dose of exogenous hormones may be needed for such pregnancy which can complicate her health; and
- iv. As petitioners have a child, opting for IVF may be deterrent towards sex determination.



CWP-6818-2025

-3-

3. Writ petition has been contested by respondents No.1 to 3 by filing a joint written statement, wherein while supporting the impugned order, reference has been made to Section 21 of the ART Act. Respondent No.4 has adopted the reply, Annexure P-6, filed in response to the previous writ petition.

4. I have heard counsel for the parties and given a thoughtful consideration to the arguments addressed by them.

5. The first ground for rejection mentioned in the impugned order, Annexure P-8, is no longer a hurdle in granting relief to the petitioners. Relying upon the judgment of Calcutta High Court in **Sanchita Ghosh and another Versus Union of India and others** (WPA-12154-2023, decided on 08.04.2024), this Court in **Manjit Kaur and another vs Union of India and others, Law Finder Doc ID # 2822316**, has opined that there is no age restriction for a commissioning couple as defined under the ART Act. This Court observed that Section 21 (g) of ART Act makes it mandatory for a clinic to extend ART services to a woman if she is above the age of 21 years and below the age of 50 years and to a man if he is above the age of 21 years and below the age of 55 years. This Court held that the statute reinforces age restriction on an individual gender and not to a couple. Similar view has also been taken by Calcutta High Court in **Shyamoli Saha and another vs State of West Bengal and others, AIR 2025 Calcutta 55**. The reason given by respondent No.2 for not following both the Calcutta High Court judgments is that they are in the process of being challenged, however, the contesting respondents have conceded that no appeal or SLP has been preferred against the aforesaid judgments till now.

6. In so far as the second ground of rejection is concerned, the same

**CWP-6818-2025****-4-**

is against the objective behind the framing of ART Act as well as the Surrogacy (Regulation) Act, 2021. ART has been defined under the ART Act, as all techniques that attempt to obtain a pregnancy by handling a sperm or the oocyte outside the human body and transferring the gamete or the embryo into the reproductive system of a woman. A gamete has been described to mean both sperm and oocyte; and gamete donor have been defined to be a person, who provides sperm or oocyte with an objective of enabling an infertile couple or woman to have a child. Section 27 of the statute provides for sourcing of gametes by ART banks. When these provisions are read together, it is evident that the statutory framework explicitly provides for gamete donors as well as oocyte donation. Chapter IV of the ART Act lays down the duties of ART clinics as well as banks. Various safeguards regarding sourcing, collection, preservation of oocyte have been laid down under this chapter for the purposes of regulation of the ART procedure. The primary purpose of the ART Act is to regulate and supervise the ART clinics and banks, so as to prevent their misuse and avoid unsafe and unethical practices. The intent of the statute would stand defeated if the reasoning given by respondent No.2 is accepted. This ground in fact, violates the very spirit of ART Act as well as the Surrogacy (Regulation) Act, 2021. The second ground, therefore, cannot withstand judicial scrutiny and is rejected.

7. Insofar as the next ground is concerned, in his affidavit, Annexure P-6, respondent No.4 has elaborated upon the health and fitness of the couple. He has specifically stated that petitioner No.1 is a healthy woman and is fit to carry a pregnancy, if a fertilized egg is successfully implanted in her uterus. It



CWP-6818-2025

-5-

has been further stated that sperm count of petitioner No.2 has been analyzed and has been found to be normal. There are chances of his being able to produce a healthy sperm for fertilization of a donor egg sourced from an ART Bank, after screening and examination. The doctor has also certified that he has made the couple aware of the risks involved in the IVF treatment, which petitioners are willing to undertake. The risks involved in undergoing an ART procedure and chances of the genetic abnormality in the offspring are not an embargo from undergoing the procedure under the ART Act. This ground for rejection has been taken by respondent No.2 without there being any statutory prohibition. Similarly, in so far as ground (iv) is concerned, there is no bar in the ART Act for a couple to opt for IVF, when they have one living child. No restriction could be pointed out by the State counsel in any statute, which debars the petitioners from undergoing the ART treatment. All the grounds given in the impugned order passed by respondent No.2 are not tenable and are turned down.

8. In view of the above discussion, impugned order, Annexure P-8, cannot be sustained and is set aside. Petitioners are permitted to undergo ART services, including IVF treatment, for the purposes of conception of human embryo and its implantation in petitioner No.1.

9. Writ petition is disposed of.

(SUVIR SEHGAL)
JUDGE

22.01.2026
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No