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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: November 02nd, 2026***

\# **CNR No. DLHC010526802026**

\+ **W.P.(C) 16168/2026 & CM APPL. 75725/2026**

KIRAN STEFAN & ANR. .....Petitioners

Through: Mr. Vikas Verma & Mr. Swatny Pillai, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Jivesh Kr. Tiwari, CGSC & Mr. Mritunjaya Mahendra, GP with Ms. Nandini Aggarwal, Adv. for UOI

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. By way of the present petition, the petitioner seeks the following reliefs:

I. *"Issue a writ of mandamus or any other appropriate writ, order or direction, to grant exemption from the age restriction to the Petitioners under the Surrogacy (Regulation) Act, 2021 and permit the Petitioners to avail gestational surrogacy;*

AND

II. *Direct the Respondents to issue the eligibility certificate and all consequential approvals required under the Surrogacy (Regulation) Act, 2021 and the Surrogacy (Regulation) Rules, 2022;*

III. *In the alternative, read down / relax the age restriction to the extent necessary to permit the Petitioners to proceed with surrogacy, considering their childless status, failed IVF treatment(s), prior cryopreserved embryos and medical necessity;*

OR

IV. *Pass such other order or orders as this Hon'ble Court may*

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deem fit and proper in the facts and circumstances of the case."

2. Briefly put, it is the case of the petitioners that they have been unable to have a child despite several unsuccessful attempts at natural conception, IVF and other assisted reproductive procedures. The facts, as discernible from the pleadings, reveal that on 06.02.2025, the petitioners approached the treating clinic for their first consultation and at that time, Petitioner No.1 was approximately 49 years 7 months old. Thereafter, on 10.02.2025, gestational surrogacy with a donor oocyte was advised to the petitioners. As discernible from the pleadings, Petitioner No. 1 was only undergoing infertility treatment in July, 2025 when she crossed the upper age limit of 50 years under Section 4(iii)(c)(I) of the Surrogacy (Regulation) Act, 2021 [hereafter '**the Act**']. The present petition thereafter was filed on 02.03.2026.

3. It is the case of the petitioners that Petitioner No. 1, having crossed the upper age limit prescribed under the Act has been rendered ineligible for the surrogacy procedure. It has been argued that the disqualification has operated to the detriment of the petitioners despite the fact that the petitioners have initiated the requisite process for surrogacy before Petitioner No. 1 crossed the upper age limit prescribed under the Act. Reliance has been placed on the case of ***Tapas Kumar Mallick & Anr. v. Union of India & Anr.* : 2025:DHC:9583** to argue that this Court, upon consideration of the prior commencement of surrogacy procedure, had exempted the petitioners therein from seeking eligibility certification and had allowed the petitioners therein to move forward with the surrogacy

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procedure. It has consequently been argued that the petitioners be also exempted from seeking eligibility certification.

4. Having taken note of the contentions advanced by the petitioners, this Court is of the opinion that the relief sought by the petitioners cannot be countenanced.

5. As is apparent from a perusal of the record, Petitioner No. 1, when she went for her consultation for the very first time on 06.02.2025 was already 49 years and 7 months old. On that occasion, while altruistic surrogacy was advised, Petitioner No. 1 was advised to obtain all relevant permissions for treatment. The record does not indicate that Petitioner No. 1 proceeded to obtain any requisite permission, and while Petitioner No. 1 was undergoing infertility treatment only, she crossed the upper age prescribed under the Act. Thus, as discernible from the pleadings, before the surrogacy procedure could be commenced, Petitioner No. 1 had crossed the statutory limit prescribed under the Act.

6. Even reliance placed by the petitioners on ***Tapas Kumar Mallick & Anr. v. Union of India & Anr.*** *(supra)* does not aid the case of the petitioners. In the said case, the petitioners therein were allowed to move forward with the surrogacy process specifically noting that the petitioners therein had initiated the process for surrogacy as far back as in January, 2021, that is prior to the commencement of the Act, which came into force on 25.01.2022.

7. In contradistinction to the facts of ***Tapas Kumar Mallick & Anr. v. Union of India & Anr.*** *(supra)*, in the present case, *firstly*, the petitioners underwent their very first consultation on 06.02.2025, that

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is, three years after the Act and statutory limit came into force. Secondly, Petitioner No. 1 was only in the process of infertility treatment when she crossed the statutory age limit. It cannot thus be said that since the petitioners 'commenced' the process of surrogacy prior to Petitioner No. 1 crossing the statutory limit, Petitioner No. 1 ought to be granted the exemption.

8. There is also another factor which disentitles the petitioners to grant of discretionary relief under Article 226 of the Constitution of India. As noted above, the petitioners, at their very first consultation on 06.02.2025 were made aware that Petitioner No. 1 was only 5 months short of approaching the upper age limit. Despite the same, the petitioners only approached this Court on 02.03.2026. The petition does not disclose any satisfactory explanation for not approaching the Court with promptitude. The petitioners thus cannot seek equitable and discretionary relief under Article 226 of the Constitution of India after having failed to act with due diligence despite prior knowledge of the legal impediment.

9. While this Court is conscious of the deeply personal nature of the petitioners' aspirations and the emotional distress which unsuccessful treatment may entail. Notwithstanding, the Court is required to decide the matter in accordance with the governing statutory framework and sympathy, howsoever genuine, cannot be a substitute for statutory eligibility. The present case is not one where a statutory restriction has been retrospectively imposed.

10. Pertinently, the petitioners have not challenged the *vires* of the Act. This Court, while interpreting a provision, is only required to

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interpret the law and cannot legislate it [Ref. ***State of Jharkhand and Another v. Govind Singh*** **: (2005) 10 SCC 437**]. Courts therefore, in exercise of jurisdiction under Article 226 of the Constitution of India cannot amend, modify or alter the law. Consequently, in the absence of any challenge to the provisions of the Act, no relief can be granted to the petitioners.

11. In view of the above, no ground to exercise jurisdiction under Article 226 of the Constitution of India is made out.

12. The present petition is accordingly dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

NOVEMBER 2, 2026
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