CGHC010372042026 2026:CGHC:43127

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Order Reserved on : 29.09.2026**
**Order Delivered on : 06.10.2026**

**WPC No. 4926 of 2026**

AVINASH SHARMA
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Date: 2026.10.06 18:07:23 +0530

1. Archana Tiwari, W/o Pradeep Kumar Tiwari, Aged 46 Years, R/o Civil Lines, Ward No. 18, Manendragarh, Manendragarh-Chirmiri-Bharatpur (MCB), Chhattisgarh

2. Pradeep Kumar Tiwari, S/o Bihari Lal Tiwari, Aged 57 Years, R/o Civil Lines, Ward No. 18, Manendragarh, Manendragarh-Chirmiri-Bharatpur (MCB), Chhattisgarh

--- **Petitioners**

**Versus**

1. State of Chhattisgarh Through Secretary, Department of Health and Family Welfare, Swasthya Bhawan, Sector 19, Atal Nagar, Naya Raipur, Distt. Raipur, Chhattisgarh.

2. State Assisted Reproductive Technology and Surrogacy Board, Department of Health and Family Welfare, Swasthya Bhawan, Sector 19, Atal Nagar, Naya Raipur, Distt. Raipur, Chhattisgarh.

3. Chairman State Assisted Reproductive Technology And Surrogacy Board, Department of Health And Family Welfare, Swasthya Bhawan, Sector 19, Atal Nagar, Naya Raipur, Distt. Raipur, Chhattisgarh.

4. Deputy Director, ART-Surrogacy, Directorate of health service, Department of Health and Family Welfare, Swasthya Bhawan, Sector 19, Atal Nagar, Naya Raipur, Distt. Raipur, Chhattisgarh.

5. Aayush Test Tube Baby Centre, through its Director Dr. Manoj Chellani, C-9 Ashok Ratan, Vidhansabha Road, Sankar Nagar, Raipur, Chhattisgarh. --- **Respondents**

(Cause-title taken from Case Information System)

| | | |
|---|---|---|
| For Petitioners | : | Mr. Gagan Tiwari, Advocate |
| For State | : | Mr. Anmol Sharma, Panel Lawyer |

**Hon'ble Shri Amitendra Kishore Prasad, Judge**

**CAV Order**

**1.** The petitioners are the unfortunate couple who are not having any children have approached this Court in its extraordinary jurisdiction while preferring the instant writ petition seeking issuance of an appropriate writ, order or direction permitting them to undergo In-Vitro Fertilization (IVF)/Assisted Reproductive Technology (ART) treatment, notwithstanding the age restriction prescribed under Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter referred to as “ART Act”). The petitioners are a legally wedded couple aged about 47 and 57 years respectively and have completed about 22 years of matrimonial life without having a surviving child. Petitioner No. 1 had earlier undergone IUI treatment in the year 2013 and, though she conceived in 2015, the pregnancy unfortunately ended in miscarriage at about four months. Thereafter, the petitioners approached respondent No. 5 for IVF/ART treatment and, upon medical examination and counselling, were found suitable for the proposed treatment, subject to requisite permission from the competent authority. Their representation dated 24.06.2026 was, however, rejected vide impugned letter/order dated 31.07.2026

solely on the ground that petitioner No. 2 had crossed the upper age limit prescribed for a man under Section 21(g) of the ART Act. The petitioners contend that such rejection ignores the gender-specific age limits prescribed under the statute, the fact that petitioner No. 1 is within the permissible age limit, and the absence of any provision prescribing a composite age bar for a commissioning couple. It is, therefore, contended that denial of ART treatment in the peculiar facts of the case amounts to a rigid and mechanical application of the statutory provision and adversely affects the petitioners' right to reproductive autonomy under Article 21 of the Constitution of India, necessitating interference by this Court. The petitioners have sought for following reliefs:-

> "*10.1. That, this Hon'ble Court may kindly be pleased to issue a writ/writs, direction/ directions, order/orders and direction setting-aside the impugned letter/order dated 31.07.2026.*
>
> *10.2. That, this Hon'ble Court may kindly be pleased to issue a writ/writs, direction/ directions, order/orders and direction may be issued to the Respondents to permit and proceed with IVF Treatment of the petitioner;*
>
> *10.3. That, this Hon'ble Court may Kindly be pleased to issue a writ/writs, direction/ directions, order/orders and direct the respondents to continue with the IVF Treatment*

*making this case an exception to the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021 even when the Petitioner no. 2 surpasses the age of 50 during the ongoing treatment;*

*10.4. That, this Hon'ble Court may Kindly be pleased to issue a writ/writs, direction/ directions, order/orders to ensure that no administrative or regulatory hurdles are placed against the Petitioner's ongoing cycles, treating her case as an exception based on the principle of Right to the reproductive autonomy;*

*10.5. Any other relief in favour of the Petitioner, which it deems fit in the facts and circumstances of the case, in the interest of Justice including costs of the Petition.*"

**2.** The fervent desire of a married couple, who have remained without a surviving child despite prolonged efforts and medical treatment, has compelled them to approach this Court seeking a direction to the respondents to permit them to avail Assisted Reproductive Technology ("ART") services for achieving parenthood. The petitioners are a legally wedded couple who have completed about 22 years of matrimonial life. The impediment in availing the said treatment is the age of petitioner No.2, who has crossed the upper age limit prescribed for a man under Section 21(g)(ii) of the ART Act.

**3.** The issue which arises for consideration is whether, in the facts and circumstances of the present case, the petitioners can be

denied ART/IVF treatment solely on the ground that petitioner No.2 has crossed the age limit prescribed under Section 21(g)(ii) of the ART Act when petitioner No.1 is within the prescribed age limit and has been medically found suitable for the proposed treatment.

**4.** The facts, as canvassed by the petitioners, are that they are a legally wedded couple. Petitioner No.1 is aged about 47 years, whereas petitioner No.2 is aged about 57 years. Despite about 22 years of matrimonial life, the petitioners have not been blessed with a surviving child. The petitioners made several attempts to achieve conception through medical treatment. Petitioner No.1 underwent Intrauterine Insemination (IUI) treatment in the year 2013 at the hospital of respondent No.5, but the same did not result in successful conception. Thereafter, petitioner No.1 conceived in the year 2015; however, unfortunately, the pregnancy resulted in miscarriage at about four months of gestation.

**5.** Having regard to their prolonged history of infertility and after exhausting conventional medical options, the petitioners approached respondent No.5 for undergoing In-Vitro Fertilization (IVF)/ART treatment. Upon medical examination and counselling, respondent No.5 found the petitioners suitable for the proposed treatment and advised them to obtain requisite permission from the competent authority in view of the advanced age of petitioner No.2. Accordingly, the petitioners submitted a representation dated

24.06.2026 before the competent authority seeking permission to undergo IVF/ART treatment. Respondent No.5 also addressed a communication dated 24.06.2026 recommending that permission be granted after appropriate counselling and informed consent of the petitioners.

**6.** However, the representation of the petitioners came to be rejected vide impugned letter/order dated 31.07.2026 solely on the ground that petitioner No.2 had crossed the upper age limit prescribed for a man under Section 21(g)(ii) of the ART Act. It is the contention of the petitioners that such rejection proceeds on the assumption that crossing of the prescribed age limit by one spouse renders the entire commissioning couple ineligible for ART services, although petitioner No.1 is aged about 47 years and, therefore, falls within the age limit prescribed for a woman under Section 21(g)(i) of the ART Act.

**7.** The petitioners have further contended that Section 21(g) of the ART Act prescribes separate and gender-specific age limits for a woman and a man and does not prescribe any composite age criterion for a commissioning couple. Reliance has been placed upon the definitions contained in Sections 2(1)(n), 2(1)(u) and 2(1)(e) of the ART Act to contend that eligibility for ART services is required to be examined with reference to the statutory requirements applicable to the individual concerned. It is, therefore, submitted that petitioner No.1, being within the

prescribed age limit and medically suitable for the proposed treatment, cannot be denied ART services merely because petitioner No.2 has crossed the age limit applicable to a man.

**8.** In support of the aforesaid submissions, reliance has been placed upon the judgment of this Court in ***Neeru Singh v. State of Chhattisgarh & Others, W.P.(C) No.1495 of 2026***, wherein the issue of denial of ART treatment on account of the husband having crossed the prescribed age limit was considered. Reliance has also been placed upon the judgment of the High Court of Calcutta in ***Sanchita Ghosh & Another v. Union of India, 2024 SCC OnLine Cal 12155.*** It is contended that denial of the proposed treatment in the peculiar facts of the present case, particularly when petitioner No.1 is within the statutory age limit and has been medically found suitable, would amount to a rigid and mechanical application of Section 21(g) of the ART Act and would adversely affect the petitioners' right to reproductive autonomy forming part of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

**9.** On the aforesaid factual and legal submissions, the petitioners seek interference with the impugned letter/order dated 31.07.2026 and appropriate directions to the respondents to permit them to undergo IVF/ART treatment in accordance with law.

**10.** Mr. Gagan Tiwari, learned counsel appearing for the petitioners, would submit that the impugned communication dated 31.07.2026

proceeds on an erroneous and unduly restrictive interpretation of Section 21(g) of the ART Act. According to learned counsel, the provision prescribes two distinct and gender-specific age criteria, namely, one applicable to a woman and the other applicable to a man, and nowhere provides that the crossing of the prescribed age limit by one spouse would, by itself, render the other spouse ineligible to avail ART services. It is submitted that petitioner No.1 is aged about 47 years and thus continues to fall within the age limit prescribed under Section 21(g)(i) of the ART Act, whereas petitioner No.2, aged about 57 years, has crossed the age limit prescribed under Section 21(g)(ii) of the ART Act. The statutory language, however, does not contemplate a composite or cumulative age restriction applicable to a “commissioning couple”. Learned counsel would therefore submit that the respondent authorities could not have mechanically rejected the petitioners' request merely by taking into consideration the age of petitioner No.2, without examining the independent eligibility of petitioner No.1.

**11.** Learned counsel would further submit that the petitioners' case is not one where the request for ART treatment is founded merely upon a desire to have a child without any medical basis. The petitioners have remained married for about 22 years and have undergone prolonged medical treatment for infertility. Petitioner No.1 had undergone IUI treatment in the year 2013, which did not result in successful conception, and although she conceived in the

year 2015, the pregnancy unfortunately terminated in miscarriage at about four months. It is submitted that, after having exhausted conventional medical avenues, the petitioners approached respondent No.5, who, upon medical examination, counselling and consideration of their medical history, found them suitable for the proposed IVF/ART treatment and recommended that permission be granted by the competent authority. Thus, the petitioners are not seeking any indulgence contrary to medical advice; rather, the proposed treatment is medically recommended and the only impediment placed by the respondents is the age of petitioner No.2.

**12.** Mr. Tiwari would submit that the expression “commissioning couple” occurring in the ART Act cannot be construed so as to introduce a disqualification which the legislature itself has not enacted. Section 2(1)(e) of the ART Act merely defines a commissioning couple as an infertile married couple approaching an ART clinic or ART bank for obtaining authorised services. Likewise, the definitions of “patients” under Section 2(1)(n) and “woman” under Section 2(1)(u), read with Section 21(g) of the ART Act, demonstrate that the statutory framework recognises the individual eligibility of persons seeking ART services. Learned counsel would contend that if the legislature intended to impose a joint age ceiling upon both spouses, it could have expressly provided that both members of a commissioning couple must simultaneously satisfy their respective age requirements. In the

absence of such express language, an administrative authority cannot create an additional disqualification by interpretation. Such an approach, according to learned counsel, would amount to adding words to the statute and converting two separate gender-specific conditions into a composite condition which the legislature has consciously not enacted.

**13.** Learned counsel would further submit that the interpretation sought to be placed by the respondents upon Section 21(g) of the ART Act would lead to anomalous and manifestly disproportionate consequences. A woman who is herself within the prescribed statutory age limit and medically capable of undergoing ART treatment would be deprived of the opportunity merely because her husband happens to have crossed the age prescribed for a man. According to learned counsel, the statute does not declare such a woman to be ineligible, nor does it provide that the ineligibility of one spouse automatically attaches to the other. The statutory scheme, therefore, must be interpreted in a manner which gives meaning to each of the separate age conditions prescribed for a woman and a man, rather than treating the two conditions as a single composite prohibition. It is submitted that petitioner No.1 satisfies the requirement under Section 21(g)(i) of the ART Act, and the respondents were consequently required to consider her eligibility independently, subject to all other medical and regulatory safeguards.

**14.** In support of the aforesaid proposition, learned counsel has placed reliance upon the recent decision of the Gujarat High Court in ***X2 v. Chief Medical Officer-cum-Civil Surgeon and the Appropriate Authority, 2026 SCC OnLine Guj 6712, decided on 02.09.2026,*** particularly paragraphs 8, 10 and 11, to contend that the statutory age restriction under Section 21(g) cannot be applied in an excessively technical manner divorced from the object of the legislation and the constitutional protection available to reproductive autonomy.

**15.** Reliance has also been placed upon ***Ankhi Laha v. Union of India, 2026 SCC OnLine Cal 13928, decided on 30.07.2026***, particularly paragraphs 3, 6 and 7, and ***Piu Das Sarkar v. Union of India, 2026 SCC OnLine Cal 13232, decided on 28.07.2026,*** particularly paragraphs 3, 7, 8, 9 and 11. Learned counsel submits that the aforesaid decisions recognise that while the ART Act undoubtedly constitutes a regulatory framework governing assisted reproductive procedures, its provisions relating to age cannot be construed mechanically so as to defeat legitimate claims of reproductive autonomy where the statutory requirements otherwise stand substantially satisfied.

**16.** Learned counsel has also relied upon the judgment of the ***Madhya Pradesh High Court in Babitha A. Singh v. State of M.P., 2026 SCC OnLine MP 25565, decided on 10.07.2026***, particularly paragraphs 6 and 11 to 14, as also the judgment of the Calcutta

High Court in ***Chayana Bisui v. State of W.B., 2026 SCC OnLine Cal 8579, decided on 24.06.2026***, particularly paragraphs 4, 7 to 9 and 11. According to learned counsel, these decisions reinforce the proposition that the provisions of the ART Act have to be understood in the context of the right to reproductive choice and personal autonomy, and that the statutory restrictions cannot be extended beyond their express terms so as to create an embargo which is not contemplated by the enactment itself. It is submitted that the Court, while ensuring compliance with the regulatory and medical safeguards prescribed by the statute, is required to examine whether the denial of treatment is actually authorised by the statutory language or is merely the consequence of an administrative interpretation which adds an additional condition.

**17.** Learned counsel has further placed reliance upon the judgment of the Delhi High Court in ***Shewta Tuteja v. Union of India, 2026 SCC OnLine Del 4606, decided on 25.05.2026,*** particularly paragraphs 23 and 26 to 28. In the said decision, according to learned counsel, the Court considered the scope of Section 21(g) of the ART Act in the context of continuation of an ART process and emphasised the need to distinguish between the regulatory requirements governing ART and the constitutional protection afforded to reproductive choice and decisional autonomy. It is submitted that the Court recognised that reproductive autonomy constitutes an important facet of the rights protected under Article 21 of the Constitution of India and that the provisions regulating

ART ought to receive a purposive construction which advances, rather than unnecessarily defeats, constitutionally protected reproductive choices. Learned counsel submits that the reasoning of the said decision is of considerable relevance while examining the present case, where the petitioners have approached the authorities for initiation of IVF treatment but petitioner No.1 admittedly remains within the statutory age limit.

**18.** Learned counsel has also relied upon ***Pushpa (Dr.) v. Union of India, 2026 SCC OnLine P&H 10431, decided on 19.05.2026,*** particularly paragraphs 2 and 6, and ***Jayanta Dasgupta v. State of W.B., 2026 SCC OnLine Cal 5931, decided on 30.04.2026.*** It is submitted that the consistent judicial approach reflected in the aforesaid decisions is that the ART Act, though regulatory in character, cannot be interpreted in a manner which imposes restrictions beyond the plain language of Section 21(g) of the ART Act, particularly where such interpretation directly affects the individual's constitutionally protected reproductive choice. Learned counsel would submit that the statutory scheme has to be harmoniously construed so that the regulatory purpose of the enactment is preserved while at the same time ensuring that legitimate reproductive choices are not defeated by an artificial or expansive interpretation of the age restriction.

**19.** Learned counsel would lastly submit that the petitioners' case deserves to be considered in the backdrop of their peculiar

circumstances. The petitioners have remained without a surviving child despite 22 years of matrimonial life, have undergone medical treatment over a considerable period, and have approached the recognised ART facility only after conventional methods did not yield the desired result. Petitioner No.1 is still within the age limit prescribed by the legislature and has been medically examined and found suitable for the proposed treatment. The rejection of their request, therefore, solely because petitioner No.2 has crossed the age limit applicable to a man, according to learned counsel, amounts to treating the commissioning couple as an indivisible statutory unit for the purpose of age restriction, despite there being no such express provision in the Act. Such interpretation, it is urged, would result in denial of the petitioners' opportunity to pursue parenthood and would disproportionately impair their right to reproductive autonomy forming part of the right to life and personal liberty under Article 21 of the Constitution of India.

**20.** Learned counsel would, therefore, submit that the impugned letter/order dated 31.07.2026 deserves to be quashed and set aside and the respondent authorities be directed to reconsider and permit the petitioners to undergo IVF/ART treatment, subject to fulfilment of all medical, ethical and regulatory safeguards prescribed under the ART Act and the applicable Rules and Regulations. It is further submitted that such a direction would neither dilute the statutory regulatory framework nor amount to

granting an unrestricted exemption from Section 21(g) of the ART Act, but would only prevent the respondents from treating the age of petitioner No.2 as an automatic disqualification against petitioner No.1, who independently satisfies the age criterion prescribed under Section 21(g)(i) of the ART Act.

**21.** On the other hand, Mr. Anmol Sharma, learned Panel Lawyer, appearing for the State opposes the submissions advanced by learned counsel for the petitioners and submits that the impugned letter/order dated 31.07.2026 has been passed strictly in accordance with the provisions of the ART Act. According to learned counsel, Section 21(g) of the Act expressly prescribes the age limits within which ART services may be provided, namely, to a woman above the age of 21 years and below the age of 50 years and to a man above the age of 21 years and below the age of 55 years. Since petitioner No.2 is admittedly aged about 57 years, he does not satisfy the statutory eligibility requirement prescribed under Section 21(g)(ii) of the ART Act, and the competent authority was, therefore, justified in declining the request for IVF/ART treatment. He would further submit that the petitioners cannot seek relaxation of an express statutory condition merely by relying upon their personal circumstances or their desire to have a child. It is contended that the ART Act has been enacted with the object of regulating assisted reproductive technology services and prescribing appropriate safeguards in the interest of the persons undergoing such procedures, as well as the

child born through ART. The age restrictions contained in Section 21(g) of the ART Act, according to learned counsel, are part of the statutory regulatory framework and cannot be diluted or relaxed by an administrative authority or by directing the respondents to make an exception in an individual case. The fact that petitioner No.1 is within the prescribed age limit, according to the respondents, cannot by itself confer an independent right upon the petitioners to avail ART services contrary to the statutory conditions governing a commissioning couple. It is further submitted that the judgments relied upon by learned counsel for the petitioners are distinguishable on their facts and cannot be understood as conferring an unrestricted right to undergo ART treatment irrespective of the statutory age restrictions. Learned Government Advocate would submit that the Court, while exercising jurisdiction under Article 226 of the Constitution, cannot rewrite Section 21(g) of the ART Act or substitute a different age criterion for the one consciously prescribed by the legislature. Any relaxation of the statutory age limit, according to learned counsel, would amount to judicially creating an exception which finds no place in the Act and may also have consequences for the regulatory safeguards intended by the legislature.

**22.** Learned State counsel would lastly submit that the petitioners have admittedly approached the authorities at a stage when petitioner No.2 had already crossed the prescribed upper age limit. The competent authority has considered the representation

and has rejected the same for the sole reason that the statutory requirement is not fulfilled. It is, therefore, contended that there is neither arbitrariness nor violation of principles of natural justice in the impugned decision. Learned counsel accordingly submits that the writ petition, being devoid of any legal ground warranting interference with the statutory age restriction, deserves to be dismissed.

**23.** I have heard learned counsel for the petitioners as well as learned counsel appearing for the State and have perused the pleadings and documents placed on record.

**24.** At the outset, the controversy involved in the present petition lies in a narrow compass, namely, whether the petitioners, who are otherwise medically fit and fall within the statutory framework in part, can be denied access to Assisted Reproductive Technology ART)/IVF treatment solely on account of a rigid application of the age bar prescribed under Section 21(g) of the ART Act, without taking into consideration the peculiar and exceptional facts of the present case. For the sake of convenience, Section 21(g) of the ART Act is reproduced below:

> *"21. The clinics and banks shall perform the following duties, namely:-*
>
> *XXX XXX XXX*
>
> *(g) the clinics shall apply the assisted reproductive technology services,-*

*(i) to a woman above the age of twenty-one years and below the age of fifty years;*

*(ii) to a man above the age of twenty-one years and below the age of fifty-five years;*

*XXX XXX"*

**25.** According to the provisions of the ART Act, ART services are available to a woman above the age of 21 years and below the age of 50 years and to a man above the age of 21 years and below the age of 55 years. In the present case, although petitioner No.1-wife, aged about 47 years, falls within the prescribed age limit, petitioner No.2-husband, aged about 57 years, has exceeded the upper age limit prescribed for a man. The petitioners, who have been married for about 22 years and have no surviving child, approached respondent No.5, Aayush Test Tube Baby Centre, Raipur, for undergoing IVF/ART treatment. Upon medical examination and counselling, respondent No.5 found the petitioners medically suitable and recommended that they be permitted to undergo the proposed treatment. However, in view of the age of petitioner No.2, the petitioners were informed that the treatment could not be proceeded with without appropriate permission from the competent authority/court. The petitioners, accordingly, submitted a representation dated 24.06.2026 seeking permission to undergo IVF/ART treatment, which came to be rejected vide communication/order dated 31.07.2026 solely on the

ground that petitioner No.2 had crossed the prescribed age limit.

**26.** Conspicuously, the Act does not contain the concept of combined age for commissioning couples analogous to the composite age criteria applicable to prospective adoptive parents. Instead, the Act adopts an individual-centric approach, whereby the age eligibility criteria are separately laid down for women and men rather than collectively for a couple. This interpretation is further supported by Section 2(1)(n) of the ART Act, which defines "patients" as both individuals and couples seeking infertility treatment at a clinic. Section 2(1)(n) of the ART Act is reproduced below:

> *“2. (1) In this Act, unless the context otherwise requires,-*
>
> *XXX XXX XXX*
>
> *(n) "patients" means an individual or couple who comes to any registered assisted reproductive technology clinic for management of infertility;”*

**27.** Additionally, Section 21 of the ART Act casts statutory duties upon the registered ART clinics and banks to ensure strict adherence to the requirements prescribed under the Act. In particular, Section 21(g) of the ART Act provides separate age criteria for a woman and a man, namely, that ART services may be provided to a woman above 21 years and below 50 years of age and to a man above 21 years and below 55 years of age. The language employed in the provision indicates that the age restriction is

gender-specific and is to be applied with reference to the individual seeking the ART service, rather than by treating the age of the commissioning couple as a composite or cumulative criterion. In the present case, petitioner No.1-wife is aged about 47 years and, therefore, falls within the prescribed age limit, whereas petitioner No.2-husband is aged about 57 years and has crossed the upper age limit prescribed under Section 21(g)(ii) of the ART Act. Nevertheless, the petitioners seek to pursue parenthood through petitioner No.1, who is otherwise within the permissible age limit and has also been medically examined and found suitable for undergoing IVF/ART treatment by respondent No.5. The statutory scheme, read as a whole, does not expressly provide that the ineligibility of one spouse on account of age would, by itself, render the other spouse ineligible where such spouse independently satisfies the prescribed statutory conditions. The consent of petitioner No.2, as the husband of petitioner No.1, is available and the petitioners are willing to comply with all requisite statutory safeguards, including furnishing the necessary consent and declarations. Thus, merely because petitioner No.2 has crossed the age prescribed for a man under Section 21(g)(ii) of the ART Act, the statutory eligibility of petitioner No.1, who continues to fall within the age prescribed for a woman under Section 21(g)(i) of the ART Act, cannot automatically be treated as extinguished. Such interpretation would amount to reading into the Act a composite age restriction for a couple which is not expressly

provided by the legislature.

**28.** From the undisputed factual matrix, it emerges that the petitioners are a legally wedded couple who have completed about 22 years of matrimonial life and, unfortunately, have no surviving child. Petitioner No.1 had earlier undergone an IUI procedure in the year 2013 at the hospital of respondent No.5, but the said attempt was unsuccessful. Thereafter, in the year 2015, petitioner No.1 conceived but suffered a miscarriage at about four months of pregnancy. The petitioners, therefore, approached respondent No.5 for undergoing IVF/ART treatment with the hope of achieving parenthood. Upon medical examination and counselling, respondent No.5 found the petitioners suitable for the proposed treatment and, having regard to their circumstances, recommended that permission be granted for undergoing IVF/ART. The petitioners thereafter submitted their representation dated 24.06.2026 seeking permission for the proposed treatment. However, their request came to be rejected vide communication/order dated 31.07.2026 solely on the ground that petitioner No.2 had crossed the upper age limit prescribed under Section 21(g)(ii) of the ART Act. Thus, the denial is not founded upon any medical contraindication, unsuitability of petitioner No.1, or any allegation of non-compliance with the other statutory safeguards, but solely upon the age of petitioner No.2. The issue, therefore, essentially concerns the interpretation and application of Section 21(g) of the ART Act to the peculiar facts of the present

case, particularly where petitioner No.1 admittedly falls within the prescribed age limit and has been medically found suitable to undergo the proposed ART procedure.

**29.** The Hon'ble Supreme Court, in ***Suchita Srivastava Chandigarh Admn, (2009) 9 SCC 1,*** has categorically held that reproductive choices form an integral part of personal liberty under Article 21 of the Constitution of India. It was observed thus:

> *"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected......"*

**30.** The aforesaid principle has been consistently expanded in subsequent decisions to include not merely the right to procreate, but also the right to access reproductive technologies, subject to reasonable regulation.

**31.** In the matter of ***K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1,*** which recognised a right to privacy within the contours of Article 21, Dr D.Y. Chandrachud, J. (as he then was), observed as follows:

> *"248. Privacy has distinct connotations*

*including (i) spatial control; (ii) decisional autonomy: and (iii) informational control. [Bhairav Acharya, "The Four Parts of Privacy in India", Economic & Political Weekly (2015), Vol. 50 Issue 22, at p. 32.] Spatial control denotes the creation of private spaces. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress."*

*(empasis supplied)"*

**32.** The Hon'ble Supreme Court in the matter of ***X2 v. State (NCT of Delhi), (2023) 9 SCC 433*** has held as under :

*"(i) The right to reproductive autonomy*

*101. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from*

*coercion or violence."*

**33.** In the matter of ***X4 v. Union of India, reported in (2024) 9 SCC 586*** Hon'ble Supreme Court has held as under:

> *"18. Secondly, the petitioner herein had commenced the procedure achieving for parenthood through surrogacy much prior to the amendment which has come into effect from 14-3-2023. Therefore, amendment which is now coming in the way of the intending couple and preventing them from achieving parenthood through surrogacy, we find, is prima facie contrary to what is intended under the main provisions of the Surrogacy Act both in the form as well as in substance."*

**34.** Recently, in the matter of ***Vijaya Kumari S. v. Union of India, (2026) 2 SCC 96*** has held as under:

> *"10.4. From a constitutional perspective, it was submitted that the upper age-limit falls foul of the right to reproductive autonomy under Article 21 of the Constitution. This right enables a woman to make autonomous decisions regarding, if, when, and in what manner to have children. Our attention was drawn to the following extract from the decision of this Court in X1 v. State (NCT of Delhi) [X1 v. State (NCT of Delhi), (2023) 9 SCC 433] ("X1 v. State"): (SCC pp. 486-87, para 101)*
>
> > *"101. The ambit of reproductive rights is not restricted to the right of women to have*

*or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence."*

*10.5. In light of this decision in X1 v. State (NCT of Delhi) [X1 v. State (NCT of Delhi), (2023) 9 SCC 433], it was submitted that the age-restrictions under the Act run contrary to the constitutional right afforded to women make unhindered decisions regarding their reproductive choices.*

*XXX XXX XXX*

*24.4. As recently as 2024, this Court in A v. State of Maharashtra [A v. State of Maharashtra, (2024) 6 SCC 327 : (2024) 3 SCC (Cri) 197] held that: (SCC p. 345, para 36)*

*"36. The right to choose and a*

*reproductive freedom is fundamental right under Article 21 of the Constitution."*

*XXX XXX XXX*

*54. The real issue in each case is as to the dominant intention of the legislature to be gathered from the language used, the object indicated, the nature of rights affected, and the circumstances under which the statute is passed. Applying the aforesaid principles to the present case, if the intending couple had attained the age of 50 and 55 years prior to the coming into force of the Act and had also commenced the the surrogacy procedure would certification be denied to them after the coming into force of the Act. Conversely, if the intending couple were within the age-limits when they commenced the surrogacy procedure and on the date of certification sought under the Act had overreached the age-limits will the certificate be denied to them? In our view, in both of the above situations the provision cannot apply retrospectively so as to deny the certification to the intending couples in the present cases on the premise that on the date of issuance of certification they had crossed the age bar. This is because there was no age restriction when the couples intending commenced the surrogacy procedure, the Act has been enforced when the Intending couple were in the midst of the procedure, at a crucial phase I.e. at the stage of creation of embryos and*

*freezing the same. This was a sufficient manifestation of their intention. The next step was to transfer the frozen embryos to the uterus of the surrogate mother. At that stage the age bar under the Act has come into play. The intending couples have a constitutional right which was unfettered when they commenced the process of surrogacy. The same can be curtailed only by reasonable restrictions and by not interpreting the Act unfairly, so as to completely curtail their constitutional right to surrogacy which was unfettered by the Act not giving a retrospective or even a retroactive effect to the Act under consideration.*

*XXX XXX XX*

*Right includes liberty - Salmond*

*66. Salmond on Jurisprudence, 12th Edn. by P. J. Fitzgerald, while dealing with the aspect of legal rights in the wider sense of the term, sets out the principle that there are things which an individual may do without being prevented by the law. It further mentions that the sphere of one's legal liberty is that sphere of activity within which the law is content to leave the individual alone. Salmond asserts that "the term right is often used in a wide sense to include such liberty" (at p. 225):*

> *"Liberties and no-rights. Just as my legal rights (in the strict sense) are the benefits which I derive from legal duties imposed*

*upon other persons, so my legal liberties (sometimes called licences or privileges) are the benefits which I derive from the absence of legal duties imposed upon myself. They are the various forms assumed by the interest which I have in doing as I please. They are the things which I may do without being prevented by the law. The sphere of my legal liberty is that sphere of activity within which the law is content to leave me alone. It is clear that the term right is often used in a wide sense to include such liberty. I have a right (that is to say, I am at liberty) to do as I please with my own; but I have no right and am not at liberty to interfere with what is another's. I have a right to express my opinions on public affairs, but I have no right to publish a defamatory or seditious libel. I have a right to defend myself against violence, but I have no right to take revenge upon him who has injured me."*

*(emphasis supplied)"*

**35.** High Court of Delhi, in the matter of ***D and Another vs. Union of India and Another, 2023 SCC OnLine Del 8826*** has held as under:

*"12. The petitioners have encountered a roadblock in obtaining the eligibility certificate, primarily due to their age exceeding the prescribed limits. However, it is essential to*

*note that the petitioners commenced their IVF treatment, and embryo was created on 3-12-2021, when the age restrictions outlined in both the SR Act and the ART Act, were not yet in effect. Furthermore, it is essential to emphasize that the embryos were created through the fertilization of gametes that were recovered and frozen when the petitioners' ages were well below the age-limit introduced under the Impugned provision. Prima facie, the impugned provision cannot be applied retrospectively, thereby disqualifying individuals who had already initiated or undergone the ART process, accordance with the prevailing laws. Mr Chetan Sharma, learned Additional Solicitor General, has also fairly pointed out that the legal implications of the provision should be prospective in nature. Considering these crucial facts, in our opinion, the impugned provision should not be interpreted as an obstacle to the petitioners' pursuit of surrogacy.*

*13. At this juncture, we must reference a judgment passed by the High Court of Kerala in Nandini K. [Nandini K. v. Union of India, 2022 SCC OnLine Ker 8235], as it bears significant relevance to the issue at hand. In that case, the Court was dealing with Section 21(g) of the ART Act, which prescribes the age-limit for couples desirous of availing ART. It was held that if the prohibition under Section 21(g) is understood to be preventing continuance of ART services that had already*

*commenced, it would amount to unreasonable and unjustified restriction on the reproductive choice of the commissioning couple, and would militate against the liberty guaranteed under Article 21 of the Constitution. As a result, the Court determined that couples who had initiated IVF treatment prior to 25-1-2022 (the date of the enforcement of the ART Act) should not be adversely affected by the age prescription outlined in the ART Act. This precedent, set by the High Court of Kerala, sheds significant light on the prospective applicability of standing provisions, and reinforces the argument in favour of the petitioners.*

*(emphasis supplied)"*

**36.** Further, High Court of Punjab and Haryana at Chandigarh in the matter of ***Sarbjit Kaur and Another vs. State of Punjab and Others 2026 SCC OnLine P&H 689*** has held as under:

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

**37.** High Court of Calcutta in the matter of ***Shyamoli Saha and Another Vs. State of West Bengal and Others, 2024 SCC***

***OnLine Cal 10379*** has held as under:

> *"18. In the case at hand, if the woman is not allowed to avail ARTS citing Section 21(g) even though she is eligible for the same, then it will be sheer injustice to her. For the ineligibility of the husband, the wife ought not to suffer. This is so because the husband has no physical participation in any of the procedures involved for the birth of the child through ARTS. The husband has claimed that he is financially strong to bear the expenses of the procedure. Apart from providing moral and financial support to the wife, the husband hardly has a role to play.*
>
> *19. The Court in the matter of Sanchita Ghosh (supra) and Sudarshan Mandal (supra) discussed the issue elaborately and held that the couple would be entitled to have the benefit of Assisted Reproductive Technology as one of the parties qualify on the upper age limit stipulated in Section 21(g), irrespective of the fact that the other spouse does not."*

**38.** High Court of Kerala at Ernakulam in the matter of ***Sajitha Abdul Nazar and Others Vs. Union of India Represented By Its Secretary, Ministry of Health and Family Welfare and Others, 2025 SCC OnLine Ker 1171*** has held as under:

> *"22. On the contrary, if the respondents' contention is accepted that both spouses must satisfy the age criteria, it would create an unconstitutional classification, treating married*

*women and single women as separate and distinct classes. Take, for example, a hypothetical situation where a married woman is ineligible for an ART procedure solely because her husband has surpassed the age limit; the woman would become eligible immediately on her legal separation or becoming a widow. Such a classification would be a fallacy and would put married women at an unfair disadvantage when compared to single women to access ART procedures. It can never be presumed that the Parliament intended such an inequitable classification within a benevolent statute like the Act. It is a well-established legal principle that no one can supplement conditions not explicitly provided in the statute. Without any express provision in the Act restricting commissioning couples on the basis of their composite age, there is no legal bar in a woman who is otherwise eligible under Section 21(g)(i) from applying the ART procedure even if her husband has surpassed the age limit. The same rationale applies to men, ensuring that single and married individuals enjoy equitable access to reproductive assistance. The above discussions conclude that there is no legal bar for the 4th respondent to apply the ART procedure on the 1st petitioner. The experience of childlessness is a silent anguish known to only those who walk that path.*

*In light of the above discussions, I answer the*

*question in favour of the 1st petitioner by allowing the writ petition and directing the 4th respondent to provide ART services to the 1st petitioner as per the provisions of the Act after obtaining the consent of the 2nd petitioner."*

**39.** Very recently the Delhi High Court in the matter ***Shewta Tuteja and Another v. Union of India, through Secretary, Ministry of Health & Welfare and Others, 2026 SCC OnLine Del 4606*** has head as under :

*"11. There can be no quarrel with the proposition that the ART Act is a beneficial regulatory legislation enacted with the object of ensuring safe, ethical and regulated ART practices. Equally, the concerns relating to maternal health and child welfare which underlie the statutory framework cannot be disregarded. However, while interpreting a regulatory statute touching upon reproductive rights and decisional autonomy, the Court is also required to adopt an interpretation which remains consistent with constitutional values embodied under Article 21 of the Constitution.*

*12. The Petitioners' herein, are not seeking Initiation of a fresh IVF cycle after having crossed the statutory age limit prescribed under Section 21(g) of the ART Act. Rather the admitted factual position is that the treatment process had already commenced while the Petitioners were within prescribed statutory age limits. At the relevant time, when*

*the embryos were retrieved, created and cryopreserved on 7-3-2026 Petitioner 1(female) was aged 49 years 11 months and 14 days old and, therefore, squarely fulfilled the eligibility criteria under Section 21(g) of the ART Act. It is also not disputed that six embryos were created and cryopreserved pursuant thereto, out of which one embryo was utilised during the FET Procedure undertaken on 7-3-2026. Presently, five cryopreserved embryos belonging to the Petitioners continue to remain preserved with the Hospital.*

*13. At this stage, it is significant to note that the Petitioners are not seeking creation or extraction of fresh embryos after crossing the statutory age threshold. The request of the Petitioners' is confined to utilisation of the very same embryos which had already been retrieved at a point when Petitioner 1 undisputedly satisfied the statutory age requirement. As on date, Petitioner 1 is stated to be 50 years 2 months of age where as Petitioner 2 is stated to be 54 years old. However, the embryos presently sought to be utilised are those which came to be created during subsistence of permissible statutory age and pursuant to a process initiated under medical supervision.*

*14. The aforesaid distinction, in the considered opinion of this Court, assumes considerable significance while interpreting*

*the scope and application of Section 21(g) of the ART Act. The present case, therefore, concerns continuation of an already initiated reproductive process involving pre-existing cryopreserved embryos and not commencement of a fresh ART procedure dehors the statutory framework.*

*15. The cryopreserved embryos in question are not merely preserved biological material in abstract but are intrinsically connected with the Petitioners' reproductive autonomy, decisional privacy and their constitutional protected choice relating procreation and family life.*

*16. The Supreme Court in the case of Suchita Srivastava (supra) recognised reproductive choice as an inseparable facet of personal liberty under Article 21 of the Constitution. Similarly, in Justice K.S. Puttaswamy (supra), decisional autonomy and privacy in matters concerning family, procreation and bodily integrity were held to be constitutionally protected interests. These constitutional principles necessarily require that statutory provisions regulating ART procedures receive a purposive Interpretation that advances constitutional freedoms while preserving the regulatory object sought to be achieved by the enactment.*

*17. The Punjab Haryana High Court in Sarabjit Kaur (supra) while Interpreting the provisions of the ART Act observed that the*

*primary purpose of the enactment is to regulate and supervise ART clinics and banks so as to prevent misuse and unsafe practices. The statutory framework ought not to be construed in a manner defeating the very object underlying the legislation. The restrictions which are not expressly contemplated under the statue cannot be imported so as to defeat access to ART procedures. The reasoning adopted in Sarabjit Kaur also assumes significance Inasmuch as the statutory framework Imposes age restrictions individually upon a woman and a man and not upon "commissioning couple" as a composite unit. The legislative scheme does not contemplate any joint or collective age restriction for a "commissioning couple."*

*18. Further, the Calcutta High Court in Shaymoll Saha (supra) upon analysing the definitions of "woman", "patient" and "commissioning couple" under the ART Act, had observed that the statute does not prescribe any composite age criterion for a "commissioning couple" and that such a restriction cannot be judicially imported into the statue.*

*19. The aforesaid line of reasoning has also found acceptance in subsequent decisions including Vanaja v. Union of India, Ambiki Balan v. Union of India, Union of India v. Devayani S15 The Division Bench of Kerala High Court in Devayani S. specifically*

*observed that although the parliamentary Standing Committee had considered introduction of a "combined age" criterion for couples, the legislature consciously did not incorporate any such composite age restriction within the enacted provisions of the ART Act. The Court further held that where the statue prescribes age thresholds separately for a woman and a man under Section 21(g), Courts cannot read into the statue an additional restriction not expressly contemplated by the legislature.*

*20. Through a different lens, the aforenoted reasoning also finds support in the text of the provision. Section 21(a) of the ART Act, at its highest, require the commissioning couple, which is to "avall" assistive reproductive technology to be compliant of the requirements of the Act. Section 2(e) of the ART Act further defines "commissioning couple" as a couple who "approach" a clinic providing assisting reproductive technology.*

*21. Thus, it is the time that the benefits of the technology are availed and when the couple approaches, that the limitations and conditions of age, if at all, are to be considered. Section 21(h) further requires a discharge certificate to be issued to the "commissioning couple" I.e. which is the couple as they were at the time they approached the clinic, stating the details of the assisted reproductive technology procedure performed on the "commissioning*

*couple". It is, therefore, the case, that the text of the provision, also, support the purposive interpretation rendered by the Courts.*

*22. A brief reliance may also be placed on GP Singh's Principles of Statutory Interpretation, which has noted that while selecting out of different interpretations "the Court will adopt that which is just, reasonable and sensible rather than that which is none of the hose things". A construction giving rise to an anomaly ought to be avoided.*

*23. This Court is conscious of the decisions relied upon by the Respondents including Pankaj Kumar Das and Kavitha Anand, wherein, emphasis has been laid upon the legislative policy underlying the age restrictions prescribed under Section 21(g) of the ART Act. There can be no disagreement with the proposition that the statutory age limits are founded upon legitimate considerations relating to maternal health, ethical regulation and child welfare.*

*24. However, in the facts of the present case, concerns relating to maternal health and welfare of child though legitimate and substantial, stand safeguarded. The Petitioners had already undergone medical evaluation, counselling and requisite treatment under expert supervision before commencement of the ART process. The material on record would indicate that the Petitioners were declared medically fit for*

*undergoing the procedure.*

*25. The Respondents have not placed any medical opinion indicating that utilisation of the existing cryopreserved embryos would pose any immediate or exceptional medical risk beyond the general policy concerns underlying the enactment.*

*26. The distinction between initiation of a fresh ART cycle after crossing the statutory age threshold and continuation of an already commenced treatment involving existing cryopreserved embryos cannot be lost sight of. The Punjab and Haryana High Court in the case of Pushpa v. Union of India, 12 recently, while coming across a case where the petitioner-wife had crossed the age of 50 years, permitted continuation of IVF treatment noting that the issue stood covered by the earlier decision in Sarbjit Kaur. In the opinion of this Court, the latter category stands on a materially different footing and warrants a purposive interpretation consistent with constitutional protections available to reproductive choice and decisional autonomy.*

*27. This Court is also conscious of the fact that reproductive rights and access to parenthood in the contemporary constitutional jurisprudence cannot be reduced to purely technical or pedantic application of statutory conditions divorced from factual context in which such rights are asserted. The ART Act is fundamentally regulatory in character. The*

*object of the enactment is to ensure ethical and safe ART practices and not to create insurmountable barriers defeating legitimate continuation of treatment processes already lawfully undertaken*."

**40.** In the light of the law laid down by the Supreme Court of India and various High Courts, reproductive autonomy forms an integral facet of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The statutory provisions regulating Assisted Reproductive Technology are undoubtedly required to be complied with; however, while interpreting such provisions, the Court is also required to keep in view the object and purpose of the legislation and the constitutional rights sought to be protected. A rigid and mechanical interpretation of an age restriction, particularly where one spouse independently satisfies the prescribed eligibility criteria and the proposed treatment is medically permissible, ought not to result in an unintended and disproportionate denial of the opportunity to pursue parenthood.

**41.** Thus, access to ART/IVF treatment, in appropriate circumstances, falls within the broader sphere of reproductive autonomy and decisional privacy protected under Article 21 of the Constitution. In the present case, the petitioners are not seeking exemption from the statutory framework in its entirety, nor do they seek dispensation from the safeguards prescribed under the Act. Petitioner No.1, who is aged about 47 years, admittedly falls within the age limit prescribed for a woman under Section 21(g)(i) of the

ART Act. She has also been medically examined and found suitable for undergoing the proposed IVF/ART treatment by respondent No.5. The only impediment relied upon by the respondents is that petitioner No.2, aged about 57 years, has crossed the upper age limit prescribed for a man under Section 21(g)(ii) of the ART Act.

**42.** A purposive interpretation of Section 21(g) of the ART Act, therefore, becomes necessary in the facts of the present case. The provision prescribes distinct age limits for a woman and a man; however, it does not expressly provide that the crossing of the prescribed age limit by one spouse would automatically render the other spouse, who independently satisfies the statutory age requirement, ineligible to undergo ART treatment. Likewise, the statutory definition of a “commissioning couple” does not, by itself, prescribe a composite or cumulative age criterion whereby the eligibility of one spouse is made entirely dependent upon the age of the other spouse. The provision, being part of a regulatory framework governing ART services, cannot be extended beyond its express terms so as to create an additional restriction which the legislature has not specifically incorporated.

**43.** This Court also finds substance in the submission of learned counsel for the petitioners that the statutory scheme, particularly Section 21(g) of the ART Act, contemplates separate age parameters for women and men. Petitioner No.1 satisfies the age

requirement applicable to a woman and is medically fit to undergo the proposed procedure. Petitioner No.2, though having crossed the age prescribed under Section 21(g)(ii) of the ART Act, is not seeking to claim eligibility contrary to the statutory prescription; rather, the petitioners seek to proceed with the ART treatment through petitioner No.1, with the consent and participation of petitioner No.2 and subject to compliance with all other statutory and medical requirements. At the same time, the objection of the respondents that the registered ART clinic is bound by the provisions of the Act also deserves due consideration. Respondent No.5, being a regulated ART clinic, cannot be faulted for declining to proceed with the treatment in the absence of an appropriate judicial or competent-authority direction. However, once this Court, in exercise of its constitutional jurisdiction, interprets the statutory provision and grants appropriate relief, the concerned respondents are required to act in accordance with such direction.

**44.** Having regard to the totality of the facts and circumstances, this Court is of the considered view that the present case warrants judicial intervention. The petitioners have remained married for about 22 years and have no surviving child. Petitioner No.1 had earlier undergone IUI treatment in the year 2013, which was unsuccessful, and thereafter conceived in the year 2015 but unfortunately suffered miscarriage at about four months of pregnancy. The petitioners have thereafter approached

respondent No.5 with the intention of undergoing IVF/ART treatment and, upon medical examination and counselling, have been found suitable for the proposed treatment. The request of the petitioners has been declined solely on account of the age of petitioner No.2, notwithstanding the fact that petitioner No.1 is within the permissible age limit and has been medically found fit. In these peculiar circumstances, treating the age of petitioner No.2 as an absolute bar to the ART treatment of petitioner No.1 would amount to importing a composite age restriction into Section 21(g) of the ART Act, which is not expressly contemplated by the statutory provision. Such an interpretation would also have the effect of substantially curtailing the reproductive choice of petitioner No.1 despite her independently satisfying the prescribed age criterion.

**45.** Accordingly, the writ petition is **allowed** with the following directions:

(a) The impugned communication/order dated 31.07.2026, whereby the request of the petitioners has been rejected solely on the ground that petitioner No.2 has crossed the upper age limit prescribed under Section 21(g)(ii) of the Assisted Reproductive Technology (Regulation) Act, 2021, is hereby set aside.

(b) The respondent authorities and respondent No.5 shall permit the petitioners to proceed with IVF/ART treatment,

subject to petitioner No.1 satisfying the applicable medical requirements and the petitioners complying with all other statutory, ethical and regulatory requirements prescribed under the ART Act and the applicable Rules/Regulations.

(c) The mere fact that petitioner No.2 has crossed the age prescribed under Section 21(g)(ii) of the ART Act shall not, by itself, be treated as a bar to petitioner No.1 undergoing the proposed IVF/ART procedure, she otherwise being within the age prescribed under Section 21(g)(i) of the ART Act.

(d) It is further directed that if, during the course of the treatment already commenced pursuant to this order, petitioner No.1 crosses the age of 50 years, such intervening attainment of age shall not, by itself, operate to discontinue or frustrate an ongoing treatment cycle, subject always to medical advisability and compliance with the other applicable statutory requirements.

(e) Respondent No.5 shall not be subjected to any penal or adverse action under the ART Act merely for providing the treatment to the petitioners in compliance with the present order, provided that all other statutory, medical and regulatory requirements are duly complied with.

(f) The concerned respondents shall ensure that no

unnecessary administrative impediment is created in the implementation of the present order. The treatment shall, however, remain subject to medical assessment, informed consent, professional advice and all other safeguards mandated under the applicable law.

**46.** It is clarified that the relief granted herein is confined to the peculiar facts and circumstances of the present case and shall not be construed as dispensing with any other mandatory requirement prescribed under the ART Act or the Rules and Regulations framed thereunder.

**47.** Before parting with this order, it is noteworthy to mention that "Where the body remains capable and the heart remains willing, the desire for parenthood cannot be dismissed merely as a desire whose time has passed."

**Sd/-**

**(Amitendra Kishore Prasad)**
**Judge**

Yogesh / Avinash

| The date when the judgment is reserved | The date when the judgment is pronounced | The date when the judgment is uploaded on the website | |
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| 29.09.2026 | 06.10.2026 | ------ | 06.10.2026 |

## HEAD NOTE:-

“Where medical fitness, informed consent and the capacity to assume parental responsibilities are established, the mere fact of crossing a prescribed age cannot be viewed in isolation from the constitutional guarantee of dignity and personal liberty.”