



AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for orders on : 22.04.2026

Order passed on : 24.04.2026

WPC No. 1495 of 2026

1 - Neeru Singh W/o Lavakesh Pratap Singh Baghel Aged About 49 Years R/o B-3, High Court Residential Colony, Bodri, Bilaspur, Distt. Bilaspur, Chhattisgarh.

2 - Lavakesh Pratap Singh Baghel S/o Yashwant Singh Baghel Aged About 55 Years R/o B-3, High Court Residential Colony, Bodri, Bilaspur, Distt. Bilaspur, Chhattisgarh.

... Petitioner(s)

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 - Indira Ivf Fertility Centre (A Unit Of Indira Ivf Hospital Ltd.) 2nd Floor, Of Trade View Building, Link Road, Near Cmd Chowk, Above Apollo City Center, Bilaspur, Chhattisgarh. Registered Under The Assisted Reproductive Technology (Regulation) Act, 2021.



5 - Director Indira Ivf Fertility Centre (A Unit Of Indira Ivf Hospital Ltd.),
2nd Floor, Of Trade View Building, Link Road, Near Cmd Chowk, Above
Apollo City Center, Bilaspur, Chhattisgarh.

... Respondent(s)

(Cause-title is taken from Case Information System)

For Petitioners : Mr. Manoj Paranjpe, Sr. Advocate assisted
by Ms. Apoorva Ghore, Advocate

For State : Mr. Anadi Sharma, Panel Lawyer

For Resp. No. 4 : Mr. Vivek Sharma, Advocate and
and 5 : Mr. Shantam Awasthi, Advocate

(Hon'ble Shri Amitendra Kishore Prasad, Judge)

C.A.V. Order

1. The petitioners have preferred the instant writ petition seeking issuance of an appropriate writ, order or direction for permitting them to undergo In Vitro Fertilization (IVF) treatment, notwithstanding the age restriction prescribed under Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021. The necessity of filing the present petition arises out of peculiar and exceptional facts, wherein the petitioners, a legally wedded couple aged about 49 and 55 years respectively, have been deprived of access to assisted reproductive treatment solely on account of a rigid and mechanical application of the statutory age bar, despite being medically fit to undergo such procedure. It is the case of the petitioners that they had earlier been blessed with a daughter; however, the unfortunate and untimely demise of their



only child in the year 2022 caused them immense emotional and psychological distress, on account of which they were unable to immediately take any steps towards expanding their family. After passage of time and upon regaining a degree of emotional stability, the petitioners approached a recognized fertility centre for IVF treatment, whereupon medical evaluation confirmed their suitability for the procedure. However, the said treatment has been denied solely on the ground that petitioner No. 2 has marginally crossed the upper age limit prescribed under Section 21(g) of the Act of 2021. The petitioners contend that such denial, without considering their peculiar circumstances and the urgency arising from the advancing age of petitioner No. 1, who is on the verge of crossing the permissible age limit, has compelled them to approach this Court. It is further urged that the strict enforcement of the statutory provision, in the facts of the present case, results in infringement of their fundamental right to life and personal liberty, which encompasses the right to reproductive autonomy, thereby necessitating judicial intervention for grant of following reliefs :

“10.1 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;

10.2 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. 1 surpasses the age of 50 during the ongoing treatment;

10.3 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;

10.4 Any other and further relief(s) that this Hon'ble Court deems fit in the interest of justice.”

2. The fervent yearning of a married infertile couple to have a family has compelled them to approach this Court praying for a direction upon the respondent for providing Assisted Reproductive Technology (hereinafter referred to as 'ART' for the sake of brevity) for giving birth to a child. The petitioners are a married couple who have lost their only daughter in the year 2022. They intend to avail the facility under ART for giving birth to a baby. The stumbling block is the over age of the husband-petitioner no. 2.
3. The issue to be decided is whether the petitioners would be eligible to avail the said facility in accordance with the Assisted Reproductive Technology (Regulation) Act, 2021.



4. Facts of the case, as canvased are that, the petitioners are legally wedded couple residing at Bilaspur, Chhattisgarh. Petitioner No. 1 (wife) is aged about 49 years and Petitioner No. 2 (husband) is aged about 55 years. It is the case of the petitioners that they were blessed with a daughter; however, the unfortunate demise of their only child in the year 2022 resulted in severe emotional distress and psychological trauma. Owing to such tragic and unforeseen circumstances, the petitioners required a considerable period of time to regain emotional stability and were unable to contemplate expanding their family during that phase. It is further averred that, after gradually recovering from the said trauma, the petitioners decided to pursue parenthood through Assisted Reproductive Technology (ART) and accordingly approached the Indira IVF Centre, Bilaspur, for consultation and treatment. Upon medical evaluation, it was found that both the petitioners are physically and clinically fit to undergo the IVF procedure and that their medical parameters fall within the acceptable range for such treatment. However, despite such medical eligibility, the respondent clinic declined to proceed with the treatment solely on the ground that Petitioner No. 2 had crossed the upper age limit of 55 years in February, 2026, as prescribed under Section 21(g)(ii) of the Assisted Reproductive Technology (Regulation) Act, 2021. The petitioners submit that they had made a detailed representation dated 24.03.2026 before the Director of the Indira IVF Centre, Bilaspur, requesting initiation of the IVF process and



seeking relaxation of the age limit in light of their exceptional circumstances. However, no favourable action was taken on the said representation, and the request of the petitioners was declined solely on account of the statutory age restriction applicable to Petitioner No. 2. It is further the case of the petitioners that the delay in seeking ART treatment was neither deliberate nor negligent, but was occasioned entirely due to the tragic loss of their only child, which necessitated time for emotional and psychological healing. It is specifically contended that Petitioner No. 1, being below the age of 50 years, independently satisfies the eligibility criteria prescribed under Section 21(g)(i) of the Act, and is medically fit to undergo the IVF procedure. Therefore, denial of treatment on the basis of a rigid and mechanical application of the age bar pertaining to the husband is stated to be arbitrary and unjust. The petitioners have further elaborated upon the statutory scheme of the Assisted Reproductive Technology (Regulation) Act, 2021, contending that the Act adopts an individual-centric approach rather than a strictly couple-centric one. Reliance has been placed upon the definitions contained in Sections 2(1)(n) and 2(1)(u), which recognize “patients” and “woman” as independent legal entities for the purpose of ART procedures. It is urged that a conjoint reading of these provisions demonstrates that eligibility for ART is to be assessed individually, and not collectively as a “commissioning couple.” The petitioners further contend that the Act does not



prescribe any composite age criterion for a couple, and that the age limits specified under Section 21(g) are gender-specific rather than joint in nature. In this backdrop, it is submitted that Petitioner No. 1, being within the prescribed age limit and medically eligible, cannot be denied access to ART treatment merely because Petitioner No. 2 has marginally exceeded the age threshold. In support of their submissions, the petitioners have placed reliance upon the judgment of the High Court of Kerala in Sajitha Abdul Nazar and Others vs. Union of India, wherein it has been held that the eligibility of a woman to undergo ART treatment operates independently of the eligibility of her spouse, and that denial of such treatment based on the spouse's age would result in an unjust and unconstitutional classification. It is thus contended that the impugned refusal on the part of the respondents to permit IVF treatment in the present case is arbitrary, unreasonable, and violative of the petitioners' fundamental rights, particularly the right to life and personal liberty under Article 21 of the Constitution of India, which encompasses the right to reproductive autonomy. The petitioners submit that the balance of convenience lies in their favour, as denial of treatment would cause irreparable injury, whereas permitting the same would not prejudice the respondents in any manner. Accordingly, the petitioners have approached this Court seeking appropriate directions to enable them to undergo IVF treatment in accordance with law.

5. Learned counsel for the petitioners submits that the impugned



action of the respondent authorities in denying permission to the petitioners to undergo Assisted Reproductive Technology (ART) is wholly arbitrary, unjust, and violative of the fundamental rights guaranteed under the Constitution of India. It is contended that the right to life and personal liberty under Article 21 is of the widest amplitude and includes within its fold the right to reproductive autonomy, dignity, and the right to form a family. The petitioners, having suffered the irreparable loss of their only child, are now seeking to avail what is effectively their last opportunity to experience parenthood. It is urged that such a deeply personal and constitutionally protected right cannot be defeated by a rigid, mechanical, and pedantic application of statutory age limits, particularly in exceptional circumstances such as the present case. Learned counsel further submits that the scheme of the Assisted Reproductive Technology (Regulation) Act, 2021 is not strictly couple-centric but rather adopts an individual-centric approach, especially with regard to the eligibility of a woman undergoing ART procedures. It is argued that the statutory framework, including the definitions contained in the Act, clearly recognizes the independent legal identity and eligibility of a woman seeking such treatment. In the present case, Petitioner No. 1 is admittedly below the age of 50 years and is medically fit to undergo IVF treatment. Therefore, she independently satisfies the eligibility criteria under Section 21(g)(i) of the Act, and her right to access such treatment cannot be curtailed merely on account



of the age of her husband. It is further contended that the refusal to permit ART treatment, despite the petitioners being medically fit and financially capable, is manifestly arbitrary, unreasonable, and disproportionate. Learned counsel submits that the rigid application of Section 21(g) of the Act, without taking into account the peculiar and exceptional facts of the present case, results in hostile discrimination and is violative of Article 14 of the Constitution of India. It is argued that the law cannot be applied in a manner that leads to inequitable and unjust outcomes, particularly when the petitioners stand on a distinct footing owing to the tragic loss of their only child. Learned counsel also submits that the delay in approaching for ART treatment is neither intentional nor attributable to any negligence on the part of the petitioners. Rather, such delay has occurred solely due to the devastating demise of their daughter in the year 2022, which caused severe emotional and psychological trauma, requiring time for recovery and stabilization. It is urged that the petitioners cannot be penalized for circumstances beyond their control, and denial of relief on such technical grounds would result in grave miscarriage of justice. It is further submitted that the petitioners have been duly evaluated by a recognized IVF clinic and have been found medically fit to undergo the procedure. The denial of treatment is not based on any medical contraindication or risk factor, but solely on a technical interpretation of the age criterion. Learned counsel submits that such an approach defeats the very



object and purpose of the Act, which is to regulate and facilitate access to reproductive technologies, and not to unreasonably restrict the same. Learned counsel also emphasizes that the petitioners are physically, mentally, and financially capable of raising a child. It is contended that they possess sufficient economic stability and resources to ensure the proper upbringing, education, and welfare of the child, and therefore, no prejudice would be caused by permitting them to undergo ART treatment.

6. It is further argued by learned counsel for the petitioners that there exists no clear or composite age criterion for a “commissioning couple” under the Act. While separate age limits have been prescribed for a “woman” and a “man” under Section 21(g), the Act does not lay down any combined or joint age requirement for a couple. Moreover, the term “man” itself has not been specifically defined, which creates ambiguity in the interpretation and application of the provision. Learned counsel submits that such ambiguity has led to arbitrary and inconsistent application by authorities, thereby conferring unguided discretion and resulting in discrimination. Learned counsel reiterates that the statutory scheme must be interpreted in a purposive and beneficial manner so as to advance the object of the legislation. It is submitted that Section 21(g) ought not to be construed in a rigid or literal manner, especially in cases involving exceptional circumstances. A purposive interpretation, consistent with constitutional values, would require that the provision be applied in a manner that



facilitates access to ART rather than denies it. Placing reliance on judicial precedents, learned counsel submits that constitutional courts have consistently adopted a liberal approach in matters concerning reproductive rights and have granted relief even in cases where statutory age limits were technically exceeded, particularly when the applicants were otherwise medically fit and deserving. It is contended that the ART Act is a welfare-oriented and beneficial legislation, and its provisions must be interpreted in a manner that upholds the dignity and reproductive choices of individuals. Finally, learned counsel submits that if the relief sought by the petitioners is not granted, they would lose their only remaining opportunity to have a biological child due to advancing age, resulting in irreparable injury that cannot be compensated in any manner. It is, therefore, prayed that this Court may be pleased to exercise its extraordinary jurisdiction to grant appropriate relief to the petitioners in the interest of justice.

7. Learned State counsel, while opposing the submissions of the petitioners, would contend that the relief sought is in the teeth of the express provisions of the Assisted Reproductive Technology (Regulation) Act, 2021, particularly Section 21(g), which prescribes definitive and non-negotiable age criteria for availing ART services. It is submitted that the statute, being a product of legislative wisdom, consciously incorporates such age limits keeping in view medical, ethical, and social considerations, and the same cannot be diluted on compassionate or equitable



grounds. The State would further urge that the scheme of the Act is to regulate ART procedures in a structured manner, and any deviation by way of judicial intervention would amount to rewriting the statute. It is also contended that the eligibility conditions are to be read in the context of a commissioning couple as a unit, and not in isolation of either spouse. It is thus argued that permitting the petitioners to undergo IVF despite clear statutory prohibition would set an undesirable precedent and defeat the object of the legislation. Accordingly, the writ petition is liable to be dismissed as being devoid of merit.

8. Learned counsel appearing on behalf of respondent Nos. 4 and 5 - IVF Centre, submits at the outset that the present writ petition essentially seeks a direction to permit Assisted Reproductive Technology (ART)/IVF treatment in deviation of the statutory mandate contained under Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021. It is contended that the petitioners are seeking judicial intervention to create an exception to the express age limitations prescribed under the Act, particularly when Petitioner No. 2 has admittedly crossed the upper age limit of 55 years. It is further submitted that respondent No. 4 is a duly registered ART clinic functioning strictly within the framework of the 2021 Act and the Rules framed thereunder, and Respondent No. 5, being its Director, is statutorily bound to ensure compliance with the provisions of the said enactment. The clinic, being a regulated entity, cannot act de hors the statutory



scheme or assume powers not conferred upon it. The refusal to proceed with the treatment is thus not arbitrary, but is a consequence of statutory compulsion. Learned counsel emphasizes that once it came to the notice of the respondents that petitioner No. 2 had crossed the age threshold prescribed under Section 21(g)(ii), the respondents were left with no discretion in the matter. It is submitted that any departure from the statutory conditions would expose the clinic to serious legal consequences, including action affecting its registration under Section 18 of the Act, as well as penal consequences upon the Director under Sections 33(2), 34, and 37 of the Act. Therefore, the impediment in proceeding with the treatment is purely legal and not administrative or discretionary. It is also contended that the Act does not confer any power upon the clinic or its Director to relax, waive, or reinterpret the statutory age limits. Such authority, if at all, vests only in the regulatory bodies constituted under the Act, including the State Board and the Appropriate Authority under Section 12. In absence of any such relaxation mechanism within the statute, the answering respondents cannot independently assume jurisdiction to override the legislative mandate. Learned counsel further submits that there exists divergence of judicial opinion across various High Courts on the interpretation of Section 21(g) of the Act. While some courts have upheld the age restriction as mandatory, others have adopted an individual-centric approach permitting ART where the woman satisfies the



age criteria. In such a scenario of conflicting judicial views, it would be unsafe and impermissible for a regulated clinic to adopt one interpretation at its own discretion, particularly when such action may expose it to statutory liability. It is, therefore, submitted that no fault can be attributed to respondent Nos. 4 and 5 for their inability to proceed with the treatment in absence of clear legal sanction. The respondents have acted bona fide and strictly in accordance with the statutory provisions governing their functioning. Without prejudice to the above, learned counsel submits that in the event this Court is inclined to grant relief to the petitioners and permit ART/IVF treatment as an exception, it is imperative that appropriate protective directions be issued. It is prayed that this Court may clarify that any action taken by respondent Nos. 4 and 5 in compliance with such judicial directions shall not expose them to any penal consequences or regulatory action under the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021.

9. I have heard learned counsel for the parties at length and have bestowed my thoughtful consideration to the rival submissions advanced, as also perused the material placed on record.
10. 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 Assisted Reproductive Technology (Regulation) Act, 2021, without taking into consideration the peculiar and exceptional facts of the present case. For the sake of convenience, Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 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 xxx”

11. According to the Act the service is 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. Thought the wife-petitioner no. 1 is within the prescribed age limit, but the husband fails to meet up the age criteria. He is currently 55 years of age. The clinic from where the petitioners intend to avail the service, has denied to provide the same in the absence



of any order from the court of law.

12. 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 Act, which defines “patients” as both individuals and couples seeking infertility treatment at a clinic. Section 2(1)(n) of the Assisted Reproductive Technology (Regulation) Act, 2021 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;”

13. Additionally, Section 21 casts duties on the ART clinics and banks to ensure adherence to the statutory requirements. Notably, under Section 21(g) the mandate is for the **clinics to apply ART services to a** woman only if she is above 21 and below 50 years of age and to a man if he is above 21 and below 55 years of age. The provision reinforces that the age restriction is gender-specific



rather than couple-specific, reinforcing that eligibility depends on the individual's age rather than the couple's combined age. In the context of the case at hand, the 2nd petitioner has attained 55 years of age, rendering him ineligible to avail of the ART procedure. However, the couple still intends to pursue parenthood through the 1st petitioner, who desires to avail of the ART procedure, as she falls within the legally permissible age range. A holistic understanding of the Act and the associated ART procedures and services reveal that the only legal requirement that the 2nd petitioner has to comply with to enable the 1st petitioner to apply the ART procedure is to give his consent in Form 8, undertaking that he would acknowledge the child born through the procedure as his legal heir. In essence, the 1st petitioner's eligibility to apply for the ART procedure operates independently despite the 2nd petitioner's ineligibility, provided the 2nd petitioner gives his consent for the procedure. Hence, when a woman wants to undergo an IVF procedure, only her age is considered relevant, irrespective of her husband's age, and the same principle applies conversely to men. The above interpretation leads to an inevitable conclusion that the legislature has treated men and women as distinct legal entities under the Act rather than imposing uniform couple-centric legislation.

14. From the undisputed factual matrix, it emerges that the petitioners



are a legally wedded couple who had been blessed with a child, but suffered the irreparable loss of their only daughter in the year 2022. The said circumstance is not merely a routine factual assertion but constitutes a deeply tragic and extraordinary situation, which had a direct bearing on the petitioners' ability to take timely recourse to ART procedures. It is further borne out from the record that upon medical evaluation, both the petitioners have been found fit to undergo IVF treatment and that the denial of such treatment is not based on any medical contraindication but solely on the ground that petitioner No. 2 has marginally crossed the upper age limit prescribed under Section 21(g)(ii) of the Act of 2021. The issue, therefore, is not of eligibility in substance, but of interpretation and application of the statutory provision in light of constitutional guarantees.

15. The Hon'ble Supreme Court, in **Suchita Srivastava v. Chandigarh Admn, reported in (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.....”

16. 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.
17. In the matter of **K.S. Puttaswamy v. Union of India**, reported in **(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.”

(emphasis supplied)



18. Hon'ble Supreme Court in the matter of **X2 v. State (NCT of Delhi)**, reported in **(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.”

19. 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 for achieving parenthood through surrogacy much prior to the



amendment which has come into effect from 14-3-2023. Therefore, the 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.”

20. Very recently, in the matter of **Vijaya Kumari S. v. Union of India**, reported in (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 to 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 reproductive freedom is a 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 surrogacy procedure would the 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 intending couples 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

xxx

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)”

21. High Court of Delhi, in the matter of **D and Another vs. Union of India and Another**, reported in **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, in 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)”

22. Further, High Court of Punjab and Haryana at Chandigarh in the matter of **Sarbjit Kaur and Another vs. State of Punjab and Others** reported in **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 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 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.”

23. High Court of Calcutta in the matter of **Shyamoli Saha and Another Vs. State of West Bengal and Others** reported in **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.”

24. 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,** reported in **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.”

25. In the light of the law laid down by the Supreme Court of India and various High Courts, it is well settled that the right to reproductive autonomy forms an integral part of the right to life and personal liberty under Article 21 of the Constitution, and statutory provisions regulating the same are required to be interpreted in a purposive and non-restrictive manner. It has consistently been held that a rigid and mechanical application of age restrictions, particularly in exceptional circumstances, ought not to defeat the substantive rights of individuals, especially when one of the parties otherwise satisfies the statutory eligibility.
26. Thus, the right to access ART/IVF treatment, in appropriate circumstances, falls within the broader spectrum of reproductive autonomy and decisional privacy. In the present case, the petitioners are not seeking to bypass the law in its entirety, but are seeking a limited and equitable relaxation in view of exceptional circumstances. It is to be noted that Petitioner No. 1, i.e., the wife, admittedly falls within the prescribed age limit under Section 21(g) (i) of the Act and is medically fit. The denial of treatment is solely on account of the age of Petitioner No. 2, which has marginally crossed the threshold.
27. A purposive interpretation of Section 21(g) is thus required. The



statute, being a beneficial and regulatory legislation, is intended to facilitate access to ethical reproductive technologies and not to create unreasonable barriers. The provision prescribes age limits, but does not expressly prohibit judicial consideration in exceptional cases, nor does it provide for a blanket embargo overriding constitutional rights.

28. This Court also finds merit in the submission advanced by learned counsel for the petitioners that the statutory scheme is, to a considerable extent, individual-centric, particularly with respect to the eligibility of a woman undergoing ART. The absence of a composite age criterion for a “commissioning couple” further reinforces the need for a liberal and purposive interpretation. The objection raised by learned counsel for Respondent Nos. 4 and 5 is also duly considered. It is rightly submitted that the said respondents, being a regulated clinic, are bound by the statutory provisions and cannot act in derogation thereof. The said submission deserves acceptance to the extent that no adverse inference can be drawn against the said respondents for their refusal in absence of judicial sanction. However, once this Court exercises its constitutional jurisdiction and grants appropriate relief, the respondents are bound to comply with the same.
29. Having regard to the totality of the facts and circumstances, this Court is of the considered view that the present case falls within the category of exceptional cases warranting judicial intervention.



The petitioners have suffered an irreparable personal loss, the delay in seeking treatment is bona fide and justified, the wife is within the permissible age limit, both petitioners are medically fit, and denial of treatment would result in permanent deprivation of their right to experience parenthood. A rigid and pedantic application of Section 21(g) in such circumstances would defeat the very purpose of the legislation and result in violation of Articles 14 and 21 of the Constitution of India.

30. Accordingly, the writ petition deserves to be and is hereby allowed with the following directions:

a) The respondent authorities, particularly Respondent Nos. 4 and 5, are directed to permit and proceed with the IVF/ART treatment of the petitioners, notwithstanding the age bar prescribed under Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021, treating the present case as an exceptional one.

b) It is further directed that if Petitioner No. 1 crosses the age of 50 years during the course of the ongoing treatment cycle, the same shall not come in the way of continuation and completion of the said treatment.

c) The respondents shall ensure that no administrative or regulatory impediment is placed in the way of the petitioners in undergoing the ART procedure pursuant to this order.



d) It is clarified that Respondent Nos. 4 and 5 shall not be subjected to any penal or adverse action under the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021 for acting in compliance with this order.

e) The entire process shall be undertaken expeditiously, subject to medical advisability and compliance with all other statutory requirements.

31. With the aforesaid observations and directions, the writ petition stands **allowed** and disposed of.

Sd/-

(Amitendra Kishore Prasad)
JUDGE

Shayna