

24.06.2026
Court No.25
D/L No.15
S. Gayen

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 2953 of 2026
Mrs. Laxmi Hembrom Tudu & Anr.
Versus
The State of West Bengal & Ors.

Mr. Swapnadwip Roy

...for the Petitioners

Ms. Sudipa Banerjee
Ms. Manisha Paswan

...for the State

1. The petitioners have filed the present writ application praying for a direction upon the respondent No.5 to provide the petitioners with all the necessary permission to avail the Assisted Reproductive Technology (ART) through IVF procedure upon obtaining sperm and ovum from concerned bank in terms of the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021.
2. The learned counsel appearing for the petitioners submits that the petitioners are the married couple but since after marriage, the couple were not blessed with any child. The petitioners have taken the decision to go for the ART procedure through IVF to conceive the child. The petitioner Nos. 1 and 2 are continuous under medical treatment and after conduct of the clinical tests of both the parties, it was found that the petitioner No.2 who is the husband of the petitioner No.1 is aged about 56 years and is over age.

3. Learned counsel for the petitioners has relied upon the judgment in the case of ***Shyamoli Saha & Anr. vs. The State of West Bengal & Ors.*** passed in ***WPA 23776 of 2024*** dated November 22, 2024 and submits that in the said case the Coordinate Bench has considered that the husband was overage but the Hon'ble Court has allowed the couple to undergo the IVF treatment irrespective of age as mentioned in Section 21(g) (ii) of the Act.
4. Learned counsel appearing for the State submits that the petitioner No.1 being the wife is aged about 49 years but the petitioner No.2 is aged about 56 years. As such, as per Section 21(g)(ii), no order can be passed for availing the facilities of ARTs.
5. Heard the learned counsel for the respective parties and perused the materials on record and the medical report. This Court finds that the respondent No.5 has duly certified that both the parties are physically fit and can proceed for the IVF treatment but the hospital could conduct the IVF procedure due to the overage of the petitioner No. 2.
6. Assisted Reproductive Technology (Regulation) Rules, 2022 provides for reasonable checks and balances. A consent form is to be signed by the couple or the woman disclosing their acceptance of ARTs. The prescribed form specifies that there is no guarantee that the oocytes will be retrieved in all cases, the oocytes will be fertilized and even if there were

fertilization, the resulting embryos would be of suitable quality to be transferred. The couple or the woman is made aware of the risks of the procedures involved. There is no assurance that pregnancy will result in the delivery of a normal living child and the uncertainty of the outcome of the procedures is fully explained to the couple or the woman.

7. As per the Act 'commissioning couple' means an infertile married couple who approach an Assisted Reproductive Technology clinic or Assisted Reproductive Technology bank for obtaining the services authorized of the said clinic or the bank. 'Gamete Donor' has been defined as a person who provides sperm or oocyte with the objective of enabling an infertile couple or woman to have a child. 'Patients' has been defined as an individual or couple who comes to any registered Assisted Reproductive Technology clinic for management of infertility. 'Woman' has been defined as any woman above the age of 21 years who approaches an Assisted Reproductive Technology clinic or Assisted Reproductive Technology bank for obtaining the authorized services of the clinic or the bank. Section 21 (g) of the Act bars the clinic from applying Assisted Reproductive Technology who does not meet the prescribed age criteria.
8. In the instant case, the woman falls within the prescribed age limit but the man is over aged. Due to over age of the husband, the clinic is refusing to

provide the service to the couple. The term 'patient' in the Act permits an individual to avail the facility of Assisted Reproductive Technology irrespective of gender. The Act does not bar an individual partner of a married couple to avail ARTs independently. The same implies that the parties to a marriage may avail the service either individually or jointly. It is not necessary that the service has to be availed jointly by a married couple. There is no provision in the Act which bars a married woman to approach the clinic individually for availing the benefit of ARTs. The bar will not have any effect if the wife approaches the clinic to seek the service unilaterally. The clinic or the bank does not have any authority to refuse service if a single partner of a married couple intends to avail the service. Had the petitioner No. 1 approached the clinic individually, the clinic could not have refused to provide ARTS to her. Here, since the parties are in a cordial relationship, they approached the clinic jointly as commissioning couple.

9. The medical report of the wife discloses that the lady is physically fit to hold the embryo. The parties have averred in the writ petition that they would borrow oocyte and sperm from third persons and the pregnancy will be by handling the sperm and the oocyte outside the woman's body and thereafter the gamete will be transferred into the reproductive system of the woman. Apart from being a supportive partner to the lady, the man does not have any role in the birth of

the child. The lady acts as the gestational carrier. The medical report of the lady suggests that she is currently physically fit to hold the embryo which means that the lady is eligible to avail ARTs both age wise as well as health wise.

10. The legislature in its wisdom has prescribed an age limit to avail such service. The reasons for such prescription seem to be reasonably sound. In the absence of proper restriction and supervision to check defaults there is every possibility that there will be misuse and the very purpose for providing such service will be frustrated. At the same time, the law cannot be interpreted or applied in such a manner that the same becomes unworkable.

11. In the present case, 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.

12. In view of the above, this Court is of the view that the petitioners will be eligible to avail the facility of ARTs and the respondent No. 5 is directed to provide such facility to the petitioners in accordance with law.

13. Accordingly, **WPA 2953 of 2026** stands **disposed of**.

14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

15. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all formalities.

(Krishna Rao, J.)