

S/L 3  
28.04.2026  
Court. No. 25  
*suvayan*

WPA 7469 of 2026

Kamal Kumar Chanda & Anr.  
Vs.  
The State of West Bengal & Ors.

*Mr. Debmalya Ghosal*  
*Ms. Doyel Dey*

*...for the petitioners.*

*Ms. Kakali Samajpaty*  
*Ms. Sangita Jangra*

*...for the State.*

*Mr. Anindya Kanan*

*...for the respondent no. 4.*

1. The affidavit-of-service filed by the petitioners be kept with the record.
2. The petitioners have filed the present writ application praying for a direction to the respondents to provide the petitioners with the assisted reproductive technology by way of vitro fertilization by self gametes/donated sperm in terms of the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021. The petitioners are the married couple and were blessed with a male child. But, unfortunately, on June 12, 2025 the male child passed away. After the death of their child, they have taken a decision to have the second child but it was not possible for the couple to conceive the second child and accordingly the petitioners went to the clinic for advise and after the clinical examination of the petitioners, the hospital authorities have come to know that the petitioners no. 1 is the husband is aged about 56 years and the petitioners no. 2 is aged about 44 years. Thus in

terms of Section 21 (g) (ii), the petitioners no. 2 is over aged and thus the hospital authorities have advised the petitioners to obtain permission from the concerned authority to undergo assisted reproductive technology through IVF with ovum donation on an individual basis. As per the advice of the hospital, the petitioners have filed the present writ application.

3. This Court finds that before filing of the present writ application, the petitioners had been to the hospital wherein the hospital authorities have conducted clinical test of both the parties and after clinical examination, it was found that the petitioners no. 1 is over age in terms of Section 21 (g) (ii).
4. Learned counsel for the petitioners submits that the similar question arose before this Court in the case of ***Sanchita Ghosh & Anr. vs. Union of India & Ors.*** reported in ***2024 SCC OnLine Cal 12155*** wherein Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 was taken into consideration. The co-ordinate Bench of this Court while considering the said Section has held as follows:

*“31. Thus read, the bar available in Section 21(g), clauses (1) and (ii) shall be read as follows:-*

*i) If a commissioning couple approaches a clinic/bank for assisted reproductive technology services, no upper age limit restriction will be applicable to them unless both spouses of the commissioning couple are debarred respectively under sub-clauses (i) and (ii) of sub-Section (g) of Section 21 of the 2021 Act.*

ii) *In the event either of the couples qualify in respect of the age limits as stipulated in Section 21(g), he or she can approach the clinic to have assisted reproductive technology service, irrespective of the fact that he or she is the constituent of a commissioning couple and her spouse is not eligible age-wise.*

iii) *In the second scenario above, the commissioning couple, as a commissioning couple, shall be permitted to avail the facilities of assisted reproductive technology services, since there is no bar on a commissioning couple acting as such, to have such reproductive technology irrespective of any age bar.*

iv) *It is made clear that in the event one of the spouses is eligible under Section 21(g) and the other is not, it will be at the option of the clinic whether or not to use the gamete donated by the ineligible spouse in the process of assisted reproductive technology.*

*32. Only the above interpretation of Section 21 (g) and its sub-clauses, read harmoniously with the definition clause as stipulated in Section 2 of the 2021 Act, can give complete meaning and a wide expanse to the said Act, in consonance with the contemplation of the Preamble of the Act.*

*33. Hence, interpreted/read down as above, the provisions of Section 21 (g) of the 2021 Act create no unreasonable discrimination between married and unmarried women in availing assisted reproductive technology and, thus, passes the test of constitutionality.”*

5. Learned counsel for the petitioners submits that the case of the petitioners also covered with the judgment

***Sanchita Ghosh (supra)*** and prayed for an order directing the respondent no. 4 to conduct the assisted reproductive technology by way of vitro fertilization by self gametes/donates sperm in terms of the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021.

6. Learned counsel for the respondent no. 4 submits that the petitioners admit to the clinic of the respondent no. 4 and as per the request of the petitioners, the respondent no. 4 has conducted clinical test of the couple and found that the couples have medically fit but due to the over age of the petitioners no. 1 in terms of Section 21 (g) (ii), the clinic authorities have advised the petitioners to take appropriate steps before the appropriate authority for getting permission, if the Court grant permission the hospital authorities will take appropriate steps in accordance with law.
7. Heard the learned counsel for the respective parties perused the materials on record.
8. This Court finds that the petitioners were blessed with male child but unfortunately, the male child died on June 12, 2025. After the death of the child the petitioners have taken a decision to have a second child but they have not in a position to conceive the second child and had been to the clinic of the respondent no. 4. The respondent no. 4 has conducted the clinical test of the petitioners and found that both the petitioners are fit but due to over age of the petitioner no. 1 the hospital

authorities have not conducted the assisted reproductive technology though IVF.

9. The provisions of Section 21 (g) of the Assisted Reproductive Technology (Regulation) Act, 2021 was considered by this Court in the case of ***Sanchita Ghosh (supra)*** and the co-ordinate Bench of this Court was of the view that the provisions of Section 21 (g) of the Assisted Reproductive Technology (Regulation) Act, 2021 create no unreasonable discrimination between married and unmarried women in availing assisted reproductive technology and, thus, passes the test of constitutionality. In the present case the petitioners are the married couple. Now they intended to have a second child but due to the over age of the petitioner no. 1, the hospital authorities have not conducted the assisted reproductive technology though IVF procedure.
10. In the case of ***Sanchita Ghosh (supra)*** the co-ordinate Bench held that in the event either the woman or the man comprising the commissioning couple are eligible to have assistive reproductive technology, there is no reason why the bar stipulated for individual woman and man should be incorporated into the purview of the commissioning couple as well. The age related ineligibility of one of the spouses need not effect the other, if they compromise a commissioning couple.
11. In view of the above, the respondent no. 2 is directed to conduct assisted reproductive technology though IVF with ovum donation by complying all the provision in

accordance with law within a period of four weeks from the date of receipt of this order.

12. Accordingly, WPA 7469 of 2026 is disposed of.
13. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

**(Krishna Rao, J.)**