

**Form No.J(2)**  
akg/SB

IN THE HIGH COURT AT CALCUTTA  
CIRCUIT BENCH AT JALPAIGURI  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

**Present:**

**The Hon'ble Justice Raja Basu Chowdhury**

**WPA 481 of 2026**

**Sangita Raha & Anr.  
Versus  
The State of West Bengal & Ors.**

For the petitioners : Dr. Achin Jana, Advocate  
Mr. Satadal Gupta, Advocate  
Mr. Abhilash Mittal, Advocate

For the State : Mr. Nabankur Paul, Advocate  
Mr. Sourav Sarkar, Advocate

Heard on : 16.04.2026

Judgment on : 16.04.2026.

**Raja Basu Chowdhury, J. (Oral):**

1. The petitioners claim to have been married as per Hindu Rights and Customs on 21<sup>st</sup> February, 2019. According to the petitioners, the marriage was later registered on 13<sup>th</sup> May 2025 in terms of declaration made by the petitioners under sub-Rule 4 of Rule 15 of the West Bengal Hindu Marriage Registration Rules 2010, w.e.f. the date of marriage. The petitioners claim that they are a happily married couple. However, have been unsuccessful in extending their family as despite serious attempts made, the petitioner no.1 was unable to conceive naturally and therefore,

considering their advanced age, they availed the benefits of Assisted Reproductive Technology.

2. Unfortunately, as it may seem, despite best efforts and despite consulting the infertility specialist and notwithstanding trying out the IVF procedure, the petitioners failed to get any desired result. This prompted the petitioners to take recourse through gestational surrogacy procedure. However, in the process, as aforesaid, and before taking such a huge decision, the petitioners had to prepare themselves mentally and only after mental preparation, they decided to undergo surrogacy process and, accordingly, consulted doctors and other infertility specialists.
3. Upon acquiring adequate knowledge and upon going through all relevant procedures, the petitioners on 26<sup>th</sup> May, 2025 submitted an application to the Chief Medical Officer of Health and Chairman of the District Medical Board, Darjeeling, West Bengal, seeking the grant of a “Certificate of Medical Indication” as an intending couple under the provisions of Surrogacy (Regulation) Act, 2021 (in short, ‘the Surrogacy Act’). At the time of making the application, according to the petitioners, the petitioner no.1 was within the age limit as prescribed by the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter referred to as ‘the ART’) and the petitioner no.2 i.e. the husband of the petitioner no.1 was marginally beyond the age limit as prescribed.
4. The petitioners state that the “Certificate of Medical Indication” for surrogacy was issued by the CMO of Health, Darjeeling only on 16<sup>th</sup> April 2025 and immediately thereafter, the petitioners took steps and the ovum was picked up on 29<sup>th</sup> November, 2025 and thereafter the cryopreserved embryo was retained on 16<sup>th</sup> December 2025. It is only thereafter a certificate was issued by the Fetus IVF Centre, certifying that the two

numbers of cryopreserved embryos of the petitioners are in good condition and upon transfer of the same in the uterus of the surrogate mother, there is a fair chance that it will result in successful pregnancy.

5. The application for issuance of eligibility certificate under regulation 4(c) of the Surrogacy Act has, however, remained pending before the Health Secretary since 5<sup>th</sup> February, 2026. When the writ petition was moved on 8<sup>th</sup> April, 2026, this Court considering the peculiar facts had called for a report. Pursuant to the aforesaid, though no report has been filed, a response captioned 'Parawise Reply' has been filed. The only objection in the aforesaid reply is that the couple has crossed the eligibility age i.e. that the intending couple under the said Regulation has crossed the age limit and the State has no authority to alter the prescribed age limit.
6. I, however, find that the age limit is specified by the Central Government provided under Section 21(g) of the said ART Act. I find on the basis of the findings recorded by the coordinate Bench in the case of ***Shyamoli Saha & Anr. vs. The State of West Bengal & Ors***, in WPA/23776/2024, relied on by the petitioners as per the data maintained by the Government the average age of menopause of females in India has been found to be 46.2 years. In this case, admittedly, when the application for certificate of medical indication for surrogacy was made the petitioner no.1 was 49 years' old and, as such, was within the prescribed age limit in terms of Regulation 4(c) of the Surrogacy Act. Subsequently while seeking the eligibility certificate, the petitioner no.1 had crossed the age limit. However, the medical report and cryopreserved report would demonstrate that the petitioner no.1 was physically fit to hold eggs and the summary of created embryo would suggest that the same has been successfully cryopreserved. However, even if the process is permitted to go on, there is

no guarantee that the same shall be successful. Be that as it may, the parties have already taken lot of pain for the petitioner no.1 to bear a child the same has not happened. Now the petitioners are interest to take the benefit of Assisted Reproductive Technology Services (in short, 'ARTS'). In the peculiar facts when the initiation application was within the time prescribed and though the petitioner no.2 were marginally over-aged, I am of the view, the petitioners should not be made to suffer and should be given an opportunity to become parents especially when the embryo has been successfully cryopreserved and that there is a fair chance that it shall result in successful pregnancy.

7. This Court in the case of Shyamoli Saha and Anr (Supra) and in the case of Sanchita Ghosh and Anr. vs. Union of India in WPA 12154 of 2023 has dealt with the issue elaborately and held that the couple would be entitled to have the benefit of ARTS despite one of the parties having crossed the upper age limit stipulated under Section 21(g) of the ART Act.
8. The said case is no different from the present one. In the facts of the present case of I am of the considered view that the petitioners should be permitted to take the benefit of ARTS and the respondent no.2 is accordingly directed to issue the eligibility certificate to the petitioners as expeditiously as possible preferably within a period of seven (7) working days from date.
9. The parties are directed to communicate the order to the respondent no.2. The respondent no.2 shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.
10. With the above observations and directions the writ petition stands disposed of.

**(Raja Basu Chowdhury, J.)**