



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

TUESDAY, THE 7TH DAY OF APRIL 2026 / 17TH CHAITHRA, 1948

WP(C) NO. 31918 OF 2025

PETITIONERS:

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BY ADVS.
SRI.SREEKANTH S.NAIR
SMT.DEEPA SREENIVASAN

RESPONDENTS:

1 THE UNION OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE,
SASHTRI BHAVAN, NEW DELHI REPRESENTED BY ITS
SECRETARY, PIN - 110001

2 THE STATE OF KERALA
MINISTRY OF HEALTH AND FAMILY WELFARE, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM REPRESENTED BY ITS
SECRETARY, PIN - 695001



- 3 THE APPROPRIATE AUTHORITY
DIRECTORATE OF HEALTH SCIENCES, GENERAL HOSPITAL
JUNCTION, VANCHIYOOR P.O,
THIRUVANANTHAPURAM, PIN - 695035
- 4 THE DISTRICT MEDICAL OFFICER
MEDICAL BOARD GENERAL HOSPITAL ALAPPUZHA, GENERAL
HOSPITAL RD, CHUNGAM, ALAPPUZHA, PIN - 688001
- 5 THE DIRECTOR
LIFELINE SUPER SPECIALTY HOSPITAL, ADOOR,
PATHANAMTHITTA, PIN - 691523

BY SRI.P.M.SHAMEER - GOVT. PLEADER
BY ADV SHRI.K.ARJUN VENUGOPAL, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07.04.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**"C.R"****M.B.SNEHALATHA, J.****W.P(C) No.31918 of 2025****Dated, this the 7th April, 2026****JUDGMENT**

In this writ petition filed under Article 226 of the Constitution of India, petitioners challenge the constitutional validity of the upper age limit imposed on the intending couple under the Surrogacy (Regulation) Act, 2021 (hereinafter referred to as Act).

2. Petitioners are husband and wife. 1st petitioner wife is aged 44 and 2nd petitioner husband is aged 57 years. Though married in the year 2006, they have no children. Petitioners have undergone treatments for infertility and undergone various tests and surgeries at various hospitals. The documents relating to the treatment are produced as Exts.P3 to Ext.P8. Petitioners have currently 3 viable cryopreserved embryos at 5th respondent hospital. The only medically viable option available to the petitioners is gestational surrogacy. But in view of the upper age restriction imposed under Section 4(iii)(c)(I) of the Surrogacy (Regulation) Act, 2021 they are unable to proceed with the surrogacy procedure on the ground that the 2nd petitioner has crossed the age limit prescribed under Section 4(iii)(c)(I) of the Act. The medical records of the 2nd petitioner are



to the effect that he is medically fit to participate in the surrogacy procedure as per the current clinical guidelines. Surrogacy procedure is the only and last option of the petitioners to have their own child. The refusal of the respondents to permit surrogacy on the grounds of upper age limit, despite the availability of the cryopreserved embryos and medical eligibility, amounts to an unreasonable and arbitrary restriction on the petitioners' fundamental right to reproductive autonomy and family life. Hence, the petitioners seek following reliefs:

- 1) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to permit the petitioners to proceed with the surrogacy treatment using their cryopreserved embryos, without being disqualified on the basis of the 2nd petitioner's age.
- 2) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction declaring that S.4(iii)(c)(I) of the Surrogacy (Regulation) Act, 2021 and to the extent they impose upper age limit without exceptions, are violative of Articles 14 and 21 of the Constitution and hence as unconstitutional.
- 3) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction and struck off the impugned provisions to the extent they restrict surrogacy access for medically eligible individuals solely based on upper age limit.

3. Notice served to the respondents. The learned Central Government Standing Counsel entered appearance for the 1st respondent and the learned Government Pleader entered appearance for respondents 2 to 4. R5 hospital remained absent.

4. 1st respondent Union of India filed counter stating that the Surrogacy Act was enacted after exhaustive deliberations with all stakeholders by different parliamentary committees and by both houses of



the parliament. The process involved domain experts and all stakeholders, with several rounds of review and stakeholder consultation and examination by the parliamentary committee. The object of the Surrogacy (Regulation) Act is to protect individuals who are most vulnerable and to protect surrogate mother and child born through surrogacy. The Surrogacy Act was enacted to provide altruistic surrogacy and to prohibit commercial surrogacy. The issue of prescribing age limits for man and woman for surrogacy services was considered by the parliamentary select committee on Health and Family Welfare. The issue on which the restriction under Section 4(iii)(c)(I) of the Surrogacy Act was also referred to the expert members of the National Surrogacy Board, which agreed with the recommendations of the select committee of Parliament of India. The National Board added that the future of the child to be born through surrogacy is of paramount importance. The fixation of the upper age limit for man and woman under the Surrogacy Act and for availing ART Services under the ART Act was done after consultation and considering the studies of experts in the field and after much deliberation. The age limit was stipulated to balance the interests of the parents and the child, as well as considering the delayed marriages in India. The social impact as well as the health aspects were also taken into account. The restrictions regarding the age are essential to prevent situations where the child may be exposed to risk associated with potential parental age-



related concerns, such as health complications or inability to provide adequate care. As the 2nd petitioner has crossed the upper age limit of 55 years, the couple is not eligible to avail surrogacy. The challenge to the provisions of the Surrogacy Act regarding the age limit is misconceived. There is no fundamental right to resort to surrogacy, but only a statutory right in terms of the Surrogacy (Regulation) Act. The age criteria prescribed under the Act are reasonable restrictions designed to promote safe medical practices and minimize health risk associated with the surrogacy procedures for the commissioning and intending couples/individuals, surrogate mother and the child. ART and surrogacy services being statutory rights and the Act being techno-legal in nature, the scientific prescriptions recommended by domain experts and enumerated in the Act are to be mandatorily observed by the ART and surrogacy service seekers. Since the petitioners claim that embryos were cryopreserved in the year 2023, that is subsequent to the commencement of Surrogacy (Regulation) Act they will not get the benefits of the judgment of the Hon'ble Supreme Court in *Vijaya Kumari S v. Union of India* reported in (2025 KHC Online 6856).

5. Heard both sides.

6. Petitioners challenge the constitutional validity of the upper age limit fixed for the intending couple under the Surrogacy (Regulation) Act, 2021.



7. 1st petitioner, the wife in the writ petition, is aged 44 years, whereas the 2nd petitioner-husband is aged 57 years. It is their case that though they were married for the past 19 years, they have no children. Despite undergoing treatment for infertility at various hospitals and undergoing various tests and surgeries to have a child of their own, all the efforts went in vain and the medical experts advised them to have surrogacy procedure as the last option.

8. Section 4(iii)(c)(I) of the Surrogacy (Regulation) Act provides that on and from the date of commencement of the Act, an intending couple requires an eligibility certificate issued by the appropriate authority certifying that the intending couple are married and between the age of 23 to 50 years in case of female and between 26 to 55 years in case of male on the date of certification.

9. According to the petitioners, the embryos created and cryopreserved in the year 2023 at the 5th respondent hospital and remain in viable condition for use in an ongoing or future surrogacy cycle. But the petitioners are not able to proceed with the surrogacy treatment using their cryopreserved embryos on the ground that the 2nd petitioner/husband has crossed the age bar. It is the contention of the petitioners that applying the current age bar retroactively to pre-existing gametes and embryos violates vested reproductive rights and amounts to unconstitutional retrospective application, contrary to settled principles of



substantive due process.

10. Sri. Sreekanth S. Nair, the learned counsel for the petitioners, submitted that the intending couples had started the surrogacy procedure prior to the commencement of the Act, ie prior to 25.1.2022 and the embryo was cryopreserved in the year 2023. So it was submitted that the age restrictions under the Act run contrary to the constitutional rights afforded to women to make unhindered decisions regarding their reproductive choices.

11. Per contra, Sri. K. Arjun Venugopal, the learned Central Government Standing Counsel appearing for the 1st respondent, submitted that the documents produced by the petitioner would itself show that the gametes were cryopreserved in the year 2023 at the 5th respondent hospital. Thus, it was subsequent to the enactment of the Surrogacy Act. The learned Central Government Counsel submitted that the object of the Act is to protect the individuals in the most vulnerable position in the process namely the surrogate mother and the child born through surrogacy. It was submitted that the right to avail surrogacy is a statutory right and not fundamental right and the age restrictions are based on rational principles founded on scientific reasoning and the age restrictions were made in the Act on the advise of domain experts. The learned Central Government Counsel placed reliance on *Vijaya Kumari (cited supra)* and pointed out that the Hon'ble Apex Court did not accept



the argument that the age restrictions in the Surrogacy Act are unconstitutional.

12. In *Suchita Srivastava and Another v. Chandigarh Administration* [(2009) 9 SCC 1], the Apex Court observed as follows:

"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. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods."

13. In *R. Rajagopal Alias R.R. Gopal and Another v. State of TN and others* [(1994) 6 SCC 632] the Hon'ble Apex Court held that any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child-rearing.

14. In *Vijaya Kumari* (cited supra), the Hon'ble Apex Court observed as follows:

"13.7. We must clarify that we are not questioning the wisdom of the Parliament in its prescription of age-limits under the Act, or passing a judgment on its validity. Rather, the cases before us are limited to couples who commenced the surrogacy process before the enforcement of the Act, and we limit our observations to the same. Therefore, the question that arises is, whether, the Respondent-Union of India has been able to demonstrate compelling reasons as to why the age-limits must apply retrospectively and why the freedom of intending couple Nos. 1 to 3 to pursue surrogacy, once exercised by them, should now be taken away. Concerns over parenting and gamete quality, while possibly being legitimate concerns for lawmakers (though we do not express any opinion on the same), are not compelling reasons



for retrospective application of the Act, especially since the State allows some categories of couples (those who wish to conceive naturally) to procreate despite these concerns or for that matter to opt for adoption as per personal law.”

15. In *Vijaya Kumari*, (cited supra) the Hon'ble Apex Court held that there is no manifest intention in the provisions of Surrogacy Act to apply the age limit retrospectively. The Apex Court also observed as follows:

13.9. It is important to note in this regard, that the relevant age-limits under the Act are imposed on the intending couples in the present cases. Therefore, they are in the nature of fetters on the freedom of choice and the realm of decision-making that, in the absence of Regulation, would be the sole prerogative of intending couples. For intending couples who undertook surrogacy procedures prior to the Act, age-related considerations were entirely their prerogative and as explained earlier, an exercise of their rights Under Article 21 of the Constitution. Therefore, we have no hesitation in observing that the right to make autonomous decisions regarding the age at which one wished to pursue surrogacy, had vested in intending couple Nos. 1 to 3. Hence, since there is no manifest intention in the provisions of the Act to apply the age-limits retrospectively, we are of the view that the same is not permissible. Further, the intending couples in the present cases could have opted for adoption of children under personal law in the absence of an age restriction. In such a situation, the argument regarding quality parenting would be futile and of no consequence.

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13.11. The common thread that runs through the emphasised portions above is that they express the need for surrogacy Regulation in terms of impacts on people who are different from the intending couple - exploitation of the surrogate mother and the rights (pertinently the protection against abandonment) of children born through surrogacy. These considerations have manifested in various provisions of the Act, such as the prohibition of commercial surrogacy [Section 4(ii)(c)]; the prohibition on surrogacy clinics, inter alia, inducing a woman to act as a surrogate mother [Section 3(v)(b)]; the prohibition on abandonment of the child (Section 7); the right of a child to be deemed a 'biological child' of the intending couple (Section 8), etc.

13.12. Thus, prior to the enforcement of the Act, the right



to pursue surrogacy despite one's age, did not impinge on any of the above considerations and was solely in the decision-making domain of the intending couple. It was a personal decision, with personal consequences. Although the Respondent-Union of India has argued that the age-limits are directly related to the welfare of the children, as explained above, we are unable to accept this submission in view of the unlimited freedom afforded to couples who wish to conceive children naturally, irrespective of their age. This was also the status occupied by intending couple Nos. 1 to 3 before the enforcement of the Act. Their decision to have children through surrogacy despite their age was a personal one and did not involve a third person (the surrogate mother) or the rights of the children to be considered biological children.

13.13. Therefore, we are of the view that the right to decide to bear children through surrogacy despite their ages, is one that can legitimately be considered to have vested in intending couple Nos. 1 to 3 herein prior to the coming into force of the Act, following their decision to undertake the surrogacy procedure. At this point, we must once again reiterate that our decision is restricted to intending couple Nos. 1 to 3, who have been prevented from pursuing surrogacy solely due to their age, despite having commenced the surrogacy procedure before the enforcement of the Act. We make it clear that have not considered the vires of the age fixation Under Section 4 for intending couples in this order.

'Commencement' of the Surrogacy Procedure:

14. The next question that arises is the proper meaning of the term 'commencement' of the surrogacy procedure. When can it be said that couples have 'commenced' the process of surrogacy before the enforcement of the Act, and hence may be allowed to continue despite the subsequent age-limits? In this regard, we find it helpful to refer to the diagram submitted by the Respondent-Union of India, referred to in an earlier paragraph of this order.

14.1. We can see that the last step in Stage A is the 'freezing of embryos', which marks the last step before the commencement of Stage B, which involves the surrogate mother inasmuch as the embryos are transferred to the uterus of the surrogate mother by implantation. At this point, the intending couple has already completed the process of extracting gametes which included both the sperm and oocyte; fertilising them to form zygotes, and freezing the resulting 'embryos', which means a developing or developed organism after fertilization till the end of fifty-six days. Section 2(c) defines "fertilisation" to mean the



penetration of the ovum by the spermatozoa and fusion of genetic materials resulting in the development of a zygote. The word 'zygote' is defined in Section 2(zh) to mean the fertilised oocyte prior to the first cell division. Further, from the fifty-seventh day after fertilization onwards, the organism is called a 'foetus' which is defined to mean a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at birth.

This is the stage at which intending couple Nos. 1 to 3 found themselves before the commencement of the Act. They were thus ready to transfer the embryo to the womb of the surrogate mother.

16. It was urged that the age restriction are unconstitutional as it infringes Article 14 and 21 of the Constitution of India.

17. The age restrictions on intending parents and surrogate mother is the most debated feature of the statute. It is challenged on the ground that it is unconstitutional, unreasonable, arbitrary and disproportionate.

18. Article 14 of the Constitution of India permits reasonable classification. The age limits prescribed for intending parents and surrogate mother are based on intelligible differentia namely biological age and medical fitness. Thus classification bears a direct nexus with the objective of the Act which is to ensure safe pregnancies, healthy child birth and the well being of both the surrogate mother and the child to be born.

19. Age based classification is neither arbitrary nor discriminatory but rather scientifically justified. Article 14 of the Constitution of India permits classification if it is based on intelligible differentia and has a



rational nexus with the objective.

20. The State is not merely a passive observer but has a positive obligation to safeguard the health of persons undergoing assisted reproduction procedures and the child born through such procedure.

21. By prescribing age limits, the Act seeks to prevent high risk pregnancies and ensure that reproductive technologies are not misused. The age restrictions does not infringe Article 21, but it actually advances its protective scope as argued by the learned CGC. Age restrictions act as a safeguard to ensure that only women within a safe and appropriate age bracket, capable of informed consent and physical endurance participate in the surrogacy. The age restrictions satisfy the doctrine of proportionality as evolved in constitutional jurisprudence. The age restrictions are suitable as they directly address medical and ethical concerns. Unregulated reproductive practice can lead to serious harm. The age restrictions are not arbitrary. It strikes a careful balance between individual choice and public health. Reproductive rights though fundamental are not absolute. They are subject to reasonable restrictions.

22. The age restrictions are grounded on medical sciences, ethical necessity and social welfare and they meet the constitutional standards of reasonableness and proportionality. Age restrictions are not an infringement of rights, but it act as a protective frame work. Regulation



of reproductive technology is not a denial of liberty, but a structured exercise of it.

23. The objective behind age restriction is to ensure safe reproduction, child welfare and medical viability. Thus classification based on age is scientifically grounded and directly linked to the purpose. Reproductive technologies affect the family structure, child rights and public morality. State can impose reasonable restrictions in larger societal interest. Fertility, pregnancy outcomes and risks associated with child birth are directly linked to age. The age restrictions satisfies the test of proportionality. It is a measured restriction not an excessive one.

24. The age limits prescribed under the Surrogacy (Regulation) Act, 2021 are constitutionally valid and they represents a carefully designed regulatory mechanism to ensure that surrogacy is practiced in a safe, ethical and non exploitative manner consistent with constitutional principles.

25. In *Vijaya Kumari* (cited supra) the Hon'ble Apex Court held that if an intending couple had commenced the surrogacy procedure prior to the commencement of the Act ie. 25.1.2022 and were at the stage of creation of embryos and freezing after extraction of the gametes and on the threshold of transfer of embryos to the uterus of the surrogate mother, the age restriction under Section 4(iii)(c) (I) of the Act would not apply. In Ext.P2 certificate produced by the petitioners, it is stated that



the embryos are created and cryopreserved in the year 2023 at the 5th respondent hospital. So admittedly, it was subsequent to the enactment of the Surrogacy Act on 25.1.2022.

26. It is true that the right to make decisions relating to reproduction and parenthood forms part of personal liberty under Article 21 of the Constitution of India. But the said rights are not absolute and are subject to reasonable restrictions imposed by the law. The statutory restrictions regarding age governing surrogacy are constitutionally valid and it has a rational link to the object and purpose of the enactment. The restrictions regarding the age are reasonable and it is not arbitrary and not disproportionate. The age limits are clearly linked to the concerns of parental capacity, health, longevity and the welfare of the child.

27. For the reasons stated above this, writ petition challenging the constitutional validity of the age limit prescribed in the Surrogacy Act fails.

Hence, this Writ Petition stands dismissed.

Sd/-
M.B.SNEHALATHA
JUDGE

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APPENDIX OF WP(C) NO. 31918 OF 2025

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED FROM THE 5TH RESPONDENT HOSPITAL TO FIRST PETITIONER DATED 12.07.2025
- Exhibit P2 TRUE COPY OF THE MEDICAL FITNESS CERTIFICATE ISSUED TO THE 2ND PETITIONER BY THE 5TH RESPONDENT HOSPITAL DATED 11.08.2025
- Exhibit P3 TRUE COPY OF THE DIAGNOSTIC LAPROSCOPY AND OPERATIVE HYSTEROSCOPY UNDER GA DATED 13.10.2010 ISSUED FROM KJK HOSPITAL TRIVANDRUM
- Exhibit P4 TRUE COPY OF DISCHARGE SUMMARY OF THE K.J.K HOSPITAL DATED 01.11.2013
- Exhibit P5 TRUE COPY OF THE REPORT OF OPERATIVE LAPROSCOPY AND DIAGONOSTIC HYSTEROSCOPY DATED 16.09.2018
- Exhibit P6 TRUE COPY OF DISCHARGE SUMMARY ISSUED FROM SREE KRISHNA SURGICAL CENTRE SPECIALITY HOSPITAL THIRUVANANTHAPURAM DATED 27.08.2022
- Exhibit P7 TRUE COPY OF DISCHARGE SUMMARY OF LIFE LINE HOSPITAL DATED 20.12.2022
- Exhibit P8 TRUE COPY OF DISCHARGE SUMMARY OF LIFE LINE HOSPITAL DATED 12.05.2023
- Exhibit P9 TRUE COPY OF MEDICAL CERTIFICATE NO. LLH/MC/519/2025 DATED 25.09.2025 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER

RESPONDENT EXHIBITS

- Exhibit R1(a) True copy of the relevant parts of the Report dated 5.2.2020 of the Parliamentary Select Committee on Health and Family Welfare
- Exhibit R1(b) True copy of the relevant parts of the decision of the National Board dated nil