



2026:DHC:4980



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6103/2026**

Date of Decision: **25.05.2026**

IN THE MATTER OF:

SHEWTA TUTEJA
R/O RZC-90/2, RAJ NAGAR-II, RAJ
PALAM – II, COLONY, NEW DELHI
-110077

.....PETITIONER NO.1

RAJESH TUTEJA
R/O RZC-90/2, RAJ NAGAR-II, RAJ
PALAM – II, COLONY, NEW DELHI
-110077

.....PETITIONER NO. 2

(Through: Mr. Mohit Khandelwal and Mr. Deepak Dahiya, Advocates.)

Versus

UNION OF INDIA
THROUGH SECRETARY, MINISTRY OF HEALTH
& WELFARE, GOVERNMENT OF INDIA, MIRMAN
BHAWAN, NEW DELHI

.... RESPONDENT NO.1

**NATIONAL ASSISTED REPRODUCTIVE TECHNOLOGY
AND SURROGACY BOARD**
2nd FLOOR IRCS BUILDING -1, RED CROSS ROAD,
NEW DELHI- 110002

.... RESPONDENT NO. 2



2026:DHC:4980



**THE GOVT. OF NCT OF DELHI
THROUGH THE SECRETARY OF HEALTH
& FAMILY WELFARE DEPARTMENT
9th LEVEL A – WING, DELHI
SECRETARIAT, IP – ESTATE, NEW DELHI 110002.**

..... RESPONDENT NO. 3

**THE JOINT DIRECTOR/ADDITIONAL
DIRECTOR OF HEALTH SERVICES,
PANDIT DEEP CHAND SHARMA
SAHKAR BAHWAN SECTOR-20,
PHASE – I, DWARKA DELHI, 110077**

..... RESPONDENT NO. 4

**CLOUDNINE HOSPITAL
(KIDS CLINIC INDIA LTD.)
PLOT NO. 17 & 18 POCKET B-10,
SECTOR 13, DWARKA,
NEW DELHI – 110075**

.....RESPONDENT NO. 5

**THE FELLOWSHIP DOCTOR/
GYNAECOLOGIST, CLOUDNINE
HOSPITAL
DWARKA DELHI**

..... RESPONDENT NO. 6

(Through:Dr. Monika Arora, CGSC, with Mr. Subhrdeep Saha, Ms. Anamika Thakur and Mr. Abhinav Verma Advs., Ms. Avni SINGH (Panel Counsel – GNCTD) and Mr. Vaibhav Sharma Advocates.)

**CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

J U D G E M E N T

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The instant petition is seeking directions permitting the Petitioners to undergo frozen embryo transfer ('**FET Procedure**') of their remaining five



cryopreserved¹ embryos at Respondent no. 5- Cloudnine Hospital, Dwarka, (“**Hospital**”) under the provisions of the Assisted Reproductive Technology Regulation Act, 2021 (“**ART Act**”).

FACTUAL MATRIX

2. The facts appear to be that the Petitioners are a married couple who after the unfortunate demise of their son on 10.05.2025, approached Hospital for the Assisted Reproductive Technology (‘**ART**’) services in the nature of the In Vitro-Fertilization (‘**IVF**’) treatment under Respondent no. 6 – Fellowship Doctor/Gynaecologist Doctor at the Hospital (“**Concerned Doctor**”).

3. At the relevant time when the Petitioners’ approached Respondent no. 5, they were within the age limit as prescribed under Section 21(g) of the ART Act. Pursuant thereto, the Petitioners underwent medical evaluation, counselling and investigations and, thereafter, were declared medically fit for treatment. Necessary consent forms including consent for freezing of embryos, frozen embryo transfer and allied procedures, were executed on 07.03.2026. However, the transfer was unsuccessful and the Beta-HCG test² which was conducted turned out to be negative.

4. Presently, five cryopreserved embryos belonging to the Petitioners remain preserved with the Hospital. The Petitioners contend that notwithstanding the unsuccessful transfer, the remaining embryos ought to be permitted to be utilised through further FET Procedure. However, the Hospital and the Concerned Doctor declined to proceed further on the

¹ Cryopreservation refers to the preservation by means of freezing at very low temperatures (usually in liquid nitrogen) so that cells, tissues or embryos can be stored for future use without losing viability.

² Beta-HCG (Beta Human Chorionic Gonadotropin) test refers to a blood test used to detect pregnancy by measuring the level of the hCG hormone produced after implantation of the embryo.



ground that Petitioner No.1 had crossed the upper age limit prescribed under Section 21(g) of ART Act. Aggrieved thereby, the Petitioners' have filed the present petition.

SUBMISSIONS MADE BY THE PARTIES

5. Learned counsels Mohit Khandelwal and Deepak Dahiya appearing on behalf of the Petitioners has made the following submissions:

- i. The Petitioners were within the permissible age limit when they began the treatment with Respondent Nos. 5 and 6 and that they attained the threshold age prescribed under Section 21(g) of the ART Act during the course of the treatment.
- ii. The age restriction under Section 21(g) cannot operate mechanically once embryos have already been created and cryopreserved. The remaining embryos constitute the Petitioners' reproductive material and form part of their decisional autonomy and reproductive choice protected under Article 21 of the Constitution. Reliance is placed upon *Suchita Srivastava v. Chandigarh Administration*³ and *Justice K.S. Puttaswamy v. Union of India*⁴ to contend that reproductive autonomy forms an integral facet of privacy and personal liberty.
- iii. The Petitioners further submit that the ART Act does not prescribe any separate upper age limit for a "commissioning couple" and that Section 21(g) imposes age conditions individually upon a woman and a man. Reliance is placed on decision of *Sarabjit Kuar v. State of Punjab*,⁵ *Sanchita Ghosh v. Union of India*,⁶ *Shyamoli Saha v. State*

³ (2009) 9 SCC 1

⁴ (2017) 10 SCC 1

⁵ 2026 SCC OnLine P&H 689

⁶ WPA. No. 12154 OF 2023



of *West Bengal*⁷ and *Manjit Kaur v. Union of India*⁸ to contend that the statute deserves purposive interpretation in favour of facilitating reproductive rights and that age restrictions ought not to defeat ongoing reproductive processes involving already created embryos.

6. *Per Contra*, learned counsels Monika Arora and Avni Singh, appearing on behalf of the respondents has advanced the following submissions:

- i. Section 21(g) employs mandatory language and leaves no discretion with ART clinics once the statutory threshold is crossed. Embryos in the present case were created in March 2026 long after the ART Act came into force on 25.01.2022 and, therefore, no question of transitional protection arises.
- ii. ART services are statutory entitlements governed entirely by the eligibility conditions prescribed under the ART Act and cannot be claimed *dehors* the statute.
- iii. The upper age limits were consciously adopted based upon scientific, ethical and child-welfare considerations. Reliance is placed upon the Statement of Objects and Reasons of the ART Act and Parliamentary Standing Committee Report No. 129 leading to enactment of Section 21(g). Reliance is also placed on decisions of *Union of India v. Nandini K.*⁹, *Union of India v. A.G. SarlaKumari & Ors*¹⁰, *Pankaj Kumar Das v. Union of*

⁷ AIR 2025 Cal 55

⁸ CWP No. 13670 of 2025

⁹ WA No. 696 of 2024

¹⁰ WA No. 827 of 2024, Judgement dated 06.08.2024



*India*¹¹, *Kavitha Anand v. State of Tamil Nadu and Madhu Soni v. Indira IVF Centre*¹² to submit that age restrictions under Section 21(g) have consistently been upheld and cannot be diluted by judicial directions.

- iv. The Report of Expert Committee on Implications of Conceptions at Advanced Parental Age dated 21.01.2026 records that conception at advanced maternal age is associated with increased maternal and perinatal complications and has opined that statutory age limits represent a reasonable and evidence-based policy choice grounded in medical, psychosocial and child – welfare considerations.

7. I have heard learned counsels on behalf of the parties have perused the records.

ANALYSIS

8. The controversy in the present petition lies within a narrow compass. The question which falls for consideration is whether the age restriction prescribed under Section 21(g) of the ART Act can be construed in a manner so as to prevent the *continuation*, as opposed to the *initiation*, of an ART process beyond the age limit prescribed under Section 21(g) of the ART Act.

The material portion of the said provision reads as under:

“21. General duties of assisted reproductive technology clinics and banks.
The clinics and banks shall perform the following duties, namely:

(a) the clinics and banks shall ensure that commissioning couple, woman and donors of gametes are eligible to avail the assisted reproductive technology procedures subject to such criteria as may be prescribed;

¹¹ 2025 SCC OnLine Gau 5083

¹² WP. No. 35158 OF 2024



...

- (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;
(h) the clinics ***shall issue to the commissioning couple or woman a discharge certificate*** stating details of the assisted reproductive technology procedure performed on the commissioning couple or woman”

[Emphasis supplied]

9. Further, Section 2(e) of the ART Act provides for the definition of a “*commissioning couple*” in the following terms:

“(e) “*commissioning couple*” means an infertile married couple who ***approach*** an assisted reproductive technology clinic or assisted reproductive technology bank for obtaining the services authorised of the said clinic or bank”

[Emphasis supplied]

10. A bare perusal of the aforesaid provision would indicate that Section 21(g) of the ART Act prescribes the age eligibility for availing the ART services by a woman and a man individually. The provision stipulated that ART services may be extended to a woman above the age of twenty-one years and below the age of fifty years and to a man above the age of twenty-one years and below the age of fifty-five years.

11. There can be no quarrel with the proposition that the ART Act is a beneficial regulatory legislation enacted with the object of ensuring safe, ethical and regulated ART practices. Equally, the concerns relating to maternal health and child welfare which underlie the statutory framework cannot be disregarded. However, while interpreting a regulatory statute touching upon reproductive rights and decisional autonomy, the Court is also required to adopt an interpretation which remains consistent with



constitutional values embodied under Article 21 of the Constitution.

12. The Petitioners' herein, are not seeking initiation of a fresh IVF cycle after having crossed the statutory age limit prescribed under Section 21(g) of the ART Act. Rather the admitted factual position is that the treatment process had already commenced while the Petitioners were within prescribed statutory age limits. At the relevant time, when the embryos were retrieved, created and cryopreserved on 07.03.2026 the Petitioner No. 1(female) was aged 49 years 11 months and 14 days old and, therefore, squarely fulfilled the eligibility criteria under Section 21(g) of the ART Act. It is also not disputed that six embryos were created and cryopreserved pursuant thereto, out of which one embryo was utilised during the FET Procedure undertaken on 07.03.2026. Presently, five cryopreserved embryos belonging to the Petitioners continue to remain preserved with the Hospital.

13. At this stage, it is significant to note that the Petitioners are not seeking creation or extraction of fresh embryos after crossing the statutory age threshold. The request of the Petitioners' is confined to utilisation of the very same embryos which had already been retrieved at a point when the Petitioner No.1 undisputedly satisfied the statutory age requirement. As on date, Petitioner No. 1 is stated to be 50 years 2 months of age where as Petitioner No. 2 is stated to be 54 years old. However, the embryos presently sought to be utilised are those which came to be created during subsistence of permissible statutory age and pursuant to a process initiated under medical supervision.

14. The aforesaid distinction, in the considered opinion of this Court, assumes considerable significance while interpreting the scope and application of Section 21(g) of the ART Act. The present case, therefore,



concerns continuation of an already initiated reproductive process involving pre-existing cryopreserved embryos and not commencement of a fresh ART procedure dehors the statutory framework.

15. The cryopreserved embryos in question are not merely preserved biological material in abstract but are intrinsically connected with the Petitioners' reproductive autonomy, decisional privacy and their constitutional protected choice relating procreation and family life.

16. The Supreme Court in the case of *Suchita Srivastava* (supra) recognised reproductive choice as an inseparable facet of personal liberty under Article 21 of the Constitution. Similarly, in *Justice K.S. Puttaswamy* (supra), decisional autonomy and privacy in matters concerning family, procreation and bodily integrity were held to be constitutionally protected interests. These constitutional principles necessarily require that statutory provisions regulating ART procedures receive a purposive interpretation that advances constitutional freedoms while preserving the regulatory object sought to be achieved by the enactment.

17. The Punjab Haryana High Court in *Sarabjit Kaur* (supra) while interpreting the provisions of the ART Act observed that the primary purpose of the enactment is to regulate and supervise ART clinics and banks so as to prevent misuse and unsafe practices. The statutory framework ought not to be construed in a manner defeating the very object underlying the legislation. The restrictions which are not expressly contemplated under the statute cannot be imported so as to defeat access to ART procedures. The reasoning adopted in *Sarabjit Kaur* also assumes significance inasmuch as the statutory framework imposes age restrictions individually upon a woman and a man and not upon “*commissioning couple*” as a composite unit. The



legislative scheme does not contemplate any joint or collective age restriction for a “*commissioning couple*.”

18. Further, the Calcutta High Court in *Shaymoli Saha*(supra) upon analysing the definitions of “*woman*”, “*patient*” and “*commissioning couple*” under the ART Act, had observed that the statute does not prescribe any composite age criterion for a “*commissioning couple*” and that such a restriction cannot be judicially imported into the statute.

19. The aforesaid line of reasoning has also found acceptance in subsequent decisions including *Vanaja v. Union of India*¹³, *Ambiki Balan v. Union of India*¹⁴, *Union of India v. Devayani S. & Ors.*¹⁵ The Division Bench of Kerala High Court in *Devayani S.* specifically observed that although the Parliamentary Standing Committee had considered introduction of a “*combined age*” criterion for couples, the legislature consciously did not incorporate any such composite age restriction within the enacted provisions of the ART Act. The Court further held that where the statute prescribes age thresholds separately for a woman and a man under Section 21(g), Courts cannot read into the statute an additional restriction not expressly contemplated by the legislature.

20. Through a different lens, the aforementioned reasoning also finds support in the text of the provision. Section 21(a) of the ART Act, at its highest, require the commissioning couple, which is to “*avail*” assistive reproductive technology to be compliant of the requirements of the Act. Section 2(e) of the ART Act further defines “*commissioning couple*” as a couple who “*approach*” a clinic providing assisting reproductive technology.

¹³ 2025:KER:16115

¹⁴ 2026:KER:30454



21. Thus, it is the time that the benefits of the technology are availed and when the couple approaches, that the limitations and conditions of age, if at all, are to be considered. Section 21(h) further requires a discharge certificate to be issued to the “*commissioning couple*” i.e., which is the couple as they were at the time they approached the clinic, stating the details of the assisted reproductive technology procedure performed on the “*commissioning couple*”. It is, therefore, the case, that the text of the provision, also, support the purposive interpretation rendered by the Courts.

22. A brief reliance may also be placed on ***GP Singh’s Principles of Statutory Interpretation***,¹⁶ which has noted that while selecting out of different interpretations “*the Court will adopt that which is just, reasonable and sensible rather than that which is none of the hose things*”. A construction giving rise to an anomaly ought to be avoided.

23. This Court is conscious of the decisions relied upon by the Respondents including ***Pankaj Kumar Das*** and ***Kavitha Anand***, wherein, emphasis has been laid upon the legislative policy underlying the age restrictions prescribed under Section 21(g) of the ART Act. There can be no disagreement with the proposition that the statutory age limits are founded upon legitimate considerations relating to maternal health, ethical regulation and child welfare.

24. However, in the facts of the present case, concerns relating to maternal health and welfare of child though legitimate and substantial, stand safeguarded. The Petitioners had already undergone medical evaluation, counselling and requisite treatment under expert supervision before

¹⁵ 2025:KER:83955

¹⁶ 13th Ed., 2012, Ch. 2, pg. 132-133.



commencement of the ART process. The material on record would indicate that the Petitioners were declared medically fit for undergoing the procedure.

25. The Respondents have not placed any medical opinion indicating that utilisation of the existing cryopreserved embryos would pose any immediate or exceptional medical risk beyond the general policy concerns underlying the enactment.

26. The distinction between initiation of a fresh ART cycle after crossing the statutory age threshold and continuation of an already commenced treatment involving existing cryopreserved embryos cannot be lost sight of. The Punjab and Haryana High Court in the case of *Pushpa & Anr. v. Union of India & Ors.*,¹⁷ recently, while coming across a case where the petitioner-wife had crossed the age of 50 years, permitted continuation of IVF treatment noting that the issue stood covered by the earlier decision in *Sarbjit Kaur*. In the opinion of this Court, the latter category stands on a materially different footing and warrants a purposive interpretation consistent with constitutional protections available to reproductive choice and decisional autonomy.

27. This Court is also conscious of the fact that reproductive rights and access to parenthood in the contemporary constitutional jurisprudence cannot be reduced to purely technical or pedantic application of statutory conditions divorced from factual context in which such rights are asserted. The ART Act is fundamentally regulatory in character. The object of the enactment is to ensure ethical and safe ART practices and not to create insurmountable barriers defeating legitimate continuation of treatment



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processes already lawfully undertaken.

28. In view of the peculiar facts of the case, this Court is of the considered opinion that denial of permission to utilise the remaining five cryopreserved embryos solely on account of the Petitioners having marginally crossed age threshold of the ART process would not subserve the object of the ART Act.

29. In view of the aforesaid, the petition stands allowed. The Petitioners are permitted to undergo frozen embryo transfer of their remaining five cryopreserved embryos, with all medical safeguards.

30. With the aforesaid directions, the instant petition stands disposed of.

31. No order as to costs.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

MAY 25, 2026
Rao/SS

¹⁷ 2026:PHHC:078831