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WP-1233-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 10th OF JULY, 2026WRIT PETITION No. 1233 of 2026

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Appearance:

Shri Prakash Upadhyay - Senior Advocate with Shri Parth Pandey,
Advocate for the petitioners.

Shri Aakash Malpani - Panel Lawyer for the respondents/ State.
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ORDER

The present petition is filed being aggrieved by the inaction of the respondent no. 2 in not processing their case for having child through IVF on the ground that the petitioner no.1 is more than 50 years of age and the petitioner no. 2 is 50 years of age, therefore, respondent no. 2 denied to process the IVF procedure due to the age restriction provided under Section 21 of the Assisted Reproductive Technology (Regulation) Act, 2021.

2. It is the case of the petitioners that petitioner no.1 is married to the Petitioner No. 2 and from their marriage a child named was born and the family was leading a peaceful life, however due to Organ failure and Jaundice, the only child of the Petitioners herein died at the age of 21 years on 19.10.2025. After the death of their only child, the petitioners are left with no child and because of their age, they are unfit to conceive naturally



due to the age.

3. It is argued that the joy of parenthood is available to them and cannot be snatched away by barriers of law and every attempt to secure, should be made by the married couple. Therefore, with an intention to have a child further, they approached the respondent no. 2 Hospital to get appropriate medical treatment to have child through Assisted Reproductive Technology (In Vitro Fertilization). The respondent Hospital also performed the medical test on the petitioner no.1 and she was found to be medically fit to bear a child. But as the petitioner no. 1 was more than 50 years of age and the petitioner no. 2 was 50 years of age, the respondent no. 2 Hospital refused to proceed further with the procedure / treatment as Section 22 of the Assisted Reproductive Technology (Regulation) Act, 2021 provides age limit of 50 years for female and 55 years for male to perform the ART (IVF) procedure as the upper age limited. Therefore, the procedure could not be performed.

4. It is argued that a similar issue came up for consideration before the Kerala High Court in the case of **Sajitha Abdul Nazar vs. Union of India (2025)** and in the case of **Union of India vs. Devayani S and others** in WA No. 2009 of 2025, Calcutta High Court in **Shyamoli Saha and another vs. State of West Bengal and others** in WPA No. 23776 of 2024. Punjab and Haryana at Chandigarh High Court in **Sarbjit Kaur and another vs. State of Punjab and others** in CWP No. 6818/2025, in the case of **Veena Kumar alias Avinash Kaur Dhillon and another vs. Union of India and others** in CWP No.24686 of 2025 (O & M), **Dr. Pushpa and another vs. Union of India and**



others in CWP No.13085 of 2026 (O&M) as well as this Court in the case of **Rajesh Singh and another vs. The State of Madhya Pradesh and another** in WP No.17036 of 2023 dated 26.7.2023 and **Kajal Jwala and another vs. State of MP and another** in WP No.30477/2023 dated 20.12.2023 and relief was granted to the aggrieved petitioners therein.

5. It is the case of the petitioners that age barriers can be relaxed by the Courts. The Courts while relaxing the age barriers have made an observation that applying the age limit to undergo the treatment would create an unconstitutional distinction where a single woman below fifty years may avail ART but a married woman of the same age would be disqualified merely because her husband is older.

6. Petitioner no.1 was found to be medically fit by the respondent no. 2 Hospital to have a child, therefore, IVF, therefore, this Court in the case of **Kajal Jwala (supra)** has also considered the same and recorded the consensus of the parties that if they are ready to face the consequences and in case, the operation resulted in failure, then they would not claim anything from the respondent Hospital and the same will be totally on their own risk.

7. This Court vide order dated 20.1.2026 directed the petitioners to appear before the Medical Board, Bhopal and in pursuance to which, a letter dated 2.2.2026 has been produced before this Court wherein it is observed as under :-

- "1. माननीय उच्च न्यायालय के संदर्भित पत्र द्वारा प्राप्त निर्देशों के परिपालन में जिला मेडिकल बोर्ड, भोपाल के समक्ष परीक्षण के लिये भेजा गया।
2. उक्त पत्र के साथ दिनांक 21/01/2026 को जयप्रकाश जिला चिकित्सालय, भोपाल में उपस्थित हुये उन्हें दिनांक 23/01/2026 के जिला मेडिकल बोर्ड के जयप्रकाश जिला



चिकित्सालय, भोपाल के समक्ष उपस्थित होने को कहा गया।

3. श्रीमती बबीता सिंह एवं अजय सिंह दिनांक 23/01/2026 को जिला मेडिकल बोर्ड के समक्ष उपस्थित हुये जिसमें मेडिकल विशेषज्ञ द्वारा आवश्यक जांचे सुझाई गई तथा जांचों के पश्चात् उपस्थित होने के लिये कहा गया।

4. दिनांक 24/01/2026 को समस्त जांचों के उपरांत श्रीमती बबीता सिंह एवं अजय सिंह उपस्थित हुये जिसमें उन्हें मेडिकल विशेषज्ञ द्वारा शारीरिक एवं मानसिक रूप से स्वास्थ्य पाये गये तथा श्रीमती बबीता सिंह को स्त्री रोग विशेषज्ञ से परामर्श हेतु आदेशित किया गया। दिनांक 24/01/2026 को ही स्त्री रोग विशेषज्ञ, जयप्रकाश जिला चिकित्सालय, भोपाल द्वारा आई.व्ही.एफ क्लीनिक में उपस्थित होकर अग्रिम जांच व अभिमत की सलाह दी गई।

5. दिनांक 24/01/2026 को ही श्री अजय सिंह को मेडिकल विशेषज्ञ द्वारा समस्त दस्तावेज परीक्षण उपरांत पाया गया कि वह ब्लड प्रेशर एवं शुगर (डायबटिज) के मरीज है जो कि उपचार से नियंत्रण में है तथा शारीरिक रूप से उपचार के साथ फिट है।

6. इसके उपरांत श्रीमती बबीता सिंह एवं अजय सिंह पुनः दिनांक 29/01/2026 को उपस्थित हुये जिसमें मेडिकल बोर्ड, भोपाल द्वारा पत्र लिखकर अधीक्षक डॉ. कैलाशनाथ काटजू चिकित्सालय, भोपाल को जांच कर Assisted Reproductive Technology (IVF) हेतु फिट है अथवा नहीं, इस संबंध में अभिमत के लिये कहा गया।

7. दिनांक 29/01/2026 को ही श्रीमती बबीता सिंह पत्र के साथ डॉ. कैलाशनाथ काटजू चिकित्सालय, भोपाल में उपस्थित हुईं, जहां उनकी सोनोग्राफी व कॉल्पोस्कोपी उसी दिनांक को की गई तथा उन्हें Endometrial Biopsy की सलाह दी गई।

8. दिनांक 30/01/2026 को श्रीमती बबीता सिंह की Endometrial Biopsy के लिये ओ.टी में लिया गया जहां उनका बी.पी बड़ा हुआ पाया गया, अतः Anti Hypertensive दवाईया देकर एक सप्ताह पश्चात् उपस्थित होने को कहा गया।

9. आज दिनांक तक श्रीमती बबीता सिंह स्पष्ट अभिमत के साथ उपस्थित नहीं हुईं एवं उनके उपचार की प्रक्रिया पूर्ण होने के उपरांत स्पष्ट अभिमत प्राप्त होते ही आपकी ओर प्रेषित कर दिया जायेगा।"

8. But, the medical opinion could not be granted as her BP was high on 30.1.2026 when she was taken to Endometrial Biopsy Operation Theater, therefore, after giving Anti Hypertensive medicines, she was asked to come after one week.

9. The fact remains that if the doctors are of the considered opinion that the petitioner no.1 being patient is fit for Assisted Reproductive Technology, the age barrier will not come in her way for doing the same.



10. Section 21 (g) of the Assisted Reproductive Technology (Regulation) Act, 2021 provides as under :-

(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.”

11. The said provision does not prescribe any composite age limit for the couple as a unit, therefore, it creates discrepancy regarding the age limit which was considered in series of judgments by the Court. Therefore, the report is given by the Superintendent, Dr. K. N. K. Hospital, Bhopal addressed to President, District Medical Board, Jai Prakash Hospital, Bhopal dated 27.2.2026 to the following effect:-

"उपरोक्त विषयांतर्गत लेख है कि आपके संदर्भित पत्र द्वारा श्रीमती बबीत अजय सिंह के संबंध में जांच कर Assisted Reproductive Technology (IVF) हेतु फिट है अथवा नहीं, का अभिमत चाहा गया है।

प्रकरण में संबंधित स्त्रीरोग विशेषज्ञ द्वारा जांच कर "Patient can be planned for surrogacy or IVF with oocytes donation." का अभिमत दिया गया है।

अतः उपरोक्तानुसार चाही गई जानकारी आपकी ओर आवश्यक कार्यवाही हेतु प्रेषित है।"

12. Counsel appearing for the petitioners before this Court submits that the petitioners are ready to face all the consequences and will undergo the IVF at their own risk and if ultimately that operation fails, they would not claim anything from the respondents / doctors as it would be totally on their own risk.

13. Considering the judgments as cited herein above as well as the opinion given by the doctors that "Patient can be planned for surrogacy or IVF with oocytes donation", this Court deems it appropriate to permit the



petitioners to undergo Assisted Reproductive Technology (IVF) at any Institution of their choice. The Institution is at the liberty to examine the petitioners and take a decision with respect to the fact that whether Assisted Reproductive Technology (IVF) can be performed or not. The case of the petitioners will not be rejected on the ground of age barrier as the petitioner no. 1 is 52 years of age.

14. Needless to mention here that the identity of the petitioners should not be disclosed in view of Section 21 (e) of the Assisted Reproductive Technology (Regulation) Act, 2021.

15. Accordingly, I.A. No.573/2026 is disposed of.

16. With the aforesaid, the petition stands disposed off.

(VISHAL MISHRA)
JUDGE

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