

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-09-2026

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THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.37683 of 2026

CNR:{HCMA012211092026}



Case QR

- 1.
- 2.

..Petitioners

Vs

1. Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
Department of Health Research,
2nd Floor, IRCS Building 1,
Red Cross Road,
New Delhi – 110 001.
2. State of Tamil Nadu,
Rep. by its Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Namakkal Kavingar Maaligai,
4th Floor, Fort St.George,
Chennai – 600 009.
3. The Director,
Directorate of Medical and Rural
Health Service,
No.359, DMS Complex,
361, Anna Salai,
Chennai – 600 006.
4. The Joint Director of Health Service
District Medical Board,
O/o.Joint Director of Health Service,
No.359, DMS Complex,
361, Anna Salai,
Chennai – 600 006.



5. GG Hospital,
No.6E, Nungambakkam High Road,
1A, Dr.Thirumurthy Nagar, 1st street,
Chennai – 600 034.

..Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus or any other appropriate writ,

A. directing the respondents 1 to 4 to permit the petitioners to avail themselves of ART services from the fifth respondent notwithstanding the age restriction applicable to the first petitioner under section 21(g)(i) of the Assisted Reproductive Technology (Regulation) Act, 2021 with the first petitioner being aged 50 years and 18 days as of the date of filing of the present writ petition in the facts and circumstances of the case and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thereby render justice.

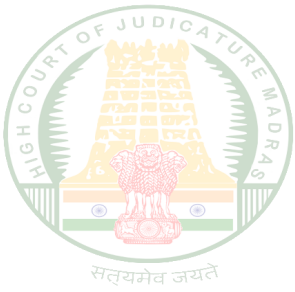
B. To permit the first petitioner through a duly registered Assisted Reproductive Technology (ART) clinic, to avail herself of donor oocytes and to have the said donor oocytes fertilised with the sperm of the second petitioner and thereafter to have the resultant embryo/embryos transferred and implanted into the uterus of the first petitioner in accordance with law.

For Petitioners : Ms.A.Shabnam Banu

For Respondents : Dr.K.Kannan
Senior Panel Counsel for R1

Mr.J.V.Sakthi Baalakrishnan
Government Advocate for R2 to R4

Mr.D.Senthur Kugan for R5



ORDER

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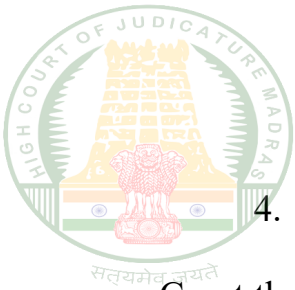
The prayer in the writ petition is to issue a writ of mandamus directing the respondents 1 to 4 to permit the petitioners to avail themselves of ART services from the fifth respondent notwithstanding the age restriction applicable to the first petitioner under Section 21(g)(i) of the Assisted Reproductive Technology (Regulation) Act, 2021.

2. Upon hearing the learned counsel for the petitioners and perusing the material records of the case, it is seen that the first petitioner is the wife and the second petitioner is the husband. Both of them are Sri Lankan nationalists and have permanently settled in the United Kingdom. However, when they were not blessed with a child, they turned to India for availing In Vitro Fertilization (IVF) treatment. They had even started the treatment in the United Kingdom in the year 2013 and had also frozen their embryos much prior to the coming into force of the Act. However, since the treatment resulted in miscarriages, the petitioners were informed about the fifth respondent being a pioneer in the fertility treatment and accordingly, the petitioners came to Chennai in the year 2023. Extensive medical examination was conducted on the petitioners and the first petitioner was diagnosed with fibroids and was advised to have them removed by way of a surgery. The first petitioner underwent a Laparoscopic



Myomectomy and Hysteroscopy and at that point, in order to continue IVF treatment, it was required that the first petitioner heal physically after the surgery and return to India for treatment after a break. At that point of time, it was found that the suitable oocyte donor had to be found in view of the physiological condition of the first petitioner. Therefore, the petitioners settled down on a course of treatment, i.e, to use the sperm of the second petitioner and to get oocyte from the qualified donor and after the fertilization of the embryos, the same has to be ingested by way of IVF into the first petitioner.

3. After deciding on the same from the year 2023 until now, when the petitioners' applied for medical visa, the same was granted to them on 30.06.2026 and subsequently, when the petitioners arrived at India for treatment on 07.09.2026, finding that the first petitioner crossed the age of 50 on 24.08.2026 and the first petitioner being over-aged by only eighteen days, the fifth respondent is refusing the treatment. The petitioners otherwise fully satisfied all the other criteria under the Assisted Reproductive Technology (Regulation) Act, 2021. The second petitioner is very well within the age of 55 years. Only the first petitioner alone has now crossed the age of 50 by eighteen days and therefore, the petitioners are before this Court.



4. The learned counsel for the petitioners brought to the notice of the Court the judgment passed in CrI.R.C.No.950 of 2026, wherein it has been held Court that until a person crosses 51 years of age, the age of the petitioner should be treated as 50. The learned counsel further relied upon the judgment of the Gujarat High Court in *Sumitraben Shaileshkumar Patel and another vs. The Chief Medical Officer and others (GJHC240477542026)*, whereby the Court after considering the judgment of the Calcutta High Court in *Sanchita Ghosh and others vs. Union of India and others (W.P.A.No.12154 of 2023)*, held that even if only one of the persons is eligible as per the Act, the right of the other person cannot be violated. Considering the cumulative age and giving liberty to the concerned clinic to use the oocyte or sperm, as the case may be, even with reference to the person who has crossed the age limit, the orders have been passed permitting them to undergo the treatment. The learned counsel also relied upon the judgment of Madhya Pradesh in the case of *Babita A.Singh and others v. State of Madhya Pradesh (W.P.No.1233 of 2026)*, as well the judgment of this Court in *Nabila Abdul and another vs. Union of India and others (W.P.No.12533 of 2026)*.

5. Per contra, the learned Senior Panel Counsel appearing on behalf of the first respondent would submit that even with reference to foreigners, the Act would be applicable, inasmuch as the treatment was given in India. The age

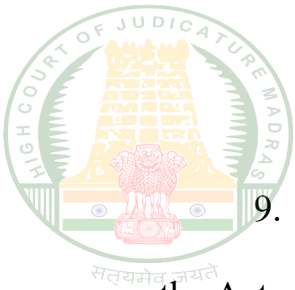


should be less than fifty. Once the first petitioner has crossed the age, the mandate should be followed. If at all the petitioners are aggrieved, they have to challenge the validity of the upper age limit. Since a challenge to the upper age limit is pending before the Hon'ble Division Bench of this Court in a batch of matters, the relief cannot be granted to the petitioners.

6. The learned Government Advocate appearing for the respondents 2 to 4 would submit that it is true that it is only eighteen days in respect of one of the petitioners, even in that case, this Court in ***Kavitha Anand vs. State of Tamil Nadu and others (2025:MHC:360)*** has held that the upper age limit should be followed without any exception.

7. I have considered the rival submissions made on either side and perused the material records of the case.

8. It is true that, the upper age limit as fixed by the Parliament has to be followed. In the instant case, Section 21(g) of the Act prescribes the age limit in respect of a woman that she should above the age of twenty-one years and below the age of fifty years. Therefore, there can be no doubt that as on 24.08.2026, the first petitioner crossed the age limit of fifty years. However, this Court takes into consideration two extraordinary circumstances.



9. Firstly, in this case, the petitioners are foreign nationals even though the Act *per se* would apply, it must be seen that the upper age limit was fixed by the Parliament of India taking into account the average life expectation of life in India and the condition of life in India and taking into consideration the welfare of the minor children to be born and brought up in India. In the present case, the petitioners have come only under the medical tourism to avail the services of the fifth respondent and they are going back to their own Country where they are bringing up the child to be born, that has to be kept in mind. Secondly, the Hon'ble Supreme Court of India in ***Vijaya Kumari S and another vs Union of India (2025 INSC 1209)*** has also held that if the intention of a commissioning couple had crystallized prior to the commencement of the Act and they are only continuing their treatment, applying the Act with strict trigger would amount to retrospective effect and has granted relaxation in respect of all those categories. However, it must be noted that the Hon'ble Supreme Court of India specifically laid down that the embryos have been frozen prior to the date if only the same embryos is considered. But in this case, it must be seen that it is not the oocyte of the first petitioner which is now going to be taken, the donor is within the age limit. It is only going to be ingested in the first petitioner. Even the intention of the petitioners as per the medical records got crystallized in the year 2013 itself wherein they have been undergoing treatment, it must be seen that they came to India by way of medical tourism in the year 2023, where upon only on account

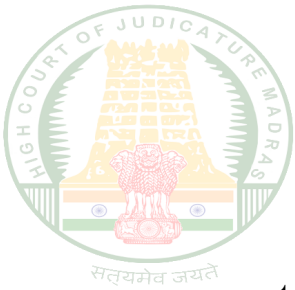


of the physiological condition of the first petitioner that she was having fibroids,
the second attempt got aborted.

10. Now it must also be seen that the petitioners intended to return to India and had applied for visa well within her age of 50, but however, unwittingly, even though visa was granted on 30.06.2026, she landed in India only after 18 days after the completion of the 50th year. This unfortunate human error gives rise to an extraordinary circumstances whereby I am of the view that the law laid down by the Hon'ble Supreme Court of India in the case of **Vijay Kumari** can be applied by taking into account the spirit of the said judgment and an opportunity can be granted and applying the age limit of 50 can be held to be retroactive / retrospective in the case of the petitioners.

11. In view of the above, this Writ Petition is disposed of on the following terms:

(i) It is declared that 50 years upper age limit need not be applied to the first petitioner herein and as such *dehors* the fact that the first petitioner has crossed the age of 50 by 24.08.2026, the fifth respondent or any other clinic shall perform the ART procedure in the case of the petitioners as per procedure;



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Order QR

(ii) It is made clear that the petitioners are undertaking the treatment on their own risk and the clinic concerned will be free to use the oocyte of the third party donor;

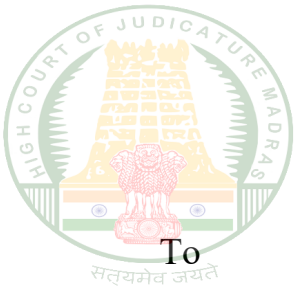
(iii) It is made clear that as stated *supra*, the order is passed taking into account the very peculiar facts and circumstances of the case that both the petitioners are foreign nationals and have approached our Country only for the technical support they are receiving from the fifth respondent by way of medical tourism and secondly, even the visa was applied in time, but however they missed the timeline only by eighteen days;

(iv) The parties to act upon the web copy of the order. No costs.

17-09-2026
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Neutral Citation: No

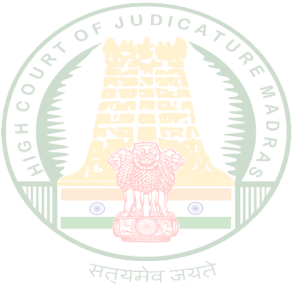
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To

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2. The Secretary,
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