



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2026 / 1ST ASWINA, 1948

WP(C) NO. 28787 OF 2026

PETITIONERS:

1

2

BY ADVS.
SRI.VIMAL VIJAY
SMT.DINU N.G.

RESPONDENTS:

- 1 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH
AND FAMILY WELFARE, SASTHRI BHAVAN,
NEW DELHI, PIN - 110001.
- 2 THE NATIONAL ART AND SURROGACY BOARD,
REPRESENTED BY THE EX-OFFICIO VICE CHAIRPERSON,
(THE SECRETARY, DEPARTMENT OF HEALTH RESEARCH),
DEPARTMENT OF HEALTH RESEARCH, 2ND FLOOR,
IRCS BUILDING 1, RED CROSS ROAD, NEW DELHI,
PIN - 110001.
- 3 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH
AND FAMILY WELFARE, SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001.
- 4 THE DISTRICT REPRODUCTIVE & CHILD HEALTH ("RCH")
OFFICER, DISTRICT MEDICAL OFFICE, ERNAKULAM,



PARK AVENUE, MARINE DRIVE, ERNAKULAM, PIN - 682011.

5 SABINE HOSPITALS, REPRESENTED BY ITS MANAGING DIRECTOR,
PEZHAKKAPPILLY P.O., MUVATUPUZHA, ERNAKULAM,
PIN - 686673.

ADDL.R6 THE KERALA STATE ART AND SURROGACY BOARD,
REPRESENTED BY THE SECRETARY, HEALTH AND FAMILY
WELFARE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
KERALA, PIN-695001.

(IS SUOMOTU IMPEADED AS ADDITIONAL 6TH RESPONDENT AS
PER JUDGMENT DATED 23.09.2026 IN W.P(C)NO.28787 OF 2026)

BY ADV.SHRI.JOSEPH RONY JOSE, CGC

SMT.MINTU CHERIAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.09.2026, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

Heard Sri.Vimal Vijay, the learned counsel for the petitioners, Sri.Joseph Rony Jose, the learned Central Government Counsel for respondents 1 and 2, and Smt.Mintu Cherian, the learned Government Pleader for respondents 3 and 4.

2. The petitioners, a married couple of 50 and 49 years of age respectively, are stated to have commenced their IVF treatment procedure as early as in the year 2023 with the 5th respondent hospital. Admittedly, during that period of time both the petitioners were within the permissible age limit with reference to the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021 (for short 'Act'). However, they have approached this Court pointing out that on account of one of them crossing the age limit prescribed under Section 21(g) of the Act, the 5th respondent is not coming forward to offer the required procedure as sought for by them.

3. Sri.Vimal, the learned counsel for the petitioners, would point out that the petitioners are ready and willing to undergo the treatment, by undertaking the liability, if any. The learned counsel



further relies upon the judgment of the Punjab and Haryana High Court in Dr. Pushpa and Another v. Union of India and Others [CWP No.13085 of 2026], dated 19.05.2026, wherein a substantially similar issue was considered. In the said case, the petitioners were permitted to furnish an undertaking and were consequently directed to be provided with ART services. The relevant observations of the Punjab and Haryana High Court are as under:

"4. Learned counsel for respondent – UOI expressed his inability to controvert applicability of aforesaid judgment to instant case, however, submit that petitioners may be directed to furnish their undertaking before authorities to the effect that if any injury/damage is caused to petitioner No.1 on account of aforesaid treatment, they would be responsible.

5. Faced with this, learned counsel for the petitioners submits that aforesaid undertaking would be furnished before competent authority.

6. In the wake of statement of both sides and judgment of this Court in Sarbjit Kaur and another (supra), this Court is of the considered opinion that petition deserves to be allowed and accordingly allowed. The petitioners shall furnish aforesaid undertaking before competent authority and respondent No.7 would be free to proceed with further treatment."



4. The learned counsel for the petitioners submitted that the petitioners are ready and willing to furnish an undertaking before the competent respondent for the purpose of availing ART services.

5. However, the learned Central Government Counsel for respondents 1 and 3 would point out that the provisions of Section 21(g) of the Act cannot be diluted and since, admittedly, one of the petitioners has crossed the afore age limit, no facility could be provided to them.

6. As the Kerala State Art and Surrogacy Board is not impleaded in this writ petition, this Court is *suo motu* impleading the Kerala State Art and Surrogacy Board, represented by the Secretary, Health and Family Welfare Department, Secretariat, Thiruvananthapuram, Kerala, PIN – 695001, as the additional 6th respondent.

In such circumstances, I am of the opinion that since the petitioners have come forward to bear the risk, and since such facility has been extended to a similarly placed couple by the Punjab and Haryana High Court, the petitioners are also to be extended the same benefits, upon furnishing an undertaking before the 6th



respondent to the effect that they shall bear all risks, consequences, and liabilities arising out of or incidental to the said procedure/treatment. Needless to say, upon the petitioners furnishing the aforesaid as a notarised undertaking, the ART services shall be provided to them in accordance with law.

This writ petition is disposed of as above.

Sd/-
HARISANKAR V. MENON
JUDGE

AP



APPENDIX OF WP(C) NO. 28787 OF 2026

PETITIONERS' EXHIBITS:

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| EXHIBIT P1 | A TRUE COPY OF MARRIAGE RECEIPT ISSUED BY THE
TEMPLE DATED 18.01.2023. |
| EXHIBIT P2 | A TRUE COPY OF AADHAR CARD OF 1ST PETITIONER DATED
NIL. |
| EXHIBIT P3 | A TRUE COPY OF AADHAR CARD OF 2ND PETITIONER DATED
NIL. |
| EXHIBIT P4 | A TRUE COPY OF LETTER ISSUED BY THE 5TH RESPONDENT
DATED 15.07.2026. |