CNR No: PHHC011796492026
2026:PHHC:201438-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

110 **LPA-3067-2026 (O&M)**

UNION OF INDIA AND ANOTHER **…..APPELLANTS**

Vs.

DR. PUSHPA AND OTHERS

…..RESPONDENTS

Sr. No.	Particular	Details
1	The date when the judgment is reserved	27.10.2026
2	The date when the judgment is pronounced	16.11.2026
3	The date when the judgment is uploaded on the website	16.11.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL
HON'BLE MR. JUSTICE RAJESH GAUR

Argued by: Mr. Vipul Aggarwal, Senior Panel Counsel
for the appellants-UOI

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RAJESH GAUR, J.

1. Challenge in the present Letters Patent Appeal, filed under Clause X of the Letter patent is against the impugned order dated 19.05.2026 passed by learned Single Bench in CWP-13085 of 2026, whereby the writ petition filed by the contesting respondents No.1 and 2/ writ petitioners, seeking a direction to the appellants to permit respondent No.1 to avail herself of Assisted Reproductive Technology (ART) services, including In

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Vitro Fertilization (IVF), was allowed by the learned Single Bench in terms of the order passed by a Co-ordinate Bench in ***'Sarbjit Kaur and Another Vs. State of Punjab and Others' [CWP-6818-2025]***.

2. The brief facts of the case, as have emerged from the pleadings, are that respondents No. 1 and 2 are a married couple who approached respondent No.7 with the desire to conceive a child through IVF, particularly in view of the fact that, during their previous pregnancy, which was also facilitated through IVF, respondent No.1 had suffered the loss of one foetus. However, when the contesting respondents approached respondent No.7 to avail themselves of IVF services, they were informed that they were ineligible to undergo the procedure on account of the statutory age restrictions prescribed under Section 21(g)(i) of the Assisted Reproductive Technology (Regulation) Act, 2021 (for short, "ART Act"). The said provision stipulates that an ART clinic may provide ART services to a woman who is above the age of 21 years and below the age of 50 years, and since respondent No.1 had crossed the prescribed upper age limit, the couple was informed that they could no longer avail themselves of these services under the said Act.

3. Aggrieved by the aforesaid rejection, the contesting respondent approached this Court by way of a writ petition, which was allowed vide order dated 19.05.2026. Assailing the aforementioned order, the appellants have approached this Division Bench by way of the present Letters Patent Appeal.

4. Learned counsel for the appellants submitted that the learned Single Judge had overlooked the clear and unambiguous statutory age

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restrictions prescribed under Section 21(g)(i) of the Assisted Reproductive Technology (Regulation) Act, 2021. It is further contended that reliance placed upon the judgment in ***Sarbjit Kaur and Another Vs. State of Punjab and Other, CWP 6818-2025***, was misplaced, as the Union of India, being a necessary party, was not impleaded in the said proceedings and, consequently, was not afforded an opportunity to defend the legislative intent underlying the relevant provision of the ART Act. It is further submitted that Section 21(g) of the ART Act contemplates that both constituents of the commissioning couple must simultaneously satisfy the prescribed eligibility criteria and that there is no provision under the Act which indicates that age eligibility requirement is to be satisfied by one of the constituents of the commissioning couple, to the exclusion of the other.

5. We have perused the case file, the material available on record and the relevant provisions of the aforementioned Act, with the able assistance of learned counsel for the appellants.

6. During the course of arguments in the writ petition, learned counsel for the appellant-respondents submitted that the contesting respondents may be directed to furnish an undertaking before the competent authority to the effect that, in the event of any injury or damage being caused to the responding No.1 (wife) on account of aforesaid treatment, the respondents would be responsible for the same. The learned Single Bench accepted the said submission and permitted respondent No.1 to proceed with the treatment, subject to furnishing the aforesaid undertaking before the competent authority. The appellants still further proceeded to challenge the order of writ petition in appeal, despite not controverting the applicability of

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the judgment in ***Sarbjit Kaur*** (supra) therein, and having themselves proposed the recourse of an undertaking. The appellants are hence estopped by their own conduct and acquiescence.

7. The ART Act, 2021 defines a commissioning couple as an infertile married couple, who approach an ART clinic or ART bank for availing authorised services under the Act. Significantly, the Act does not prescribe any combined age limit for commissioning couple. Section 2 (1) (n) of the Act of 2021 defines the expression 'patients' to mean an individual or a couple who approaches a registered ART clinic for the management of infertility. The use of the expression 'an individual or a couple' clearly indicates that the legislature has recognised an individual and a couple as distinct categories for the purpose of the Act. Section 21 of the Act of 2021 prescribes the general duties of ART clinics and ART banks and mandates compliance with the statutory requirements. Further, Section 21(g) of the Act specifically stipulates that ART services shall be provided to a woman only if she is above the age of 21 years or below the age of 50 years and to a man only if he is above the age of 21 years and below the age of 55 years. A conjoint reading of the aforesaid provisions makes it abundantly clear that the legislature has consciously prescribed age restrictions separately for an individual man and an individual woman. The statutory scheme does not contemplate as prescribed any cumulative and combined age restriction in respect of commissioning couple. Thus, the age criteria under the Act is individual specific and cannot be construed as imposing any additional age restriction based on the combined age of the couple, particularly when no such restriction finds express statutory recognition. Consequently, any

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interpretation seeking to impose a combined age limit upon a commissioning couple would amount to importing a condition into the statute which the legislature has consciously not prescribed. In support of the aforesaid interpretation, reliance is placed upon the judgment of the Calcutta High Court in ***Sanchita Ghosh and Another v. Union of India and Others (WPA-12154-2023, decided on 08.04.2024)***, wherein it was observed as under:

> *"29. Forging the said lack of restriction for commissioning couples with Section 21(g)(i) and (ii), the only possible interpretation is that unless the restriction is applicable to both the spouses who comprise of the commissioning couple, there is no bar in the commissioning couple to approach the appropriate clinic for assistive reproductive technology services.*
>
> *30. In the event either the woman or the man comprising the commissioning couple are eligible to have assistive reproductive technology, there is no reason why the bar stipulated for individual women and men should be incorporated into the purview of the commissioning couple as well. The age-related ineligibility of one of the spouses need not affect the other, if they comprise of a commissioning couple.*
>
> *31. Thus read, the bar available in Section 21(g), clauses (i) and (ii) shall be read as follows:-*
>
> *(i) If a commissioning couple approaches a clinic/bank for assisted reproductive technology services, no upper age limit restriction will be applicable to them unless both spouses of the commissioning couple are debarred respectively under sub-clauses (i) and (ii) of sub-Section (g) of Section 21 of the 2021 Act.*
>
> *(ii) In the event either of the couples qualify in respect of the age limits as stipulated in Section 21(g), he or she can approach the clinic to have assisted reproductive technology service, irrespective of the fact that he or she is the constituent*

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of a commissioning couple and her spouse is not eligible age-wise.

(iii) In the second scenario above, the commissioning couple, as a commissioning couple, shall be permitted to avail the facilities of assisted reproductive technology services, since there is no bar on a commissioning couple acting as such, to have such reproductive technology irrespective of any age bar.

(iv) It is made clear that in the event one of the spouses is eligible under Section 21(g) and the other is not, it will be at the option of the clinic whether or not to use the gamete donated by the ineligible spouse in the process of assisted reproductive technology."

8. The present case also raises an issue concerning the alleged violation of Article 21 of the Constitution of India, inasmuch as the woman concerned seeking to exercise her right to reproductive autonomy by undergoing IVF treatment, has been denied access to the said treatment on account of statutory age restrictions prescribed under the ART Act. In this regard, reliance has been placed upon the judgments of the Hon'ble Supreme Court in ***Justice K.S. Puttaswami Vs. Union of India, AIR (2017) SC 4161 and Vijaya Kumari S. and Another Vs. Union of India, 2025 INSC 1209,*** wherein the Court held that the right to personal liberty encompasses a woman's reproductive choices, including the freedom to make intimate decisions concerning reproduction, contraception, pregnancy and family planning, free from undue State interference. The Hon'ble Supreme Court has recognised that reproductive autonomy forms an integral part of the constellation of rights guaranteed to every individual under Article 21 of the Constitution of India. In 2009, a three-Judge Bench of the Hon'ble Supreme

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Court in ***Suchita Srivastava Vs. Chandigarh Administration, (2009) 9 SCC 1,*** authoritatively recognised that a woman's reproductive autonomy is an essential facet of her right to life and personal liberty. The Court held that reproductive choices encompass the right to procreate as well as the right to abstain from procreating and that such choices are protected under Article 21 of the Constitution of India.

9. The right to make reproductive choices constitutes an essential facet of the fundamental right to personal liberty guaranteed under Article 21 of the Constitution of India. Any statutory restriction seeking to curtail such a right must satisfy the constitutional tests of reasonableness, non-arbitrariness and proportionality. A statutory classification to withstand scrutiny under Article 14 of the Constitution, must bear a rational nexus to the object sought to be achieved by the legislation.

10. In the present context, the prescription of an upper age limit under the ART Act, 2021, without adequate consideration of an individual woman’s health, medical fitness and informed consent, raises substantial constitutional concerns. Such a blanket age-based restriction, if imposed without a rational and proportional justification, may unduly infringe upon a woman's decisional autonomy, bodily integrity and dignity, which constitute integral facets of Article 21 of the Constitution.

11. The Constitutional principle also finds resonance in contemporary global jurisprudential discourse surrounding the competing pro-life and pro-choice perspectives, wherein bodily autonomy, reproductive freedom and individual decisional liberty remain central to determining the permissible limit of state interference in reproductive choices.

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12. In view of the above discussion and the facts and circumstances of the present case, this Court finds no reason to interfere with the direction issued by the learned Single Bench permitting the contesting respondent to proceed with the treatment. Accordingly, the present appeal is dismissed.

13. Pending application(s), if any, shall stand disposed of.

(SUVIR SEHGAL)
JUDGE

(RAJESH GAUR)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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