

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 03.03.2023**

**Pronounced on : 31.03.2023**

**CORAM**

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

**WP(MD)No.4714 of 2023  
and  
WMP(MD)No.4371 of 2023**

1.Priya Dharshini

2.Satish Tiwari

... Petitioners

**v.**

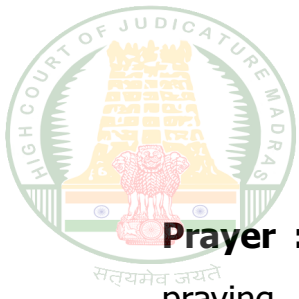
1.The State of Tamil nadu,  
Rep.through the Assisted  
Reproductive Technology and Surrogacy  
Authority, Health and Family Welfare Department,  
Secretariat, St.George Fort,  
Chennai – 600 009.

2.The District Medical Board,  
(Constituted under Assisted Reproductive  
Technology (Regulation) Act, 2021 and  
Surrogacy (Regulation) Act, 2021),  
Tirunelveli District, Tirunelveli.

3.The Health Office,  
M/s.Vamsam Fertility Research Centre,  
Coimbatore.

4.The Branch Office,  
M/s.Vamsam Fertility Research Centre,  
South Bypass Road,  
Kurichi, Melapalayam,  
Tirunelveli - 627 003.

... Respondents



**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the second respondent to issue eligibility certificate for the petitioners being the intending couples to undergo the surrogacy procedure with the third and fourth respondents constituted under Assisted Reproductive Technology (Regulation) Act, 2021 and Surrogacy (Regulation) Act, 2021 on the basis of the representation of the petitioners dated 24.02.2023.

For Petitioner : Mr.P.M.Vishnuvarthanan

For Respondents : Mrs.S.Jeyapriya, Government Advocate  
for R1 & R2

### **ORDER**

“Faced with a seemingly unassailable mountain, humans will instead seek out the shortcut. Rather than trying to go over the top, is there perhaps a sneaky way around? And often it is the shortcut that leads to a truly innovative way to solve a problem,” writes Marcus du Sautoy in “Thinking Better”. Call it the art of shortcut or the power of bypass, human ingenuity always strives to achieve what is seemingly impossible.

2.The object of traditional marriage is procreation. Modern science has come to the rescue of couples who are unable to beget children due to biological reasons. It is called assisted reproductive technology. Clinics offering such services are colloquially called IVF centres. It is a fact that the



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mushrooming of such centres and prevalence of unethical practices by a section of professionals led the parliament to enact the Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021. These Acts mandate a series of procedures to be followed before the couple desiring a surrogate mother to birth their child may be allowed to do so. The couple have to fulfil the age and other criteria that have been laid down to have a child via surrogacy. Commercial surrogacy has been banned. Jonathan Swift remarked long ago "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through." Celebrity couples particularly the super celebrity ones will sneak through the surrogacy laws and its cumbersome procedures. While the constitutionality of the Act is pending consideration before the Hon'ble Supreme Court, it appears that even those who are eligible under the Act are not able to have their treatment procedures done because the concerned authorities are unaware of the procedures to be followed. As per the Act, the Central Government and the State Governments should have respectively formed National Surrogacy Board and State Surrogacy Boards within 90 days of passing the Acts to regulate these procedures. There is no clarity as to whether such a Board is functional in Tamilnadu. The State Government has issued G.O Ms.No.324 Health and Family Welfare dated 19.09.2022 appointing the Joint Directors (Health Services) in the concerned Districts (except Chennai) as the District



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Appropriate Authority to implement and enforce the provisions of the aforesaid Acts. For Chennai, the Joint Director (Acts) has been designated as the appropriate authority in Chennai District. What is more important is the formation of the District Medical Board in each district. While the appropriate authority will issue certificate of essentiality/eligibility, the District Board has to provide a certificate of medical indication in favour of either or both members of the intending couple or intending woman necessitating gestational surrogacy. Explanation to Section 4(iii)(a)(i) of the Surrogacy Act, 2021 states that the expression "district medical board" means a medical board under the chairpersonship of Chief Medical Officer or Chief Civil Surgeon or Joint Director of Health Services of the District and comprising of at least two other specialists, namely, the Chief Gynecologist or obstetrician and Chief pediatrician of the District. Such District Boards do not appear to have been constituted. The Act specifies that the intending couple should be within the age limit of 23-50 years (female) and 26-55 (male) on the day of certification. This means that couples who have already been struggling to have a child for many years and who have to painfully accept that their only way to have a child may be via surrogacy now also have the added burden of getting these procedures done before they run out of time to have a baby. So, the procedure to enable them to undergo surrogacy must be fast tracked. Otherwise, the right given by the statute will be frustrated by bureaucratic



delay and the intending couple may never be able to have their own biological child.

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3. Let us come to the case facts. The first petitioner who was born on 27.10.1973 will lose her right to have a child through surrogacy if eligibility certificate is not issued on or before 26.10.2023. That is why, the petitioners have rushed to this Court immediately after lodging application. The petition-mentioned application dated 24.02.2023 shall be considered and disposed of on merits and in accordance with law within a period of four weeks from the date of receipt of copy of this order by the concerned authorities under the aforesaid Acts.

4. The Central Government has issued notification bearing U. 11019/255/2022-HR dated 06.01.2023 containing instructions regarding filing application for getting certificates of medical indication and essentiality, parentage order before approaching clinic for surrogacy services.

5. Though in the cause title, the petitioners have arrayed the District Medical Board as the second respondent, there is no clarity as to whether the District Medical Board for Tirunelveli has been constituted. I, therefore, direct the first respondent to constitute such a Board immediately if not already



constituted. The first respondent shall also take immediate steps to set up

District Medical Boards in all Districts in Tamil Nadu. The members of the District Medical Board need not necessarily be from Medical Colleges as the Act does not contain such a stipulation. Information about the District Medical Boards should be made available at every Medical College Hospital office. The government is obliged to ensure that the appropriate authorities and the members of the District Medical Board are well versed in the norms and procedures laid down in the aforesaid Acts. They should be sensitized so that applications are disposed of expeditiously. Since the Act requires that the intending couple and the surrogate to apply to the Magistrate Court for order concerning the parentage and custody of the child to be born through surrogacy, the State Judicial Academy should conduct programs so that the judicial officers are fully acquainted with the statutory provisions.

6.The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

**31.03.2023**

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**G.R.SWAMINATHAN, J.**

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