



2025:KER:45316

WA NO. 1331 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 25TH DAY OF JUNE 2025 / 4TH ASHADHA, 1947

WA NO. 1331 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 19.12.2022 IN WP(C) NO.35582

OF 2022 OF HIGH COURT OF KERALA

APPELLANT(S)/1ST RESPONDENT:

UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
SASTHRI BHAVAN, NEW DELHI, PIN - 110001

BY ADVS
SMT.SINDHUMOL.T.P.
SRI.ARJUN VENUGOPAL. K

RESPONDENT(S)/PETITIONERS AND RESPONDENTS 2-4:

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3 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001



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- 4 THE DISTRICT REPRODUCTIVE & CHILD HEALTH ("RCH") OFFICER
DISTRICT MEDICAL OFFICE, ERNAKULAM, PARK EVE, MARINE
DRIVE, ERNAKULAM, KERALA, PIN - 682011
- 5 SABINE HOSPITAL AND RESEARCH CENTRE PVT. LTD,
REPRESENTED BY ITS MANAGING DIRECTOR, PEZHAKKAPPALLY PO,
MUVATTUPUZHA, PIN - 686673

BY ADV SRI.T.K.VIPINDAS - (SR.GP)- R3, R4

THIS WRIT APPEAL HAVING BEING HEARD ON 20.06.2025, THE COURT ON
25.06.2025 DELIVERED THE FOLLOWING:



JUDGMENT

SUSHRUT ARVIND DHARMADHIKARI, J.

The present intra court appeal under Section 5 of the Kerala High Court Act, 1958 has been filed assailing the order dated 19.12.2022 passed in W.P.(C)No.35582/2022 by the single Judge who had allowed the writ petition along with certain directions.

2. The writ petition was filed by respondents 1 and 2 herein who are married couples undergoing or intending to undergo assisted reproductive services, driven by the desire to have children. They had challenged the upper age limit of 50 years for women and 55 years for men prescribed under the Assisted Reproductive Technology (Regulation) Act, 2021('the ART Act' for short), which prohibits the application of ART services to persons above the prescribed age limit. According to the writ petitioners, the prescription of the upper age limit under Section 21(g) of the ART Act is irrational, arbitrary, unreasonable and in violation of their right to reproduction, which is acknowledged as a fundamental right. Therefore, the provisions of Section 21(g) of the ART Act, to the extent prescribes an upper age



limit for availing assisted reproductive technology services, be declared as unconstitutional.

3. The learned single Judge, while disposing of the writ petition, issued certain directions which are as under;

“(i) Those among the petitioners who were undergoing ART services as on 25.01.2022 shall be permitted to continue their treatment.

(ii) The National Board shall alert the Central Government about the need for having a re-look at the upper age limit prescribed in Section 21(g) of the Act.

(iii) The National Board shall also bring to the notice of the Central Government the requirement of including a transitional provision in the ART Act.

(iv) The above directions shall be complied by the National Board within three months of receipt of a copy of this judgment.

(v) Those among the petitioners who are yet to commence their ART treatment shall await the decision of the Central Government on the upper age limit and the transitional provision.

(vi) The liberty of the petitioners to approach this Court at a later stage, if so necessitated, is reserved.”

I place on record my appreciation for the immense help rendered by the learned amicus curiae.

4. From perusal of the aforesaid directions, it can be very well seen that the learned single Judge did not touch the merits of the case or the validity of the provisions, that is, Section 21(g) of the ART Act, however, issued the aforesaid directions which appear to be just and proper.



5. The appellant-Union of India has filed the present writ appeal with a huge delay of 864 days in filing the appeal, against the Judgment dated 19.12.2022 in W.P. (C)No.35582/2022.

6. The appellant had filed C.M.Application No.1/2025 seeking condonation of delay under Section 5 of the Limitation Act.

7. On going through the application, it is found that instead of giving day to day explanation for the huge delay, the appellant has discussed the merits of the case in the application. The only reason assigned for the delay is that due to introduction of ART Act and Surrogacy Act, many persons filed writ petitions in various High Courts across the country and also before the Hon'ble Apex Court. The strength of the Department of Health Research is very small, and it has only 30 regular employees in place. There is no exclusive legal division to handle around 300 cases/petitions pertaining to the ART and Surrogacy Act. Therefore, due to such an influx of court cases, considerable time was lost and an appeal could not be filed within time. It is further stated that the delay was caused solely due to the reasons mentioned in the application which



were outside the control of the appellant and was not deliberate. In view of the aforesaid, the delay may be condoned and the writ appeal may be heard on merits.

8. The learned counsel for the appellant further contended that the delay is genuine, which has been caused due to procedural formalities and the same is bona fide on the part of the appellant.

9. The learned counsel for the appellant/Union of India, in support of their contentions, placed reliance on the judgment of the Apex Court passed in the case of **State of Haryana Vs. Chandramani and Others** reported in [(1996) 3 SCC 132] wherein it has been held as under:-

"When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the notemaking, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is



public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay."

10. We are well aware of the fact that in the government various approvals had different stages that were required to be taken, but that does not mean that the law with regard to limitation is different for the government. The reason assigned is absolutely frivolous, no day-to-day explanation has been provided for the delay.

11. Per contra, the learned Senior Government Pleader for respondents 3 and 4 opposed the prayer and submitted that, in view of the settled legal principles of law, the delay and laches in filing the writ petitions/appeals cannot be brushed aside, otherwise, the same would amount to reviewing a dead/stale claim. Various judgments have been passed by Apex Court which are as under:-

*(i) In the case of **Postmaster General & Ors. Vs. Living Media India Ltd. & Anr.** reported in (2012) 3 SCC 563, it is held that merely because the Government is involved, different yardsticks cannot be laid down for condoning the delay. The SLPs dismissed due to delay of 427 days.*

*(ii) In the case of **State of Madhya Pradesh And Others Vs. Bherulal** reported in (2020)10 SCC 654,*



*the Apex Court has held that unavailability of documents and the process of arranging the documents and bureaucratic process works cannot be a ground to condone the delay in filing of an appeal by the State. The delay of 663 days was not condoned and the SLP was dismissed with a cost of Rs. 25,000/-. In the case of **State of M.P. & Anr. Vs. Chaitram Maywade reported in (2020)10 SCC 667**, it was held that the Law Department took 17 months in permitting filing of SLP. Officers responsible cannot just sit on the files and delay its filing. The SLP was dismissed with a cost of Rs. 35,000/- as delay of 588 days has occurred.*

*(ii) In the case of **Govt. of India Vs. Md Wasim Akram in SLP (Cri) Diary No. 10760/2020**, although it was a good case on merits, the threshold bar of delay and laches cannot be ignored. SLP was dismissed with a cost of Rs.25,000/- for a delay of 254 days.*

12. In the present appeal, there is a delay of 864 days. In the application seeking condonation of delay, no plausible explanation has been put forth by the appellant/Union of India for such a huge delay, therefore, the present appeal suffers from inordinate delay and laches and therefore the same is liable to be dismissed.

13. Whilst, it is true that limitation does not strictly apply to the proceedings under Article 32 or 226 of the Constitution of India, nevertheless such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions and writ Courts



naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence sitters cannot be allowed to barge into Courts and cry for their rights at their convenience and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated by the Apex Court for there are implicit limitations of time within which writ remedies can be enforced.

14. In the case of ***S.S. Balu Vs. State of Kerela*** [(2009) 2 SCC 479] the Apex Court has observed that " it is also well-settled principle of law that "delay defeats equity....." It is now a trite law that where the petitioner/appellant approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches.

15. In view of the aforesaid pronunciation of law and the fact that the delay has not been properly explained, C.M.Application No.1/2025 seeking condonation of delay is hereby rejected. Even on merits, if at all it is considered,



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the learned Single Judge has not touched the validity of Section 21(g) of the ART Act; instead, he has issued certain directions to the appellant, on which they are required to take a just and proper decision.

Consequently, the writ appeal also stands dismissed.

Sd/-

SUSHRUT ARVIND DHARMADHIKARI

JUDGE

Sd/-

SYAM KUMAR V.M.

JUDGE

rkr



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APPENDIX OF WA 1331/2025

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE RELEVANT EXTRACT OF REPORT NO. 129 OF DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE DATED 19.3.2021
Annexure A2	A TRUE COPY OF THE EMAIL DATED 19.01.2023 SHARING THE MINUTES OF VIRTUAL MEETING HELD ON 18.01.2023 OF EXPERT MEMBERS OF NATIONAL BOARD
Annexure A3	A COPY OF THE LETTER NO.U.11021/01/2023-HR DATED 09.03.2023 ALONG WITH ITS ANNEXURE
Annexure A4	A TRUE COPY OF THE LETTER BEARING NO. U.11021/01/2023-HR (PART-I) DATED 31.3.2023 ISSUED BY THE CENTRAL GOVERNMENT TO THE PRINCIPAL SECRETARY (HEALTH) OF ALL STATES AND UNION TERRITORIES
Annexure A5	A TRUE COPY OF THE INTERIM ORDER DATED 06.08.2024 PASSED IN WRIT APPEAL NO. 696 OF 2024 AND CONNECTED CASES