



2025:KER:55330

WA NO. 696 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN

FRIDAY, THE 18TH DAY OF JULY 2025 / 27TH ASHADHA, 1947

WA NO. 696 OF 2024

AGAINST THE JUDGMENT DATED 19.12.2022 IN WP(C) NO.24058 OF 2022
OF HIGH COURT OF KERALA

APPELLANT/S-RESPONDENT NO.1:

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

BY ADV SHRI.K.ARJUN VENUGOPAL, CGC

RESPONDENT(S)/PETITIONERS & RESPONDENTS 2 TO 6:

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3 THE DIRECTOR
MEDICAL COUNCIL OF INDIA, POCKET - 14, SECTOR 8, DWARAKA
PHASE - I, NEW DELHI (ADDRESS OF R2 IS CORRECTED AS THE
CHAIRMAN, NATIONAL MEDICAL COMMISSION, POCKET-14, SECTOR 8,
DWARAKA PHASE-I, NEW DELHI-110 077 AS PER THE ORDER DATED
29-07-2022 IN IA NO.1/2022 IN WP(C) NO.24058/2022.)

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



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- 5 THE DIRECTOR
KERALA STATE MEDICAL COUNCIL, COMBINED COUNCIL BUILDING, RED
CROSS ROAD, NEAR GENERAL HOSPITAL, THIRUVANANTHAPURAM
(ADDRESS OF R4 IS CORRECTED AS THE REGISTRAR, KERALA STATE
MEDICAL COUNCIL FOR MODERN MEDICINE, COMBINED COUNCIL
BUILDING, RED CROSS ROAD, NEAR GENERAL HOSPITAL,
THIRUVANANTHAPURAM-695 035. AS PER THE ORDER DATED 29-07-
2022 IN IA NO.1/2022 IN WP(C) NO.24058/2022.)
- 6 THE DISTRICT REPRODUCTIVE & CHILD HEALTH ("RCH") OFFICER
DISTRICT MEDICAL OFFICE, ERNAKULAM, PARK EVE, MARINE DRIVE,
ERNAKULAM, KERALA, PIN - 682011
- 7 THE MANAGING DIRECTOR
SABINE HOSPITAL AND RESEARCH CENTRE PVT. LTD, PEZHAKKAPPALLY
PO, MUVATTUPUZHA ., PIN - 686673

BY ADVS.

SHRI.VIVEK MENON

SHRI.K.S.PRENJITH KUMAR, SC, NATIONAL MEDICAL COMMISSION

THIS WRIT APPEAL HAVING BEEN HEARD ON 18.07.2025, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Amit Rawal, J.

This intra-court appeal has been preferred against the common judgment dated 19.12.2022 passed in the writ petition, whereby the vires of the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter referred to as 'the Act 42 of 2021'), which came into effect on 25.01.2022, were upheld, and certain directions were issued which have been challenged by the Union of India. The directions contained in the aforementioned judgment reads thus:

(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.

2. It is pertinent to mention here that, along with the aforementioned Act, the Surrogacy (Regulation) Act, 2021 (hereinafter referred to as 'Act 47 of 2021') was also promulgated which also came into effect on 25.01.2022. Prior to the promulgation of the aforementioned two Acts, a guidelines called the 'National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, were in force. Clause 3.14, envisaged general conditions, i.e. the minimum age for undergoing ART Treatment, clause 3.14.1, is as follows:

"For a woman between 20 and 30 years, two years of cohabitation/marriage without the use of a contraceptive, excepting in cases where the man is infertile or the woman cannot physiologically conceive. For a woman over 30 years, one year of cohabitation/marriage without use of contraceptives. Normally, no ART procedure shall be used on a woman below 20 years."

3. Those persons undergoing the treatment without any age limit were essentially aggrieved with the absence of any transitional provisions while promulgating the aforementioned two Acts. In other words, as and when a new Act is published, and an old Act is repealed, there is always a provision for Repealing and Saving Clause.



4. Assisted Reproductive Technology (Regulation) Act, 2021, particularly Section 21 of which the writ petitioner were aggrieved of, envisage certain duties on the clinics and the banks providing the facility of ART, and as per sub clause (g) of Section 21, the clinics have to apply the aforementioned services to a women above the age of 21 years and below the age of 50 years, whereas to a man, above the age of 21 years and below the age of 55 years. Meaning thereby, prior to the aforementioned Act, the women who crossed the age of 50 years and the men, 55 years, were also undergoing certain treatments as per the guidelines in vogue. As per clause 3.14 of the guidelines, no doubt certain age was prescribed for a woman between 20 and 30 years and over 2 years of cohabitation in a prescribed manner was provided to avail the benefit of ART procedure, restricting the women below the age of 20 years. In other words, there was no restriction for a woman who had crossed reproductive age of 50 years. The statement of objects and reasons of the Act 42 of 2021 is to provide the existing Assisted reproductive technology clinics and banks as on the date of enactment of the proposed legislation, either conducting the procedure partly or exclusively to make an application to



registration authority within a period of 60 days from the date of the establishment of the National Registry and for regulating the clinics, it was compulsory for establishment of national and state boards including national and state registration authority for regulation and supervision of the ART clinics and banks for prevention of misuse and ensure safe and ethical practice of the aforementioned services.

5. The pith and substance of the grievance of the writ petitioner in challenging the provisions of Section 21(g) of the Act was that there was no saving clause protecting the affected parties availing the services either through one or different cycles under the old guidelines.

6. The learned Single Bench by relying upon certain judgments *Suchita Srivastava and Anr. v. Chandigarh Administration [(2009) 9 SCC 1]*, *K.S. Puttuswamy and another v Union of India [(2017) 10 SCC 1]* rejected the challenge to the vires and upheld the same but while disposing of the writ petition, issued the directions supra.

7. The judgment was passed on 19.12.2022 and in compliance of the directions, expert members of National Board had convened a meeting on 18.1.2023 and found that the upper



age limit of the male and female availing the aided service under the Act 42 of 2021 is correct and no changes were required in the current law and that the extension of time given to the clinics and banks by the Central Government vide letter dated 24.1.2023 is sufficient, therefore no further specific transitional provision is required. Thus, in pith and substance, the directions contained in the judgment have already been complied with by the National Board. However, there is no challenge to the same. The only point to be pondered by this Court is with regard to the directions which are under stay by detailed and speaking order of this Court dated 6.8.2024.

8. Learned counsel appearing on behalf of the appellant submitted that the directions (supra) cannot be permitted to stand, as the Court, while exercising its power of judicial review, cannot transgress its limits by issuing directions to the legislature, as that would amount to legislating the law, which is impermissible, and in support of the contentions relied upon the judgment of the Supreme Court in *State of Himachal Pradesh v. Yogendera Mohan Sengupta* [2024 SCC OnLine SC 36] wherein in paragraph 81, it has been held as under:

"81. It is a settled law that the Constitution of India



does not permit the courts to direct or advise the Executive in the matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive. It is also settled that the courts cannot issue directions to the Legislature for enacting the laws in a particular manner or for amending the Acts or the Rules. It is for the Legislature to do so."

9. There was no need of keeping the transitional provisions in the new Act for the reason that the ART treatment even as per the guidelines was depending upon the cycle. None of the cases specify whether any petitioner has completed the cycle initiated under the old guidelines or was midway. In case of completion of the cycle under the old guidelines, there was no difficulty, but a new cycle is to be governed by the provisions of the new Act for undertaking the procedure from the clinic / bank who has undertaken a registration as per the contents of the letter dated 24.1.2023. But in case the aforementioned directions are permitted to continue, it would mean that the persons who have crossed the maximum prescribed age under Section 21(g) will be permitted to undergo the treatment under the erstwhile guidelines, which was not the scope while enacting Act of 2021, as it was promulgated after due deliberation and



discussions by the experts as well as in both the houses of the parliament. There is no representation on behalf of the writ petitioner despite service.

10. We have heard the learned counsel for the appellant and appraised the paper book. There is no dispute to the proposition culled out in the judgment of *State of Himachal Pradesh (supra)*, for it is settled law that the courts cannot transgress its power while exercising the power of judicial review under Article 226 of the Constitution of India while issuing a slew of directions which tantamount to legislating the law, which is the domain of the legislature. Paragraph 3.14 of the erstwhile guidelines, no doubt provided the age for a women to undergo the treatment and there was no age limit prescribed for the men to avail the services of the procedure under the ART.

11. The sole purpose of the Act was to provide existing Assisted Reproductive Technology and to prevent its misuse and mandating the clinics and the banks for registration either through the National or with the State Registration Departments, so that, the clinics strictly abide by the provisions of the Act 42 of 2021, effective from 25.1.2022.

12. There was no necessity for issuing directions to alert



the Government to consider the predicament of persons undergoing treatment under the erstwhile guidelines by incorporating a transitional procedure, as it is evident that such treatment was cycle-based, depending on the woman's menstrual cycle, and could not continue for infinite period. Only those persons who were in the midst of treatment under the erstwhile guidelines and were able to conceive would have been satisfied; others are required to fulfill the conditions envisaged under Act 42 of 2021, including the age limit prescribed under Section 21(g). For example, a patient, particularly a male patient above the age of 55 years, who had undertaken a cycle with the assistance of a woman above the age of 50 years, and had either completed one cycle or was in the midst of a cycle but failed to conceive, would be expressly barred from availing the facility under the provisions of the new Act.

13. The aims and objectives of the Act are based on expert reports, age expectancy, and the reproductive stages of both women and men. Once the aforementioned age limit, i.e., the provisions of Section 21(g), was under challenged and upheld, in our considered view, the learned Single Bench ought not to have issued the directions (*supra*). There was no



requirement to issue such directions directing the appellant to incorporate the aforementioned provisions in the already enacted and promulgated Act.

14. The direction No.1 would be construed only for the purpose of the patients, who had availed the ART services under the erstwhile guidelines and once the one cycle is over, it cannot be permitted to continue under the old cycle as by that time, the new Act with effect from 25.1.2022 had already come into force. Since the National Board has already deliberated upon the directions and found the provisions of the Act to be intact the aforementioned directions, in our considered view have become otiose.

15. Thus for the reason aforementioned, we hereby allow the intra court appeal viz-a-viz the directions issued in the impugned judgment and uphold findings negating the challenge to provisions of section 21(g) of Act of 2021.

SD/-
AMIT RAWAL
JUDGE

SD/-
P. V. BALAKRISHNAN
JUDGE

sab



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APPENDIX OF WA 696/2024

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF EMAIL DATED 19.01.2023 SHARING THE MINUTES OF VIRTUAL MEETING HELD ON 18.01.2023 OF EXPERT MEMBERS OF NATIONAL BOARD AND ACCEPTING THE SAME BY ITS MEMBERS VIDE THEIR DIFFERENT DATES EMAILS.
Annexure A2	TRUE COPY OF THE LETTER NO.U.11021/01/2023-HR DATED 09.03.2023 ISSUED TO THE LEARNED DSG.
Annexure A3	TRUE COPY OF 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.