

GAHC010282542023



2025:GAU-AS:17578

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7348/2023

SEEMA CHAKRABORTY AND ANR
W/O- BHASKAR BHATTACHARJEE @ BASHKAR BHATTACHARJEE,
R/O- WARD NO. 12, SILCHAR TOWN,
P.S.- SILCHAR SADAR,
DIST.- CACHAR, ASSAM.

2: BHASKAR BHATTACHARJEE @ BASHKAR BHATTACHARJEE
S/O- LATE SAMARESH KUMAR BHATTACHARJEE

R/O- WARD NO. 12
SILCHAR TOWN

P.S.- SILCHAR SADAR

DIST.- CACHAR
ASSAM

VERSUS

UNION OF INDIA AND 5 ORS
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SOUTH BLOCK, NEW DELHI- 110001.

2:MINISTRY OF HEALTH AND FAMILY WELFARE
REPRESENTED BY ITS SECRETARY

UNION OF INDIA

NIRMAN BHAWAN
C WING

NEW DELHI- 110001.

3:STATE OF ASSAM
REPRESENTED BY ITS CHIEF SECRETARY OF GOVERNMENT

SECRETARIAT
DISPUR- 781006.

4:THE SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE
SECRETARIAT
DISPUR- 781006.

5:THE DIRECTOR

ASSAM STATE MEDICAL COUNCI

Advocate for the Petitioner : MR H R A CHOUDHURY, U U KHAN,MR A AHMED,MR. I U CHOWDHURY,MR. A AHMED

Advocate for the Respondent : DY.S.G.I., MRS. A GAYAN,SC, HEALTH,GA, ASSAM

BEFORE

HON'BLE THE CHIEF JUSTICE ASHUTOSH KUMAR

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. A. Ahmed, learned Adv.

For the Respondents : Ms. A. Gayan, learned CGC.
Ms. R. B. Bora, learned GA.

Date on which judgment is reserved : 12.12.2025

Date of pronouncement of judgment : 18.12.2025

Whether the pronouncement is of the
operative part of the judgment : No

Whether the full judgment has been pronounced : Yes

JUDGMENT & ORDER (CAV)

Date:18-12-2025

(Arun Dev Choudhury, J)

1. Heard Mr. A. Ahmed, learned counsel for the petitioners and Ms. A. Gayan, learned Central Government Counsel, as well as Ms. R. B. Bora, learned Government Advocate, Assam, for the respondents.
2. The challenge is directed both against the applicability of the age eligibility prescribed under Section 4 (iii) of the SURROGACY (REGULATION) ACT, 2021 (hereinafter referred to as the Act, 2021) and the amendment dated 14-3-2023 to Form No. 2 under Rule 7 of the of the Surrogacy (Regulation) Rules, 2022, which regulates the use of donor gametes.
3. The facts which are necessary for proper adjudication of the present case in nutshell are that the petitioners, a married couple faced with infertility issues went for extensive medical efforts including IVF technology, which failed to bestow them blessings of parenthood for which, they finally decided to go for surrogacy; the semen of the petitioner No.2 was collected for initiating the process of surrogacy. However, during the said process, the Act 2021 was enacted on 25.12.2021, which mandated specific permission and certification to opt for Surrogacy.
4. Finding no alternative, the petitioners approached this Court by filing

WP(C) No. 7025/2022, contending that the requisite statutory mechanism for enabling surrogacy had not been constituted till then. Also argued that the Central/State Government has not formed any Board to function as “Appropriate Authority” as required under Section 35 of the said Act, 2021, which issues certificates as required under Section 4 (iii)(a) of the said Act before initiating any procedure for surrogacy.

5. The aforementioned writ petition was disposed of by the learned Single Judge on 23.01.2023, permitting them to try the same in any other State. Accordingly, though the petitioners again initiated the surrogacy procedure on 01.02.2023, it also failed. Thereafter, the Central Government issued a Notification dated 14.03.2023, which prevents the use of donor sperm to avail a surrogacy procedure by a married woman, excluding single women, with an exception in respect of widows or divorcees.

6. Accordingly, the petitioners have filed the present writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, assailing the refusal of the competent authorities to permit them to pursue surrogacy under the said Act, 2021, and the Surrogacy (Regulation) Rules, 2022.

7. As recorded hereinabove, the factual background is largely undisputed. The petitioners suffer from medically certified conditions, rendering natural conception impossible. They had earlier attempted surrogacy pursuant to an order of this Court whereby the Court permitted them to do so in another State, in

the absence of the establishment of the authority under the Act, 2021 in the State of Assam.

8. The said attempt, however, failed for medical reasons. On the date when the amendment dated 14.03.2023 came into force, no surrogacy process of the petitioners was continuing, the earlier attempt having already failed. In the meantime, the petitioners crossed the upper age limit prescribed under Section 4 (iii) (b) (I) of the Act, 2021.

9. When the petitioners, thereafter, sought fresh permission to initiate surrogacy, the authorities declined the request on the grounds of statutory ineligibility and non-compliance with the amended Form-2.

10. The petitioners contended that the impugned action violates their fundamental rights under Articles 14 and 21 of the Constitution of India.

11. It is urged that reproductive autonomy is an integral facet of personal liberty and dignity; that the petitioners were eligible when they first attempted surrogacy; that the failure of the process was involuntary, and that the subsequent statutory changes cannot be applied to extinguish their rights to parenthood permanently. The amendment to Form-2 is further assailed as discretionary, inasmuch as, donor gametes are permitted for specific categories of single women but not for married couples.

12. The relevant statutory provisions of Section 4 (iii) (b) (I) of the Act, 2021 read thus:

(iii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or initiated, unless the Director or in-charge of the surrogacy clinic and the person qualified to do so are satisfied, for reasons to be recorded in writing, that the following conditions have been fulfilled, namely:—.....

(b) The surrogate mother is in possession of an eligibility certificate issued by the appropriate authority on fulfilment of the following conditions, namely:—

(I) No woman, other than an ever married woman having a child of her own and between the ages of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise.

13. The relevant provision of the Notification dated 14.03.2023 reads as follows:

2. In Form 2 under rule 7 of the Surrogacy (Regulation) Rules, 2022, the existing Para 1 (d) stands omitted and shall be substituted as under:-

1.(d)(I) Couple undergoing Surrogacy must have both gamete from the intending couple & donor gametes is not allowed;

(II) Single woman (widow/divorcee) undergoing Surrogacy must use self eggs and donor sperms to avail surrogacy procedure.

14. There can be no quarrel with the proposition that the right to make decisions relating to reproduction and parenthood forms part of personal liberty under Article 21 of the Constitution of India, as recognised in **Suchita Srivastava & Anr. Vs. Chandigarh Administration reported in [(2009) 13 (ADDL.) S.C.R 989]**; however, it is equally settled that the fundamental rights are not absolute and are subject to reasonable restrictions imposed by law.

15. The constitutional enquiry, therefore, is not whether a right exists but whether the impugned restrictions are reasonable, non-arbitrary, and proportionate.

16. Prior to the enactment of the statute, surrogacy in India operated in a largely unregulated space. The Parliament, in its wisdom, chose to replace the regime with a structured framework prescribing eligibility conditions, procedural safeguards, and regulatory oversight. The Court must accord substantial deference to such legislative policy, particularly in areas involving complex socio-medical considerations.

17. Section 4(iii)(b)(I) of the Act, 2021 prescribes age eligibility as a condition precedent for intending couples. Age-based classification has long been recognised as a valid basis of legislative differentiation.

18. We have given our thoughtful consideration to the materials on record and have heard the learned counsel for the parties.

19. The Act, 2021, is a comprehensive legislative measure enacted after extensive deliberation to address ethical concerns, prevent exploitation of surrogate mothers, ensure transparency, and safeguard the interests of children born through surrogacy.

20. The Apex Court reiterated that a classification would withstand scrutiny under Article 14 of the Constitution of India if it is founded on an intelligible differentia and bears a rational nexus with the object sought to be achieved.

21. In the context of surrogacy, age limits are clearly linked to the concerns of paternal capacity, health, longevity, and long-term welfare of the child. The provision, therefore, cannot be characterised as arbitrary or irrational. The petitioners admittedly crossed the upper age limit before seeking fresh permission under the Act, 2021.

22. The contention of the learned counsel for the petitioners that the petitioners were within the age limit at the time of their earlier attempt does not advance their case. It is a settled principle that eligibility conditions must be satisfied on the date when the benefit is claimed, unless the statute expressly provides otherwise. The failure of the earlier surrogacy attempt, though unfortunate, does not confer a vested right to re-initiate surrogacy in disregard of subsequently enacted/amended statutory requirements.

23. The doctrine of legitimate expectation also has no application in the present case. Legitimate expectation neither can be operated against a statute, nor can it be invoked to defeat a clear legislative mandate. The Parliament was competent to prescribe age limits prospectively, and the Act and the Rules in question do not contain any saving clause exempting persons who had failed in attempted surrogacy from compliance with the new eligibility criteria.

24. The challenge to the amendment of Form 2 under Rule 7 likewise fails. The rules and forms framed thereunder are integral to the regulatory scheme contemplated under the Act, 2021. The restriction on the use of donor gametes

by a married couple reflects a policy choice aimed at ensuring genetic linkage between the child and the intending parents, a consideration that the Parliament was entitled to prioritise.

25. The classification is based on differing social and biological circumstances. Article 14 of the Constitution of India not only prohibits classification but also forbids class legislation. So long as the classification is reasonable, the Courts cannot sit in appeal over legislative policy. **[Ref: E. P. Royappa Vs. State of Tamil Nadu, (1974) 4 SCC 3].**

26. The submission that the amendment of Form 2 is inconsistent with Rule 14(a) is also without merit. Rule 14(a) recognises a specific medical indication for permitting surrogacy, but it does not confer an unqualified or unconditional right to employ donor gametes. The regulatory conditions imposed through Form 2 operate within the framework of the Act, 2021 and the Rules, 2022 and cannot be said to override or nullify the parent statute.

27. The petitioners have placed reliance on the principles enunciated in ***Vijaya Kumari S. and Anr. Vs. Union of India reported in [(2025) SCC OnLine SC 2195]***. In our view, the said decision does not advance the petitioners' case. The present case stands on an entirely different footing, being governed by an express parliamentary enactment. Once the legislature has laid down clear eligibility criteria, the Courts cannot dilute or carve out exceptions on equitable considerations unless the provision is shown to be manifestly arbitrary or

unconstitutional, which is not the case here. In **Vijaya Kumari** (*supra*), the process was ongoing, unlike the present case, which failed before the enactment. Therefore, such principles of law cannot be made applicable to the given facts of the present case.

28. The plea of retrospectivity is equally misconceived. The impugned provisions are not being applied retrospectively; they are being used to a fresh attempt at surrogacy initiated after the commencement/amendment of the Act, 2021 and the Rules, 2022, as well as the Forms thereof. The mere fact that the petitioners had earlier attempted surrogacy does not immunise them from compliance with the law as it stands today, as their surrogacy failed and cannot be said to be a continuing one.

29. The restrictions also satisfy the proportionality test as articulated in **Modern Dental College v. State of Madhya Pradesh, reported in [(2016)-07-SCC-353]**.

30. The measures pursue legitimate state interests, bear a rational nexus with the object of the legislation and cannot be said to be excessive or oppressive. Individual hardship, however genuine, cannot be a ground to strike down or relax a statutory policy framed in the public interest.

31. In conclusion, while the Court is not unmindful of the petitioners' predicament, constitutional adjudication cannot be guided by sympathy alone. The impugned provisions represent a considered legislative policy and do not infringe on Articles 14 or 21 of the Constitution of India.

32. Accordingly, for the reasons recorded hereinabove, it is held that the writ petition is devoid of merit and, accordingly, the same is dismissed.

33. There shall be no order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant