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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10101 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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Approved for Reporting	Yes	No
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SUMITRABEN SHAILESHKUMAR PATEL & ANR.
Versus
THE CHIEF MEDICAL OFFICER CUM CIVIL SURGEON AND THE APPROPRIATE AUTHORITY & ORS.

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Appearance:
MR. MOHIT S BANKER(6866) for the Petitioner(s) No. 1,2
ANGESH PANCHAL AGP for the Respondent(s) No. 1,2
MR PRADIP D BHATE(1523) for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

Date : 02/09/2026

JUDGMENT

1. Heard learned advocate Mr. Banker for the petitioners, learned AGP Mr. Angesh Panchal for respondent Nos. 1 and 2, and learned Central Government Standing Counsel Mr. Bhate for respondent No. 3.

2. With the consent of the parties, the matter is taken up for final disposal. Hence, Rule. Learned AGP Mr. Panchal waives service of notice of Rule for respondent Nos. 1 and 2, and learned Central Government Standing Counsel Mr. Bhate

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waives service of notice of Rule for respondent No. 3.

3. By way of this petition, the petitioners have prayed for the following reliefs;

> *13.(A) YOUR LORDSHIPS be pleased to issue the writ of mandamus or any other appropriate writ, order or direction, directing the respondents' Nos. 1, 2 and 3 to permit the petitioners to avail Assisted Reproductive Technology services to a conceive a child.*
>
> *13.(B) To issue a writ of mandamus or any other appropriate writ, order or direction or directing the respondent Nos. 1, 2 & 3 to decide on the representation dated 31.05.2026 within a stipulated time period.*
>
> *13.(C) To grant such other and further reliefs in the interest of justice.*
>
> *13.(D) YOUR LORDSHIPS be pleased to issue the writ of certiorari or a writ of mandamus or any other appropriate writ, order or direction in the like nature quashing and setting aside the impugned order/letter dated 03.07.2026 vide letter/order no.: F.No. U.11019/65/2026-HR at ANNEXURE - B passed by the respondent No. 3 and be further pleased to direct the respondents Nos. 1, 2 & 3 to permit the petitioners to avail Assisted Reproductive Technology (IVF) services to*

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conceive a child.

4. The brief facts giving rise to the present petition are that petitioner Nos. 1 and 2 are a married couple, petitioner No. 1 being the wife of petitioner No. 2. From their wedlock, they were blessed with a son and a daughter. The petitioners lost their 25-year-old son, who committed suicide while pursuing medical studies at Jaipur National University Institute of Medical Sciences and Research Centre on 12th May 2022 at Jaipur. The petitioners were emotionally disturbed and, therefore, decided to have a child. However, petitioner No. 1 is menopausal and is unable to conceive naturally. Hence, the petitioners opted to achieve pregnancy through In Vitro Fertilization (IVF) and approached a doctor at Mehsana. The said doctor refused to provide IVF treatment to the petitioners on the ground that petitioner No.1 had exceeded the upper age limit prescribed under the Assisted Reproductive Technology (Regulation) Act, 2021, whereas petitioner No. 2 is 54 years old.

5. As per Section 21(g) of the Act, clinics can apply assisted reproductive technology services only to a woman above the age of 21 years and below the age of 50 years, and to a man

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above the age of 21 years and below the age of 55 years. In the instant case, as petitioner No. 1 has crossed the age of 50 years and petitioner No. 2 is 54 years old, the concerned authority refused to provide IVF treatment to the petitioners. The petitioners, therefore, made a representation to the respondents, which came to be rejected, and that is how the present petition has been preferred by the petitioners.

6. Learned advocate Mr. Banker submitted that, under Section 2(e) of The Assisted Reproductive Technology (Regulation) Act, 2021 "commissioning couple" means an infertile married couple who approach an Assisted Reproductive Technology clinic or Assisted Reproductive Technology bank for obtaining the services authorised by such clinic or bank. In view of the aforesaid definition, according to learned advocate Mr. Banker, the Act would be applicable to the couple and, therefore, the fertility of the couple is required to be considered and not that of an individual partner. Once petitioner No. 2, i.e. the husband, is still fertile as per the Act and has not crossed the age of 55 years, the concerned doctor ought not to have refused to provide treatment to the petitioners. Therefore, according to learned advocate Mr. Banker, the respondents were not justified in rejecting the

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representation made by the petitioners. He submitted that this Court may consider the fact that petitioner No. 2 is still below the age of 55 years and that the Act applies to the couple and not to an individual partner, and consequently, the petitioners are entitled to the reliefs prayed for in the present petition.

6.1. He further clarified that, in view of the definition of "commissioning couple", if one of the partners of the couple is fertile, the couple can still be considered eligible to undergo IVF treatment. Merely because one partner has crossed the age limit prescribed under Section 21(g) of the Act, the request of the petitioners to undergo IVF treatment ought not to have been rejected by the respondent authority.

6.3. Learned advocate Mr. Banker relied upon various decisions of different High Courts on the subject. One of the judgments relied upon by him was the decision of the High Court at Calcutta in the case of ***Sanchita Ghosh and others v. Union of India and others, rendered in W.P.A. No. 12154 of 2023, decided on 08.04.2024***. By relying upon the aforesaid decision, he submitted that, in a similar situation, the Calcutta High Court had permitted the couple to undergo IVF treatment. He also relied upon a number of other decisions by

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filing a compilation of judgments. The latest judgment in the compilation was the judgment delivered by the ***High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 1233 of 2026, decided on 10.07.2026, in the case of Babita A. Singh and others v. State of Madhya Pradesh***.

6.4. By relying upon the aforesaid decisions, learned advocate Mr. Banker submitted that, considering the fact that the case of the present petitioners is similar to those cases, the present petition may be allowed in terms of the prayers made by the petitioners.

7. Learned AGP Mr. Panchal, though opposed the petition, could not dispute the legal proposition on the subject, particularly when a compilation of as many as nine judgments has been produced by learned advocate Mr. Banker. Even learned Central Government Standing Counsel Mr. Bhate, while opposing the petition, could not dispute the legal proposition canvassed by learned advocate Mr. Banker by relying upon the aforesaid compilation. Hence, both learned counsel appearing for respondent Nos. 1, 2 and 3 submitted that an appropriate order may be passed in the facts and circumstances of the case.

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8. I have heard learned counsel for the parties and perused the record. On perusal of the record, I find that petitioner No. 1 has crossed the age of 50 years, which is the maximum age limit prescribed under Section 21(g) of the Act, whereas petitioner No. 2 is 54 years of age and, therefore, falls within the eligibility criteria for undergoing IVF treatment.

9. The term "commissioning couple" is defined in Section 2(e) of the Act, which reads as under;

> *"2(e) "commissioning couple" means an infertile married couple who approach an Assisted Reproductive Technology clinic or Assisted Reproductive Technology bank for obtaining the services authorised by such clinic or bank."*

10. Now, in view of the aforesaid, the judgments of various High Courts relied upon by learned advocate Mr. Banker have been considered by this Court. In the case of Sanchita Ghosh (supra), the Calcutta High Court, on a similar set of facts, observed in paragraphs 7 to 39 as under;

> *"7. Upon hearing learned counsel, it is apparent that the question involved is short and as such, unnecessary direction for affidavits will only prolong the agony of the*

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petitioners.

8. Let us look into the Preamble of the statute in order to shed some light on the issue at hand. The Preamble reads as follows:

"An Act for the regulation and supervision of the assisted reproductive technology clinics and the assisted reproductive technology banks, prevention of misuse, safe and ethical practice of assisted reproductive technology services for addressing the issues of reproductive health where assisted reproductive technology is required for becoming a parent or for freezing gametes, embryos, embryonic tissues for further use due to infertility, disease or social or medical concerns and for regulation and supervision of research and development and for matters connected therewith or incidental thereto."

9. It is, thus, evident that the Act is for regulation and supervision of assisted reproductive technology primarily, putting in certain safeguards to prevent misuse and to ensure safe and ethical practice of the technology.

10. The purpose of such Act is also for addressing the issues of reproductive health where assisted reproductive technology is required for becoming a parent.

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11. As such, the thrust of the statute is two-fold - first, it is to provide a healthy channel for couples who are willing to have a baby but are unable to do so due to certain inability, clinical or otherwise, to avail of assisted reproductive technology and second, to regulate and govern such process in order to curtail rampant abuse and exploitation of such eager couples by unruly and unlawful elements.

12. The purpose is noble and as such has to be read in a liberal context insofar as the beneficiaries of the statute, that is, childless couples are concerned.

13. The first thing which strikes the eye even on a primary reading of the statute is that there is no specific bar or age limit in respect of „commissioning couples" for availing assistive reproductive technologies.

14. The bar is stipulated in Section 21(g) separately and specifically in respect of women and men, described independently by their genders.

15. However, whereas a woman has been separately defined in Section 2(1)(u), there is no such definition of a man under the statute.

16. Since Section 2(1)(e) defines a „commissioning

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couple" independent of a „woman", it has to be construed that the said terms have been used and intended to be used separately.

17. Whereas under Section 2(e) a commissioning couple is an infertile married couple who approach for assistive technology, Section 21(g) does not put in any rider to restrict their collective age and/or their individual age limits, if acting as a couple.

18. On the other hand, the restriction put in is to an individual man or a woman who is apparently not married or does not come within the purview of commissioning couple.

19. Thus, two interpretations of the bar stipulated in Section 21(g)(i) vis-à-vis women are possible.

20. The first and restrictive interpretation is that a woman as contemplated in Section 21(g) is a woman who does not fall within the purview of „commissioning couple" and the second more liberal view is that the Section encompasses women as a class - both in or outside matrimony.

21. Interpreted either way, the bar applicable under Section 21(g)(i), does not discriminate between a woman

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in a matrimonial bond and a woman who is not.

22. The restriction in Section 21(g)(i) is specifically applicable to a woman, irrespective of whether she is or is not married.

23. Applying such test, in the present case, the petitioner no.1 is a woman who, by chance, is in a matrimonial bond but remains a woman all the same within the contemplation of the statute.

24. It is evident that the expression "woman" has been used separately defined in the definition clause from a commissioning couple to spread the wings of the liberty granted to persons seeking assistive reproductive technology not only to married couples but also to independent women who are not married or choose not to be married.

25. The same is in advancement of the changing mores of society to assist people who are different from the established and archaic conventional societal norms.

26. As such, the restriction applicable under Section 21(g)(i) applies to women in general, irrespective of whether they are married or not.

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27. Applying the same test to a commissioning couple, the separate bars applicable to either of the spouses has to be taken into consideration.

28. In so taking into consideration, we have to take into account that collectively as a „commissioning couple", there is no age limit or upper ceiling of age.

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:-

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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 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.

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32. Only the above interpretation of Section 21 (g) and its sub-clauses, read harmoniously with the definition clause as stipulated in Section 2 of the 2021 Act, can give complete meaning and a wide expanse to the said Act, in consonance with the contemplation of the Preamble of the Act.

33. Hence, interpreted/read down as above, the provisions of Section 21 (g) of the 2021 Act create no unreasonable discrimination between married and unmarried women in availing assisted reproductive technology and, thus, passes the test of constitutionality.

34. Accordingly, Section 21 (g) of the Assisted Reproductive Technology (Regulation) Act, 2021 is held to be intra vires the Constitution of India.

35. Consequentially, in the present case, in view of the above interpretation of Section 21(g), the petitioners will be entitled to have the benefit of assisted reproductive technology services and can approach an appropriate clinic for having such services, in view of the fact that one of the two spouses, that is, the petitioner no.1, qualifies on the upper age limit as stipulated in Section 21(g), irrespective of the fact that the other spouse does not so qualify.

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36. If so approached, the concerned clinics shall, within the contemplation of the Act, assist the petitioners to have the benefit of such assisted reproductive technology service, with or without the gamete of petitioner no. 2 at the discretion of the clinic.

37. WPA 12154 of 2023 is disposed of accordingly in the light of the above observations.

38. There will be no order as to costs.

39. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities."

11. There are other judgments which are also on similar lines. The latest judgment is the one delivered by the Madhya Pradesh High Court in the case of Babita A. Singh, wherein, after considering a series of judgments rendered by various High Courts, the Madhya Pradesh High Court, in paragraphs 11 to 14, observed as under;

"11. The said provision does not prescribe any composite age limit for the couple as a unit, therefore, it creates discrepancy regarding the age limit which was considered in series of judgments by the Court. Therefore, the report is given by the Superintendent, Dr. K. N. K. Hospital,

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Bhopal addressed to President, District Medical Board, Jai Prakash Hospital, Bhopal dated 27.2.2026 to the following effect:-

"उपरो वषयांतगत लेख है क आपके संदिभत प ारा ीमती बबीत अजय िसंह के संबंध म जांच कर *Assisted Reproductive Technology (IVF)* हे तु फट है अथवा नह ं, का अिभमत चाहा गया है ।

करण म संबंिधत ीरोग वशेष ारा जांच कर *" Patient can be planned for surrogacy or IVF with oocytes donation."* का अिभमत दया गया है ।

अतः उपरो ानुसार चाह गई जानकार आपक ओर आव यक कायवाह हे तु े षत है ।"

12. Counsel appearing for the petitioners before this Court submits that the petitioners are ready to face all the consequences and will undergo the IVF at their own risk and if ultimately that operation fails, they would not claim anything from the respondents / doctors as it would be totally on their own risk.

13. Considering the judgments as cited herein above as well as the opinion given by the doctors that "Patient can be planned for surrogacy or IVF with oocytes donation", this Court deems it appropriate to permit the petitioners to undergo Assisted Reproductive Technology (IVF) at any Institution of their choice. The Institution is at the liberty to examine the petitioners and take a decision with respect to the fact that whether Assisted Reproductive Technology (IVF) can be performed or not. The case of the petitioners will not be rejected on the

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ground of age barrier as the petitioner no. 1 is 52 years of age.

14. Needless to mention here that the identity of the petitioners should not be disclosed in view of Section 21 (e) of the Assisted Reproductive Technology (Regulation) Act, 2021.”

12. Considering the fact that there are a series of judgments taking a similar view, I do not deem it appropriate to reproduce all the relevant paragraphs of all the judgments, as all these judgments have taken a similar view.

13. In view of the aforesaid discussion and as learned counsel appearing for the respondents could not produce any judgment taking a contrary view, the present petition is required to be allowed and is accordingly allowed in terms of the prayer made in paragraph 13(D) of the petition. Rule is made absolute. No order as to costs.

Direct service is permitted.

(NIRZAR S. DESAI,J)

BHAVIN MEHTA

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