

## Rajitha P.V Vs Union Of India

**Court:** High Court Of Kerala

**Date of Decision:** Feb. 13, 2025

**Acts Referred:** Surrogacy (Regulation) Act, 2021 – Section 4(iii)(c), 4(iii)(c)(I)

General Clauses Act, 1897 – Section 9

Representation of People Act, 1951 – Section 81(1)

Indian Majority Act, 1875 – Section 4

**Hon'ble Judges:** C.S.Dias, J

**Bench:** Single Bench

**Advocate:** Adithya Rajeev, S.Parvathi, Safa Navas, R.V. Sreejith, T C Krishna, Vidya Kuriakose

**Final Decision:** Dismissed

### Judgement

C.S.Dias, J

1. The 1st petitioner is the wife of the 2nd petitioner. The 1st petitioner was born on 21.06.1978 and is 46 years of age, while the 2nd petitioner was

born on 21.11.1972 and is 52 years old. The petitioners are issueless. The petitioners underwent several cycles of treatment utilising the Assisted

Reproductive Technology, but did not yield the expected results. Hence, the petitioners are eligible to avail surrogacy services. The petitioners have

identified a surrogate mother who has consented to assist them in conceiving a child. The jurisdictional Magistrate has passed Ext.P8 order declaring

that the parentage and custody of the child born through the surrogate mother would vest with the petitioners.

Accordingly, the petitioners approached

the 3rd respondent Board for an eligibility certificate as provided under Section 4(iii)(c) of the Surrogacy (Regulation) Act, 2021 (‘‘Act’’, for

brevity). However, the 3rd respondent has orally declined to issue the eligibility certificate because the 1st petitioner has attained 50 years. Section

4(iii)(c)(I) of the Act lays down the age limit for both males and females seeking surrogacy services. The provision specifically states that females

between the ages of 23 and 50 years and males between the ages of 26 and 55 years, on the date of certification, are entitled to an eligibility

certificate. Under Section 9 of the General Clause Act, the inclusion of the term ‘‘to’’ in any central act or regulation is deemed sufficient to

encompass the purpose of including the last in the series of days or any other period of time. Given the conscious usage of the word ‘‘to’’ in

Section 4(iii)(c)(I) of the Act, the age limits of 50 years for females and 55 years for males shall be interpreted as extending until the previous day of

attaining the ages of 51 and 56. Therefore, the 1st petitioner, who has just completed the age of 50 years as per Ext.P9 document, is eligible to partake

in the surrogacy process. Hence, this Court may declare that the petitioners would fall within the age limit prescribed under Section 4(iii)(c) (I) of the

Act, and the 3rd respondent may be directed to issue the eligibility certificate.

2. Heard; Smt. Safa Navas, the learned counsel for the petitioners, Smt. Vidya Kuriakose, the learned Government Pleader and Sri. R.V. Sreejith, the

learned Central Government Counsel.

3. The learned counsel for the petitioners strenuously argued that as the words used in Section 4(iii) (c)(I) of the Act are between 23 to 50 years and

26 to 55 years, in the cases of females and males, respectively, and in view of Section 9 of the General Clauses Act, the 1st petitioner is entitled to an

eligibility certificate till the previous day she attains 51 years. The learned counsel relied on the decisions of the Hon'ble Supreme Court in Tarun

Prasad Chatterjee v. Dinanath Sharma [(2000) 8 SCC 649] and Shashikala and others v. Gangalakshamma and another [(2015) 9 SCC 150] and the

decisions of this Court in P.O.Meera and another v. Ananda P.Naik and others (2022 (1) KHC 591) and National Insurance Company Limited,

Kollam v. A. Prashanth A. (died) A. and A. others A. (2024 A. (7) A. KHC A. 621) A. to substantiate her contentions.

4. The learned Government Pleader opposed the above writ petition. She submitted that in the 1st petitioner's Aadhar card, passport and driving

license (Exts.P2 to P4), her date of birth is 21.06.1978. However, in the 1st petitioner's school admission register, which is the relevant document, her

date of birth is 21.06.1974. Therefore, the 1st petitioner has completed the age of 50 years. It was in the said situation that the 3rd respondent had

refused to issue the eligibility certificate. She also refuted the contention of the learned counsel for the petitioners that a female continues to be 50

years and is eligible till the previous day of attaining the age of 51. She argued that the General Clauses Act deals with the computation of time and

not the calculation of age. She drew the attention of this Court to the decision of the Hon'ble Supreme Court in Tarun Prasad Chatterjee v.

Dinanath Sharma's case and the decisions of this Court in Jaison V. George v. State of Kerala [2019 (5) KHC 115] and the Mysore High Court in G.

Vatsala Rani v. Selection Committee for Admission to Medical Colleges [AIR 1967 Mys 135] in support of her contention that a person would attain a

specified age on the day preceding the anniversary of his birthday. She prayed that the writ petition be dismissed.

5. The point is whether the first petitioner is entitled to an eligibility certificate to have a surrogate child after attaining 50 years of age.

6. It is apposite to refer to Section 4 (iii)(c) of the Surrogacy (Regulation) Act, 2021, which reads as follows:

“(c) an eligibility certificate for intending couple is issued separately by the appropriate authority on fulfilment of the following conditions, namely:--

(I) the intending couple are married and between the age of 23 to 50 years in case of female and between 26 to 55 years in case of male on the day of certification;

(II) the intending couple have not had any surviving child biologically or through adoption or through surrogacy earlier: Provided that nothing contained in this item

shall affect the intending couple who have a child and who is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no

permanent cure and approved by the appropriate authority with due medical certificate from a District Medical Board; and

(III) such other conditions as may be specified by the regulations.

(highlighted)

7. The above provision stipulates that an intending couple desirous of having a child via surrogacy would be entitled to an eligibility certificate, provided

the intending couple is married and the female is within the age range of 23 to 50 years and the male is between 26 to 55 years on the day of

certification.

8. In the case at hand, as per Ext.P9 admission register, the 1st petitioner's date of birth is 21.06.1974, thereby indicating that she has attained 50

years.

9. The crux of the argument put forth by the learned counsel for the petitioners rests on the interpretation of the words used in Section 4(iii) (c) (I) of

the Act, which specifies the age limit for females as “between the age of 23 to 50 years”. The learned Counsel contends that in the light of

Section 9 of the General Clauses Act, the 1st petitioner continues to be 50 years till the previous day of her 51st birthday.

10. Section 9 (1) of the General Clauses Act states as follows:

“9. Commencement and termination of time. (1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the

purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days

or any other period of time, to use the word “to”.

11. A careful examination of the above provision reveals that it pertains to the commencement and termination of time rather than the calculation of

age.

12. The learned Counsel for the petitioner relied on the decisions in Tarun Prasad Chatterjee and Shasikala's cases to support her assertion that

the 1st petitioner will continue to be considered as a person of 50 years old until the preceding day of her 51st birthday. It is pertinent to note that

Tarun Prasad's case dealt with the interpretation of Section 9 of the General Clauses Act, 1897, in relation to the computation of the limitation

period under Section 81(1) of the Representation of People Act, 1951, which has no relevance to the present case. Whereas, the decision in

Shasikala's case was rendered in the context of determining the relevant multiplier for calculating compensation in motor accident cases as per

the principles laid down by the Hon'ble Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and another [(2009) 6 SCC

121]. In Sarla Verma's case, the multiplier system was adopted for death and injury claims, categorising the deceased/injured into ten age groups:

16-20, 21-25, 26-30, 31-35, 36-40, 41-45, 46-50, 51-55, 56-60 and 61-65. In this context, the Supreme Court stated that the multiplier would shift to the

subsequent age category once the deceased/injured attained the age corresponding to that category. Following the principles in Shashikala's case,

this Court rendered the decisions in P.O. Meera and Prashanth's cases. However, the petitioner cannot draw an analogy to the above principles in

the instant case. Section 4 (iii)(c) (I) of the Act explicitly specifies the age limit for females as "between the age of 23 to 50 years", with no

transition to a subsequent age category as in the multiplier method in Sarla Verma.

13. Section 4 of the Indian Majority Act, 1875, deals with how the age of majority is to be computed. It reads:

"4. Age of majority how computed. "In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed

to have attained majority, if he falls within the first paragraph of Section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the

second paragraph of Section 3, at the beginning of the eighteenth anniversary of that day."

The above section embodies that, in calculating an individual's age, the day the person was born is counted as a whole day, and he is deemed to

have attained majority at the start of his eighteenth anniversary day.

14. The above legal position has been lucidly explained by the Hon'ble Supreme Court in Prabhu Dayal Sesma v. State of Rajasthan and another

[(1986) 4 SCC 59], which reads as follows:

"9. In calculating a person's age, the day of his birth must be counted as a whole day, and he attains the specified age on the day preceding

the anniversary of his birthday. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a

period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until



considering the normal age that women conceive a biological child. If the petitioners interpretation is accepted, it would extend age criteria set forth in

various statutes, particularly in service law, by an additional year. Furthermore, the petitioners have not challenged the vires of the age fixation in the

Act.

Considering the facts and the legal principles, this Court is of the view that the 3rd respondent has rightly concluded that the 1st petitioner is ineligible

for an eligibility certificate under Section 4(iii) (c) of the Act since she has attained the age of 50 years. Consequently, the petitioners' prayer to

declare that the 1st petitioner is eligible for an eligibility certificate is rejected. Accordingly, the writ petition is dismissed.