

(2025) 12 P&H CK 0017

Punjab And Haryana HC

Case No: Civil Writ Petition No. 13670 Of 2025

Manjit Kaur And Another

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: Dec. 15, 2025

Acts Referred:

- Assisted Reproductive Technology (Regulation) Act, 2021-Section 2(1)(n), 21, 21(g), 21(g)(i), 21(g)(ii)

Hon'ble Judges: Suvir Sehgal, J

Bench: Single Bench

Advocate: R.S.Dhaliwal, Shalini Attri, Harinder Pal Singh Ishar, Sahil Khunger

Final Decision: Disposed Of

Judgement

Suvir Sehgal, J

1. Petitioners have approached this court, inter alia, for issuance of a writ, in the nature of mandamus, directing the respondents to permit and provide assisted reproductive technology (ART) services, including In Vitro Fertilization (IVF treatment), to the petitioners for conception of a human embryo and its implantation in petitioner no.1.

2. Counsel for the petitioners states that the petitioners were married in 2004 and have consulted various doctors in India and abroad, but petitioner no.1 has not been able to conceive. They approached Nova IVF Fertility Centre, Jalandhar-respondent no.5, but were informed that they could not be given treatment as petitioner no.2 had surpassed the age of 55 years and is debarred under Assisted Reproductive Technology (Regulation) Act, 2021 (for short 'the Act of 2021') from undergoing the treatment.

3. Petition has been contested by the official respondents. In its response, respondent no.1-Union of India has stated that as petitioner no.2 has exceeded the age criteria prescribed under Section 21 (g) (ii) of the Act of 2021, petitioners are ineligible to avail ART services. It has been stated that the age restriction has been laid down in the Act of 2021 after considering the best interest of the child to be born through the ART procedure. A stand has been taken that as petitioners have filed the writ petition as a couple, they fall within the definition of a 'commissioning couple', which requires satisfaction of the twin conditions regarding age laid down in Section 21(g) (i) and (ii) of the Act of 2021. Reference has been made to the Report No.129, Annexure R-1, of the Standing Parliamentary Committee on Health and Family Welfare, as well as the minutes of the meeting of the National Board, Annexure R-3, and instructions dated 31.03.2023, Annexure R-4. A separate response has been filed by the State of Punjab-respondent nos. 2 to 4, wherein it has been stated that as petitioner no.2 is above the age of 55 years, he is not eligible to undergo the treatment as male fertility

and sperm quality declines with age, especially after the age of 55 years. Respondent no.5 has not filed any response, but has adopted the reply filed on behalf of respondent no.1.

4. I have heard counsel for the parties and considered their respective submissions.

5. Petitioners have not challenged any of the statutory provisions of the Act of 2021. Limited prayer made in the petition is for permission to undergo IVF treatment. Primarily, reliance placed by the petitioners is upon the judgment of the Calcutta High Court in Sanchita Ghosh and another versus Union of India and others, (WPA-12154-2023, decided on 08.04.2024), whereby the provisions of the statute have been exhaustively discussed.

6. Act of 2021 defines the 'commissioning couple' as an infertile married couple, who approach an ART clinic or bank for obtaining its authorised services. The combined age of the commissioning couple has not been laid down under the statute. Section 2 (1) (n) of the Act of 2021 lays down that 'patients' means an individual or a couple, who approach a registered ART clinic for management of infertility. The term patients, therefore, recognizes the concept of a couple as being distinct from an individual. Section 21 of the Act of 2021 lays down general duties of ART clinics and bank, who have been mandated to ensure the compliance of statutory requirements. Section 21 (g) of the Act of 2021 makes it mandatory for the clinic to apply ART services to a woman only if she is above the age of 21 years and below 50 years of age, and to a man if he is above the age of 21 years and below 55 years of age. This sub-provision further reinforces that age restriction has been placed on individual gender. There is no age restriction for a couple. It is in this context that the observations of the Calcutta High Court in Sanchita Ghosh's case (supra) are relevant and are reproduced hereunder:-

"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:-

(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.”

7. In view of the above, eligibility of the petitioner no.1 to apply for ART services operates independently of the ineligibility of petitioner no.2.

8. Adverting to the facts of the present case, it is evident that petitioner no.1 falls within the eligibility criteria laid down under Section 21 (g)(i) of the Act as she is less than 50 years and is not debarred from seeking ART for the purposes of reproduction. Respondent No.5, therefore, cannot deny ART services to petitioners merely because one of them has crossed the threshold age limit laid down under Section 21 (g) of the Act of 2021.

9. For the foregoing reasons, this Court is of the opinion that petitioners cannot be debarred under the Act of 2021. A direction is issued to the respondents to permit the petitioners to avail ART services.

10. Writ petition is disposed of.