

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.756/2022

ARUN MUTHUVEL

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(ONLY W.P.(C) NO. 61 OF 2024 IS LISTED UNDER THIS ITEM)

WITH

W.P.(C) No. 61/2024 (X)

(FOR STAY APPLICATION ON IA 20781/2024

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 22172/2024

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 27823/2024

IA No. 27823/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 22172/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 20781/2024 - STAY APPLICATION)

Date : 17-05-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Ms. Mohini Priya, AOR

Mr. Viresh B. Saharya, AOR

Ms. Radhika Thapar Behl, Adv.

Mr. Akshat Agarwal, Adv.

For Respondent(s) Ms. Aishwarya Bhati, A.S.G.

Mr. Gurmeet Singh Makker, AOR

Mr. Rajat Nair, Adv.

Mr. Ketan Paul, Adv.

Mr. Mayank Pandey, Adv.

Ms. Chitrangda Rashtravara, Adv.

Mr. Arkaj Kumar, Adv.

Mr. Ravindra Sadanand Chingale, AOR

Mr. Trideep Pais, Sr. Adv.

Ms. Shreya Munoth, AOR

Mr. Gautam Bhatia, Adv.
Ms. Sitamsini Cherukumalli, Adv.

Ms. Ameyavikrama Thanvi, AOR

Mr. Ivan, AOR
Mr. Siddharth Agarwal, Adv.
Mr. Alok K Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

W.P.(C) No. 61/2024

In terms of the earlier order of this Court, the petitioner has been examined by the District Medical Board and the report has been submitted.

On perusal of the report, we find that the petitioner is entitled to the benefit of the order dated 18.10.2023 provided she fulfills all other conditions.

For immediate reference, the relevant portion of the order dated 18.10.2023 reads as under:

"We find substance in the arguments of the learned counsel for the petitioner inasmuch as Rule 14 which is extracted above clearly refers to the wife as not being able to achieve parenthood owing to the "disability" on account of the absence of a uterus or repeatedly failed pregnancies, multiple pregnancies or an illness which makes it impossible for a woman to carry a pregnancy to term or would make the pregnancy life-threatening. The justification for necessitating gestational surrogacy in Rule 14 is all related to the intending woman or the wife and does not refer to the man/husband at all. The said provision is woman-centric and relates to the medical or congenital condition of a woman, which impedes her from becoming a mother.

Therefore, the whole scheme of the Act revolves around the

"inability" of the woman to conceive and to give birth to a child and the medical indication necessitating gestational surrogacy in Rule 14 explains the various circumstances which incapacitate or disable women from having a normal pregnancy and having a child.

We have closely perused the original Paragraph 1 (d) in Form 2 and the substituted Paragraph 1(d). A reading of Paragraph 1 of Form 2 clearly indicates several procedures contemplated prior to the implantation of the embryo obtained through any of the procedures or possibilities into the uterus, after the necessary treatment if any of the surrogate mother. However, the substituted Paragraph 1(d) is in the nature of a mandate prohibiting or permitting the use of gametes of the intending couple or the single woman, as the case may be, and does not relate to fertilisation or other procedures contemplated therein. In other words, the fertilisation of a donor oocyte by the sperm of the husband is deleted. This in our view is contrary to what is contemplated under Rule 14(a) of the Surrogacy Rules. Moreover, the form as well as the substance of the amendment of Paragraph 1 (d) is not in tune with the form and substance of the pre-existing Paragraph 1 (a)-(f) of the Form 2. When Rule 14(a) specifically recognises the absence of a uterus or any allied condition as a medical indication necessitating gestational surrogacy, the consent of the surrogate mother and the agreement for surrogacy in Form 2 appended to Rule 7 cannot mandate a condition contrary to Rule 14(a).

In circumstances stated in Rule 14(a) for instance, the intending couple would necessarily have to have a surrogate child through donor's oocytes because in such a condition, it is not possible for the woman to produce oocytes. Otherwise Rule 14 which has to be read as part of Section 2(r) cannot be given effect at all, even having regard to the scheme of the Act which permits surrogacy subject to certain conditions being complied with.

In this regard, it may be noted that the expression "genetically" related to the intending couple has to be read as being related to the husband when Rule 14(a) applies. Similarly, the expression "genetically" related to the intending woman would

refer only to the intending woman who is an Indian woman who is a widow or divorcee which is in consonance with Paragraph d(ii) of the amendment, between the age of 35 to 45 years and intending to avail surrogacy. When an intending woman avails of surrogacy naturally, she would have to use her own oocytes or eggs and donor's sperm. Conversely, when the woman in the intending couple is unable to produce oocytes or eggs, then donor oocytes or eggs have to be made use of.

Secondly, the petitioner herein had commenced the procedure for achieving parenthood through surrogacy much prior to the amendment which has come into effect from 14.03.2023. Therefore, the amendment which is now coming in the way of the intending couple and preventing them from achieving parenthood through surrogacy, we find, is, prima facie contrary to what is intended under the main provisions of the Surrogacy Act both in form as well as in substance."

List the matter on 02.09.2024.

(KRITIKA TIWARI)
SENIOR PERSONAL ASSISTANT

(MALEKAR NAGARAJ)
COURT MASTER (NSH)