ITEM NO.49 COURT NO.12 SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION(S)(CIVIL) NO(S). 756/2022

ARUN MUTHUVEL Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(IA No. 181650/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 19266/2023 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 181569/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 179193/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 4734/2023 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 78519/2023 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 179058/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 205942/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 197034/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 50195/2023 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 26763/2024 - CLARIFICATION/DIRECTION
IA No. 50391/2023 - CLARIFICATION/DIRECTION
IA No. 30306/2024 - CLARIFICATION/DIRECTION
IA No. 235190/2023 - INTERVENTION APPLICATION
IA No. 181719/2022 - INTERVENTION/IMPLEADMENT
IA No. 50188/2023 - INTERVENTION/IMPLEADMENT
IA No. 26533/2024 - INTERVENTION/IMPLEADMENT
IA No. 19264/2023 - INTERVENTION/IMPLEADMENT
IA No. 78516/2023 - INTERVENTION/IMPLEADMENT
IA No. 173949/2022 - INTERVENTION/IMPLEADMENT
IA No. 205941/2022 - INTERVENTION/IMPLEADMENT
IA No. 169226/2022 - INTERVENTION/IMPLEADMENT
IA No. 50390/2023 - INTERVENTION/IMPLEADMENT
IA No. 31514/2024 - INTERVENTION/IMPLEADMENT
IA No. 150600/2022 - INTERVENTION/IMPLEADMENT
IA No. 196980/2022 - INTERVENTION/IMPLEADMENT)

WITH
W.P.(C) No. 931/2022 (X)
(FOR)

W.P.(C) No. 1129/2022 (X)
(FOR ADMISSION)

W.P.(C) No. 42/2023 (X)
(IA No. 8968/2023 - APPLICATION FOR FILING THE PETITION WITHOUT DISCLOSING THE IDENTITY OF THE PETITIONER/RESPONDENT
IA No. 14205/2023 - APPROPRIATE ORDERS/DIRECTIONS)

W.P.(C) No. 164/2023 (X)

Signature Not Verified
Digitally signed by
RADHA SHARMA
Date: 2024.02.26
17:58:51 IST
Reason:

(FOR ADMISSION)

W.P.(C) No. 522/2023 (X)
(FOR ADMISSION)

W.P.(C) No. 487/2023 (X)
(FOR ADMISSION
IA No. 90140/2023 - GRANT OF INTERIM RELIEF
IA No. 190740/2023 - INTERVENTION/IMPLEADMENT
IA No. 164088/2023 - INTERVENTION/IMPLEADMENT
IA No. 162623/2023 - INTERVENTION/IMPLEADMENT
IA No. 154907/2023 - INTERVENTION/IMPLEADMENT
IA No. 116569/2023 - INTERVENTION/IMPLEADMENT
IA No. 115323/2023 - INTERVENTION/IMPLEADMENT)

I.A. No.115323/2023 (For impleadment)
I.A. NO.196800/2023 (For Direction)
I.A. No.116569/2023 (For impleadment)
I.A. No.138444/2023 (For direction)
I.A. No.138689/2023 (For Direction)
I.A. No.162623/2023 (For Impleadment)
I.A. No.154907/2023 (For impleadment)
I.A. No.191808/2023 (For Direction)
I.A. No.164088/2023 (For impleadment)
I.A. No.208062/2023 (For Direction)
I.A. No.190740/2023 (For impleadment)
I.A. No.191978/2023 (For Direction)
I.A. No.265815/2023 (For Direction)

W.P.(C) No. 830/2023 (X)
(IA No.161812/2023-STAY APPLICATION)

W.P.(C) No. 1316/2023 (X)
(FOR ADMISSION)

W.P.(C) No. 1441/2023 (X)
(FOR ADMISSION and IA No.267057/2023-APPROPRIATE ORDERS/DIRECTIONS and IA No.267059/2023-APPLICATION FOR FILING THE PETITION WITHOUT DISCLOSING THE IDENTITY OF THE PETITIONER/RESPONDENT)

W.P.(C) No. 61/2024 (X)
(FOR ADMISSION and IA No.20781/2024-STAY APPLICATION)

W.P.(C) No. 67/2024 (X)

Date : 23-02-2024 These matters were called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Apoorva Bhumesh, AOR

Ms. Madhavi Khare, Adv.

Mr. Mayank Pandey, AOR
Mr. Anjesh Dahiya, Av.
Mr. Ashish Kumar Pandey, Adv.

Mr. Nalin Tripathi, Adv.
Mr. Nishank Tripathi, Adv.
Mr. Nischal Tripathi, Adv.
Mr. Mrinmai Sagar, Adv.
Ms. Mansha Shukla, Adv.
Mr. Lakshay Laroiya, Adv.
Ms. Neelam Singh, AOR

Mr. Akshat Srivastava, AOR

Ms. Mohini Priya, AOR
Ms. Eka Kumari Singh, Adv.
Ms. Aishwarya Sinha, Adv.

Mr. Malak Manish Bhatt, AOR
Ms. Neena Nagpal, Adv.
Ms. Supriya Julka, Adv.
Ms. Samriddhi, Adv.

Mr. Shyamal Kumar, AOR
Ms. Bhawana Pandey, Adv.
Ms. Sukhdeep Kaur, Adv.
Mr. B S Rajesh Agrajit, Adv.
Mr. Siddharth Goswami, Adv.
Ms. Priya Nagar, Adv.
Ms. Meetu Goswami, Adv.
Mr. Bittu Kumar Singh, Adv.
Mr. Satyaveer Singh, Adv.

Mr. Viresh B. Saharya, AOR
Ms. Radhika Thapar Behl, Adv.
Mr. Akshat Agarwal, Adv.

For Respondent(s) **Ms. Aishwarya Bhati, A.S.G.**
Mr. Vikramjit Banerjee, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Rajat Nair, Adv.
Mr. Prashant Rawat, Adv.
Mr. Ketan Paul, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Mr. Mayank Pandey, Adv.
Mr. Anuj Srinivas Udupa, Adv.
Ms. Chitrangda Rashtravara, Adv.
Mr. Chitransh Sharma, Adv.
Mr. Arkaj Kumar, Adv.
Mr. Purnendu Bajpai, Adv.

Mr. Siddharth Sinha, Adv.

Mr. Anil Goel, Adv.
Mr. Aditya Goel, Adv.
Mr. Pranjal Sharma, Adv.
Ms. Deeplaxmi Matwonkar, Adv.
Ms. Sumbul, 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

Ms. Kavya S. Lokande, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. Sandeep Singh Dingra, Adv
Ms. Tanishka Grover, Adv.
Mr. Amit Kumar Chawla, Adv.
Ms. Sandhya S. Sinde, Adv.
Ms. Madhvi S. Sawant, Adv.
Ms. Manju Sharma, AOR

UPON hearing the counsel the Court made the following

O R D E R

<u>W.P. (C) No.61/2024</u>:

The petitioner in W.P. (C) No.61/2024 to once again appear before the State Medical Board for seeking an opinion as to whether she requires donor gametes and whether her medical condition would necessitate the intending couple to use donor gametes in view of the latest amendment, the Surrogacy (Regulation) Amendment Rules, 2024 made *vide* Notification dated 21.02.2024 bearing G.S.R. 119(E) to sub-paragraph (d) in paragraph 1 of Form 2 Surrogacy (Regulation) Amendment Rules, 2022, which reads to the following effect:

> **"2. In the Surrogacy (Regulation) Rules, 2022 in Form 2, in paragraph 1, for sub-paragraph (d), the following shall be**

substituted namely:-

> **"1(d)(i) couple undergoing surrogacy must have both gamete from the intending couple. However, in case when the District Medical Board certifies that either husband or wife constituting the intending couple suffers from medical condition necessitating use of donor gamete then surrogacy using donor gamete is allowed subject to the condition that the child to be born through surrogacy must have atleast one gamete from the intending couple:**
> **(ii) single woman (widow or divorcee) undergoing surrogacy must use self eggs and donor sperms to avail surrogacy procedure;"**

She shall appear before the Medical Board on 01.03.2024.

The Report to be sent to the Registry of this Court by 11.03.2024.

W.P.(C) No. 487/2023 and W.P.(C) No. 522/2023:

Learned ASG appearing for the respondent-Union of India has brought to our notice the Surrogacy (Regulation) Amendment Rules, 2024 a recent amendment made to sub-paragraph (d) of paragraph 1 in Form 2 of Surrogacy (Regulation) Rules, 2022 *vide* Notification dated 21.02.2024 bearing G.S.R. 119(E). For ease of reference the said notification reads as under:

> **"2. In the Surrogacy (Regulation) Rules, 2022 in Form 2, in paragraph 1, for sub-paragraph (d), the following shall be substituted namely:-**
>
> > **"1(d)(i) couple undergoing surrogacy must have both gamete from the intending couple. However, in case when**

the District Medical Board certifies that either husband or wife constituting the intending couple suffers from medical condition necessitating use of donor gamete then surrogacy using donor gamete is allowed subject to the condition that the child to be born through surrogacy must have atleast one gamete from the intending couple:

(ii) single woman (widow or divorcee) undergoing surrogacy must use self eggs and donor sperms to avail surrogacy procedure;"

In the circumstances, in the case of Mrs. Smitha in W.P.(C) No.487/2023 and Mrs. Karishma Mathur in W.P.(C) No.61/2024 (applicant in I.A. No.26763/2024) who have already appeared before the concerned District Medical Board(s) and where the reports have been received by this Court and have been perused, the aforesaid persons are permitted to proceed with the surrogacy procedure, if they are otherwise eligible under the provisions of the law.

Since the respondent-UOI has now notified the amendment as extracted above, the challenge to the earlier substituted amendment(s) dated 14.03.2023 is no longer on the statute books and therefore, any challenge to the same is now redundant and infructuous.

Consequently, the following applications which had assailed the same, stand disposed of:-

(i) W.P.(C) 522/2023 and I.As. therein;

(ii) W.P. (C) 487/2023 and IAs therein being:

I.A. No.115323/2023 (For impleadment)
I.A. NO.196800/2023 (For Direction)
I.A. No.116569/2023 (For impleadment)

I.A. No.138444/2023 (For direction)
I.A. No.138689/2023 (For Direction)
I.A. No.162623/2023 (For Impleadment)
I.A. No.154907/2023 (For impleadment)
I.A. No.191808/2023 (For Direction)
I.A. No.164088/2023 (For impleadment)
I.A. No.208062/2023 (For Direction)
I.A. No.190740/2023 (For impleadment)
I.A. No.191978/2023 (For Direction)
I.A. No.265815/2023 (For Direction)

Insofar as the challenge made to the other provisions of the Surrogacy (Regulation) Rules, 2022 and as well as the Surrogacy (Regulation) Act, 2021, since pleadings are complete, permission is granted to file written submissions.

Further, learned ASG seeks some time to file counter affidavit in the two writ petitions filed by the single unmarried women seeking the benefit of the provisions of the Act and the Rules/Regulations made thereunder.

The written submissions are directed to be filed by the respective counsel *vis-a-vis* the challenge to the provisions of the Assisted Reproductive Technology (Regulation) Act, 2021 also.

List on 15.04.2024.

(RADHA SHARMA)
COURT MASTER (SH)

(MALEKAR NAGARAJ)
COURT MASTER (NSH)