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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19-06-2026

PRONOUNCED ON : 25.06.2026

CORAM

THE HON'BLE MR.JUSTICE SHAMIM AHMED

CRL RC No. 950 of 2026

1. [REDACTED]  
[REDACTED]  
[REDACTED], Namakkal.

2. [REDACTED]  
[REDACTED]  
[REDACTED], Namakkal.

3. [REDACTED]  
[REDACTED]  
[REDACTED] Karur.

..Petitioner(s)

Vs

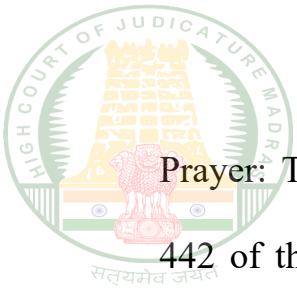
1.The State of Tamilnadu, Rep by its Health Secretary, Secretariat, Fort St.George, Chennai-600009.

2.The Director of Medical and Rural Health Services, 359, Anna Salai, Chokkalingam Nagar, Teynampet, Chennai-600006.

3.The Appropriate Authority/ Joint Director of Health Services, Mohanur Road, Thillaipuram, Namakkal, Tamil Nadu-637001.

4.The Appropriate Authority/ Joint Director of Health Services, II-Floor, Collectorate Annexure Building, Karur-639007.

..Respondent(s)



Prayer: This Criminal Revision Case has been filed, under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), to call for the records, relating to order, dated 18.03.2026 passed in Crl.MP.No.258 of 2026, by the learned Judicial Magistrate No.1, Namakkal and to set aside the same and consequently to allow the Crl.MP.No.258 of 2026, as prayed for.

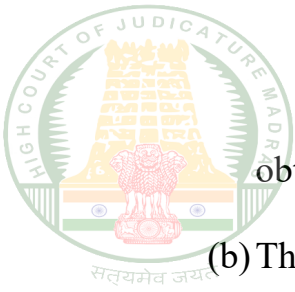
For Petitioner(s): Mr. Niranjan Rajagopalan, assisted by Mr.T.E.Krishna for G.R.Associates

For Respondent(s): Mr.John Sathyan, Senior Advocate, Counsel for the State of Tamil Nadu (Criminal Side), assisted by Mr.M.Dinesh, Government Advocate (Criminal Side)

Mr.Hasan Mohamad Jinnah, Senior Advocate and Amicus Curiae, assisted by Ms.J.R.Archana, Ms.T.Harshana and Mr.S.Prajesh Kumar.

### ORDER

1. This Criminal Revision Case has been filed, seeking to set aside the order, dated 18.03.2026, passed in Crl.MP.No.258 of 2026, by the Judicial Magistrate No.I, Namakkal and to allow Crl.MP.No.258 of 2026, as prayed for.
2. The facts of the case, in a nutshell, are as follows:-
  - (a) The Petitioners 1 and 2 got married on 21.02.2005 and they had a son, born on 21.09.2008 and he died on 06.11.2024, due to cardiac arrest. The Petitioners 1 and 2 intend to have another child, but unfortunately, the 1st Petitioner suffers from the absence of uterus and therefore, she is medically incapable of carrying a pregnancy and hence, they decided to

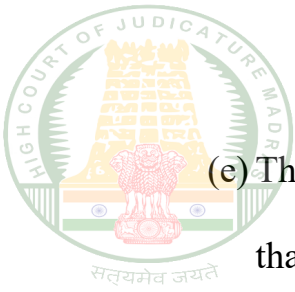


obtain a child through surrogacy.

(b) The Petitioners 1 and 2 had approached the Dharan Hospital at Salem to initiate the procedure of Surrogacy and the Hospital had initiated the procedure contemplated under the provisions of the Surrogacy (Regulation) Act, 2021 (hereinafter referred to as the Act) for the Petitioners 1 and 2 and sent their application to the Government Hospital at Namakkal. After scrutiny of the medical records and the age-related documents of the Petitioners 1 and 2, the appropriate authority had issued the Eligibility Certificate to the Petitioners 1 and 2, dated 23.05.2025.

(c) The 3<sup>rd</sup> Petitioner, who is the relative of the Petitioners 1 and 2, had agreed to act as the surrogate mother for the child and also submitted her application with all the required documents, as per the provisions of the Act, along with the consent of her husband to the 4th Respondent/ Appellate Authority, which had issued the Eligibility Certificate, dated 22.12.2025 to the 3<sup>rd</sup> Petitioner.

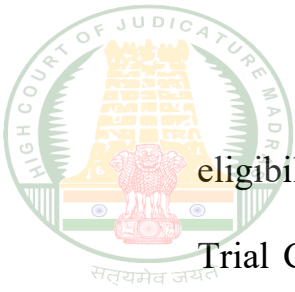
(d) Thereafter, the Petitioners had filed Crl.MP.No.258 of 2026, along with the aforesaid eligibility certificates, before the court below, under Section 4(iii)(a)(II) of the Surrogacy (Regulation) Act, 2021, seeking an order concerning the parentage and custody of the child, to be born through surrogacy to the Petitioners 1 and 2 and for consequential rights and for a direction to the 3<sup>rd</sup> Petitioner to relinquish all her rights over the child to be born through the surrogacy.



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(e) The court below, by the impugned order, dated 18.03.2026, had found that the prescribed age limit as per the Act is 23-50 years and that since the 1<sup>st</sup> Petitioner was 50 years 9 months and 3 days at the time of making her Application for eligibility before the 3rd Respondent, the eligibility certificate issued in favour of the 1<sup>st</sup> Petitioner is not a valid one, as it was issued in violation of the provisions of the Act and that the husband of the surrogate mother/ 3rd Petitioner, who was not a party to the proceedings, was not examined and finding so, the court below had dismissed the said Petition, by the impugned order, under Section 4 (iii) (a) (II) of the Act. Thus, it is seen that the impugned order, dismissing the Petition, was passed on mainly two grounds, namely, (1) Age ineligibility of the applicant and (2) Non-examination of the surrogate mother's husband.

3. This Court heard Mr. Niranjan Rajagopalan, assisted by Mr.T.E.Krishna for G.R.Associates, Mr.John Sathyan, learned Senior Advocate, Counsel for the State of Tamil Nadu (Criminal Side), assisted by Mr.M.Dinesh, Government Advocate (Criminal Side) and Mr.Hasan Mohamad Jinnah, learned Senior Advocate and learned Amicus Curiae, assisted by Ms.J.R.Archana, Ms.T.Harshana and Mr.S.Prajesh Kumar, learned counsel.
4. Mr.Niranjan Rajagopalan, the learned counsel for the Petitioners has submitted that a woman remains aged 50 years, until she attains 51 years and therefore, she continues to remain within the statutory age band and that the

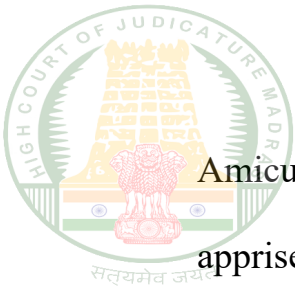


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eligibility certificate was issued by the appropriate authority and that the Trial Court has no jurisdiction to reassess the said document, issued by the appropriate authority and that when the consent of the husband of the surrogate mother was obtained, it is not necessary for the Trial Court to examine the husband of the surrogate mother and that the impugned order, dated 18.03.2026, had been passed, without considering the legal provisions and also without considering the fact that Act is the beneficial legislation, but, mainly on technicality grounds, namely, (1) age ineligibility of the application of the 1<sup>st</sup> Petitioner and (2) non-examination of the husband of the surrogate mother and that the Trial Court had exceeded its jurisdiction and passed the impugned order, as a trial case, as an appellate authority. In such circumstances, the learned counsel prays for allowing this Criminal Revision Case, by setting aside the impugned order and reversing the same.

5. The learned counsel for the Petitioners has further submitted that during the pendency of the case before the Trial Court and also before this Court, the eligibility certificate, dated 23.05.2025, issued by the appropriate authority in Form XVII was valid. But, due to the pendency of the case, the eligibility certificate, which was valid with effect from 23.05.2025 till 22.05.2026, got expired. Thus, the learned counsel requested this Court that the appropriate authority may be directed to extend the period of the eligibility certificate with effect from 23.05.2026 till 22.05.2027, so that justice may be done.

6. Mr.Hasan Mohamed Jinnah, learned Senior Advocate and the learned



Amicus Curiae, appointed by this Court, to assist this Court in the matter, has apprised in this matter and submitted that with regard to the legislative intent behind the introduction of the Surrogacy (Regulation) Bill and the statements and objectives of the Act, the Indian framework seeks to (a) Protect surrogate mothers from exploitation, (b) Prevent commercialisation of reproduction, (c) Ensure ethical reproductive practices, (d) Safeguard the welfare of children born through surrogacy, (e) Regulate fertility clinics and ART procedures and (f) Prevent trafficking and reproductive tourism.

7. The learned Amicus Curiae has further submitted that the questions in this case arise for consideration are (1) whether the non-examination of surrogate mother's husband is fatal to the proceedings and (2) whether the expression “between 23 to 50 years” occurring in Section 4(iii)(c)(I) of the Act includes a woman, who has completed 50 years, but has not attained the age of 51 years and that the court below had exceeded its jurisdiction and that in the question, which is not in its jurisdiction, the court below had decided the case, as an appellate authority and passed the impugned order, on the basis of surmises and conjectures and that the court below gone through matter so deep and decided the case as a trial case.

8. Mr. John Sathyan, learned Senior Advocate and the learned Counsel for the State of Tamil Nadu (Criminal Side) for the Respondents has submitted that after considering all the formalities, the appropriate authority had issued the eligibility certificate to the Petitioners and that there is no provision laid in



the Act, in respect of examination of the husband of the surrogate mother and that this view taken by the court below appears to be without application of mind.

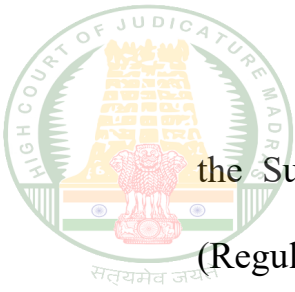
9. Mr.Hasan Mohamed Jinnah, the learned Senior Advocate and learned Amicus Curiae, appointed by this Court, has given his valuable suggestions in this matter and he has also provided relevant case laws in respect of the subject matter and also he has given his written submissions in this matter, which helps this Court in deciding the matter. This Court is thankful to Mr.Hasan Mohamed Jinnah, the learned Amicus Curiae, for his valuable assistance in this matter.

10.This Court is also thankful to Mr.John Sathyan, learned Senior Advocate and learned Counsel for the State of Tamil Nadu (Criminal Side) and Mr.Niranjan Rajagopalan, the learned counsel for the Petitioner for giving proper assistance and for their valuable suggestions in this matter.

11.This Court considered the submissions of the learned counsel for the Petitioners, the learned Counsel for the State of Tamil Nadu for the Respondents and the learned Amicus Curiae and also perused the entire materials placed on record.

12.For the sake of convenience, the Petitioners 1 and 2 and the 3<sup>rd</sup> Petitioner herein after referred to as the Intending Couple and Surrogate Mother, respectively.

13.Before proceeding in this matter, at the outset, it is essential to understand



the Surrogacy Legislation in its totality and the intent of the Surrogacy (Regulation) Act, 2021.

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**14. Definition of Surrogacy:-** The Supreme Court in its judgment in *Baby Manji Yamada vs Union of India [(2008) (13) SCC (518)]*, has provided the definition of surrogacy:-

*“9. The word “surrogate”, from Latin “subrogare”, means “appointed to act in the place of”. The intended parent(s) is the individual or couple who intends to rear the child after its birth.”*

**15. Statutory Definition:-** Under Section 2(1)(zd) of the Surrogacy (Regulation) Act, 2021:

*“Surrogacy” means a practice whereby one woman bears and gives birth to a child for an intending couple or intending woman with the intention of handing over the child after birth to such intending couple or intending woman.*

### **Parties Involved**

- **Surrogate Mother** – the woman carrying the pregnancy.
- **Intending Couple** – legally eligible couple seeking a child through surrogacy.
- **Intending Woman** – an eligible woman permitted under law to avail surrogacy.
- **Surrogacy Clinic** – medical facility conducting the procedure.



## 16. Origin and Evolution of Surrogacy:-

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The Honourable Supreme Court, in its judgment in *Vijaya Kumari vs Union of India* (2026-2-SCC-96:2025 INSC 1209), had explained the development of surrogacy in India, wherein “*The first move towards prohibition of commercial surrogacy came with the 228<sup>th</sup> Report of the Law Commission of India in 2009, which flagged the problem of India becoming a “reproductive tourism destination” and wombs being “on rent”.* (Para 22) To prevent these forms of misuse of the procedure, the Parliament enacted the Surrogacy (Regulation) Act, 2021 to prohibit commercial surrogacy and permit only altruistic surrogacy under regulated conditions.

17. **Types of Surrogacy:-** The case of *Baby Manji Yamada vs Union of India* [(2008) 13 SCC 518] (Para 10 to 13), also explained the different types of surrogacies, which are:

### (i) Traditional Surrogacy

- The surrogate mother's own egg is used.
- She is genetically related to the child.
- Conception usually occurs through artificial insemination.
- Surrogate is the biological mother.
- Not permitted under India's present legal framework.

### (ii) Gestational Surrogacy

- The embryo is created through IVF and transferred to the surrogate.
- The surrogate has no genetic connection with the child.



- Legally recognised under Indian law.
- Minimizes parental disputes.

### (iii) Commercial Surrogacy

- Surrogate receives monetary compensation beyond medical expenses and insurance.
- Surrogacy performed for profit, often involves contractual payments.
- Expressly prohibited under the Surrogacy (Regulation) Act, 2021.

### (iv) Altruistic Surrogacy

- No monetary consideration except:
  - Medical expenses,
  - Insurance coverage,
  - Prescribed ancillary expenses.
- Undertaken out of compassion or familial support.
- No commercial gain.
- This is the **only form of surrogacy** permitted under Indian law.

18. **Objectives of Surrogacy Regulation:-** With regard to the legislative intent behind the introduction of the Surrogacy (Regulation) Bill and the statements and objectives of the Act, the Indian framework seeks to:

- Protect surrogate mothers from exploitation.
- Prevent commercialisation of reproduction.
- Ensure ethical reproductive practices.
- Safeguard the welfare of children born through surrogacy.
- Regulate fertility clinics and ART procedures.
- Prevent trafficking and reproductive tourism.



## 19. Legal Framework in India:-

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### Primary Legislation

- Surrogacy (Regulation) Act, 2021
- Assisted Reproductive Technology (Regulation) Act, 2021

### Important Rules

- Surrogacy (Regulation) Rules, 2022.
- Assisted Reproductive Technology (Regulation) Rules, 2022.

### Regulatory Authorities

- National Surrogacy Board.
- State Surrogacy Boards.
- Appropriate Authorities.
- District Medical Boards.

## 20. STATUTORY SCHEME UNDER THE SURROGACY ACT, 2021:-

The Surrogacy Act creates a structured statutory mechanism involving multiple authorities and the procedure laid down is as follows:-

**Section 4(ii):-** No surrogacy procedure shall be conducted except for the following purposes:-

- Couple of Indian Origin – S. 4(ii)(a)
- Couple shall obtain a certificate of recommendation from the National Assisted Reproductive Technology and Surrogacy Board



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– S.4(ii)(a)

- Only for altruistic surrogacy purposes – S. 4(ii)(b)
- Not for commercial purposes – S. 4(ii)(c)
- Not for producing children for sale, prostitution or any other form of exploitation – S. 4(ii)(d).

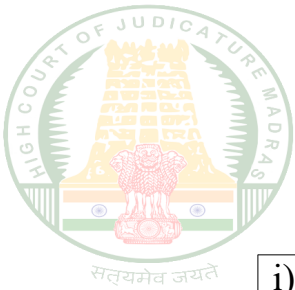
## 21.SURROGACY PROCEDURE – S. 4(iii):-

No surrogacy or surrogacy procedure shall be conducted unless the Director or in-charge of the surrogacy clinic or person qualified to do so are satisfied on the following conditions:-

- a) Certificate of Essentiality – S. 4(iii)(a)
- b) Eligibility certificate of surrogate mother – S. 4(iii)(b)
- c) Eligibility certificate of intending couple – S. 4(iii)(c)

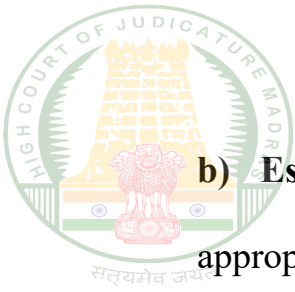
**a) Certificate of essentiality, S. 4(iii)(a)** – by appropriate authority (S. 35 – Appointment by the Central/State Government i.e District Medical and Rural Health Services) after fulfilment of the following conditions:-

- Certificate of Medical Indication by the District Medical Board
- Order concerning Parentage and custody of the child from the Magistrate
- Insurance coverage for the surrogate mother from an Insurance agency



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<p>i) <b>Certificate of medical indication – S.4(iii)(a)(I)</b> By the District Medical Board</p>	<p>- Considering Pregnancy not possible</p> <p><b>Rule 14 of The Surrogacy (Regulation) Rules, 2022:</b></p> <ul style="list-style-type: none"> <li>- Absence or missing or abnormal uterus or if uterus is surgically removed due to medical conditions</li> <li>- Intended parent or woman has repeatedly failed to conceive after multiple In vitro fertilization</li> <li>- Multiple pregnancy losses</li> <li>- Any illness that makes it impossible for woman to carry pregnancy or making pregnancy life threatening</li> </ul>
<p>ii) <b>An Order concerning Parentage and custody of the child – S. 4(iii)(a)(II)</b>  By the Magistrate of the first class or above</p>	<p>which shall be the birth affidavit of the surrogate child born</p>
<p>iii) <b>Insurance Coverage – S. 4(iii)(a)(III)</b>  From an Insurance Company</p>	<p><b>Rule 5 of The Surrogacy (Regulation) Rules, 2022:</b></p> <ul style="list-style-type: none"> <li>- Insurance in favour of surrogate mother for 36 months for a sufficient amount</li> <li>- Intending couple/woman shall sign an affidavit to be sworn before Metropolitan Magistrate or Judicial Magistrate of 1<sup>st</sup> class or Executive Magistrate or Notary Public</li> </ul>



**b) Essentiality certificate of Surrogate Mother:- S. 4(iii)(b):-** by appropriate authority after fulfilment of the following conditions:-

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<p><b>Eligibility Certificate of Surrogate Mother – S. 4(iii)(b)</b></p> <p>By Appropriate Authority</p>	<p>I) Married woman            II) Having child of her own            III) Between ages of 25 to 35 years on the day of implantation            IV) Willing woman            V) Not provide her own gametes            VI) Not act as surrogate mother more than once            VII) Certificate of medical and psychological fitness            Other conditions as per Form 2:</p> <ul style="list-style-type: none"> <li>• Relinquish all rights over the child to the intending couple</li> </ul>
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**c) Eligibility Certificate of Intending Couple – S. 4(iii)(c):-**by Appropriate Authority after fulfilling the following conditions:-

<p><b>Eligibility Certificate of Intending Couple – S. 4(iii)(c)</b></p> <p>By Appropriate Authority</p>	<p>a) Married            b) Between 23 to 50 years – female            Between 26 to 55 years – male            On the date of certification            c) Not had any surviving child (biological/adoption/surrogacy earlier)            But can have a child – mentally or physically challenged</p>
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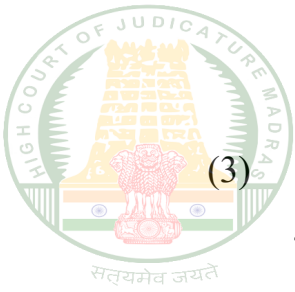
**22. Prohibition to abandon child, S. 7:-** The intending couple or intending woman shall not abandon the child, born out of a surrogacy procedure, regardless of the circumstances and the reasons.

**23. Rights of surrogate child, S.8:-** The child born out of surrogacy procedure, shall be deemed to be a biological child of the intending couple, or intending woman and the said child shall be entitled to all the rights and privileges available to a natural child under any law.

24. The main grounds, on which the courts below had dismissed the prayer of the Petitioners, seeking an order of parentage and custody of the child to be born through surrogacy, are that (1) the 1<sup>st</sup> Petitioner/Intending Mother, had exceeded her permissible age of 50 years and she was 50 years 9 months and 3 days, as provided under Section 4(iii)(c)(I), at the time of preferring the application before the appropriate authority for the eligibility certificate and that (2) non-examination of the husband of the 3<sup>rd</sup> Petitioner/surrogate mother is fatal to the proceedings.

25. Now the questions that arise in this case for consideration of this Court are as follows:-

- (1) Whether the Magistrate can re-examine the correctness of the eligibility certificate, already issued by the appropriate authority, as an Appellate Authority? And what is the extent of the Magistrate's power in passing an order of parentage and custody?
- (2) Whether the non-examination of the husband of the surrogate mother is fatal to the proceedings?



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(3) Whether the expression “between 23 to 50 years” occurring in Section 4(iii)(c)(I) includes a woman, who has completed 50 years, but has not attained 51 years?

(4) Whether the High Court can pass an order of parentage by itself to avoid further delay? Or Whether the High Court can pass an order to remand the matter back to the Magistrate for passing fresh orders for issuance of birth affidavit and custody of the child to be born through surrogacy?

26. In so far as answering **Question (1)**, regarding whether the Magistrate can re-examine the correctness of the eligibility certificate already issued by the appropriate authority as Appellate Authority is concerned, there are specific roles assigned to the various Specialised Agencies under the Surrogacy (Regulations) Act. It is necessary to state that the role of one Agency does not violate the role of the other. The Magistrate has been conferred with an **individual role, which is limited only**, with respect to passing of the “order concerning Parentage and custody of the child”, thereby protecting the interest of the child, as per Section 4(iii)(a)(II) of the Surrogacy (Regulations) Act, 2021.

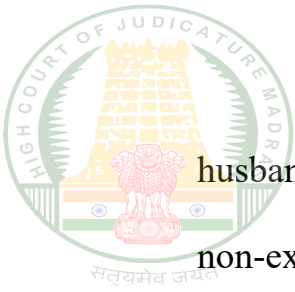
27. Even as per the own findings of the court below, the 1<sup>st</sup> Petitioner was aged only 50 years 09 Months and 3 days old, when she submitted the Petition/Application under Section 4(iii)(c) of the Act and as on the date of certification, she was 50 years 11 months and 2 days. The 1st Petitioner did not turn 51 years to become ineligible for certification and the Appropriate



Authority was legally correct in granting the 1st Petitioner with the Eligibility Certificate. Contrary to the settled position of law, the court below had wrongfully interpreted the provisions of the Act to negate the Eligibility Certificate granted by the Appropriate Authority, thereby restricting the applicability of the beneficial legislation to the Petitioners herein.

28. There is no specification in the Act, which requires the precondition of certificates to be present, when passing an order of parentage and custody. All the certificates, specified in the Act, are independent of the order of parentage and the certificates are a mandatory procedure only for the surrogacy clinic to take into account, when initiating the surrogacy procedure. With regard to certificates being rejected or repealed or suspended, the intending couple or the clinic has a provision of Appeal under Section 14, to the respective State or Central Government, as prescribed. Certificates issued by the District Medical Board and Appropriate Authority carry a presumption of validity. Unless the certificates issued by the appropriate authority are set aside by a competent forum or shown to be ex-facie illegal, fraudulent or without jurisdiction, the Magistrate ought not to reassess the merits of such certificates. This Court is of the view that when eligibility certificate was issued by the appropriate authority, the court below had exceeded its jurisdiction and erroneously reassessed the eligibility certificate as to its correctness. **Accordingly, Question (1) is answered.**

29. With regard to answering **Question (2)**, whether the non-examination of the



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husband of the surrogate mother, the court below had observed that the non-examination of the husband of the surrogate mother is fatal to the proceedings, which in the opinion of this Court is perverse and not sustainable, since as per Section 4(iii)(a)(II) of the Act, “an order concerning the parentage and custody of the child to be born through surrogacy has been passed by a Court of the Magistrate of the first class or above **on an application made by the intending couple or the intending woman and the surrogate mother and** the Eligibility certificate issued by the Appropriate Authority takes into account the consent of the surrogate mother’s husband and the same is not a factor for re-examination by the Magistrate when he/she is passing an order of parentage and the Act does not mandate examination of surrogate mother’s husband.

30. Further, the husband of the 3<sup>rd</sup> Petitioner/surrogate mother is not a party to the proceedings. Section 4 (iii) (a) (II) only requires the intending couple or the intending mother with the surrogate mother to initiate the proceedings, with regard to the parentage and custody of the child before the Learned Magistrate of First Class or above. The Section does not require the husband of the surrogate mother to be a party to the proceeding or depose evidence with regard to the issue. The wordings of the Section are very clear as to who has to initiate the proceedings for an order concerning the parentage and custody of the Child. Hence, the dismissal of the Application because the husband of the 3<sup>rd</sup> Petitioner was not a party to the Impugned proceedings is

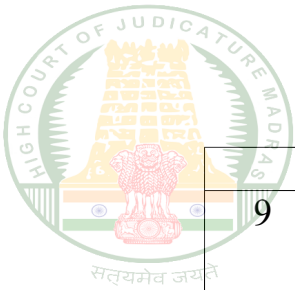


legally unfounded. Hence, this Court is of the view that the grounds taken by the court below that the husband of the 3<sup>rd</sup> Petitioner/surrogate mother was not a party to the proceedings and that the non-examination of the surrogate mother's husband are fatal to the proceedings, are not sustainable.

**Accordingly, Question (2) is answered.**

31. In regard to answering **Question (3)**, whether the expression “between 23 to 50 years” occurring in Section 4(iii)(c)(I) includes a woman, who has completed 50 years, but has not attained 51 years, details of dates and events and relevant provisions of the Act, are given as under:-

S.No.	Particulars	Date
1	Date of birth of 1 <sup>st</sup> petitioner as per a) Aadhaar Card (Ex.P.1) b) PAN Card (Ex.P.2) c) 10 <sup>th</sup> Marksheet (Ex.P.14)	21.06.1974 (50 years 9 months 3 days)
2	Date of birth of 1 <sup>st</sup> petitioner as per a) Affidavit (Ex.P. 12) b) Medical Certificate – Ossification Test (Ex.P. 13) c) Horoscope – Ex.P. 15	31.03.1975 (49 years 11 months 24 days)
3	Date of Marriage of P1 & 2	21.02.2005
4	Male Child born on Passed away due to cardiac arrest on	21.09.2008 06.11.2024 (16 years)
5	Removal of uterus to P1 Total abdominal hysterectomy	29.10.2024
6	Date of enrolment in Dharan Women's Care Fertility Centre	31.01.2025
7	Application for surrogacy before Joint Director (Ex.P.11)	24.03.2025
8	Eligibility certificate for P1 and 2 by Joint Director Medical and Rural Health Services,	23.05.2025



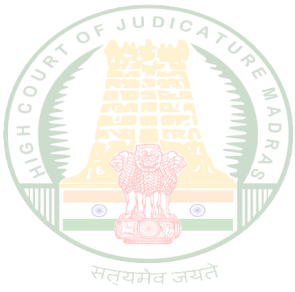
	Namakkal (Ex.P. 7)	
9	Eligibility certificate of P3 (Surrogate mother) by Joint Director of Health Services, Karur (Ex.P. 8)	22.12.2025
10	Dismissal Order in Crl.M.P. No. 258 of 2026	18.03.202

32. **Section 4(iii)(c)(I)** states that *“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 the case of male on the day of certification.”*

33. With regard to the provisions and proposition of law, concerning, “Eligibility and Age Determination”, it is relevant to refer to the following decisions.

34. In **2025-SCC-Online-Ker-1624 (Rajitha P.V. Vs. Union of India)**, the High Court of Kerala was pleased to observe, as under:-

*“25. Now, we turn to the conjoint reading of Section 4(iii)(c)(I) of the Act of 2021, together with Section 9 of the Act of 1897, to determine the correct interpretation of the age criteria for an intending woman. The key issue is whether the age range specified as “between the age of 23 to 50 years” includes 50. Section 9 of the Act of 1897, which provides a standard rule for interpreting time periods and numerical ranges in statutes, states that when a statute prefixes “to” before the last number in the range, it is included. The wording in Section 4(iii)(c)(I) of the Act of 2021 is significant. The statute specifies the age range as “between the age of 23 to 50 years”. The word “between” generally signifies a continuous range rather than isolated points. If the legislature had intended to exclude 50 as well, it would have used a different phrase instead of “to”, which has a uniform and standard meaning under Section 9 of the Act of 1897, such as “up to but not including 50” or “below the age of fifty”, as used in other statutes. Thus, the prefix “to” is used before the last number when a clear legislative intention emerges. Ignoring it would unfairly exclude a class that the legislature otherwise intended to include. If the arguments of the respondents are accepted, it would require rewriting the statute*



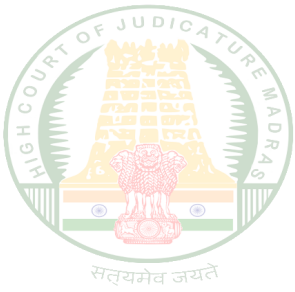
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and modifying Section 4(iii)(c) of the Act of 2021 to delete the word “to”, which is the key to understand the legislative intent. Thus, under Section 4(iii)(c)(I) of the Act of 2021, the eligibility of intending woman extends throughout the 50th year, ceasing the day before the intending woman turns 51. There is no contrary mandate in the Act that warrants any other interpretation of age.

**26.** Even assuming that Section 9 of the Act of 1897 is not made applicable and Section 4(iii)(c)(I) of the Act of 2021 has to be interpreted on a stand-alone basis, applying the basic principles of statutory interpretation would still lead to the same result. The interpretation of a phrase in the legislation has to be understood in the context of that law and the prejudice that follows from it. Therefore, it is necessary to briefly advert to the scheme of the Act of 2021.

**27.** Firstly, to adopt a plain and common parlance approach : when a range between two numbers is provided, common understanding generally includes both numbers. This means that if the number 50 is indicated as part of a range, then 51 is outside the range. There is no indication to the contrary in the Act of 2021 to depart from this straightforward interpretation. In the absence of any specific indication to the contrary under the Act of 2021, a common sense and purposive approach can be adopted.

**28.** For adopting a purposive interpretation, the intention of the Act of 2021 has to be seen from its scheme. The Act of 2021 establishes the National and State Surrogacy Boards to oversee the implementation of its provisions. Chapter II mandates that surrogacy clinics have to be registered and comply with medical and legal standards. Chapter III lays down conditions for surrogacy. Section 3 prohibits unregulated surrogacy, including commercial surrogacy and unauthorised advertisements. Section 5 prevents any unauthorised person from performing surrogacy procedures. Section 6 mandates that the surrogate mother has to give informed consent. Section 7 prohibits abandoning a child born through surrogacy, while Section 8 secures the child's rights. Sections 9 and 10 regulate medical aspects, such as embryo implantation and the prohibition of forced abortion. Chapter IV makes the registration of surrogacy clinics mandatory. Chapter V provides for the establishment of

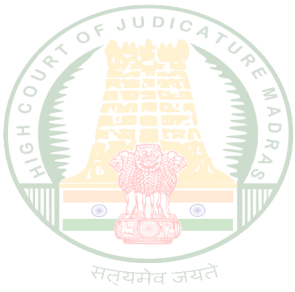


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*Surrogacy Board at the Central and State levels to supervise compliance. Chapter VII defines the duties of the appropriate authorities. Chapter VII lays down offences and penalties, including punishment for commercial surrogacy, exploitation and failure to comply with the legal surrogacy conditions. Sections 38 to 41 prescribe specific penalties for violations. The Surrogacy (Regulation) Rules, 2022, framed under Section 50 of the Act of 2021, set out procedural requirements, including the eligibility criteria for intending parents. Form 1 under Rule 4 requires intending parents to provide their date of birth and age, ensuring a clear assessment of their eligibility.*

*29. The scheme of the Act of 2021 thus provides a legal framework for regulating surrogacy. It prohibits commercial surrogacy to prevent exploitation while permitting altruistic surrogacy. The Act allows married couples with a medical necessity to opt for surrogacy. It provides for the rights and consent of surrogate mothers, mandates the registration of surrogacy clinics and establishes National and State Surrogacy Boards. The Act focuses on prohibiting unethical practices like sex selection, child abandonment and forced surrogacy. The intention of the Act is thus to ensure ethical and legal safeguards. This is important when interpreting the age eligibility for an intending mother, particularly whether the upper limit of 50 years excludes women who have turned 50. Applying the principle of purposive interpretation, the provision on age eligibility should be understood in a way that ensures ethical surrogacy practices rather than creating unnecessary restrictions. The Act does not seek to arbitrarily deny opportunities for intending couples but to regulate surrogacy within a structured legal framework. Therefore, there is no indication in the scheme of the Act to deny eligibility to intending woman up to her reaching 51 years.*

*30. Ultimately, the gravity of what is under consideration has to be kept in mind. Statutory interpretation is not an abstract exercise it directly affects people's rights and lives. The interpretation of a phrase in any statute not only has to be understood within the specific context of that statute but also in light of its consequences. In this case, what is at stake is the permanent loss of the opportunity to become a mother. Motherhood is a deeply personal and fundamental aspect of life. Any interpretation that results in depriving someone of it*



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*permanently has to be approached with caution. If one interpretation leads to a complete and irreversible loss in this case, the inability to ever bear a child through surrogacy it demands a higher level of scrutiny. When this provision, read with Section 9 of the Act of 1897 and the scheme of the Act of 2021, provides an eligibility window between the age of 23 to 50 years, there is no reason to rely on the Majority Act to close the door on motherhood prematurely when the legislature intends to allow it to remain open. Therefore, the impugned judgment and order are required to be set aside and the writ petition needs to be allowed.*

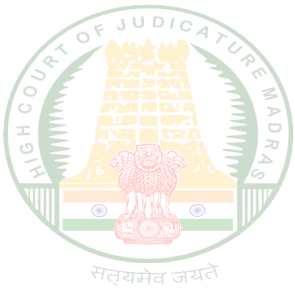
*31. In the light of this discussion, we hold that since, under Section 4(iii)(c)(I) of the Act of 2021, the eligibility of intending woman to avail of surrogacy services extends throughout the 50th year, ceasing on the day the intending woman turns 51, Petitioner 1 is eligible for a certificate under Section 4(iii)(c) of the Surrogacy (Regulation) Act, 2021, until 21-6-2025.*

*32. Accordingly, the appeal is allowed. The impugned judgment dated 13-2-2025 in WP (C) No. 403 of 2025 is set aside and the writ petition is allowed. The respondents shall issue the eligibility certificate as required under Section 4(iii)(c) of the Act of 2021 to the appellant-petitioners, within one week from today.”*

**35. In 1986-4-SCC-59 (Prabhu Dayal Sesma Vs. State of Rajasthan ) , the**

Honourable Supreme Court was pleased to observe, as under:-

*3. On appeal, a Division Bench disagreed with the view expressed by the learned Single Judge and reversed his judgment on the ground that the words used in Rule 11-B of the Rules are, ‘must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application’ and not that he should have completed the age of 28 years on that day. They relied upon the undisputed fact that the first day of January next following the last date fixed for receipt of application in this case was January 1, 1984. Accordingly, they held that the appellant was born on January 2, 1956 and, as such, he had attained the age of 28 years as soon as the first day of January, 1984 commenced. They further held that the appellant had not only attained the age of 28 years, but had also*



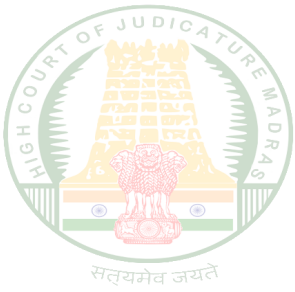
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completed the same at 12 o'clock in the midnight of January 1, 1984. According to the learned Judges, on January 2, 1984, the appellant would be one day more than 28 years and, as such, he was disqualified to appear at the examination under Rule 11-B of the Rules. The conclusion of the learned Judges may best be stated in their own words:

*“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.”*

*9. It is plain upon the language of Rule 11-B that a candidate must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application. Last day fixed for receipt of application in this case, was January 1, 1983. First day of January next following that day would be January 1, 1984. The object and intent in making Rule 11-B was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. 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 the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.*

*14. It is in recognition of the difference between how a person's age is legally construed and how it is understood in common parlance. The legislature has expressly provided in Section 4 of the Indian Majority Act, 1875 that how the age of majority is to be computed. It reads:*



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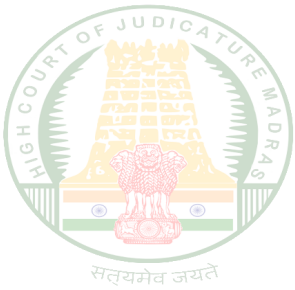
*“4. Age of majority how computed.—In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of Section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of Section 3, at the beginning of the eighteenth anniversary of that day.”*

*The section embodies that in computing the age of any person, the day on which he was born is to be included as a whole day and he must be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. As already stated, a legal day commences at 12 o'clock midnight and continues until the same hour the following night. It would therefore appear that the appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. on January 2, 1984, the appellant would be one day more than 28 years. The learned Judges were therefore right in holding that the appellant was disqualified for direct recruitment to the Rajasthan Administrative Service and as such was not entitled to appear at the examination held by the Rajasthan Public Service Commission in 1983. We affirm the view taken by the learned Judges as also the decision in G. Vatsala Rani case [AIR 1967 Mys 135 : (1966) 2 Mys LJ 606] ”*

36. In **2008-2-SCC-639 (Achhaibar Maurya Vs. State of UP)** , the Honourable Supreme Court was pleased to observe, as under:-

*“12. It was urged that the appellant was entitled to a hearing as the matter relating to retirement from service depended upon the statutory provisions. A person retires automatically on the day when he completes the age of superannuation. Principles of natural justice, therefore, cannot be said to have any application in a case of this nature. A person attains a specified age on the day next before the anniversary of his birthday or in other words on the day preceding that anniversary. (See Shurey, Re, Savory v. Shurey [ LR (1918) 1 Ch 263] and R. v. Scoffin [ LR (1930) 1 KB 741] .)*

13. This Court in *Prabhu Dayal Sesma v. State of Rajasthan*



*[(1986) 4 SCC 59 : 1986 SCC (L&S) 731 : (1986) 1 ATC 341 : 1986 SCC (Cri) 411 : AIR 1986 SC 1948] held: (SCC pp. 63-64, para 9)*

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*“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.”*

**37.In 2009-3-SCC-337 (Eerati Laxman Vs. State of AP) , the Honourable**

Supreme Court was pleased to observe, as under:-

*11. In our opinion, the High Court is not entirely correct in arriving at the said conclusion. The said Act is a beneficent legislation. It, however, would not mean that the principle of literal interpretation thereof should not be resorted to.*

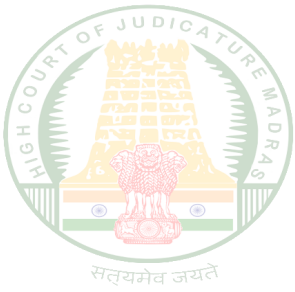
*12. Section 3 of the Majority Act, 1875 provides for age of majority of persons domiciled in India and the criteria for computation of age of majority. It reads as under:*

*“3. Age of majority of persons domiciled in India.—(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.*

*(2) 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 at the beginning of the eighteenth anniversary of that day.”*

*13. In Prabhu Dayal Sesma v. State of Rajasthan [(1986) 4 SCC 59 : 1986 SCC (Cri) 411 : 1986 SCC (L&S) 731 : (1986) 1 ATC 341] this Court categorically held that: (SCC p. 59)*

*“In absence of any express provision, while calculating a person's age, the day of his birth must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday. A legal day commences at 12 o'clock midnight and continues until the same hour the following night.” (See also Salag Ram Sharma v. State of Rajasthan [(2005) 10 SCC 77 : 2005 SCC (L&S) 747] at SCC p. 79, para 11.)*



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*14. The appellant, therefore, having been born on 10-5-1978, the said day was to be counted as a whole day and, thus, he had not attained the age of 16 years before 12 o'clock in the midnight of the previous day i.e. 9-5-1978 (sic 9-5-1994). This aspect of the matter has recently been considered in Achhaibar Maurya v. State of U.P. [(2008) 2 SCC 639 : (2008) 1 SCC (L&S) 519] wherein it was held: (SCC p. 642, para 14)*

*“14. It is interesting to note, however, that the common law rule stated in Shurey, Re, Savory [Shurey, Re, Savory v. Shurey, (1918) 1 Ch 263] in respect of anniversaries has been abrogated by virtue of the Family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1-1-1970, the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. (See Halsbury's Laws of England, 4th Edn., Reissue, p. 209.) We do not have such statute. We have, therefore, to determine the cases on the touchstone of statute operating in the field and in absence thereof by common law principle.”*

38. The Honourable Supreme Court, while dealing with the retrospective effect of the age limitation in the Surrogacy Act, deciding on a group of petitions in *Vijayakumari S &ors vs UoI, Urvashi &ors vs UoI, Arun Muthuvel vs UoI and Sadasivam P. and Mohanambal S. (2024-SCC Online-SC333:MANU/SC/1410/2025)*, the Honourable Supreme Court was pleased to observe that the age limitation, as mentioned in the Surrogacy Act, will not be applied retrospectively, as it will render the Act non-beneficial, defeating its intent of enabling safe surrogacy procedures for intending couples.

39. In this case, according to the Petitioners, a woman remains aged 50 years, until she attains 51 years and therefore, she continues to remain within the statutory age band. The contrary interpretation is that the moment a woman



attains 50 years, she crosses the statutory ceiling, as construed by the court below.

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40. As per the above decisions, *the resultant* position of law and judicial interpretation of age limit, regarding determination of age are that when calculating a person's age, the day of his birth must be counted as a whole day and he/she attains the specific age on the day preceding, the anniversary of his/her birthday. This interpretation of age determination was taken as the primary interpretation to hold that the petitioner had completed the age of 50, one day before her birth anniversary in the year 2025. However, those decisions do not directly answer the distinct question regarding the meaning of the expression "between 23 to 50 years".

41. The expression employed by the Parliament in this Act is "***between 23 to 50 years***". Other interpretations of age limits are explained for in multiple other Acts, i.e, The Prevention of Children from Sexual Offences Act, 2012 and The Assisted Reproductive Technology (Regulation) Act employ the term "***below***" the prescribed age. The Warehousing Development and Regulating Authority (Conditions of service of the Officers and other Employees) Regulations, 2016 employ the term "***not exceeding 50 years***" and The Companies Act, 2013 employs the term "***has not attained the age of 70 years***" to determine the age limit. These Acts, however, cannot be used to understand the current Surrogacy (Regulation) Act, as the term employed is "***between 23 to 50 years***".

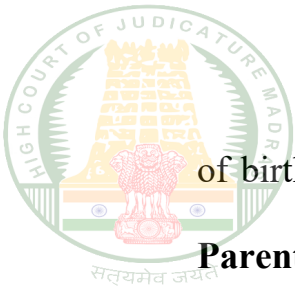


42. This Court is of the view that the Courts must therefore ensure compliance with statutory safeguards, while simultaneously avoiding an interpretation that defeats the object of the legislation through hyper-technical approaches.

Hence, taking a liberal view, this Court is of the view that the Kerala High Court Division Bench Judgement (cited supra) has taken an apt interpretation of the age limit as mentioned in the Surrogacy (Regulations) Act. Therefore, the age limit of 50 years should be read to include the Petitioner's age until she turns 51 years.

43. In this case, it is seen from the records that as per Ex.P1, Aadhaar Card and 10<sup>th</sup> Marksheet, Ex.P14, the 1<sup>st</sup> Petitioner is aged 50 years 9 months and 3 days and in alternative record for determining the age, from the perusal of the medical certificate-ossification test ( Ex.P13), affidavit (Ex.P12), and horoscope (Ex.P15), she is aged 49 years 11 months 24 days. This Court is of the view that if a woman is stated to be aged 50 years, until she attains 51 years, it can be stated that she remains at the age of 50 years. Hence, the findings of the court below that the 1<sup>st</sup> Petitioner did not satisfy the condition "between 23 to 50 years" is misconceived and perverse, as this Courts finds that the 1<sup>st</sup> Petitioner is at the age of 50 years and until she attains the age of 51 years. **Accordingly, Question (3) is answered.**

44. In regard to answering **Question (4)** whether the High Court can pass the order of parentage by itself to avoid further delay, or can pass an order to remand the matter back to the Magistrate for passing fresh orders for issuance



of birth affidavit and custody of the child to be born through surrogacy, the

**Parentage and Custody order** is the legal instrument that transfers

parenthood from the surrogate mother to the intending parents even before

the child is born. As per Section 4(iii)(a)(II), *an order concerning the*

*parentage or custody of the child to be born through surrogacy is passed by*

*the Court of the Magistrate of the first class or above on an application*

*made by the intending couple or the surrogate mother, which shall be the*

*birth affidavit after the surrogate child is born. The order of parentage* acts

as a **birth affidavit** that ensures that the child is treated in law as the

biological and legitimate child of the intending couple/intending woman from

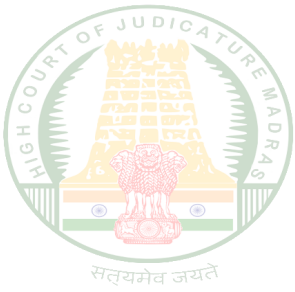
birth, with all corresponding rights of custody, inheritance and succession.

45. The **Coordinate Bench of this Court, by the orders, dated 29.07.2025**

**and 08.08.2025, made in WP.Nos.26975 and 27020 of 2025 (X, Y Vs.**

**State)**, was pleased to observe, as under:-

*“11. During the course of hearing, the format of one of the parental order passed by a competent Court was placed before this Court. On carefully going through the same, it is seen that the concerned Court satisfies itself that intending parents do not have any child either born naturally or through adoption or through surrogacy and due to the medical condition are incapable of having a child naturally and therefore the same necessitates surrogacy. The court also satisfies itself that the lady who is going to bear the child is willing to become the surrogate mother for that couple. Apart from that, the concerned Court satisfies itself that in case, the surrogate mother is married, consent of the husband is also taken. The surrogate mother must also give a statement to the effect that she will not claim the parental custody of the child/children so born in future and that the birth certificate can be granted in favour of the*



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*intending parents. The intending parents must also give a statement to the effect that they will not abandon the child/children so born, for any reasons whatsoever. All the parties must also undertake that there is no commercial surrogacy involved in the matter. The court must also be satisfied that insurance coverage has been given to the surrogate mother. Apart from that, the court must also be satisfied that the intending parents have been granted certificate of medical indication and certificate of eligibility by the Medical Board. After satisfying itself regarding all these requirements, the parentage order is passed and the court declares that the intending parents will be declared as a lawful parent of the child/children to be born and the order will be treated as the birth affidavit after the child is born.*

*14. On the one hand, the interest of the intending parents is involved and on the other hand, the right and autonomy of the surrogate mother is hanging in a balance. Apart from that, the surrogate mother is now 17 weeks/19 weeks pregnant with twins. Therefore, it also involves the right of the unborn child. Under such circumstances, when the same is pitted against the non compliance of the mandatory procedure under the Act, this Court has to necessarily lean in favour of protecting the interest of the petitioners/intending parents, surrogate mother and the unborn child. This Court must also exercise its Parens Patriaa jurisdiction in a case of this nature.*

*16. In the upshot of the above discussion, this Court is inclined to pass the parental order after examining the petitioners/intending parents and the 5<sup>th</sup> respondent/surrogate mother and after satisfying itself that all the other procedures are followed. The procedure that has been followed in this case has already been tabulated and extracted supra. ”*

46. In the above case, in view of the facts and circumstances of the case, the Hon'ble High Court has itself passed a parentage order, declaring the intending couple as the lawful parents of the child to be born. The parentage order was treated as **birth certificate** of the surrogate child.

47. The High Court can pass an order of parentage and custody of the child, as



per the facts and circumstances of the case and can also remand the matter back to the Magistrate for passing the order of parentage and custody of the surrogate child, without any further delay and hardship to the intending couple. **Accordingly, Question (4) is answered.**

48. **Conclusion:-**The Certificates issued by the District Medical Board and Appropriate Authority carry a presumption of validity. Unless set aside by a competent forum or shown to be ex-facie illegal, fraudulent or without jurisdiction, the Magistrate ought not to reassess the merits of such certificates. The Magistrate shall not function as an appellate authority over the District Medical Board, Appropriate Authority, Insurance Authority or Registered ART/Surrogacy Clinics.

49. Proceedings under Section 4(iii)(a)(II) are **beneficial, facilitative and child-centric proceedings and not adversarial litigation.** The welfare of the child is the paramount consideration when determining custody. The jurisdiction exercised by the Magistrate is protective in nature and intended to safeguard, (a) the welfare of the child, (b) the rights of the intending parents; and (c) the autonomy of the surrogate mother.

50. In this case, the Petitioners 1 and 2 had already lost their only child and are a couple, intending to obtain the benefits out of this beneficial legislation to obtain another child. They had legally obtained an Eligibility Certificate from the Appropriate Authority, which is valid from 23.05.2025 to 22.05.2026. In the meanwhile, on 12.03.2026, the court below had passed the Impugned



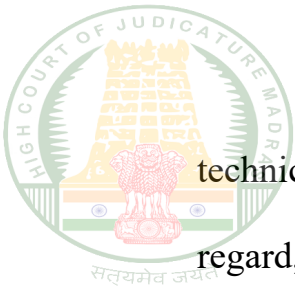
Order, rejecting the application of the Petitioners, contrary to the settled position of law, due to which the Eligibility Certificate obtained by the Petitioners had expired on 22.05.2026, before the instant revision could be decided by this Hon'ble Court. The Legally obtained Eligibility Certificate of the Petitioners, did not fructify to avail the benefits of the Act.

51. The Right to life under Article 21 provides the right and personal liberty to reproduce to live with satisfaction and dignity. The Child so brought to this world by surrogacy will provide a better life in all aspects to the parents (intending couple) and that will enable the intending couple to live with utmost satisfaction. When such facets of Article 21 are involved, the Hon'ble Courts have to give a liberal interpretation to the beneficial legislation instead of depriving a couple their fundamental right under Article 21 on mere technicalities.

52. In this case, due to the rejection of the application by the impugned order, major injury was caused to the Petitioners and the Petitioners herein plead to invoke the legal maxim *Actus curiae neminem gravabit*, which effectively lays down that the act of court prejudices nobody and the court may undo the wrong done to the party, by even considering the question of time.

53. The Petitioners suffered an order from the court below, contrary to the settled proposition of law, which eventually got their Eligibility Certificate expired, due to long delay in the decision by the learned Magistrate.

54. This court has, in most of the cases, seen that the Magistrates are hyper-



technical and are not considering this Act, as a **Beneficial Legislation**. In this regard, it is relevant to refer to the following decisions:-

55.In 2026-2-SCC-96:Manu/SC/1410/2025 (Vijaya Kumari S Vs. Union of

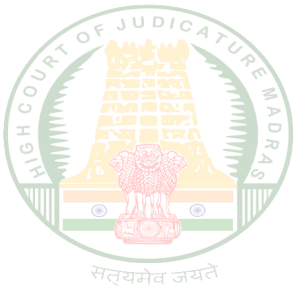
India), the Honourable Supreme Court was pleased to observe, as under:-

**“Concept of surrogacy:-**

*20. The first attempt at surrogacy regulation in India was in the form of the “National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India”, drafted by the Indian Council of Medical Research (“ICMR”), and approved by the Ministry of Health and Family Welfare, Government of India in the year 2005. It defined “surrogacy” as an “arrangement in which a woman agrees to carry a pregnancy that is genetically unrelated to her and her husband, with the intention to carry it to term and hand over the child to the genetic parents for whom she is acting as a surrogate”. It also prescribed a list of “general considerations” for surrogacy procedures, for instance, HIV tests for prospective surrogate mothers, mandatory adoption of the child by the genetic parents and limits on how many times a woman can act as a surrogate. Importantly however, the aforesaid Guidelines did not forbid the practice of “commercial surrogacy”. This was also the case in the subsequent draft ART Bill, 2008, which allowed the surrogate mother to work out “the financial terms and conditions of the surrogacy with the couple”.*

*21. “Surrogacy” as a concept was elaborated upon in great detail by this Court in Baby Manji Yamada v. Union of India [Baby Manji Yamada v. Union of India, (2008) 13 SCC 518] , wherein it was observed as follows: (SCC pp. 523-24, paras 8-16)*

*“8. Surrogacy is a well-known method of reproduction whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child she will not raise but hand over to a contracted party. She may be the child's genetic mother (the more traditional form for surrogacy) or she may be, as a gestational carrier, carry the pregnancy to delivery after having been implanted with an embryo. In some cases surrogacy is the*



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*only available option for parents who wish to have a child that is biologically related to them.*

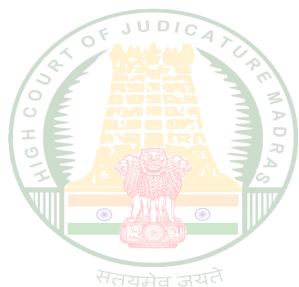
9. *The word “surrogate”, from Latin “subrogare”, means “appointed to act in the place of”. The intended parent(s) is the individual or couple who intends to rear the child after its birth.*

10. *In traditional surrogacy (also known as the straight method) the surrogate is pregnant with her own biological child, but this child was conceived with the intention of relinquishing the child to be raised by others; by the biological father and possibly his spouse or partner, either male or female. The child may be conceived via home artificial insemination using fresh or frozen sperm or impregnated via IUI (intrauterine insemination), or ICI (intracervical insemination) which is performed at a fertility clinic.*

11. *In gestational surrogacy (also known as the host method) the surrogate becomes pregnant via embryo transfer with a child of which she is not the biological mother. She may have made an arrangement to relinquish it to the biological mother or father to raise, or to a parent who is themselves unrelated to the child (e.g. because the child was conceived using egg donation, germ donation or is the result of a donated embryo). The surrogate mother may be called the gestational carrier.*

12. *Altruistic surrogacy is a situation where the surrogate receives no financial reward for her pregnancy or the relinquishment of the child (although usually all expenses related to the pregnancy and birth are paid by the intended parents such as medical expenses, maternity clothing, and other related expenses).*

13. *Commercial surrogacy is a form of surrogacy in which a gestational carrier is paid to carry a child to maturity in her womb and is usually resorted to by well-off infertile couples who can afford the cost involved or people who save and borrow in order to complete their dream of being parents. This medical procedure is legal in several countries including in India where due to excellent medical infrastructure, high international demand and ready availability of poor surrogates it is reaching industry proportions. Commercial surrogacy is sometimes referred to by the emotionally charged and potentially offensive*



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terms “wombs for rent”, “outsourced pregnancies” or “baby farms”.

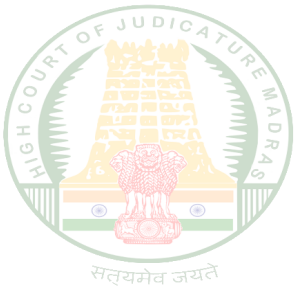
14. *Intended parents may arrange a surrogate pregnancy because a woman who intends to parent is infertile in such a way that she cannot carry a pregnancy to term. Examples include a woman who has had a hysterectomy, has a uterine malformation, has had recurrent pregnancy loss or has a health condition that makes it dangerous for her to be pregnant. A female intending parent may also be fertile and healthy, but unwilling to undergo pregnancy.*

15. *Alternatively, the intended parent may be a single male or a male homosexual couple.*

16. *Surrogates may be relatives, friends, or previous strangers. Many surrogate arrangements are made through agencies that help match up intended parents with women who want to be surrogates for a fee. The agencies often help manage the complex medical and legal aspects involved. Surrogacy arrangements can also be made independently. In compensated surrogacies the amount a surrogate receives varies widely from almost nothing above expenses to over \$30,000. Careful screening is needed to assure their health as the gestational carrier incurs potential obstetrical risks.*

22. *The first move towards the prohibition of commercial surrogacy came with the 228th Report [Ed.: Law Commission of India, Report No. 228 on Need for Legislation to Regulate Assisted Reproductive Technology Clinics as Well as Rights and Obligations of Parties to a Surrogacy (August 2009)] of the Law Commission of India in 2009, which flagged the problem of India becoming a “reproductive tourism destination” (i.e. foreign couples come to India for cost-effective surrogacy procedures) and wombs being “on rent”. It concluded with the following recommendations, inter alia:*

*“1. Surrogacy arrangement will continue to be governed by contract amongst parties, which will contain all the terms requiring consent of surrogate mother to bear child, agreement of her husband and other family members for the same, medical procedures of artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness*



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*to hand over the child born to the commissioning parent(s), etc. But such an arrangement should not be for commercial purposes.*

*2. A surrogacy arrangement should provide for financial support for surrogate child in the event of death of the commissioning couple or individual before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child.*

*3. A surrogacy contract should necessarily take care of life insurance cover for surrogate mother.*

*4. One of the intended parents should be a donor as well, because the bond of love and affection with a child primarily emanates from biological relationship. Also, the chances of various kinds of child-abuse, which have been noticed in cases of adoptions, will be reduced. In case the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child which is resorted to if biological (natural) parents and adoptive parents are different.*

*5. Legislation itself should recognise a surrogate child to be the legitimate child of the commissioning parent(s) without there being any need for adoption or even declaration of guardian.*

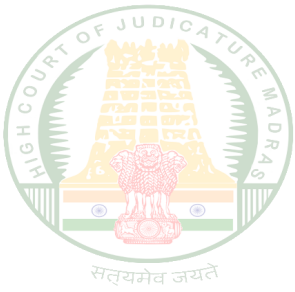
*6. The birth certificate of the surrogate child should contain the name(s) of the commissioning parent(s) only.*

*7. Right to privacy of donor as well as surrogate mother should be protected.*

*8. Sex-selective surrogacy should be prohibited.*

*9. Cases of abortions should be governed by the Medical Termination of Pregnancy Act, 1971 only.”*

*23. The question of age restrictions on the intending couple did not arise in these prior frameworks and recommendations. For instance, the ART (Regulation) Bill, 2008 imposed an age bracket of 21-45 years within which one could become a surrogate mother. However, there were no similar restrictions on the commissioning/intending*



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*couple. It is only with the advent of the Act in the year 2022 that the age-restrictions in Section 4(iii)(c)(I) have been created. Prior to the Act therefore, in the absence of a legal bar, or for that matter any binding surrogacy regulations, intending couples were free to bear children through surrogacy procedures irrespective of their age.*

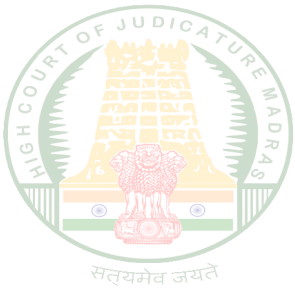
*58. In the result, we hold that Section 4(iii)(c)(I) does not have retrospective operation and therefore, would not apply to the Petitioners and Applicants who are the intending couples. We reiterate that we have not considered the validity of the age restrictions in this but only the applicability of the same to the Petitioners and the Applicants herein. The Writ Petitions and the applications are allowed in the aforesaid terms.”*

**56.In 2025-SCC-Online-Mad-9957 (S.Prasanna Vs. M.Jothika),** the

Coordinate Bench of this Court was pleased to observe, as under:-

*“7. Notably, the Act is a beneficial legislation enacted with the primary object of regulating surrogacy in India and more importantly, addressing the growing problem of infertility among young couples. The Act seeks to provide a legally structured, ethical and medically safe pathway for childless couples to experience parenthood wherein the role of the judiciary assumes great importance. A petition filed under this Act must not be dealt with as though it is a routine application and Courts must keep in mind that these are matters touching upon one of the deepest aspirations of human life, the desire of childless couples to have a child.*

*8. The judicial officers are therefore expected to approach such petitions with sensitivity, responsibility and compassion ensuring that the statutory safeguards under the Act are complied with, without frustrating the beneficial objective of the legislation. The learned Judicial Magistrate, Katpadi, without properly looking into the provisions of the Act, has returned the petition erroneously by placing reliance on the interim order passed by the Apex Court in ARUN MUTHUVEL v. UNION OF INDIA (Writ Petition (Civil) No. 756 of 2022 and connected cases on 05.02.2024 cited supra, in and by which, couples who had approached the Supreme Court with regard to exemption in the age criteria were directed to approach their respective jurisdictional High Courts for mere ease of access of justice,*



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*which is not at all applicable to the facts of the present case.*

*9. Further, it is seen that the learned Magistrate had repeatedly, without understanding the sensitivity involved in this case, had returned the petition on several occasions thereby, frustrating the parties and acting contrary to the intent of the beneficial legislation. As discussed supra, the order passed by the Apex Court cited supra by the learned Magistrate is not applicable to the facts of the present case. Even, in the very same case, the final order passed by the Apex Court on 09.10.2025 is to the effect that the age restrictions cannot be applied for the couples who started surrogacy procedures before the 2021 Act and as stated above is also not applicable to the present case of the petitioners. In the present case, the intending couples/petitioners sought an order to have parentage and custody of the child born through the respondent/surrogate mother and an order of approval of surrogacy, which is permissible in law.”*

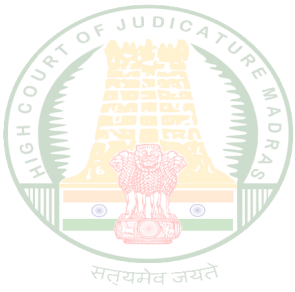
**57.In CrI.RC(MD)No.981 of 2025 (Palani Pandi Vs. Nil), by the order**

**dated, 05.08.2025,** the Coordinate Bench of this Court was pleased to observe, as under:-

**“Analysis:**

*5.The Surrogacy (Regulation) Act, 2021, is a beneficial legislation enacted with the primary objective of regulating surrogacy in India and, more importantly, addressing the growing problem of infertility among young couples. Infertility has emerged as a pressing social and medical concern, with studies showing that lifestyle changes, environmental factors, and health conditions are contributing to a decline in fertility rates in the country. The Act, therefore, seeks to provide a legally structured, ethical, and medically safe pathway for childless couples to experience parenthood (Baby Manji Yamada v. Union of India<sup>1</sup> and Union of India v. Satya<sup>2</sup>).*

*6.In this context, the role of the judiciary assumes heightened 1 (2008) 13 SCC 518 2 (2021) 8 SCC 503 importance. Courts must not treat surrogacy petitions as routine applications but as matters touching upon the deepest aspirations of human life — the desire to have a child. Judicial officers are therefore*



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*expected to approach such petitions with sensitivity, responsibility, and compassion, ensuring that the statutory safeguards under the Act are complied with while also not frustrating the welfare objective of the legislation .*

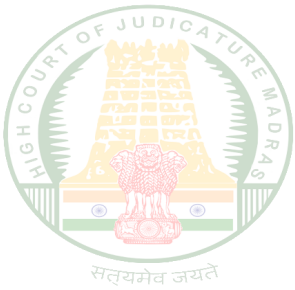
*7.In the present case, the learned Trial Court erred in dismissing the petition solely because of the surrogate mother's nervousness in recalling the date of her marriage. Such a technical lapse cannot outweigh the overwhelming compliance with the statutory requirements under the Act. The petitioners had already furnished all necessary documents, including the marriage certificate, the death certificate of the surrogate mother's husband, and the widow certificate. Once these materials are available, the dismissal of the application on a trivial ground reflects a failure to appreciate the object and purpose of the Surrogacy Act.*

*8.The Act enjoins Courts to uphold the welfare of intended parents and surrogate mothers within its regulatory framework. A dismissive approach, particularly after keeping the matter pending for seven months, reflects social irresponsibility and undermines the plight of childless couples. The Courts are duty-bound to ensure that the fundamental right to parenthood, facilitated through the Act, is not thwarted by hyper- technical reasoning .*

*9.In light of the above, the impugned order is set aside. The matter is remanded to the learned Judicial Magistrate, Uthamapalayam, with a direction to record the sworn statement afresh and dispose of the petition in accordance with law within two weeks from the date of receipt of a copy of this order. The learned Trial Court shall duly take into account the documentary evidence produced by the petitioners, including the death certificate of the surrogate mother's husband and her widow certificate, while considering the petition on merits.*

**58.In Manu/DE/4285/2026 (Shewta Tuteja Vs. Union of India), the High Court of Delhi** was pleased to observe, as under:-

*“ 11. There can be no quarrel with the proposition that the ART Act is a beneficial regulatory legislation enacted with the object of ensuring safe, ethical and regulated ART practices. Equally,*



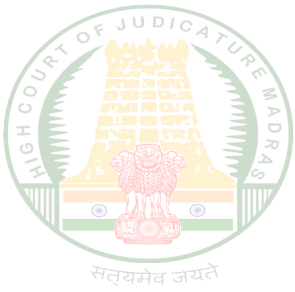
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*the concerns relating to maternal health and child welfare which underlie the statutory framework cannot be disregarded. However, while interpreting a regulatory statute touching upon reproductive rights and decisional autonomy, the Court is also required to adopt an interpretation which remains consistent with constitutional values embodied under Article 21 of the Constitution.*

*16. The Supreme Court in the case of [Suchita Srivastava](#) (supra) recognised reproductive choice as an inseparable facet of personal liberty under [Article 21](#) of the Constitution. Similarly, in [Justice K.S. Puttaswamy](#) (supra), decisional autonomy and privacy in matters concerning family, procreation and bodily integrity were held to be constitutionally protected interests. These constitutional principles necessarily require that statutory provisions regulating ART procedures receive a purposive interpretation that advances constitutional freedoms while preserving the regulatory object sought to be achieved by the enactment.*

*17. The Punjab Haryana High Court in [Sarabjit Kaur](#) (supra) while interpreting the provisions of the ART Act observed that the primary purpose of the enactment is to regulate and supervise ART clinics and banks so as to prevent misuse and unsafe practices. The statutory framework ought not to be construed in a manner defeating the very object underlying the legislation. The restrictions which are not expressly contemplated under the statute cannot be imported so as to defeat access to ART procedures. The reasoning adopted in [Sarabjit Kaur](#) also assumes significance inasmuch as the statutory framework imposes age restrictions individually upon a woman and a man and not upon "commissioning couple" as a composite unit. The legislative scheme does not contemplate any joint or collective age restriction for a "commissioning couple."*

*27. This Court is also conscious of the fact that reproductive rights and access to parenthood in the contemporary constitutional jurisprudence cannot be reduced to purely technical or pedantic application of statutory conditions divorced from factual context in which such rights are asserted. The ART Act is fundamentally regulatory in character. The object of the enactment is to ensure ethical and safe ART practices and not to create insurmountable barriers defeating*



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*legitimate continuation of treatment processes already lawfully undertaken.*

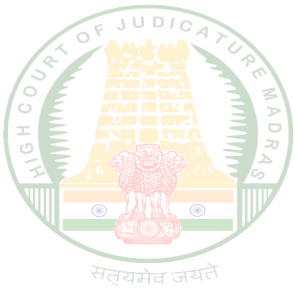
*28. In view of the peculiar facts of the case, this Court is of the considered opinion that denial of permission to utilise the remaining five cryopreserved embryos solely on account of the Petitioners having marginally crossed age threshold of the ART process would not subserve the object of the ART Act.”*

**59. In all the above said decisions, the sum and substance is that the Surrogacy Act is beneficial legislation enacted with the primary object of regulating surrogacy in India and more importantly, addressing the growing problem of infertility among young couples. The Act is intended to provide a legally structured, ethical and medically safe pathway for childless couples to experience parenthood wherein the role of judiciary assume great importance. The Courts also stressed on the need to uphold the welfare of intended parents and surrogate mothers and mere technical lapses should not hinder the access to parenthood.**

60. On the point of “**Welfare of the child as primary consideration**”, it is relevant to refer to the decision in **2008-9-SCC-413 (Nil Ratan Kundu Vs. Abhijit Kundu)**, wherein the Honourable Supreme Court was pleased to observe, as under:-

***“Principles governing custody of minor children:-***

*52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is*



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*required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.”*

61. After considering the various decisions of the Honourable Supreme Court and the High Court, this Court suggests the following **Guidelines for Magistrates while dealing with the applications under Sec. 4(iii)(a)(II) of the Surrogacy (Regulation) Act, 2021:-**

“In order to ensure uniformity in judicial practice and avoid unnecessary hardship to intending couples, surrogate mothers and children born through surrogacy, the following guidelines may be used. The suggested judicial principle based on the observations of the role of the Magistrate is provided and the same may be considered, so as to ensure the division of duties between multiple agencies involved in the process of surrogacy. The role of the Magistrate under Section 4(iii)(a)(II) is confined to ensuring voluntariness, statutory compliance, welfare of the child and legal certainty regarding parentage and custody. The Magistrate is not expected to sit in appeal over findings recorded by the District



Medical Board or the Appropriate Authority except where **fraud, lack of jurisdiction or patent illegality** is apparent on the face of the record.

### **1. Essential Requirements for Judicial Scrutiny:-**

The Magistrate shall ordinarily verify, whether the Petition/affidavit shall contain the following:-

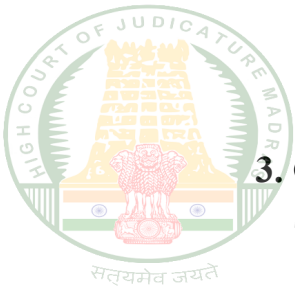
- The identity of the parties involved with valid documentation
- The consent of the surrogate mother and whether she is married and that the consent of her husband is also taken.
- The surrogate mother's statement to the effect that she will not claim parental custody of the child/children so born in future and that the birth certificate granted in favour of the intending parents.
- The intending parents' statement to the effect that they will not abandon the child/children so born, for any reasons whatsoever (*As per Section 7*).
- All the parties must also undertake that there is no commercial surrogacy involved in the matter.

### **2. Personal Interaction:-**

The Magistrate shall interact with the intending couple and surrogate mother to satisfy himself regarding.

- i) voluntariness,
- ii) absence of coercion,
- iii) absence of undue influence and
- iv) understanding of legal consequences and record the same.

Such interaction need not assume the character of a full-fledged trial.



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### 3. Commercial Surrogacy:-

The Magistrate shall satisfy himself that:

- No commercial consideration is involved
- Parties understand the statutory prohibition
- The arrangement is altruistic in nature

### 4. Undertakings to be Obtained:-

The intending parents shall undertake that:

- They shall accept custody immediately after birth
- They shall not abandon the child
- They shall bear all legal obligations towards the child
- They shall ensure registration of birth

The surrogate mother shall undertake that:

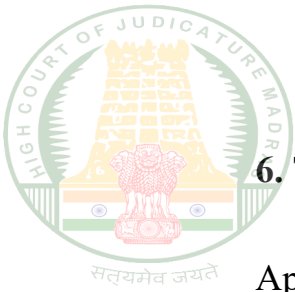
- She voluntarily agreed to act as surrogate
- She has no objection to parentage being vested in the intending parents
- She shall not claim custody subsequently

### 5. Welfare of Child

The Magistrate shall ensure that:

- Legal parentage is clearly established
- Custody immediately vests with the intending parents
  - upon birth
- No legal vacuum exists regarding guardianship
- Rights under Section 8 are protected

The **welfare of the child** shall remain the paramount consideration.



## 6. Time Limit:-

Applications should preferably be disposed of preferably within four weeks from the date of the Application by the Magistrate, so that the object of the Act be fulfilled.

## 7. Exceptional Cases:-

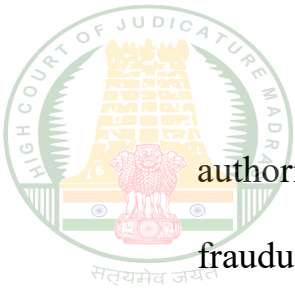
The Magistrate may undertake deeper scrutiny only where:

- Fraud is alleged
- Documents appear fabricated
- Commercial surrogacy is suspected
- Consent appears involuntary
- Documents are ex facie illegal
- Welfare of the child is demonstrably endangered

Upon satisfaction of the above, the Magistrate may **declare that**:

- The intending couple shall be the lawful parents of the child proposed to be born through surrogacy.
- The child shall be deemed to be their biological child under Section 8.
- Custody shall vest with the intending parents immediately upon birth.
- The order shall constitute the parentage declaration contemplated under Section 4(iii)(a)(II).

62. To sum and substance, **in the present case**, without construing the Surrogacy Regulation Act, 2021 as a beneficial legislation, the learned Magistrate had gone into the matter as a trial case, on hyper technicalities, as an appellate authority. Unless the certificates issued by the appropriate



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authority are set aside by a competent forum or shown to be ex-facie illegal, fraudulent or without jurisdiction, the learned Magistrate ought not to have reassessed the merits of such certificates. In this case, the learned Magistrate had exceeded its jurisdiction, in reassessing erroneously the eligibility certificate issued by the appropriate authority. When the husband of the surrogate mother had given consent, the learned Magistrate ought not to have dismissed the Petition on the ground of non-examination of the husband of the surrogate mother. Though the 1<sup>st</sup> Petitioner is aged 50 years 9 months and 3 days, she shall be presumed to be at the age of 50 years, till she crossed the age of 51 years. Considering the other alternative documents filed by the Petitioners, namely, medical certificate-ossification test ( Ex.P13), affidavit (Ex.P12), and horoscope (Ex.P15), as per those documents, she is aged 49 years 11 months 24 days. In such type of matters, the Trial Court is not required to go into the question of technicalities and legalities of the certificates issued by the appropriate authority. The learned Magistrate shall not function as an appellate authority over the District Medical Board, Appropriate Authority, Insurance Authority or Registered ART/Surrogacy Clinics. This court has, in most of the cases, seen that the Magistrates are hyper-technical and are not considering this Act, as a beneficial legislation. The Surrogacy (Regulation) Act is **beneficial legislation**, enacted with the primary object of regulating surrogacy in India.

63. This Court also considered the request of the learned counsel for the



Petitioners for extension of the eligibility certificate, with effect from 23.05.2026 till 22.05.2027. In this regard, the appropriate authority may consider the request made by the Petitioners, in the interest of justice, as the eligibility certificate got expired during the pendency of the case before the Trial Court as well as before this Court.

64. In the result, in view of the above said discussions and observations and in the light of the various decisions, referred to above, this Court is inclined to remand the matter back to the Trial Court, for consideration afresh. Accordingly, this Criminal Revision Case is **allowed**, with the following directions:-

- i. The impugned order, dated 18.03.2026, passed in CrI.MP.No.258 of 2026, by the Judicial Magistrate No.I, Namakkal is **set aside and reversed**.
- ii. The matter is remanded back to the Judicial Magistrate No.I, Namakkal, for consideration afresh, in accordance with law and in line with the observations and guidelines of this Order.
- iii. The Petitioners are directed to make an application, **within two weeks from today**, before the appropriate authority for extending the period of the eligibility certificate for a further period of one year with effect from 23.05.2026 till 22.05.2027.
- iv. On receipt of such application from the Petitioners, the appropriate authority shall issue a eligibility certificate for a further period of one year with effect from 23.05.2026 till 22.05.2027, to the Petitioners, within a period of **two weeks**, thereafter.
- v. On receipt of the eligibility certificate from the Appropriate Authority,



the Petitioners shall file the same before the Trial Court.

vi. On receipt of the eligibility certificate from the Petitioners, the Trial Court shall pass orders, in accordance with law and in the light of the discussions, observations and guidelines, made in this order, within a period of **four weeks** from the date of receipt the eligibility certificate.

vii. The learned Registrar General of this High Court is requested to circulate a copy of this order to all the Principal District Judges for information and its compliance.

**25-06-2026**

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

SRCM

To

1.The State of Tamilnadu, Rep by its Health Secretary,  
Secretariat, Fort St.George,  
Chennai-600009.

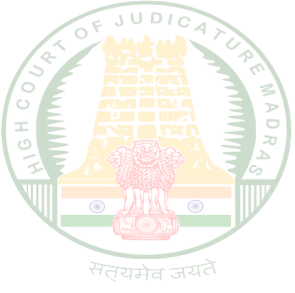
2.The Director of Medical and Rural Health Services  
359, Anna Salai, Chokkalingam Nagar,  
Teynampet, Chennai-600006.

3.The Appropriate Authority/ Joint Director of Health Services  
Mohanur Road, Thillaipuram, Namakkal,  
Tamil Nadu-637001.

4.The Appropriate Authority/ Joint Director of Health Services  
II-Floor, Collectorate Annexure Building,  
Karur-639007.

5. The Judicial Magistrate No.1, Namakkal

6. The Public Prosecutor, Madras High Court, Madras



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CRL RC No. 950 of 2



**SHAMIM AHMED, J.**

**SRCM**

**PRE DELIVERY ORDER IN  
CRL RC No. 950 of 2026**

**25-06-2026**