IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 13TH DAY OF FEBRUARY 2025 / 24TH MAGHA, 1946

WP(C) NO. 403 OF 2025

PETITIONERS:

1 RAJITHA P.V
AGED 46 YEARS
W/O SANTHOSH M., PALLATH VEETIL, VALIYANNUR P.O,
VARAM, KANNUR DISTRICT., PIN – 670594.

2 SATHOSH M.
AGED 52 YEARS
S/O NARAYANAN M., PALLATH VEETIL, VALIYANNUR P.O,
VARAM, KANNUR DISTRICT., PIN – 670594.

BY ADVS.
ADITHYA RAJEEV
S.PARVATHI
SAFA NAVAS

RESPONDENTS:

1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH
AND FAMILY WELFARE, SASTHRI BHAVAN, NEW DELHI.,
PIN - 110001

2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF HEALTH
AND FAMILY WELFARE, SECRETARIAT,
THIRUVANANTHAPURAM., PIN – 695001.

3 THE KERALA STATE ASSISTED REPRODUCTIVE TECHNOLOGY
AND SURROGACY BOARD
REPRESENTED BY ITS CHAIRPERSON, DISTRICT HEALTH
SERVICES,GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM, PIN - 695035

BY ADV R.V. Sreejith

OTHER PRESENT:

DSG1 SRI T C KRISHNA
GP SMT VIDYA KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.02.2025, THE COURT ON 13.02.2025 DELIVERED THE FOLLOWING:

"C.R"

C.S.DIAS, J.

WP(C) No. 403 of 2025

Dated this the 13th day of February, 2025

JUDGMENT

The 1st petitioner is the wife of the 2nd petitioner. The 1st petitioner was born on 21.06.1978 and is 46 years of age, while the 2nd petitioner was born on 21.11.1972 and is 52 years old. The petitioners are issueless. The petitioners underwent several cycles of treatment utilising the Assisted Reproductive Technology, but did not yield the expected results. Hence, the petitioners are eligible to avail surrogacy services. The petitioners have identified a surrogate mother who has consented to assist them in conceiving a child. The jurisdictional Magistrate has passed Ext.P8 order declaring that the parentage and custody of the child born through the surrogate mother would vest with the petitioners. Accordingly, the petitioners approached the 3rd respondent Board for an eligibility certificate as provided under Section 4(c) of the Surrogacy (Regulation) Act, 2021 ("Act", for

brevity). However, the 3rd respondent has orally declined to issue the eligibility certificate because the 1st petitioner has attained 50 years. Section 4(c)(I) of the Act lays down the age limit for both males and females seeking surrogacy services. The provision specifically states that females between the ages of 23 and 50 years and males between the ages of 26 and 55 years, on the date of certification, are entitled to an eligibility certificate. Under Section 9 of the General Clause Act, the inclusion of the term “to” in any central act or regulation is deemed sufficient to encompass the purpose of including the last in the series of days or any other period of time. Given the conscious usage of the word “to” in Section 4 (c)(I) of the Act, the age limits of 50 years for females and 55 years for males shall be interpreted as extending until the previous day of attaining the ages of 51 and 56. Therefore, the 1st petitioner, who has just completed the age of 50 years as per Ext.P9 document, is eligible to partake in the surrogacy process. Hence, this Court may declare that the petitioners would fall within the age limit prescribed under Section 4(c) (I) of the Act, and the 3rd respondent may be directed to issue the eligibility certificate.

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

3. The learned counsel for the petitioners strenuously argued that as the words used in Section 4 (c)(I) of the Act are between 23 to 50 years and 26 to 55 years, in the cases of females and males, respectively, and in view of Section 9 of the General Clauses Act, the 1st petitioner is entitled to an eligibility certificate till the previous day she attains 51 years. The learned counsel relied on the decisions of the Hon'ble Supreme Court in **Tarun Prasad Chatterjee v. Dinanath Sharma** [(2000) 8 SCC 649] **and Shashikala and others v. Gangalakshmamma and another** [(2015) 9 SCC 150] and the decisions of this Court in **P.O.Meera and another v. Ananda P.Naik and others** (2022 (1) KHC 591) and **National Insurance Company Limited, Kollam v. Prashanth (died) and others** (2024 (7) KHC 621) to substantiate her contentions.

4. The learned Government Pleader opposed the above writ petition. She submitted that in the 1st petitioner's Aadhar card, passport and driving license (Exts.P2 to P4), her date of birth is 21.06.1978. However, in the 1st petitioner's school admission register, which is the relevant document, her date of birth is 21.06.1974. Therefore, the 1st petitioner has completed the age of 50 years. It was in the said situation that the 3rd respondent had refused to issue the eligibility certificate. She also refuted the contention of the learned counsel for the petitioners that a female continues to be 50 years and is eligible till the previous day of attaining the age of 51. She argued that the General Clauses Act deals with the computation of time and not the calculation of age. She drew the attention of this Court to the decision of the Hon'ble Supreme Court in **Tarun Prasad Chatterjee v. Dinanath Sharma's case** and the decisions of this Court in **Jaison V. George v. State of Kerala** [2019 (5) KHC 115] and the Mysore High Court in **G. Vatsala Rani v. Selection Committee for Admission to Medical Colleges** [AIR 1967 Mys 135] in support of her contention that a person would attain a specified age on the day preceding the anniversary of his birthday. She prayed

that the writ petition be dismissed.

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

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

> "(c) an eligibility certificate for intending couple is issued separately by the appropriate authority on fulfilment of the following conditions, namely:--
>
> **(I) the intending couple are married and between the age of 23 to 50 years in case of female and between 26 to 55 years in case of male on the day of certification;**
>
> (II) the intending couple have not had any surviving child biologically or through adoption or through surrogacy earlier: Provided that nothing contained in this item shall affect the intending couple who have a child and who is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure and approved by the appropriate authority with due medical certificate from a District Medical Board; and
>
> (III) such other conditions as may be specified by the regulations".
>
> (highlighted)

7. The above provision stipulates that an intending couple desirous of having a child via surrogacy would be entitled to an eligibility certificate, provided the intending couple is married and the female is within the age range of 23 to 50 years and the male is between 26 to 55 years on the day of certification.

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

9. The crux of the argument put forth by the learned counsel for the petitioners rests on the interpretation of the words used in Section 4 (c) (I) of the Act, which specifies the age limit for females as "**between the age of 23 to 50 years"**. The learned Counsel contends that in the light of Section 9 of the General Clauses Act, the 1st petitioner continues to be 50 years till the previous day of her 51st birthday.

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

> "9. Commencement and termination of time.— (1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

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

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

support her assertion that the 1st petitioner will continue to be considered as a person of 50 years old until the preceding day of her 51st birthday. It is pertinent to note that **Tarun Prasad's** case dealt with the interpretation of Section 9 of the General Clauses Act, 1897, in relation to the computation of the limitation period under Section 81(1) of the Representation of People Act, 1951, which has no relevance to the present case. Whereas, the decision in **Shasikala's** case was rendered in the context of determining the relevant multiplier for calculating compensation in motor accident cases as per the principles laid down by the Hon'ble Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another** [(2009) 6 SCC 121]. In **Sarla Verma's** case, the multiplier system was adopted for death and injury claims, categorising the deceased/injured into ten age groups: 16-20, 21-25, 26-30, 31-35, 36-40, 41-45, 46-50, 51-55, 56-60 and 61-65. In this context, the Supreme Court stated that the multiplier would shift to the subsequent age category once the deceased/injured attained the age corresponding to that category. Following the principles in Shashikala's case, this Court rendered the decisions in **P.O. Meera** and **Prashanth's** cases. However,

the petitioner cannot draw an analogy to the above principles in the instant case. Section 4 (c) (I) of the Act explicitly specifies the age limit for females as “between the age of 23 to 50 years”, with no transition to a subsequent age category as in the multiplier method in Sarla Verma.

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

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

The above section embodies that, in calculating an individual’s age, the day the person was born is counted as a whole day, and he is deemed to have attained majority at the start of his eighteenth anniversary day.

14. The above legal position has been lucidly explained by the Hon’ble Supreme Court in **Prabhu Dayal Sesma v. State of Rajasthan and another** [(1986) 4 SCC 59], which reads as follows:

> “9. …… …… ……. In calculating a person's age, the day of his birth must be counted as a whole day, and he attains the specified age on the day preceding the anniversary of his birthday. We have to

apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until 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.

*** *** *** ***

***

12. In *Re Shurey Savory* v. *Shurey* [LR (1918) 1 Ch 263] the question that arose for decision was this: Does a person attain a specified age in law on the anniversary of his or her birthday, or on the day preceding that anniversary? After reviewing the earlier decisions, Sargant. J. said that law does not take cognizance of part of a day and the consequence is that person attains the age of twenty-one years or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty-first or twenty-fifth birthday or other birthday, as the case may be.

15. The Honourable Supreme Court has followed the view in **Prabhu Dayal Sesma's** case in **Earati Laxman v. State of Andhra Pradesh** [2009 (3) SCC 337] while interpreting the provisions of the Majority Act and has reiterated that a person attains a particular age at midnight on the day preceding his birthday anniversary.

16. In **Jaison V. George's** case, this Court addressed the question of whether a person would attain 18 years of age only on the previous midnight of his 19th birthday in a matter arising under the Juvenile Justice (Care and Protection of Children) Act, 2015. This Court concluded that a person would attain 18 years on the day preceding his 18th birthday anniversary.

17. The law has, therefore, crystallised that a person attains a specified age on the day preceding his birthday anniversary.

18. In the light of the interpretations under Section 4 of the Indian Majority Act, a statute that precisely deals with the computation of age, there is no doubt that a female who attains the age of 23 would become eligible to have a surrogate child and becomes ineligible on the preceding day her 50th birthday anniversary. The terms ‘between” and “to” used in Section 4 (c) (I) of the Act reflect a restriction indicating that a female can have a surrogate child only after attaining the age of 23 years and before completing the age of 50 years, with a similar restriction for males aged between 26 to 55. If the petitioners' contention is accepted, the minimum age limits will be stretched to the previous days of the 24th and 27th birthday anniversary, and the maximum ages will be extended till the preceding day of the 51st and 56th birthday. It is not for this Court to extend the age limits fixed by the legislature by exercising its extra-ordinary jurisdiction. It is reasonable to presume that the legislature has imposed these age restrictions, considering the normal age that women conceive a biological child. If the petitioners interpretation is accepted, it

would extend age criteria set forth in various statutes, particularly in service law, by an additional year. Furthermore, the petitioners have not challenged the vires of the age fixation in the Act.

Considering the facts and the legal principles, this Court is of the view that the 3rd respondent has rightly concluded that the 1st petitioner is ineligible for an eligibility certificate under Section 4 (c) of the Act since she has attained the age of 50 years. Consequently, the petitioners' prayer to declare that the 1st petitioner is eligible for an eligibility certificate is rejected. Accordingly, the writ petition is dismissed.

Sd/-C.S.DIAS, JUDGE

rkc/06.02.25

APPENDIX OF WP(C) 403/2025

PETITIONERS EXHIBITS

Exhibit-P1	**A TRUE COPY OF THE CERTIFICATE OF MARRIAGE OF THE PETITIONERS DATED 07.03.2008 ISSUED BY THE REGISTRAR OF MARRIAGES, KANNUR CORPORATION**
Exhibit-P2	**A TRUE COPY OF THE AADHAR CARD OF THE 1ST PETITIONER**
Exhibit-P3	**A TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT OF THE 1ST PETITIONER**
Exhibit-P4	**A TRUE COPY OF THE INDIAN UNION DRIVING LICENSE OF THE 1ST PETITIONER ISSUED BY THE GOVERNMENT OF KERALA**
Exhibit-P5	**A TRUE COPY OF THE AADHAR CARD OF THE 2ND PETITIONER**
Exhibit-P6	**A TRUE COPY OF THE CERTIFICATE OF MEDICAL INDICATION FOR INTENDING COUPLE DATED 25-08-2023 ISSUED BY THE DISTRICT MEDICAL OFFICER, THRISSUR**
Exhibit-P7	**A TRUE COPY OF THE CERTIFICATE OF MEDICAL AND PSYCHOLOGICAL FITNESS OF THE SURROGATE MOTHER DATED 08-10-2024 BY THE ASSISTANT SURGEON, KAP 1ST BATTALION, THRIPUNITHARA**
Exhibit-P8	**A TRUE COPY OF THE ORDER DATED 19-10-2024 IN CRL.M.P NO,8439/2024 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THRISSUR**
Exhibit-P9	**A TRUE COPY OF THE EXTRACT OF ADMISSION REGISTER OF VARAM U.P SCHOOL PERTAINING TO THE 1ST PETITIONER**