HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NO: 26921 OF 2025

Between:

1. Dr. M, W/o Shri SI aged 32 yrs., Occ. Doctor,
2. S, S/o Shri V., aged 31 yrs., Occ.Business

   Both are residents of Flat No.403, Kolan Veera Reddy Space, Near Municipal Office, Nizampet, Kukatpally, Hyderabad.

...PETITIONERS

AND

1. The Union of India, Represented by its Secretary Ministry of Health and Family Welfare (MoHFW) Room No. 156-A, Nirman Bhavan, New Delhi-110001 Email .secvhfwgnic.in
2. Appropriate Authority, Through - its Chairperson (Commissioner, Health and Family Welfare), Opposite DME Building, DM and H5 Campus, Opp. Koti Women's College Road, KutbiGuda, Sultan Bazar, Koti, Hyderabad, Telengana - 500095.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of a WRIT OF MANDAMUS or any other order or writ aggrieved by the action of the 2t respondent in passing the impugned order's vide proceedings Rc.No.228/ART and Surrogacy/Govt.Inst/2024-1 dated 18-08-2025 thereby declining to consider petitioner's application for issuance of certificate of essentiality and eligibility for Surrogacy on the ground that the Cytogenetic report from the Institute of Genetics and Hospitals for Genetic Diseases Indicates Chromosome Analysis 46 KY Karyotype being illegal irregular and in violation of articles 14, 21 of Constitution of India and consequently set-aside the 2' respondent proceedings Rc.No.228

ART and Surrogacy/Govt.Inst/2024-1 dated 18-08-2025 by directing them to issue certificate of essentiality and eligibility in favour of the Petitioners.

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased direct the 2nd respondent to consider the case of the petitioner and issue certificate of essentiality and eligibility pending disposal of the main writ petition.

Counsel for the Petitioner : SRI P.D.VINEELA

Counsel for the Respondent No.1 : SRI N.BHUJANGA RAO,
Dy.Solicitor General Of India

Counsel for the Respondent No.2 : SMT.K.SWAPNA MADHURI,
AGP FOR MEDICAL AND HEALTH

The Court made the following: ORDER

IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF TELANGANA
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 26921 OF 2025

03.03.2026

Between:

Dr. M & another

..... Petitioners

And

The Union of India,
Rep. by its Secretary,
Ministry of Health & Family Welfare (MoHFW)
& another

..... Respondents

O R D E R:

The Hindu marriage (Sanskrit: विवाह romanized: Vivaha lit 'Marriage') is the most important of all the samskaras, the rites of passage described in the Dharmashastra texts. Variously defined, it is generally described to be a social institution for the establishment and regulation of a proper relationship between the sexes, as stated by 'Manu'. Marriage is regarded to be a sacrament by Hindus, rather than a form of social contract, since they believe that all men and women are created to be parents, and practise dharma together, as ordained by the Vedas.

1.1. For centuries, marriage in India has been more than just a union between two individuals; it has been a cornerstone of society, deeply rooted in tradition and scripture. While arranged marriages are often seen as the typical form of matrimony in India, historical texts reveal a far more nuanced picture.

1.2. **Conception:**

The ideal conception of marriage that was laid down by the ancient Indians is one in which it is a ceremonial gift of a bride (Vadhů) by her father, or another appropriate family member, to a bride-groom (Vara), so that they may fulfil the purposes of human existence together. In such a conception, vivaha, which originally meant the wedding ceremony, but has to acquire the definition of marriage as a whole, is meant for procreation, and the establishment of a family (kutumba). After one's wedding, one is believed to have entered the second stage of life, the grihastha ashrama, performing the duties of a householder.

1.3. **Goals:**

In Hinduism, the four goals of life (Purusarthas) are regarded to be righteousness (dharma), wealth (artha), pleasure (kāma), and liberation (moksha). Marriage is generally not considered necessary to fulfil these goals because following

righteousness (dharma) applies to a person since birth and wealth (artha) and liberation (moksha) are again one's personal goal as dharma and need not to be aligned with marriage as they can be practiced with or without it. The three goals of marriage include allowing a husband and a wife to fulfil their dharma, bearing progeny (praja), and experiencing pleasure (rati). Sexual intercourse between a husband and wife is regarded to be important in order to produce children, but is the least desirable purpose of marriage in traditional Hindu schools of thought.

1.4. **Age:**

The Naradasmrti states a daughter should be given away for once and all, as soon as her menses appear. The Mānusmriti states that following menarche, a maiden may wait for three years, after which she may marry. Girls are usually considered to have achieved puberty when they are 12 years old, and are allowed to choose their own husbands if a suitable groom is not procured for them.

1.5. There are several types of marriages in Hindu religion.

Brahma vivah (The Divine Marriage):

Brahma marriage is the most pious and ideal form of marriage. In this form, parents of the bride choose a groom

for the girl based on his goodness, education and good character. The marriage is conducted with Vedic ceremonies, and there is no dowry exchange. The father of the bride gives his daughter as a gift to the bridegroom who is a learned and virtuous person. This type of marriage stresses dharma, duty and honor, which forms the basis for a stable, fulfilling and happy married life. In modern Hindu society, the practice of arranged marriages is mainly based on Brahma marriage norms, with special emphasis on the acceptance of both families and being compatible.

Apatyam
Children
O Lord of the home, best finder of riches for our children are you. Grant to us splendor and strength, O Master of our home.

---- *Sukla Yajur Veda 3.39. ve, 343*

1.6. What is the Fulfilment of a Marriage?

SLOKA 81:

Children are the greatest source of happiness in marriage. Householder life is made rich and complete when sons and daughters are born, at which time the marriage becomes a family and a new generation begins. Aum.

BHASHYA:

The total fulfilment of the grihastha dharma, family life, is children. Marriage remains incomplete until the first child is born or adopted. The birth of the first child cements the family together.

At the birth itself, the community of guardian devas of the husband, wife and child are eminently present. Their collective vibration showers blessings upon the home, making of it a full place, a warm place. It is the duty of the husband and wife to become father and mother. This process begins prior to conception with prayer, meditation and a conscious desire to bring a high soul into human birth and continues with providing the best possible conditions for its upbringing.

Raising several children rewards the parents and their offspring as well. Large families are more cohesive, more stable, and are encouraged within the limits of the family's ability to care for them. Parents, along with all members of the extended family, are responsible to nurture the future generation through childhood into puberty and adulthood.

1.7. *The Vedas exclaim:*

" *Blessed with sons and daughters, may they enjoy their full extent of life, decked with ornaments of gold." Aum Namah Sivāya.*

When Brahmanas know that Self, and have risen above the desire for sons, wealth, and (new) worlds, they wander about as mendicants. For a desire for sons is desire for wealth, a desire for wealth is desire for worlds. Both these are indeed desires. *(Brihadaranyaka Upanishad)*

Through a son he conquers the worlds, through a grandson he obtains immortality, but through his son's grandson he ascends to the (highest) heaven. (All that) has been declared in the Veda. *(Baudhayana Sutras 2-9-16.3)*

The son of a wife wedded, according to the Brahma rite, if he performs meritorious acts, liberates from sin ten ancestors, ten descendants and himself as the twenty-first. *(Manusmriti 3:37).*

1.8. Hindus love their children dearly. They believe that their children are gifts from GOD and products of their previous karma. Many presume that their children were related to them in their past lives or were their close friends. According to Manu, a man recreates himself through his own children. Since a Hindu firmly believes in rebirth, he views his own life from a wider perspective that encompasses not just this life but many other lives that preceded it as well as succeed it, and his individual existence as a part of a great cosmic cycle. Endowed with the belief that his relationships repeat themselves and that

his life is intricately intertwined with many others who share the same destiny, he acts with a greater sense of duty and responsibility towards himself and all those who depend upon him and are related to him. Since he sincerely believes in the continuity of his life and relationships, he works for the welfare of his family and their financial security through a policy of self denial and austerity in personal expenditure.

1.9. Orthodox Hindus do not approve childlessness and consider it to be very inauspicious. Women without children have to face social discomfort and questioning looks from friends and relations. Newly-married couple have to deal with peer pressure if they fail to produce children within a reasonable time after their marriage. Childlessness causes great hardship for both men and women in Hindu families, despite the fact that over population is a major problem of present-day India. While for men it is mostly a problem of their virility and manhood for women it is the stigma of barrenness and the absence of the pleasures of motherhood. Barren women are not allowed to participate in certain rituals and on some occasions their very presence is considered inauspicious, which add to the stigma of infertility.

1.10. A son is generally preferred because he upholds the family values and ensures its continuity. The Vedas clearly state

that a man lives through his son. Before passing away, a father well-versed in the Vedas transmits his qualities and powers to his eldest son performing a special transmission ceremony, which gives the son the right to head the family and continue the family tradition in the footsteps of his father and ancestors. Hence, the birth of a son in the family is crucial for the lineage to continue. The Vedic people performed different rituals to obtain different types of sons. The *Brihadaranyaka Upanishad* (6.4) suggests what procedures couples should follow to obtain a son of fair complexion, or brown complexion, or dark complexion with specific knowledge of the Vedas and lifespan.

1.11. According to Gautama Sutras (28:18), if a person does not have male children, he may ask his daughter to raise a son for him. A family without a male child is considered accursed. Male children are preferred for many reasons. Financially a male child is an asset. Socially he stands for the continuity and the exalted image of the family. Spiritually he helps his parents in their afterlife, by performing their funeral rites when they die and saving them from the hell of Punnama where people without sons are believed to go. Thereafter, he performs the shradda ceremonies at regular intervals to ensure their well being in the heavens. The female children are excluded from participating in funeral ceremonies and are not

even allowed to visit the cremation grounds. If a couple has more than one son, the elder one and the younger one would lit the funeral pyres of their father and mother respectively.

1.12. Hindu law books do not ignore the rights of illegitimate children. According to Gautama Sutras (28:33-34) the son of an unmarried damsel, the son of a pregnant bride, the son of a twice-married woman, the son of an appointed daughter, a son self-given, and a son bought belong to the family of their fathers. In the absence of a legitimate son or other heirs, they receive a fourth of the estate. The law books also laid down elaborate rules of inheritance for children born out of inter-caste marriages and polygamy.

1.13. In many families, girl children are subjected to gender bias. Having too many girls in a family is considered a great financial burden since the parents have to pay large dowries for their marriages. The girls have no right of inheritance. The ancestral property of the family invariably goes to the male children. Parents have the right to distribute their own wealth (swarjitam) to their daughters. But generally, they do not do so unless they do not have male children. After marriage, a girl child becomes the sole property of her husband and cannot stay with her parents however strong might have been their relationship. While the birth of a son is still welcome

in almost every Hindu family, now a days the birth of baby girl is alsc welcomed by many educated parents, who consider it as an auspicious sign, as if a goddess is born in their house.

1.14. Hindus are very possessive about their children and spend a great deal of their time and energy in bringing them up. Because of orthodox sentiments and moral values, the parents are always concerned about their children's welfare and upbringing and expect them not to bring a bad name to themselves or to their families. Compared to the western societies, the Hindus are sentimentally and emotionally more attached to their children and experience a greater warmth and intimacy in their relationships. The bond between the parents and children remains intact even after the children grow up and get married.

1.15. In a Hindu family, it is an obligatory religious duty of the sons to lookafter their aged parents and provide them with decent means of living. Many do so. But like in other societies, aged people are increasingly suffering from problems of alienation, isolation and their children's indifference and neglect. Old-age homes which were non-existent a few decades ago are now coming up in many parts of India. Hindu family system is undergoing radical transformation. But a great

majority of Hindu families still consider their children as products of their past deeds (purvajanma sukrutam). If a child strays and brings bad name, they blame it upon themselves and their previous karma.

1.16. The social and cultural consequences of being childless:

Approximately 70-80 million couples worldwide are currently infertile (Bos et al., 1995; Boivin et al., 2007) and it can be estimated that tens of millions of couples are primary infertile or childless. For most people, having children is immensely important; not being able to have children is a major life problem. There is also a large group of women and men, who have children, possibly form a previous relationship, who desperately wants to have another child. A considerable body of research in Western countries has shown that involuntary childlessness has strong psychological consequences (see for reviews: Greil, 1997; Brokvich and Fisher, 1998). Most of the studies carried out in this domain are quantitative and some are qualitative. Both kind of studies, point in the same direction: there are various psychological and psychosomatic effects, and especially women are affected. The most frequently mentioned effects are distress, raised depression and anxiety levels, lowered self-esteem, feelings of blame and guilt, somatic

complaints, and reduced sexual interest. For a small minority of women and men in the Western world these effects are at a clinical level or can be considered extremely serious (Greil, 1997).

1.17. It is interesting that social and cultural consequences are seldom mentioned in the reports on these studies. When these aspects are considered, they are often related to studies about elderly people without children, regardless of the reason for being childless. It is stressed in the reports of these studies that frail old people without children have less social support (cf., Johnson, 2006) and a less robust network for independent living compared to old people with children (cf., Wenger et al., 2009). Wirtberg and co-workers (2007) however, carried out a study that is unique in the sense that it aims at elderly involuntarily childless women. They reported on 14 women, and described that in all cases but one sexual life was affected negatively and that half of these elderly childless women were separated.

1.18. Some studies report the difficulty that childless couples have in communicating with friends who do have children. They describe negative (although sometimes well-meant) remarks within the couples social worlds, for instance at birthday parties and other social gatherings: however,

supportive reactions are also mentioned very often (Greil, 1991; van Balen et al., 1996; Schmidt, 2006). It is possible for childless couples to participate in the 'world of children', especially if couples have good friends or relatives who have children. They are able to participate in the lives and activities of the children of their friends and relatives by, for instance taking care of the children for a part of the week or when the parents are on holiday; taking the children to school, music lessons or sports activities; or going to games or shows in which the children participate. An early study on childlessness found that about ten per cent of couples had chosen this strategy as a way of coming to terms with their childless life (van Balen, 1991) Also, recently Wirtberg and colleagues (2007) described this as typical coping strategy for childlessness. It appears that in the West childless people are not formally excluded from being involved with raising children. In this background of Marriage in Hindu Dharma and humiliation to a childless couple in the society, now I will consider the merits of the case on hand.

Factual Matrix:

2. Challenging the order of the Commissioner, H&FW, Chairperson, SAA, ART & Surrogacy *vide* Rc.No. 228/ART & Surrogacy/Govt. Inst/2024-1, dated 18.08.2025, rejecting the

Application of petitioner for issuance of Certificate of Essentiality and Eligibility under the provisions of the Surrogacy (Regulation) Act, 2021 (the 2021 Act), this Writ Petition is filed.

2.1. Petitioners got married according to Hindu Rites and Ceremonies on 24.11.2021 and their marriage is duly registered in accordance with law *vide* Certificate of Marriage dated 03.10.2022 of Registrar Hindu Marriages, Kukatpally, Medchal-Malkajgiri District. The wife (petitioner No.1) is suffering from Complete Androgen Insensitivity Syndrome (CAIS meaning missing uterus and ovaries), otherwise she has been leading a normal life, but in view of the fact that the wife-intending mother has a chromosomal disorder namely CAIS, she cannot conceive. Hence, she opted for surrogacy method and applied to the District Medical Board under Regulation 14(a) of the 2021 Act. The District Medical Board, which is the prescribed authority under Regulation 4(iii) (a) (1) of the 2021 Act for issuance of Medical Indication Certificate has considered the case of petitioners and issued Medical Indication Certificate (MIC) dated 22.10.2023, which was extended on 23.08.2024. Thereafter, petitioners approached the II Additional Junior Civil Judge-cum-X Addl. Metropolitan Magistrate, Ranga Reddy District at Kukatpally, seeking an order of Parentage and Custody of the child to be born through surrogacy. The Court by

order dated 26.07.2024 in S.R. No. 3927 of 2024 granted an order concerning parentage and custody of the child to be born through surrogacy.

2.2. As prescribed under law, the intending couple have also obtained an insurance coverage of such amount in favour of the surrogate mother. Later, petitioners applied for Eligibility Certificate to the Commissioner, H&FW, Chairperson, SAA ART & Surrogacy. However, the Commissioner/Chairperson rejected the said Application by the impugned order dated 18.08.2025. It reads as under:

> " With reference to the subject cited, it is submitted that the application of Smt. Maryada Sravani and Sri Seethareddy Pradeep Reddy (Application No. 60) seeking issuance of Certificate of Essentiality and Eligibility for undergoing surrogacy procedure was placed before the State Appropriate Authority (SAA) for consideration.
>
> As per the provisions of the Surrogacy (Regulation) Act 2021, under Section 2(h), the term "couple" refers to a legally-married Indian man and woman above the age of 21 years and 18 years respectively.
>
> Further, *vide* reference 2nd cited (U 11019/50/2024-HR of Under Secretary to the Govt. MoHFW, DHR, New Delhi dt. 05.03.2025) the Department of Health Research, Government of India, has informed that in pursuance of ongoing cases before the Hon'ble Supreme court, the matter was referred to the Legislative Department, Ministry of Law & Justice, which has opined that transgender persons are not covered under the Surrogacy (Regulation) Act, 2021.
>
> In view of the reference 3rd cited (Cytogenetic report from Institute of Genetics and Hospital for Genetic Diseases dt: 16.06.2008) wherein the Cytogenetic report from Institute of Genetics and Hospital for Genetic Diseases with Regd. No. 208 dated: 16.06.2008 indicated Chromosome analysis 46XY karyotype of the intending couple Smt. Maryada

Sravani, the application cannot be considered for issue of Certificate of Essentiality and Eligibility under the provisions of the Act.

The communication is issued with due regard to the directions of the Government of India and in compliance with the statutory provisions in force."

2.3. It is stated, the Government of India vide Notification dated 21.02.2024 clarified that if either the husband of the wife constituting the intending couple suffers from any medical condition, then use of donor gemete for surrogacy procedure is allowed. In view of the same, petitioner submitted representation dated 22.10.2024 to the 2nd respondent to consider their case for issue of certificates of Essentiality and Eligibility. Since there is no response, they are stated to have filed Writ Petition No. 16281 of 2025 wherein this Court directed the 2nd respondent to dispose of the representation within four weeks. Thereafter, petitioners again submitted representation dated 27.06.2025 and the 2nd respondent considering the order passed by this Court, passed the impugned order. According to petitioners, the impugned order is contrary to the provisions of the 2021 Act and also violative of Article 21 of the Constitution.

3. Respondent No.2 filed counter affidavit mainly contending that the impugned order was passed on the ground that Cytogenetic report from the Institute of Genetics and

Hospital for Genetic Diseases indicating Chromosome analysis 46 XY karyotype of petitioner which does not satisfy the said Rules of the Act as it does not confirm to Sec. 2(1)(h) which defines couple as 'legally married Indian man and woman'. It is further submitted that man is genetically identified with XY genotype and woman with XX genotype. The petitioners are not fitting into the definition of the couple to issue the Certificate of Essentiality and Eligibility and hence the further requirement of donor gamete for surrogacy procedure does not stand.

3.1. It is stated, subsequent to the orders of the Magistrate dated 26.07.2024, State Appropriate Authority Committee conducted a meeting on 28.08.2024 with intending couple application bearing NO. 60 where the Committee members have detailedly examined the documents and in view of the Karyotype report required clarification and decision was taken to put in abeyance.

3.2. It is contended that in view of the findings observed by the State Appropriate Committee members, clarification was sought from the Director, Department of Health and Research, Government of India, for taking a decision regarding issuance of Certificate of Essentiality and Eligibility *via* mail dated 23.11.2024 for which Government of India has given response

via mail U.11019/50/2024-HR of Under Secretary to the GoI MoHFW, DHR, New Delhi, dated 05.03.2025.

3.3. It is also contended that as per Section 4(iii)(a) of the 2021 Act, the intending couple must be in possession of a certification of essentiality issued by the State Appropriate Authority having satisfied itself for the reasons to be recorded in writing. As per Section 2(h), the 'couple' definition is legally-married Indian man and woman where man is genetically identified with XY genotype and woman with XX genotype, the evidence of which is as per the Cytogenetic report from Institute of Genetics and Hospital for Genetic Diseases indicated Chromosome analysis 46 XY karyotype of the 1st petitioner which does not satisfy the said Rules of the Act. It is finally stated that the State Appropriate Authority has rejected the Application of petitioner No.1 based on the report of SAA Committee as per G.O.Ms.No. 68, dated 15.06.2022, it is apposite to mention that one ofi the committee memebrs is Professor of OBG and has given an opinion as expert regarding absence of Uterus investigated and conducrted as male genotype.

4. Petitioners filed reply affidavit stating that the case of Petitioner No. 1 falls squarely within the ambit of Rule 14(a) of the Surrogacy (Regulation) Rules, 2022. Accordingly, the

District Medical Board, being the competent authority under Section 4(iii)(a)(I) of the Surrogacy (Regulation) Act, 2021, rightly issued the Medical Indication Certificate. Owing to a chromosomal disorder, Petitioner No. 1 does not possess a uterus and is, therefore, covered under Rule 14(a). The Appropriate Authority has transgressed its jurisdiction in refusing to accept the said Certificate duly issued by the competent authority.

4.1. The record clearly establishes that petitioners meet the definition of "couple" under the statute. The contrary observation of the Appropriate Authority is arbitrary and devoid of legal basis. The object of the Surrogacy (Regulation) Act, 2021, is to safeguard family values and facilitate parenthood for infertile couples. The action of the Appropriate Authority runs counter to this object and, if allowed to stand, would render the Act otiose. The generalized statement made by the respondents that XY genotype denotes a man and XX genotype denotes a woman ignores universally recognized exceptions. Relevant scientific literature on this subject is annexed herewith in the Material Papers.

4.2. In the present case, the documents filed establish that petitioners are duly married and fall within the prescribed

age limits. Therefore, rejection of their Application by the Appropriate Authority is arbitrary and contrary to the statute.

5. Learned counsel for petitioners Ms. PD Vineela submits that the Appropriate Authority being a statutory authority under law, is duly bound to pass appropriate orders, in terms of the procedure prescribed under Section 4(iii) (a) & (c) of the 2021 Act. however, it failed to do so. According to her, the impugned order is contrary to the Statutory Guidelines issued by the Government of India *vide* Gazette Notification dated 21.02.2024 with reference to District Medical Board Certifying Intending Couple either husband or wife suffer from medical condition and in contravention of the judgment of the Hon'ble Supreme Court in ***ABC vs Union of India*** (order dated 18.10.2023) and failed to issue Eligibility/Essentiality Certificate to the petitioners. The Appropriate Authority, instead of exercising powers vested in it by law, without jurisdiction, sought clarification from the Ministry of Health & Family Welfare, GOI, who gave opinion detailing the position reiterated in all the above stated sources of law, but no whisper was made specific to the facts of the case of petitioners.

5.1. It is further contended that the 2nd respondent, ignoring the Certificate of Medical Indication issued by the District Medical Board and the order of Parentage and Custody

passed by the II AJCJ-cum-X Addl. MM, as prescribed under Section 4 of the 2021 Act, has proceeded to rely upon the *e* mail received from the 1st respondent on the ground that the Cytogenetic report from the Institute of Genetics and Hospitals for Genetic Diseases indicates that the 1st petitioner (wife) has chromosome analysis 46 XY karyotype. This action of the 1st respondent is completely arbitrary and without jurisdiction. It is also contended that due to the acts and deeds of the 2nd respondent, the 1st petitioner (wife) has been suffering/facing a social stigma of 'Infertility' due to Androgen Insensitivity Syndrome (AIS -missing uterus and ovaries) as it is.

6. Heard learned Government Pleader for Medical & Health.

7. For better understanding of the case, the relevant provisions of the 2021 Act are extracted below:

CHAPTER III

REGULATION OF SURROGACY AND SURROGACY PROCEDURES

4. Regulation of surrogacy and surrogacy procedures - On and from the date of commencement of this Act,-

(i) no place including a surrogacy clinic shall be used or cause to be used by any person for conducting surrogacy or surrogacy procedures, except for the purposes specified in clause (ii) and after satisfying all the conditions specified in clause (iii);

(ii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or availed of, except for the following purposes, namely:

(a) when an intending couple has a medical indication necessitating gestational surrogacy:

Provided that a couple of Indian origin or an intending woman who intends to avail surrogacy, shall obtain a certificate of recommendation from the Board on an application made by the said persons in such form and manner as may be prescribed.

Explanation. For the purposes of this sub-clause and item (I) of sub-clause (a) of clause

(ii) the expression 'gestational surrogacy' means a practice whereby a surrogate mother carries a child for the intending couple through implantation of embryo in her womb and the child is not genetically related to the surrogate mother,

(b) when it is only for altruistic surrogacy purposes;

(c) when it is not for commercial purposes or for commercialisation of surrogacy or surrogacy procedures;

(d) when it is not for producing children for sale, prostitution or any other form of exploitation; and

(e) any other condition or disease as may be specified by regulations made by the Board;

(iii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or initiated, unless the Director or in-charge of the surrogacy clinic and the person qualified to do so are satisfied, for reasons to be recorded in writing, that the following conditions have been fulfilled, namely:-

(a) the intending couple is in possession of a certificate of essentiality issued by the appropriate authority, after satisfying itself, for the reasons to be recorded in writing, about the fulfilment of the following conditions, namely:-

(I) a certificate of a medical indication in favour of either or both members of the intending couple or intending woman necessitating gestational surrogacy from a District Medical Board.

Explanation.- For the purposes of this item, the expression "District Medical Board" means a medical board under the Chairpersonship of Chief Medical Officer or Chief Civil Surgeon or Joint Director of Health Services of

the district and comprising of at least two other specialists, namely, the chief gynaecologist or obstetrician and chief paediatrician of the district;

(II) 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, which shall be the birth affidavit after the surrogate child is born, and

(III) an insurance coverage of such amount and in such manner as may be prescribed in favour of the surrogate mother for a period of thirty-six months covering postpartum delivery complications from an insurance company or an agent recognized by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(b) the surrogate mother is in possession of an eligibility certificate issued by the appropriate authority on fulfilment of the following conditions, namely:-

(I) no woman, other than an ever married woman having a child of her own and between the age of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise;

(II) a willing woman shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act:

Provided that the intending couple or the intending woman shall approach the appropriate authority with a willing woman who agrees to act as a surrogate mother,

(III) no woman shall act as a surrogate mother by providing her own gametes

(IV) no woman shall act as a surrogate mother more than once in her lifetime:

Provided that the number of attempts for surrogacy procedures on the surrogate mother shall be such as may be prescribed; and

(V) a certificate of medical and psychological fitness for surrogacy and surrogacy procedures from a registered medical practitioner,

(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.

Appeal: - The surrogacy clinic or the intending couple or the intending woman may, within a period of thirty days from the date of receipt of the communication relating to order of rejection of application, suspension or cancellation of registration passed by the appropriate authority under section 13 and communication relating to rejection of the certificates under section 4, prefer an appeal against such order to-

(a) the State Government, where the appeal is against the order of the appropriate authority of a State;

(b) the Central Government, where the appeal is against the order of the appropriate authority of a Union territory. in such manner as may be prescribed.

8. What is meant by Chromosome analysis 46 XY karyotype?

46 XX/46 XY is either a chimeric or mosaic genetic condition characterized by the presence of some cells that express a 46 XX karyotype and some cells that express a 46 XY karyotype in a single human being. Individuals with these conditions are classified as intersex.

Tetra gametic chimerism

The cause of the condition lies in conception or utero with the aggregation of two distinct zygotes or blastocysts (one of which expresses 46 XX and the other of which expresses 46 XY) into a single embryo which subsequently leads to the development of a single individual with two distinct cell lines, instead of a pair of fraternal twins.

8.1. In humans, sexual dimorphism is a consequence of the XY sex-determination system. In typical prenatal sex differentiation, the male and female embryo is anatomically identical until week 7 of the pregnancy, when the presence or the absence of the SRY gene on the Y chromosome causes the undetermined gonadal tissue to undergo differentiation and eventually will become either a pair of testes or ovaries respectively. The cells of the developing testes produce Anti-Müllerian hormone, causing the regression of the Müllerian ducts. As individuals with 46 XX/46 XY partially express the SRY gene, the normal process by which an embryo normally develops a phenotypic male or phenotypic female may be significantly affected causing variation in the gonads, the reproductive tract, and the genitals. Despite this, there have been cases of completely normal sex differentiation occurring in 46 XX/46 XY individuals reported in the medical literature. 46 XX/46 XY chimerism can be identified during pregnancy by

prenatal screening or in early childhood through genetic testing and direct observation.

8.2. **Mosaicism**

The cause of this condition happens in early development resulting from a single fertilized zygote's cell line divided into two cell lines; a genome that contains a characterized by the presence of some cells that express a 46 XX karyotype and some cells that express a 46 XY karyotype.

8.3. **Signs and symptoms**

Physical

46 XX/46 XY chimeric or mosaic is associated with a wide spectrum of different physical presentations, with cases ranging from having a completely normal male or female phenotype to some cases having ovotesticular syndrome". Due to this variation, genetic testing is the only way to reliably make a diagnosis.

***Ovotesticular syndrome** (also known as **ovotesticular disorder or OT-DSD**) is a rare congenital condition where an individual is born with both ovarian and testicular tissue. It is one of the rarest disorders of sex development (DSDs), with only 500 reported cases. Commonly, one or both gonads is an ovotestis containing both types of tissue. Although it is similar in some ways to mixed gonadal dysgenesis, the conditions can be distinguished histologically.

46 XX/46 XY is possible if there is direct observation of one or more of the following:

1. Small phallus midway in size between a clitoris and a penis

2. Incompletely closed urogenital opening (shallow vagina)

3. Abnormal urethra opening on the perineum

8.4. There have been no reported cases of both gonads being functional in the same person; the functional tissue is usually the ovarian tissue. A mix of male and female characteristics may emerge at puberty. Some individuals will experience secondary characteristics, such as breast development during puberty in a male phenotype, while others may experience deepening of the voice, secondary hair development, and gynecomastia.

8.5. Segmentation of skin (distinct patches of skin) has also been observed. However, this trait is not unique to 46 XX/46 XY chimerism nor mosaicism. It has also been observed in other types of chimerism.

8.6. **Cognitive**

Individuals with the condition do not experience cognitive impairment.

Genetic mechanism

46, XX/46,XY is an example of tetragametic chimerism because it requires four gametes-two sperm and two ova.

46 XX/46 XY is most commonly explained during in conception combination of two fertilized eggs zygotes. Two ova from the mother are fertilized by two sperm from the father. One sperm contains an X chromosome; the other contains a Y chromosome. The result is that a zygote with an XY genotype and a zygote with an XX genotype are produced. Under normal circumstances, the two resulting zygotes would have gone on to become fraternal twins. However, in 46 XX/46 XY, the two zygotes merge shortly before or after fertilization to become a two-cell zygote made up of two different nuclei. The zygotes merge early enough that there is no risk of them developing into conjoined twins. Variations of this mechanism include fertilization of an ovum and its first or second polar body by two sperm.

46 XX/46 XY can also be explained by a mosaic-based mechanism. A single zygote is formed from the fertilization of a normal X ovum. The resulting XX/XY zygote divides to give two cell lines: 46 XX/46 XY. The 46 XX/46 XY cell lines remain and go on to become a chimeric individual.

46 XX/46 XY can also arise when a haploid ovum undergoes a round of mitosis, and the subsequent daughter cells are fertilized by an X and a Y sperm, respectively.

8.7. Diagnosing chimerism or mosaicism is particularly difficult due to the random distribution of 46 XX and 46 XY cells within the body. In a chimeric human, an organ might be made up of a mix of 46 XX and 46 XY, but is made up entirely only one genotype. When that is the case, no abnormalities are noted and other types of tissues need to be analyzed. Blood tests might contain both or red blood cells of different blood types.

8.8. Before birth, ambiguous genitalia might be observed through ultrasound. The karyotype might also be observed through amniocentesis or cord blood sampling.

9. From the above, it is clear that in Chromosome analysis 46 XY karyotype the woman was otherwise healthy and did not have menarche or menstrual period as expected but was able to be sexually active and enjoy sex through her vagina. XY DSD can be caused by defects in androgen action typically due to dysfunction of the androgen reception (AR). DSD due to complete loss of function of the AR is called Complete Androgen Insensitivity Syndrome (CAIS) whereas mutations that retain some residual function result in Partial Androgen Insensitivity Syndrome (PAIS). CAIS typically presents in adolescence as primary amenorrhea despite normal breast development. Alternatively, CAIS may present in childhood with palpable

inguinal masses in an individual with a 46 XY karyotype and a typical female appearance to the external genitalia. The phenotype in PAIS variable depending on the degree of androgen sensitivity and there may be associated gynecomastia due to the peripheral conversion of testosterone to estradiol. Individuals with inactivating mutations of the LH receptor (Leydig cell hypoplasia) have a variable appearance ranging from completely female phenotype to a variable degree of virilization, very similar to patients with AIS. Fertility is impaired in the majority of individuals with disorders of androgen action as a result of germ cell loss and/or failure of spermatogenesis.

10. DSD are defined as congenital conditions in which development of chromosomal, gonadal, or anatomic sex is atypical and a consensus statement has been issued that calls for patient-and-family centered care delivered by an integrated, interdisciplinary team. The primary role of that team would be to assess all of these perspectives and provide care that is founded on a patient-and family-centered model. Variability exists across stakeholder groups in the key concerns affecting young children/family with DSD. Interdisciplinary DSD healthcare team development should account for varying perspectives when counselling families and planning treatment.

11. Whereas the resulting recommendations for holistic, multidisciplinary care seem to have been implemented rapidly in specialized pediatric services around the world, adolescents often experience difficulties in finding access to expert adult care and gradually or abruptly cease medical follow-up. May adults with a DSD have health related questions that remain unanswered owing to a lack of evidence pertaining to the natural evolution of the various conditions in later life stages.

12. From the above analysis, it clear that Chromosome analysis 46 XY karyotype of the wife (first petitioner) cannot abridge her chances to beget a child through Surrogacy.

13. Begetting of children, as outlined in Dharmashastra, encompasses various essential aspects of procreation. It is viewed as a means to continue lineage and repay debts to the Pitrus, highlighting the responsibilities tied to fatherhood. The act of having children carries significant cultural and religious implications, promoting familial and social duties crucial for societal continuity. Additionally, it emphasizes the importance of offspring in Hindu texts, particularly regarding the responsibilities of men in the process of reproduction and family life.

14. Keeping in view the humiliation of childless parents, the legislature in its wisdom enacted the Surrogacy (Regulation)

Act, 2021 which is a beneficial piece of legislation to help the infertile couple to get rid of the social taboo of infertility. The Act is actually a tool for women suffering from rare disorders, to develop a family and lead a normal married life.

15. Undisputedly, the marriage certificate of the petitioners shows that they are married; their Aadhar cards show that they are within the prescribed age bracket; they do not have any surviving child either biologically or through adoption or through surrogacy earlier. Therefore, the action of the 2nd respondent in refusing to issue Certificate of Essentiality and Eligibility in favour of petitioners by the impugned order on the ground of some Chromosome defect in the first petitioner is unwarranted.

16. In similar circumstances, the Hon'ble Supreme Court in ***Arun Muthivel vs Union of India*** [W.P.(s) (Civil) Nos, 756/20221 observed that 'it is stated that the petitioners, being married women, have a congenital disorder which is known as Mayer-Rokitansky-Kuster-Hauser (MRKH) syndrome, also referred to as Mullerian Aplasia, characterized by aplasia of the uterus and upper part of the vagina of the female with normal secondary sex characteristics and a normal female karyotype (46, XX). It is a condition which is stated to affect the reproductive system of the female and is caused by abnormal

development of the Mullerian ducts which are structures in the embryo that develop into uterus, fallopian tubes, cervix and the upper part of the vagina. It is stated that the MRKH syndrome involves absolute uterine factor infertility and the only option for the persons with such disability to achieve biological motherhood is through gestational surrogacy. On an elaborate analysis of the Act, arguments of both sides, medical history etc., the Hon'ble Supreme Court opined that nothing can override what is stipulated under Rule 14(a) of the 2021 Act'. The Hon'ble Supreme Court held as under:

> " We find substance in the arguments of the learned counsel for the petitioner inasmuch as Rule 14 which is extracted above clearly refers to the wife as not being able to achieve parenthood owing to the "disability" on account of the absence of a uterus or repeatedly failed pregnancies, multiple pregnancies or an illness which makes it impossible for a woman to carry a pregnancy to term or would make the pregnancy life-threatening. The justification for necessitating gestational surrogacy in Rule 14 is all related to the intending woman or the wife and does not refer to the man/husband at all. The said provisions is woman-centric and relates to the medical or congenital condition of a woman which impedes her from becoming a mother.
>
> Therefore, the whole scheme of the Act revolves around the "inability" of the woman to conceive and to give birth to a child and the medical indication necessitating gestational surrogacy in Rule 14 explains the various circumstances which incapacitate or disable women from having a normal pregnancy and having a child."

17. Apart from the above, in the case on hand, the District Medical Board for Surrogacy [U/Sec. 4(iii)(a)(I) of the

2021 Act] consisting of three members: Gynecologist, Pediatrician and the District Medical and Health Officer as Chairperson, examined petitioners and has given a Certificate of Medical Indication dated 23.08.2024. In para-1(d) of the Certificate it is stated:

"1. Medical indications necessitating gestational surrogacy, as per Rule 14 of the Surrogacy (Regulation) Act, 2021 & its Rules Dt. 21.06.2022:-

A woman may opt for surrogacy if; -

....

(d) Any illness that makes it impossible for woman to carry a pregnancy to viability or pregnancy that is life threatening:

i) Certificate for Donor Oocyte in Surrogacy:

As per new amendment GST 119(E) in exercise of power conveyed by Section 50 of Surrogacy (Regulation) Act the District Medical Board certificate that Wife constituting the intending couple suffers from Androgen Insensitivity Syndrome, Karyotype XY absent ovaries and absent uterus necessitating use of donor oocyte to avail the Surrogacy procedure."

18. Following the above certificate, the II AJCJ-cum-AMM, R.R. District at Kukatpally, allowed the Application of petitioners in S.R. No. 3927 of 2024 by order dated 26.07.2024 holding "the application is allowed and the intending couple shall have the parentage and custody of the child to be born through surrogacy."

19. The 1st petitioner, as per the writ affidavit, is having all physical features of a woman; she is not a transgender and she is fit to lead conjugal life. To her ill-luck, she is suffering from Complete Androgen Insensitivity Syndrome (CAIS).

Because she is having CAIS problem and unable to give birth to a child, she opted for surrogacy. Otherwise, she would have given birth to a child in the normal method. To extend a helping hand to such a woman, the Government has enacted the Surrogacy (Regulation) Act, 2021. Denying her an opportunity to get a child by Surrogacy method on the ground that she is not a perfect woman is contrary to the letter and spirit of the 2021 Act and is nothing but denting the very purpose of the 2021 Act itself.

20. In view of the above, more particularly in view of the certification of the District Medical Board constituted under the 2021 Act that the wife-the first petitioner herein is suffering from Androgen Insensitivity Syndrome, Karyotype XY absent ovaries and absent uterus necessitating use of donor oocyte to avail the Surrogacy procedure, the impugned order of the 2nd respondent dated 18.08.2025 rejecting the Application of petitioners for issuance of Certificate of Essentiality and Eligibility under the provisions of the 2021 Act, is not justifiable and is liable to be set aside, even on humanitarian grounds too.

21. In the result, the Writ Petition is allowed and the impugned order dated 18.03.2025 is set aside. The 2nd respondent is directed to issue Certificate of Essentiality and

Eligibility to petitioners under the provisions of the Surrogacy (Regulation) Act, 2021. No costs.

22. Consequently, the miscellaneous Applications, if any shall stand closed.

SD/- AHMED ABDULLA KHAN
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary Ministry of Health and Family Welfare (MoHFW), Union of India, Room No. 156-A, Nirman Bhavan, New Delhi-110001 Email .secvhfwgnic.in
2. The Chairperson (Commissioner, Health and Family Welfare), Appropriate Authority, Opposite DME Building, DM and H5 Campus, Opp. Koti Women's College Road, KutbiGuda, Sultan Bazar, Koti, Hyderabad, Telengana - 500095. Email .md-nhm-chfw@telanRana.gov.in
3. One CC to M/s.P.D.VINEELA, Advocate. [OPUC]
4. One CC to SRI N.BHUJANGA RAO, Deputy Solicitor General of India, High Court for the State of Telangana at Hyderabad. [OPUC]
5. Two CCs to GP for Medical, Health and Family Welfare Department,, High Court for the State of Telangana at Hyderabad. [OUT]
6. Two CD Copies.

BSK

GJP

HIGH COURT

DATED:03/03/2026



ORDER

WP.No.26921 of 2025

ALLOWING THE WRIT PETITION
WITHOUT COSTS

(9) JKS
9/3/26.