

**A. Vasantha vs Union of India**

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**SooperKanoon Citation :** [sooperkanoon.com/1349574](https://sooperkanoon.com/1349574)

**Court :** Kerala

**Decided On :** Mar-24-2023

**Judge :** Honourable Mr. Justice Shaji P.Chaly

**Appeal No. :** WP(C)/10432/2023

**Appellant :** A. Vasantha

**Respondent :** Union of India

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SHAJI P.CHALY  
FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945  
WP(C) NO. 1477 OF 2023 PETITIONER/S: 1 SASIDHARAN M.V.,  
AGED 53 YEARS S/O. V.M. SREEDHARAN NAIR, GOKULAM, GANDHI  
NAGAR, PERAMBRA, CHALAKKUDI, THRISSUR DISTRICT, PIN -  
680689 2 RAJALAKSHMI V. R., AGED 51 YEARS W/O. SASIDHARAN  
M.V., GOKULAM, GANDHI NAGAR, PERAMBRA, CHALAKKUDI,  
THRISSUR DISTRICT, PIN - 680689 BY ADVS. N.M.MADHU  
C.S.RAJANI RESPONDENT/S:

1 THE UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, SASTHRI BHAVAN, NEW DELHI, PIN - 110001 2 THE STATE OF KERALA REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE , SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 3 THE APPROPRIATE AUTHORITY FORMED U/S.12 OF THE ART (R) ACT, 2021, REPRESENTED BY VICE CHAIRPERSON DR. PREETHI, ADDITIONAL DIRECTOR OF HEALTH SERVICES (FW), PALAYAM - AIRPORT ROAD, NEAR GENERAL HOSPITAL ROAD JUNCTION, THIRUVANANTHAPURAM, PIN - 695035 4 THE DISTRICT REPRODUCTIVE AND CHILD HEALTH (RCH) OFFICER, DISTRICT MEDICAL OFFICE, ERNAKULAM, PARK AVENUE, MARINE DRIVE, ERNAKULAM, PIN - 682011 5 SABINE HOSPITAL AND RESEARCH CENTRE (P) LTD., REPRESENTED BY ITS DIRECTOR, PEZHAKKAPPILLY POST, MUVATTUPUZHA, PIN - 686673

SMT.DEEPA NARAYANAN,SENIOR GOVERNMENT PLEADER SRI. JOSE ANTONY, CGC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.03.2023, ALONG WITH WP(C).10432/2023, 10438/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SHAJI P.CHALY FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945 WP(C) NO. 10432 OF 2023 PETITIONER/S: 1 A. VASANTHA, AGED 51 YEARS WIFE OF K B HARIRAJAN, 'KUNDUMARIL', THENUR PO, PARLI -I, TENUR, PALAKKAD, PIN - 678612 2 K.B. HARIRAJAN, AGED 59 YEARS SON OF BALAN, 'KUNDUMARIL', THENUR PO, PARLI -I, TENUR, PALAKKAD - 678 612, PIN - 678612 BY ADVS.AKASH S. GIRISH KUMAR M S V.S.VARALEKSHMI DEVIKA JAYARAJ RESPONDENT/S:

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, MINISTRY OF HEALTH AND FAMILY WELFARE, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 3 THE DISTRICT REPRODUCTIVE & CHILD HEALTH ("RCH") OFFICER, DISTRICT MEDICAL OFFICE, ERNAKULAM, PARK EVE, MARINE DRIVE, ERNAKULAM, KERALA, PIN - 682011 4 SABINE HOSPITAL AND RESEARCH CENTRE PVT. LTD REPRESENTED BY ITS MANAGING DIRECTOR, PEZHAKKAPPALLY PO, MUVATTUPUZHA, PIN - 686673

-3- R1 BY SRI. S.MANU, DSGI R2 & R3 BY SMT. RESHMI K.M., SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.03.2023, ALONG WITH WP(C).1477/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -4-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SHAJI P.CHALY FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945 WP(C) NO. 10438 OF 2023 PETITIONER/S: 1 SUBAIDA N, AGED 48 YEARS WIFE OF ABUBACKER, 'CHULLIYIL HOUSE', NEAR KINS PARK, VATTAMAVU, KADAVALLUR, THRISSUR, PIN - 2 ABUBACKER CH, AGED 64 YEARS, SON OF CHULLIYIL HYDROSE, 'CHULLIYIL HOUSE', NEAR KINS PARK, VATTAMAVU, KADAVALLUR, THRISSUR, PIN - 680543 BY ADVS.AKASH S. GIRISH KUMAR M S V.S.VARALEKSHMI DEVIKA JAYARAJ RESPONDENT/S:

1 UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, SASTHRI BHAVAN, NEW DELHI, PIN - 110001 2 THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE,

SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 3 THE DISTRICT REPRODUCTIVE & CHILD HEALTH ("RCH") OFFICER, DISTRICT MEDICAL OFFICE, ERNAKULAM, PARK EVE, MARINE DRIVE, ERNAKULAM, KERALA, PIN - 682011 4 SABINE HOSPITAL AND RESEARCH CENTRE PVT. LTD REPRESENTED BY ITS MANAGING DIRECTOR, PEZHAKKAPPALLY PO, MUVATTUPUZHA, PIN - 686673

R1 BY SIR. MANU S., DSGI -5- R2 & R3 BY SMT. RESHMI K.M., SR. GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.03.2023, ALONG WITH WP(C).1477/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -6-

## **JUDGMENT**

[WP(C) Nos.1477/2023, 10432/2023, 10438/2023] The captioned writ petitions are materially connected in respect of a challenge made to Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 (for short the Act, 2021). The case of the petitioners in common are that, though they are living as husband and wife, they are suffering from infertility issues and therefore, their only alternative is to seek refuge for Assisted Reproductive Technology by undergoing treatment. In so far as Section 21(g) of the Act, 2021 is concerned, it prescribes an age limit to undergo the treatment for a woman aged above 50 years and a man aged above 55 years. The petitioners case is that, either of them have exceeded the prescribed age limit. The validity of the above provision was considered by a learned Single Judge of this Court in Nandini K. v. The Union of India and Others [2023 (1) KLT 426] and has rendered a judgment dated 19.12.2022, and disposed of the writ petitions holding as follows:-

14. As rightly pointed out by the amicus curiae, Section 5 of the Act confers the National Assisted -7-

Reproductive Technology and Surrogacy Board with the power to advise the Central Government on policy matters relating to assisted reproductive technology. In my opinion, the impact of the prescription of upper age limit on the liberty of individuals is a matter which the National Board should bring to the notice of the Central Government, so as to effectuate a detailed discussion on the subject and pave the way for necessary amendments.

Based on the above discussions, the following directions are issued;

(i) Those among the petitioners who were undergoing ART services as on 25.01.2022 shall be permitted to continue their treatment.

(ii) The National Board shall alert the Central Government about the need for having a re-look at the upper age limit prescribed in Section 21(g) of the Act.

(iii) The National Board shall also bring to the notice of the Central Government the requirement of including a transitional provision in the ART Act.

(iv) The above directions shall be complied by the National Board within three months of receipt of a copy of this judgment. -8-

(v) Those among the petitioners who are yet to commence their ART treatment shall await the decision of the Central Government on the upper age limit and the transitional provision.

(vi) The liberty of the petitioners to approach this Court at a later stage, if so necessitate, is reserved.

2. Therefore, the submission made by the learned Counsel for

the petitioners is that they are all undergoing treatment and they may be permitted to do so, failing which, irreparable loss and mental distress would be suffered by them.

3. On the other hand, learned Central Government Counsel has

submitted that the issue with respect to the constitutionality of the age limit fixed under Section 21(g) of the Act, 2021, is under consideration before the Honble Apex Court and therefore, the writ petitions may be kept pending, till such time a decision is taken by the Apex Court.

4. In my considered opinion, since already similar writ petitions

are disposed of by issuing directions as extracted above, these writ petitions can be disposed of in similar lines, failing which, the petitioners would be put to serious prejudice. Therefore, petitioners -9- who are undergoing treatment for Assisted Reproductive Technology as on 25.01.2022 shall be permitted to continue their treatment. In all

**other respects, the directions contained in the above cited judgment**

would squarely apply to the facts and figures of these cases also. The writ petitions are allowed to the above extent. Sd/- SHAJI P.CHALY JUDGE uu 25.03.2023 -10- APPENDIX OF WP(C) 10432/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE AADHAAR CARD OF THE 1ST PETITIONER Exhibit P2 TRUE COPY OF THE AADHAAR CARD OF THE 2ND PETITIONER Exhibit P3 TRUE COPY OF THE MEDICAL RECORDS OF THE TREATMENT OF THE 1ST PETITIONER AT THE RAJIV GANDHI DISTRICT CO-OPERATIVE HOSPITAL ON 07.03.2021 Exhibit P4 TRUE COPY OF THE MEDICAL RECORDS AT

RAJIV GANDHI DISTRICT CO-OPERATIVE HOSPITAL, MONITORING THE PROGRESS OF THE 1ST PETITIONER'S ENDOMETRIUM, LAST DATED 20.01.2022 Exhibit P5 TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE DOCTOR AT RAJIV GANDHI DISTRICT CO-OPERATIVE HOSPITAL DATED 18.03.2023 Exhibit P6 TRUE COPY OF TEH RELEVANT PAGES OF THE 'NATIONAL GUIDELINES FOR ACCREDITATION, SUPERVISION AND REGULATION OF ART CLINICS IN INDIA' ("NATIONAL GUIDELINES"), PREPARED BY THE INDIAN COUNCIL FOR MEDICAL RESEARCH ("ICMR") AND NATIONAL ACADEMY OF MEDICAL SCIENCES (NAMS), ON BEHALF OF

THE UNION MINISTRY OF HEALTH AND FAMILY WELFARE, OF THE YEAR 2005

-11- APPENDIX OF WP(C) 10438/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE AADHAAR CARD OF THE 1ST PETITIONER Exhibit P2 TRUE COPY OF THE AADHAAR CARD OF THE 2ND PETITIONER Exhibit P3 TRUE COPY OF THE MARRIAGE CERTIFICATE OF THE PETITIONERS, BY THE SAMASTHA SUNNI MAHAL FEDERATION, WAYANAD, DATED 18.10.2017 Exhibit P4 TRUE COPY OF THE USG SCAN ON THE

ABDOMINAL AND PELVIC AREA OF THE 1ST PETITIONER, ISSUED BY ANSAR HOSPITAL, THRISSUR, DATED 11.05.2021

Exhibit P5 TRUE COPY OF THE USG SCAN ON THE PELVIC AREA OF THE 1ST PETITIONER AT THE OXYGEN HEALTHCARE, KECHERI, DATED 26.05.2021 Exhibit P6 TRUE COPY OF THE USG SCAN ON THE PELVIC AREA OF THE 1ST PETITIONER AT THE OXYGEN HEALTHCARE, KECHERI, DATED 26.10.2021 Exhibit P7 TRUE COPY OF THE MEDICAL RECORDS ISSUED BY THE OXYGEN HEALTHCARE, KECHERI DATED 27.10.2021 Exhibit P8 TRUE COPY OF THE DISCHARGE SUMMARY OF THE 1ST PETITIONER ISSUED BY MOTHER HOSPITAL, THRISSUR, DATED 01.11.2021 Exhibit P9 TRUE COPY OF THE RELEVANT PAGES OF THE

'NATIONAL GUIDELINES FOR ACCREDITATION, SUPERVISION AND REGULATION OF ART CLINICS IN INDIA' ("NATIONAL GUIDELINES"), PREPARED BY THE INDIAN COUNCIL FOR MEDICAL RESEARCH ("ICMR") AND NATIONAL ACADEMY OF MEDICAL SCIENCES (NAMS), ON BEHALF OF THE UNION MINISTRY OF HEALTH AND FAMILY WELFARE, OF THE YEAR 2005

-12- APPENDIX OF WP(C) 1477/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPIES OF THE MEDICAL REPORTS ISSUED BY THE AMRITA INSTITUTE OF MEDICAL SCIENCE AND RESEARCH CENTRE, KOCHI Exhibit P2 TRUE COPY OF THE CERTIFICATE DATED 02.11.2022 ISSUED BY THE SABINE HOSPITAL AND RESEARCH CENTRE (P) LTD, MUVATTUPUZHA Exhibit P3

TRUE COPY OF THE CERTIFICATE DATED 23.01.2023 ISSUED BY THE FIFTH  
RESPONDENT

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