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CNR : KLHC010503102025

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 1ST DAY OF SEPTEMBER 2026 / 10TH BHADRA, 1948

WP(C) NO. 22457 OF 2025

PETITIONER:

BY ADVS.
SRI.B.RENJITHKUMAR
SMT.CLARA SHERIN FRANCIS

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF
HEALTH AND FAMILY WELFARE, SASTHRI BHAVAN,
NEW DELHI, PIN - 110001.
- 2 THE NATIONAL ART AND SURROGACY BOARD,
REPRESENTED BY THE EX-OFFICIO VICE CHAIRPERSON
(THE SECRETARY, DEPARTMENT OF HEALTH RESEARCH),
DEPARTMENT OF HEALTH RESEARCH, 2ND FLOOR, IRCS
BUILDING 1, RED CROSS ROAD, NEW DELHI,
PIN - 110001.
- 3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF
HEALTH AND FAMILY WELFARE, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.

W.P.(C) No.22457 of 2025 2



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4 SAT HOSPITAL
REPRESENTED BY ITS MANAGING DIRECTOR, MEDICAL
COLLEGE PO, THIRUVANANTHAPURAM, PIN - 695011

BY ADV SHRI.K.ARJUN VENUGOPAL, CGC

OTHER PRESENT:

SRI.DINESH THANKAPPAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01.09.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



"C.R."

JUDGMENT

This writ petition is presented by the wife of one Sreeraj, who passed away on 31.03.2021. The petitioner and the deceased husband were admittedly undergoing infertility treatment with the 4th respondent hospital. Embryos were admittedly cryopreserved during the lifetime of the deceased husband. The petitioner states that the 4th respondent hospital at the time of cryopreservation on 22.12.2022, had also obtained consent at Ext.P3. Subsequently, after the death of the husband, the petitioner sought for utilising the embryos for the purpose of IVF procedure. However, when such a request is made, the 4th respondent hospital informed the petitioner that unless a specific written consent with reference to the provisions of Section 22(1)(a) of the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter referred to as the 'ART Act') is available, the procedure cannot be continued. It is in such circumstances, the petitioner is before this Court



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seeking a direction to the 4th respondent to release, and also to allow the petitioner to use the preserved embryos of her deceased husband for the purpose of assisted reproduction.

2. I have heard Smt.Clara Sherin Francis, the learned counsel for the petitioner, as well as Sri.K.Arjun Venugopal, the learned Central Government Counsel for respondents 1 and 2, and Sri.Dinesh Thankappan, the learned counsel for the 3rd respondent.

3. Smt.Clara Sherin, the learned counsel, would point out that Ext.P3 referred to above, obtained by the 4th respondent hospital at the time cryopreservation is to be taken as a case of "substantial compliance" of the requirements under Section 22(1)(a) of the ART Act. She would further point out the observations/recommendations at paragraph 4.17.12 of the 129th report of the Department-related Parliamentary Standing Committee on Health and Family Welfare, as per which even collection of gametes "Posthumously" is advised. She would further add that, going by the afore report, there is



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no prohibition, with reference to the ART procedure, merely for the want of consent from the deceased husband. She would also place considerable reliance on the judgment of the Delhi High Court in W.P.(C) No.15159 of 2021 dated 04.10.2024, wherein the Delhi High Court permitted the parents of a deceased male, who died on account of cancer and was admittedly unmarried, to use the semen which was admittedly preserved.

4. *Per contra*, Sri.Arjun Venugopal, the learned Central Government Counsel, would invite the attention of this Court to the form prescribed under the Assisted Reproductive Technology (Regulation) Rules, 2022 (for short 'Rules') - Form 9 - to point out that there is a specific provision as per which the husband could permit the embryos to be "handed over to the wife", whereas, in the case at hand, the consent at Ext.P3 did not contain any such option. According to him, the consent at Ext.P3, on the contrary, had only permitted the use of embryos by "unknown couples". Therefore, he would submit



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that the deceased husband never wanted the petitioner wife to use the embryos in the event of his death. Therefore, he would further add that the prayer made in the writ petition is in fact against the will of the deceased husband, which is not to be permitted. Sri.Arjun would further state, with reference to the averments in the counter affidavit filed on behalf of the 1st respondent, that there are various ethical/social/legal issues in the case at hand since, admittedly, the deceased would not have wanted the wife to use the embryos since he may have wanted the wife to remarry. Similarly, he would state that there are questions with reference to inheritance of the properties also, on account of which the legal/social issues also require to be considered while considering the prayer made in the writ petition. With reference to the judgment of the Delhi High Court relied on by the learned counsel for the petitioner, it is the submission made by the learned Central Government Counsel that it is only with reference to the factual situation in that case that the Delhi High Court had permitted the parents



of the deceased person to use the semen.

5. I have considered the rival contentions as well as the connected records.

6. True, the provisions of Section 22 of the ART Act read as under:-

“22. Written informed consent. —

(1) The clinic shall not perform any treatment or procedure without—

(a) the written informed consent of all the parties seeking assisted reproductive technology;”

Thus, under the statute, the “written informed consent of all parties” is a mandatory requirement for performing the procedure under the statute. The afore provision requires to be considered along with the provisions of Rule 13(1)(f)(iv) of the Rules, as per which the consent for freezing of embryos requires to be provided under Form 9. Form 9 under the afore Rules also requires to be noticed, and the relevant portion of the same is extracted as under:-



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"FORM 9
[See rule 13(f)(iv)]
Consent for Freezing of Embryos

I/We,.....,
and..... consent to freezing of the embryos that have resulted
out of ART with sperm of..... & oocyte of..... I/We
understand that the embryos would be normally kept frozen for.....
years. If we wish to extend this period, I/we would let you (the ART clinic) know
at least six months ahead of time. If you do not hear from us before that time,
you will be free to (a) use them for research purposes; or (b) discard and destroy
them off. I/ We also understand that some of the embryos may not survive the
subsequent thaw and that frozen embryo-replaced cycles have a lower pregnancy
rate than when fresh embryos are transferred.

**Husband*

In the unforeseen event of my death, I would like the embryos
To perish
Handed over to my wife
Used for research purposes

☐
☐
☐

Signed:.....

Dated:.....

**Wife / woman*

In the unforeseen event of my death, I would like the embryos
To perish
To be handed over to my husband /.... (Specify name and details)
Used for research purposes

☐
☐
☐

Signed:.....

Dated:.....

Name, Address and Signature of the couple/woman

Endorsement by the ART Clinic

I/ we have personally explained to.....
and..... the details and implications of his / her /
their signing this consent/approval form, and made sure to the extent humanly
possible that he / she / they understand these details and implications.

Name, Address and Signature of the Witness from the Clinic

Name and Signature of the Doctor

Name and Address of the ART Clinic

Dated:.....

*The appropriate option may be ticked

*Strike of which is not applicable"



Thus, under the provisions of the ART Act and Rules and the Form referred to above, the statute requires the husband/man to consider a situation where, in the unforeseen event of his death, what would be his intention as regards the use of the “embryos”. As per the afore, the husband/man has three choices as under:-

- i. To allow the embryos to perish;
- ii. To hand over the embryos to his wife; or
- iii. To direct that the embryos be used for research purposes.

In the case of the wife/women also, the afore three options are provided.

7. In the case at hand, when the ART procedure was commenced by the 4th respondent hospital, in fact the 4th respondent hospital ought to have insisted on the petitioner and the deceased husband to execute the consent in Form 9 referred to above.



8. Instead of doing so, the hospital has collected the consent at Ext.P3 from the petitioner and the deceased husband.

9. A perusal of Ext.P3 would show that, in marked difference to Form 9, there is no provision/option by which the wife and the husband could permit the use of the embryos by the surviving spouse. Instead, Ext.P3 only permits use of the embryos by "third party couples".

10. It is only because Ext.P3 has been obtained that the 4th respondent, as well as the Central Government, is raising the contention that the request made by the wife could not be accepted, since the deceased husband never intended that his embryos be used by his wife, going by the contents of Ext.P3.

11. However, Ext.P3 requires to be noticed further, as per which there were three options available for the deceased husband. The first option, which has been opted for by the husband, pertains to the utilisation of the embryos by an unknown couple. The second option is the use of the embryos



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for research purposes. The third one is to let the embryos perish. The husband, as against afore three options, has opted for the first option noticed above, as per which he wanted the embryos to be actually used.

12. As already noticed, Form 9 also has three options, and the second option, already noticed, is handing over the embryos to the surviving spouse. In other words, when Ext.P3 is read along with Form 9, it can only be assumed that the husband wanted the wife to use the embryos after his death, as even as per Ext.P3, he wanted the same to be used for a meaningful purpose.

13. In such a situation, I am of the opinion that merely because the 4th respondent hospital has chosen to collect Ext.P3 as against the statutory format at Form 9, the request made by the wife is not to be disallowed.

14. This Court also takes note of the reliance placed on the 129th report of the Parliamentary Standing Committee on Health and Family Welfare, wherein it is observed as follows:



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"4.17.12 The Committee notes that posthumous retrieval of gametes raises diverse range of ethical and legal conundrum such as whether it is possible to presume the deceased's intention or deceased's inferred consent; status of deceased's partner and parents in determining the deceased's interests; and whether posthumous reproduction is against the resulting child's best interests. The Committee is of the view that posthumous reproduction should be permitted, even in the absence of the deceased's prior consent unless the deceased person has previously objected to it or there are strong indications that the person would not have agreed the collection of gametes, posthumously. The Committee is of the opinion that decisions to prohibit posthumous reproduction should not be based solely on the principles of autonomy and bodily integrity, therefore, the deceased's inferred consent and the partner's interest in procreating and becoming a parent should be taken into account to arrive at the conclusion for posthumous retrieval of sperm and oocyte and its subsequent use for fertilization and pregnancy."

(Underlining supplied)

Thus, the intention behind incorporating the provisions of Section 22 of the ART Act requires to be noticed. It is



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specifically found that it is the “deceased’s inferred consent” and the “partner’s interest” in becoming a parent that require the utmost consideration. As has been found, the intention of the deceased was to ensure the ‘actual use’ of the embryos, and, therefore, the wish of the petitioner-wife to become a parent deserves to be respected.

Hence, this writ petition would stand allowed, directing the 4th respondent to allow the petitioner to use the preserved embryos of the deceased husband for the purpose of assisted reproduction.

Sd/-
HARISANKAR V. MENON
JUDGE

SRJ



APPENDIX OF WP(C) NO. 22457 OF 2025

PETITIONER'S EXHIBITS:

- EXHIBIT-P1** TRUE COPY OF THE MARRIAGE CERTIFICATE OF THE PETITIONER VIDE REGISTRATION NO.42/2005 DATED 19.4.2005.
- EXHIBIT-P2** TRUE COPY OF THE DEATH CERTIFICATE OF THE HUSBAND OF THE PETITIONER ISSUED BY THE CHERIYANAD GRAMA PANCHAYATH ON 17.6.2025.
- EXHIBIT-P3** TRUE COPY OF THE CONSENT LETTER.
- EXHIBIT-P4** TRUE COPY OF THE TREATMENT RECORDS OF PETITIONER FROM 28.4.2022.
- EXHIBIT-P5** TRUE COPY OF RENEWAL RECEIPT DATED 18.2.2025.

RESPONDENTS' EXHIBITS:

- EXHIBIT R1 (A)** TRUE COPY OF THE RELEVANT EXTRACT OF THE 129TH REPORT OF THE PARLIAMENTARY STANDING COMMITTEE (CLAUSE 25).
- EXHIBIT R1 (B)** TRUE COPY OF THE OPINION OF THE EXPERT MEMBERS OF THE NATIONAL BOARD DATED 25.11.2024.