



2026:DHC:2309



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 19380/2025**

Date of decision: **13.03.2026**

IN THE MATTER OF:

XX

.....Petitioner

(Through: Petitioners in person.)

versus

UNION OF INDIA & ORS.

.....Respondents

(Through: Dr. Monika Arora, CGSC with Mr.Subhrdeep Saha, Mr. Prabhat Kumar , Ms. Anamika Thakur, Mr. Abhinav Verma, Advocates.)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

J U D G E M E N T

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The present petition assails the communication dated 28.11.2025 issued by respondent no. 4 i.e., Aveya IVF & Fertility Centre, whereby the petitioners were informed that they are ineligible to proceed with the surrogacy process on the ground that petitioner No. 2 has crossed the upper age limit of 50 years prescribed under Section 4(iii)(c)(I) of the Surrogacy (Regulation) Act, 2021 (hereinafter "**the Act**").
2. The petitioners being a married couple intend to avail gestational surrogacy in accordance with the provisions of the Act. On 30.06.2025, the Office of the Chief District Medical Officer (West District), DTE of Health



Services, Govt. of NCT of Delhi issued a Medical Indication Certificate through the District Medical Board, certifying that there exists a genuine medical indication necessitating surrogacy. At the time of issuance of the said certificate, petitioner no. 2 was 49 years of age. Subsequently, on 15.09.2025, petitioner no. 2 attained the age of 50 years. It, thus, remains undisputed that as on date, the petitioner no.2 has already attained 50 years of age. Respondent no. 4, therefore, declined to proceed with the surrogacy process on the ground that the petitioner no.2 had already crossed the upper age limit prescribed under the provisions of the Act.

3. Though, there is no refusal by any of the Government Authority with respect to the issuance of the eligibility certificate, however, looking at the nature of the dispute raised herein, this Court has been called upon to rule as to whether the language used in Section 4(iii)(c)(I) of the Act renders the applicant ineligible on completion of the age of 50 years or 55 years in case of female and male respectively.

4. The petitioners, who appear in person places reliance on a decision of the Division Bench of the Kerala High Court in *Rajitha P.V. & Anr. v. Union of India & Ors.*¹ They submit that the Kerala High Court in the said decision has considered the decision of the Supreme Court in the case of *Tarun Prasad Chatterjee v. Dinanath Sharma*,² and has held that the eligibility of the intending male or female to avail the surrogacy service extends throughout the 50th or 55th year as the case may be.

5. Dr. Monika Arora, learned counsel for the respondent, has strongly opposed the submissions made by the petitioners and has placed on record

¹ 2025:KER:21383.

² (2000) 8 SCC 649.



her written submissions. She has also tried to emphasize, on the basis of the report of the expert committee on the implications of conception and advance parental age dated 21.01.2026, that the language used in the statute is explicitly clear and does not require any external interpretation or insertion of additional words. She also submits that once a female or male completes 50 or 55 years of age respectively, they render themselves ineligible to undergo the surrogacy process. According to her, any other interpretation would be irreconcilable with the mandate of the Act.

6. I have heard learned counsel for the parties and also perused the record.

7. Section 4(iii)(c)(I) of the Act, which this Court is called upon to interpret is extracted as under:

“(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”

8. The provision prescribes that an intending woman must be between the age of 23 to 50 years as on the date of certification.

9. Section 9 of the General Clauses Act, 1897 (hereinafter “GCC”) reads as under:

“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”.”

10. The application of Section 9 of the GCC would include the last, in a series, to be included within the time period in question. In the case at hand,



it would result in '50 years of age' to be included in the time period provided for under Section 4(iii)(c)(I) of the Act. The important issue which then falls for consideration is the meaning/computation of the expression '50 years of age'.

11. Reference may be made to Section 3(2) of the Majority Act, 1875, which provides that in computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

12. The principle of computation embodied under the aforesaid provisions would indicate that the day of birth counts as a whole day and a person attains a specified age at the beginning of the relevant anniversary of that day. The Supreme Court in *Prabhu Dayal Sesma v. State of Rajasthan & Anr.*³ applied this very principle to the computation of an upper age limit. The appellant therein was born on 02.01.1956, and was held to have attained the age of 28 years on 01.01.1984, the date preceding the anniversary of his birthday and his candidature was found to be rightly rejected. The observations made by the Supreme Court in the said decision, are extracted as under:

“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

³ (1986) 4 SCC 59



of the birthday.

...

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

“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 18th anniversary of that day.”

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

13. Further in the case of *Eerati Laxman v. State of Andhra Pradesh*,⁴ the Supreme Court held that while the statute under consideration is beneficial legislation, this does not preclude the application of the principle of literal interpretation. The Court reaffirmed that, in the absence of any express statutory provision, a person's age must be computed by counting the day of birth as a whole day, and any specified age in law is deemed to be attained on the day preceding the anniversary of the birthday. The material portion of the said judgement reads as under:



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

13. In *Prabhu Dayal Sesma v. State of Rajasthan*, this Court categorically held that: (SCC p. 59) "In absence of any express provision, while calculating a person's age, the day of his birth must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday. A legal day commences at 12 o'clock midnight and continues until the same hour the following night." ...

14. In *Zillurrahman Shaikh v. State of Maharashtra*,⁵ the Supreme Court upon relying on *Prabhu Dayal Sesma* (supra) and *Eerati Laxman v. State of Andhra Pradesh* (supra) held that in calculating a person's age for the purposes of statutory interpretation, the day of birth must be counted as a whole day, and any specified age is deemed to be attained on the day preceding the birthday anniversary. Consequently, a person whose age limit is specified in a statute, is considered to have attained that age precisely on the relevant date, and benefits or eligibility tied to age do not extend automatically beyond that day. Para. 43 of the said decision reads as under:

"43. The aforesaid discussion and the law settled in the aforementioned cases and in the absence of any specific law/provision to the contrary and considering the beneficent nature of the Government Resolutions, we are of the view that 6th birth anniversary of the Petitioner child would be on 15th January 2022 as 6th anniversary falls on 16.01.2022 and the day preceding the anniversary would be 15.01.2022. Thus, the Petitioner would be entitled to participate in the on-line admission process for academic year 2021-2022."

15. Applying this principle to the present case, petitioner no. 2 since was born on 15.09.1975, attained the age of 50 years on 14.09.2025, that is, the day preceding the anniversary of her birthday. On 15.09.2025, she entered

⁴ (2009) 3 SCC 337.



her 51st year of her life and has crossed the upper age limit prescribed in the Act.

16. The expression “between 23 to 50 years” therefore, means that a woman’s eligibility extends up to and including the completion of 50th year and not beyond that. The word “to”, by the application of Section 9 of the GCC, includes 50, meaning the 50th birthday itself falls within the eligibility window. However, the word “to” does not extend the window to the 51st birthday. To read “to 50 years” as meaning “until one turns 51” would require supplying words that Parliament did not use, which is impermissible in statutory interpretation.

17. As regards the decision of the Kerala High Court in *Rajitha P.V.* (supra), relied upon by the Petitioners, this Court, with respect, adopts a different view. The Court in the said decision did not merit consideration to the issue of what ‘between’ and ‘50 years of age’ would mean. Rather, merely by applying Section 9 of the GCC, a conclusion was drawn that the window provided for under Section 4(iii)(c)(I) of the Act, is available till a person attains the age of 51 years of age, excluding only the day on which the person turns 51 years of age.

18. Section 9 of the GCC remains a guiding light where a provision provides for a period of time and the words used are “to” or “from”. However, nothing truly turns on the application of the GCC since the fundamental issue concerns the meaning of ‘between’ and ‘50 years of age’, and their interpretation, apart from plain English, is to be made by giving due consideration to the Majority Act, 1875, and the aforementioned judicial pronouncements.

⁵ 2021 SCC OnLine Bom 6190.



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19. However, it is but obvious that anything which is a second more than 50 years no longer remains 50 years. An year being a broader unit does, in fact, get affected by the ingredient/smaller units, which comprise it. For instance, if a car can be driven from 0 to 500 kilometers. The car would not run even for a centimeter beyond 500 kms. The finding of the Division Bench in *Ranjitha P.V.* (supra) arrives at the finding that the expression ‘50 years of age’ would, also, to elucidate, include the ages of 50.5, 50.8 and even 50.9. With respect, this cannot be the position of law.

20. Insofar as the respondents have placed reliance upon the document titled “*Report of the Expert Committee on the Implications of Conception at Advanced Parental Age*”, this Court does not consider it necessary to adjudicate upon the medical merits. The age bar under Section 4(iii)(c)(I) is a legislative choice made by Parliament, and it is not for this Court to examine the medical wisdom underlying that choice. Suffice it to observe that the expert committee report reinforces the rationale for the age restriction that Parliament has already imposed.

21. For the aforesaid reasons, this Court finds no merit in the petition. The writ petition, along with all pending applications, stands dismissed.

22. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MARCH 13, 2026

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