IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7589 OF 2025

Sakshi Rajan Patekar … Petitioner
vs.
State of Maharashtra,
Through Secretary, Public Health Department & ors. … Respondents

Mr. Nikhilesh P. a/w. Mr. Tanmay T. Jadhav, Mr. Sushil Shilwant, Ms. Sneha Kadam and Mr. Akshay More for petitioner.
Ms. Savina R. Crasto, AGP for respondent No.1-State.
Mr. Yashodeep Deshmukh, i/b. Mr. Ashutosh Mishra for respondent No.3-UOI.

CORAM : MANISH PITALE, J.
DATE : 25th JUNE, 2025

P.C. :

. Heard learned counsel for the petitioner, the learned AGP for the respondent No.1-State and the learned counsel appearing for respondent No.3.

2. The learned counsel for the petitioner submitted that the respondent No.2 has also been served and that an affidavit of service can be placed on record.

3. The affidavit of service be filed within one week from today.

4. This petition gives rise to important questions with regard to the manner in which the semen/gamete of a person are to be preserved, after death of such a person, under the Assisted Reproductive Technology (Regulation) Act, 2021 (ART Act) and Rules framed thereunder. This becomes particularly significant in the present case, for the reason that the deceased, being the son of the petitioner, was unmarried at the time of this death.

5. The learned counsel for the petitioner submits that in the interest of justice, this Court may consider granting leave to amend the petition to challenge the some of the Rules framed under the said Act.

6. In the interest of justice, permission is granted. Amendment be carried out within two weeks from today. Re-verification is dispensed with.

7. The learned counsel appearing for respondent No.3 has invited attention of this Court to the judgement of the Delhi High Court, in the case of *Gurvinder Singh and another vs. Government of NCT of Delhi and others* (2024 SCC OnLine Del 6902). In the said case, the parents of the deceased, who was unmarried at the time of his death, had approached the Delhi High Court with a similar prayer of handing over the frozen semen of their son. After elaborately discussing the law pertaining to such cases, although the case pertained to a set of facts prior to enactment of the ART Act, various facets were discussed before eventually allowing the writ petition with a direction that the frozen semen would be handed over to the petitioners therein.

8. The learned counsel for respondent No.3 submitted that the said judgement can be distinguished on facts, for the reason that in the present case, in the consent forms filled by the deceased, as also the semen freezing request submitted to respondent No.2, the deceased had specifically opted for his frozen semen samples to be discarded upon his death.

9. A perusal of the aforesaid judgement of the Delhi High Court shows that a direction was issued therein to the Ministry of Health and Family Welfare of Government of India, to consider as to whether any law, enactment or guidelines are required to address such issues related to posthumous reproduction or post-mortal reproduction. Direction was also issued to communicate the said judgement of the Delhi High Court to the Secretary of the Ministry for further action.

10. In that light, the learned counsel for respondent No.3 seeks time to take instructions in the matter and to apprise this Court as to whether any such guidelines have been framed.

11. The present petition requires consideration as it raises important questions. But, if during the pendency of the petition, the frozen semen of the deceased is discarded, the whole purpose of filing the present petition, would stand frustrated.

12. In view of the above, list for further consideration on 30.07.2025, High on Board.

13. In the meanwhile, as an interim direction, the respondent No.2 is directed to ensure safe-keeping and storage of frozen semen sample of the deceased, during the pendency of the present petition.

(MANISH PITALE, J)

Priya Kambli