2025:KER:21383

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S. MANU

THURSDAY, THE 13TH DAY OF MARCH 2025 / 22ND PHALGUNA, 1946

WA NO. 412 OF 2025

[AGAINST THE JUDGMENT DATED 13-02-2025 IN WP(C) NO. 403 OF 2025 OF HIGH COURT OF KERALA.]

APPELLANTS/PETITIONERS:

1 RAJITHA P.V., AGED 46 YEARS,
W/O. SANTHOSH M.,
PALLATH VEETIL, VALIYANNUR P.O,
VARAM, KANNUR DISTRICT, PIN – 670594.

2 SATHOSH M., AGED 52 YEARS,
S/O. NARAYANAN M.,
PALLATH VEETIL, VALIYANNUR P.O, VARAM,
KANNUR DISTRICT, PIN – 670594.

BY ADVS. ADITHYA RAJEEV,
SAFA NAVAS,
S. PARVATHI.

RESPONDENTS/RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
SASTHRI BHAVAN, NEW DELHI, PIN – 110001.

2025:KER:21383

2 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM, PIN – 695001.

3 THE KERALA STATE ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY BOARD,
REPRESENTED BY ITS CHAIRPERSON,
DISTRICT HEALTH SERVICES, GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM, PIN – 695035.

BY ADV. SRI. R.V. SREEJITH, CGC
BY SENIOR GOVERNMENT PLEADER SRI. K.P. HARISH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03.03.2025, THE COURT ON 13.03.2025 DELIVERED THE FOLLOWING:

2025:KER:21383

"C.R."

JUDGMENT

Dated this the 13th day of March, 2025.

Nitin Jamdar, C. J.

Surrogacy is where one woman bears and gives birth to a child with the intention of handing over such child to the intending couple after the birth. One of the conditions under the Surrogacy (Regulation) Act, 2021 is that a female in the married couple intending surrogacy is between the age of 23 to 50 years on the day of certification. The question in this Appeal is whether she is entitled to avail of surrogacy till the beginning of the 50th year or at the end of 50 years. In other words, the number 50 is included in this age range, and whether the eligibility continues till she becomes 51.

2. The Appellants – Petitioners were married as per Hindu customary rites and ceremonies on 2 March 2008. Petitioner No.2, the husband of Petitioner No.1, was born on 21 November 1972. The date of birth of Petitioner No.1, in her school admission records, is 21 June 1974. Her date of birth in the Indian Passport and the Driving Licence issued by the Government of Kerala is 21 June 1978.

3. Petitioner No.1 is suffering from endometriosis. She is unable to conceive pregnancy naturally and has undergone multiple cycles of treatment involving Assisted Reproductive Technology Services. However, they were not successful. She has also undergone several other treatments for the said reason. On account of this medical condition,

Petitioner No.1 proposed to conceive through surrogacy by identifying a surrogate mother.

4. The Surrogacy (Regulation) Act, 2021 (Act of 2021) and the Surrogacy (Regulation) Rules, 2022 (Rules of 2022) regulate the procedure for conceiving through surrogacy. Section 2(1)(r) defines an "intending couple" as those who have a medical need for surrogacy and seek to become parents through it. Section 2(1)(zd) defines "surrogacy" as a practice where one woman carries a child for an intending couple and hands over the child after birth. Section 2(1)(zg) defines a "surrogate mother" as a woman who agrees to carry a child through surrogacy and meets the prescribed conditions. The couple intending to follow surrogacy has to possess documents and certificates specified under Section 4 of the Act of 2021. Amongst other conditions, Section 4(iii)(c) stipulates that they must be married and between the age of 23 to 50 years in case of female and between the age of 26 to 55 years in case of male on the day of certification. They must not have a surviving child by birth, adoption, or prior surrogacy, except if the child has a life-threatening disorder with no cure, as certified by a District Medical Board.

5. The Petitioners secured a certificate of medical indication for intending couple by the District Medical Officer, Thrissur, certifying that the Petitioner No.1 is suffering from endometriosis and is eligible to avail of the surrogacy services. The certificate was issued on 25 August 2023.

2025:KER:21383

The Petitioners identified a surrogate mother, as defined under Section 2(1)(zg), who agreed to bear a child through surrogacy through the implantation of the embryo in her womb for the Petitioners. The Petitioners thereafter filed Crl.M.P. No.8199 of 2023 before the Judicial First Class Magistrate Court-I, Thrissur, seeking an order regarding parentage and custody of the child. The learned Magistrate passed an order in favour of the Petitioners allowing their petition. However, the doctor attached to the surrogacy clinic found that there were some medical conditions in the proposed surrogate mother, which made her incapable of participating in the surrogacy process. The Petitioners thereafter identified another surrogate mother. This surrogate mother was also issued a certificate of medical and psychological fitness on 8 October 2024 by a Surgeon at Tripunithura certifying that this surrogate mother was medically, physically and mentally fit. The Petitioners, along with the surrogate mother, filed Crl.M.P. No.8439 of 2024 before the Judicial First Class Magistrate Court-I, Thrissur, again seeking the very same relief. By order dated 19 October 2024, the learned Magistrate allowed the application holding that the parentage and custody of the child born through the surrogate mother would vest with the Petitioners.

6. Thereafter, the Petitioners approached Respondent No.3 – the Kerala State Assisted Reproductive Technology and Surrogacy Board constituted under the provisions of the Act of 2021 for the issuance of an eligibility certificate as required under Section 4(iii)(c) of the Act of 2021. Petitioner No.1 submitted Form 1 appended to the Rules of 2022.

2025:KER:21383

Petitioner No.1, along with the form, submitted the Aadhaar Card and Passport to prove her date of birth and age. Respondent No.3 directed Petitioner No.1 to produce the school admission register. Noting that the date of birth of Petitioner No.1 was of 21 June 1974 in the school record, Respondent No.3 – Board refused to issue the eligibility certificate to Petitioner No.1 and adjourned the consideration of her application, stating that she falls beyond the stipulated age limit of 50 years under Section 4(iii)(c) of the Act of 2021. According to the Respondents, the application was rejected, not adjourned.

7. The Petitioners approached this Court by filing W.P.(C) No. 403 of 2025. The Petitioners sought a declaration that they would fall within the age limit prescribed under Section 4(iii)(c)(I) of the Act of 2021 and are, thus, entitled to the issuance of an eligibility certificate as mandated under Section 4(iii)(c). The Petitioners also sought a writ of mandamus directing Respondent No.3 to expeditiously issue the eligibility certificate as mandated under Section 4(iii)(c) of the Act of 2021 to them.

8. The Petitioners raised two contentions before the learned Single Judge. Firstly, the date of birth of Petitioner No.1 recorded in the Aadhaar Card, Passport, and Driving Licence, as 21 June 1978, should be considered as the correct date of birth, and based on this date Petitioner No.1 is 46 years old, and therefore, eligible even as per the interpretation of the Respondents. Secondly, if the date of birth of Petitioner No.1 as per the school admission register extract is taken as 21 June 1974, she is

2025:KER:21383

still not 51 years old and, therefore, falls within the age range of 23 to 50 years as prescribed under Section 4(iii)(c)(I) of the Act of 2021. The Petitioners relied upon Section 9 of the General Clauses Act, 1897 (Act of 1897) and the decisions of the Hon'ble Supreme Court under it. Accordingly, they sought for a direction to issue a certificate to Petitioner No.1.

9. The learned Single Judge, relying upon the date of birth in the school admission register and not on the other documents, held that the correct date of birth of Petitioner No.1 is 21 June 1974. On the interpretation of Section 4(iii)(c)(I) of the Act of 2021, the learned Single Judge held that the decisions of the Supreme Court on Section 9 of the Act of 1897 are in respect of different statutes and thus, not applicable. The learned Single Judge referred to Section 4 of the Indian Majority Act, 1875 (Majority Act), which deals with the determination of the age of majority and relied upon the decisions of the Supreme Court that have interpreted the provisions of the Majority Act and Juvenile Justice (Care and Protection of Children) Act, 2015. The learned Single Judge concluded that a person attains a specified age on the day preceding his birthday anniversary. The learned Single Judge also held that if the contention of the Petitioners is accepted, it would extend not only the minimal age limit but also the stipulated age limits for others, and it is not for the Court to extend the age limits. With these conclusions, the learned Single Judge by judgment dated 13 February 2025 dismissed the writ petition holding that Respondent No.3 was right in concluding that

2025:KER:21383

Petitioner No.1 is ineligible for an eligibility certificate under Section 4(iii)(c) of the Act of 2021 since she has attained the age of 50 years. Being aggrieved, the Petitioners are before us with this Appeal.

10. We have heard Ms. Adithya Rajeev, the learned counsel for the Appellants/Petitioners, Mr. R.V. Sreejith, the learned Central Government Council and Mr. K.P. Harish, the learned Senior Government Pleader for the Respondents.

11. The first contention of the Petitioners is that Petitioner No.1 is eligible even as per the interpretation of the Respondents, as she is 46 years old being born on 21 June 1978, as evidenced by public records. Form 1, as stipulated under Rule 4 of the Rules of 2022, requires the couple/intending woman to provide basic information of details of the intended father and mother, which include the date of birth, age in years, etc. For Age, the documents stipulated are, the proof of age, birth certificate, 10th certificate, or any equivalent document.

12. The Petitioners contended that since under the Rules of 2022, the documents to be produced as proof of age include the birth certificate, 10th certificate, or any other equivalent document, it is not necessary to insist upon the admission register of Petitioner No.1, as there are already entries showing her date of birth in the Passport, Driving Licence and Aadhaar Card. These being public documents, should have been considered as sufficient proof. According to the Petitioners, the entry relating to the date of birth in the school records is an inadvertent error,

2025:KER:21383

and the authorities had no power to go beyond the date registered in the public documents. According to the Petitioners, neither the Act of 2021 nor the Rules of 2022 stipulate what should be the document to substantiate the age. The Petitioners also contended that Petitioner No.1 had lost her Class 10 Certificate, does not have the Birth Certificate, and thus relied upon Aadhaar card, Motor Driving Licence and Passport. The contention of the Petitioners is that as per the Unique Identification Authority of India (Enrolment and Update) Regulations, 2016, which governs Aadhaar, the same is a public document and can be considered as proof of age. The Petitioners have also relied upon the decision of the Supreme Court in the case of *Satpal Singh v. State of Haryana*[1] to contend that even if there are conflicting entries in official documents, the entry made at a later stage can be acted upon and there is no reason why a public document should be disregarded. The learned counsel for the Respondents submitted that as per Form 1 appended to the Rules of 2022, Petitioner No.1 is required to produce Birth Certificate and Class 10 Certificate or any other equivalent proof of age, and the school records are clear.

13. In this case, Exhibit-P9, an extract from the school admission register, shows that Petitioner No.1 was admitted to the Third Standard on 31 May 1982 and left the school upon completing the Seventh Standard on 12 May 1987. The Petitioners dispute the accuracy of the date of birth recorded in the school register but not contest the dates of

1 (2010) 8 SCC 714

2025:KER:21383

admission and leaving. Petitioner No.1 claims that her date of birth is 21 June 1978. However, if this was correct, she would have been only four years old at the time of admission to the Third Standard in 1982, which is not as per the standard school admission age. On the other hand, the recorded date of birth – 21 June 1974 – is as per the standard age criteria for school admission. The school admission register is a contemporaneous public record and holds substantial evidentiary value. The proforma to the Rules of 2022 specifically refers to school records, emphasising that they will have primary value. The reliance placed on the school admission register by the Authority and the learned Single Judge to determine that Petitioner No.1 was born on 21 June 1974 cannot be considered perverse or irrational. The Authority has chosen to go by the dates recorded in the School register rather than those in the Aadhaar Card, Passport, and Driving Licence, where contrary entries appear. As to how these documents show entry contrary to the School Record is not explained by the Petitioner. The precedents cited by the Petitioners are distinguishable, as they pertain to criminal proceedings where different standards apply, and these decisions do not apply to the facts of the present case. Accordingly, we will proceed on the basis that the date of birth of Petitioner No.1 is 21 June 1974.

14. This brings us to the second contention raised by the Petitioners regarding the interpretation of Section 4(iii)(c) of the Act of 2021, which lays down conditions for regulating surrogacy and surrogacy procedures. The Petitioners contend that the correct interpretation of Section 4(iii)(c)

(I) of the Act of 2021 – specifying that in the case of a married intending couple, the woman must be between 23 to 50 years of age – includes the entire 50th year. The Petitioners rely on Section 9 of the General Clauses Act, 1897 (Act of 1897) for the purpose of this interpretation. The Petitioners also rely on the decision of the Supreme Court in the cases of *State of Punjab v. Harnek Singh*[2] and *Econ Antri Ltd. v. Rom Industries Ltd. and Another*[3]. Furthermore, the Petitioners contend that the Act of 2021 is a beneficial legislation and should be interpreted accordingly to advance its intended purpose. The Respondents support the reasoning adopted by the learned Single Judge in the impugned judgment.

15. The controversy revolves around Section 4 under Chapter III of the Act of 2021, which reads as follows:-

> *"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:*

2 (2002) 3 SCC 481
3 (2014) 11 SCC 769

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 (iii) 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:-

2025:KER:21383

(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 recognised 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;

2025:KER:21383

(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."

(emphasis supplied)

Section 4(iii)(c)(I) states that the intending couple are married and between the age of 23 to 50 years in the case of females and between 26 to 55 years in the case of males on the day of certification. This judgment is restricted to the interpretation as regards the female in the married intending couple and she is referred to as the intending woman or intending mother for the purpose of simplicity.

16. The Petitioners had relied upon the decision of the Supreme Court in the case of *Tarun Prasad Chatterjee v. Dinanath Sharma*[4] in respect of the applicability of Section 9 of the Act of 1897. The Respondents reiterated the contention, which was accepted by the learned Single judge, that the controversy in that case arose under the Representation of the People Act, 1951, whereas the case at hand pertains to the Act of 2021, and therefore, the said decision is not applicable. This contention overlooks the very object and purpose of the Act of 1897. As laid down by the Hon'ble Supreme Court in *Harnek Singh*, the legislative intent behind the Act of 1897 is to avoid superfluity and unnecessary repetition in statutory language. The purpose of this Act is to standardize and simplify the language of Central Acts by providing definitions for commonly used terms, ensuring uniformity in legislative expression. The

4 (2000) 8 SCC 649

Act of 1897 establishes convenient rules for the construction and interpretation of Central Acts. It also serves to prevent omissions and inconsistencies by incorporating common form clauses that would otherwise need to be expressly included in every Central Act. Consequently, the Act of 1897 is inherently a part of every Central Act and has to be read in conjunction with such Acts unless explicitly excluded. The Hon'ble Supreme Court observed that even where the provisions of the Act do not directly apply, courts in India have applied its principles to prevent inconvenience, particularly when, its provisions are rooted in equity, justice, and good conscience. The Law Commission, in its report in 1959, emphasized that the Act of 1897 aims to simplify legislative language, ensure consistency, promote uniformity, and establish clear rules for statutory interpretation. The Law Commission referred to the Act of 1897 as the "*Law of all laws*". Therefore, the Act of 1897 provides general interpretation and ready-made phrases with particular meaning that applies to all Central laws, unless expressly excluded. Its provisions could not have been disregarded merely because the Petitioners have relied on judicial decisions where the Act was applied in the context of a different statute.

17. The key for interpreting the commencement and termination of time where a series of days or a period of time is used in the legislation is under Section 9 of the General Clauses Act, 1897(Act of 1897). Section 9 of the Act of 1897 reads as follows:

2025:KER:21383

> *"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".*
>
> *(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."*
>
> (emphasis supplied)

Therefore, if the legislation intends to include the last in the series of days, then that figure is prefixed by the use of the word "to".

18. The Supreme Court, in the case of *Tarun Prasad Chatterjee,* had an occasion to consider the implications of Section 9 of the Act of 1897. The Hon'ble Supreme Court laid down that Section 9 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time prescribed, the general rule is to exclude the first day and include the last day. The Hon'ble Supreme Court observed as follows:

> *"11. In Halsbury Laws of England, 37th Edition, Volume 3, page 92, it is stated as follows:*
>
> *"Days included or excluded – When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last*

2025:KER:21383

mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as "from such a day" or "until such a day" are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

12. Section 9 says that in any Central Act or regulation made after the commencement of the General Clauses Act, 1897, 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 period of time, to use the word "to". The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening day is to be excluded and if the last day is to be included the word "to" is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless 1st January is excluded from the period of computation."

(emphasis supplied)

Therefore, as observed in the above passage, Section 9 recognises the well-settled rule of statutory interpretation that, ordinarily, the last day is included in the series of days. This decision was thereafter followed by the Hon'ble Supreme Court in the case of *Econ Antri Ltd.*

19. Before proceeding with the conjoint reading of Section 9 of the Act of 1897 and Section 4(iii)(c)(I) of the Act of 2021, we will address the reliance on Section 4 of the Majority Act and the judicial pronouncements cited in the impugned judgment. Section 4 of the Majority Act reads as follows:

> *"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 eighteenth anniversary of that day."*

It is settled law that the interpretation of phrases in one statute should not be conflated with interpretations from another, especially when the wording, policy, and legislative intent differ. Each statute is enacted for a specific purpose, and applying principles from unrelated legislation may lead to unintended consequences. The Indian Majority Act, 1875, defines the age at which an individual attains legal majority. It is a single determining event. Unlike the Majority Act, which identifies a moment of transition, the Act of 2021 establishes an age range within which

eligibility exists. Therefore, Section 4 of the Majority Act operates under entirely different circumstances. The Majority Act and the decisions based on it are not relevant for determining the outer limit of the age range under the Act of 2021.

20. The Respondents relied upon the decision of the Supreme Court in the case of *Prabhu Dayal Sesma v. State of Rajasthan and Another*[5] before the learned Single Judge. In this case, the Rajasthan Public Service Commission had invited applications for direct recruitment to the Rajasthan Administrative Service. The minimum age prescribed for candidates was 21 years, and the maximum was 28 years. Rule 11B of the Rajasthan State and Subordinate Service, (Direct Recruitment by Competitive Examination) Rules, 1962 was under consideration of the Supreme Court, which, as reproduced in the judgment, reads as follows:

> *"11-B. Age. Notwithstanding anything contained regarding age limit in any of the service Rules governing through the agency of the Commission to the posts in the State Service and in the Subordinate Service mentioned in Schedule I and in Schedule II respectively, a candidate for direct recruitment to the posts to be filled in by combined competitive examinations conducted by the Commission under these Rules must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application."*
>
> (emphasis supplied)

5 (1986) 4 SCC 59

Under this rule, there was a clear mandate of one "must not have attained the age of 28 years". Therefore, in the context of this rule, which is differently worded, the Hon'ble Supreme Court referred to the age being computed as having been attained on the last date preceding the anniversary of the birthday. This is not the language of Section 4(iii)(c)(I) of the Act of 2021. Furthermore, it has to be noted that the phrase "to" before the last number was not used in this rule. Also, the case being of selection to public service, there would be competition amongst applicants and any dilution or modification of the eligibility will affect the opportunities of other applicants. Similarly, in the case of *Jaison v. George*[6], the issue arose under the Juvenile Justice (Care and Protection of Children) Act, 2015 (Act of 2015). Under the Act of 2015, a 'juvenile' is defined as a child "below the age of 18 years". The Juvenile Justice Act states that an individual is considered a juvenile only if he has not attained the age of 16 (or 18 in a later amendment), meaning that the status of juvenility ceases the moment the person reaches the prescribed age. The interpretation of age stipulations in a statute depends on the legislative intent behind each statute, the subject matter, and the language used. The decisions relied upon by the Respondents and referred to in the impugned judgment, therefore, do not provide guidance to interpret the statutory language employed in Section 4(iii)(c)(I) of the Act of 2021. These decisions and provisions of the Majority Act cannot lead to the conclusion that Section 9(1) of the Act of 1897 was excluded. Nothing

---

6 2019 (5) KHC 115

2025:KER:21383

has been shown by the Respondents or stated in the impugned judgment to justify the exclusion of Section 9 of the Act of 1897, except for the contention we have already addressed.

21. The Legislature uses different language to denote different intentions. For example, in the Assisted Reproductive Technology (Regulation) Act, 2021 (ART Act, 2021), another enactment relating to motherhood, the language used to denote age is different. The ART Act, 2021, governs procedures such as in-vitro fertilization and intrauterine insemination. These procedures involve external manipulation of reproductive cells, with fertilization occurring outside the body before implantation into the woman's reproductive system. Section 21(g) of the ART Act, 2021 which stipulates age eligibility reads as follows:

> *"(i) to a woman above the age of twenty-one years and below the age of fifty years;*
>
> *(ii) to a man above the age of twenty-one years and below the age of fifty-five years;"*
>
> (emphasis supplied)

There is a clear difference in the age eligibility criteria in the two enactments. The ART Act, 2021, uses the phrase "below the age of fifty years", while the Act of 2021 uses the phrase "to 50 years". The difference in language between these two Acts indicates a legislative intent to distinguish between the two forms of conception. This distinction may exist because, in ART procedures, there are medical risks associated with invasive reproductive procedures for the intending

mother, whereas in surrogacy, the primary concern for the intending mother is the emotional aspect of parenthood. This reference is only to underscore that statutory provisions relating to age in different statutes should not be interpreted uniformly without context.

22. The proposition that age cannot be changed by judicial orders is correct as a principle but is not applicable to the present case. We are not called upon to modify the age range or to strike down the outer limit on the ground that it infringes upon reproductive rights. This judgment concerns the correct interpretation of Section 4(iii)(c)(I) of the Act of 2021, as intended by the Legislature.

23. There is no merit in the contention that if any change is made to the upper limit or if any particular interpretation is given to the upper limit of 50 under Section 4(iii)(c)(I) of the Act of 2021, it will also affect the lower limit of 23 and impact the age range of the surrogate mother, as the same logic would apply to other ages as well. This contention is without merit. Each age stipulation has its own legislative significance. The manner in which the lower age limit is interpreted may not be identical to how the upper age limit is construed. Similarly, the interpretation of the age of a surrogate mother need not be the same as that of the intending woman. It could be argued that a contrary intention appears to exclude the applicability of Section 9 of the Act of 1897 when different words are used. The upper age limit of 50 years for the intending woman takes away her rights forever. In contrast, modifying the

lower age limit of 23 does not permanently deprive a woman of her rights. Similarly, the age requirement for surrogate mothers differs due to physiological, medical, and social considerations. Therefore, in this judgment, our focus is solely on the number "50" in relation to the intending woman, as it marks the final point beyond which she is permanently excluded from surrogacy rights. Any observations regarding other age stipulations are only illustrative.

24. Section 4 of the Act of 2021, which we have reproduced above, clearly denotes a time range, i.e., between the age of 23 to 50 years, and thus, Section 4(iii)(c)(I) is a legislative provision that indicates a series of days or a period of time. Secondly, it denotes the starting and ending points of this series. The word "to" is used before the last figure in this series. There is no reason why, in the absence of any indication under Section 4(iii)(c)(I) of the Act of 2021 to exclude the applicability of Section 9 of the Act of 1897, these two provisions should not be read together. Disregarding this legislative intent and curtailing the range provided under Section 4(iii)(c)(I) would render eligible persons ineligible, leading to serious consequences.

25. Now, we turn to the conjoint reading of Section 4(iii)(c)(I) of the Act of 2021, together with Section 9 of the Act of 1897, to determine the correct interpretation of the age criteria for an intending woman. The key issue is whether the age range specified as "between the age of 23 to 50 years" includes 50. Section 9 of the Act of 1897, which provides a

standard rule for interpreting time periods and numerical ranges in statutes, states that when a statute prefixes "to" before the last number in the range, it is included. The wording in Section 4(iii)(c)(I) of the Act of 2021 is significant. The statute specifies the age range as "between the age of 23 to 50 years". The word "between" generally signifies a continuous range rather than isolated points. If the Legislature had intended to exclude 50 as well, it would have used a different phrase instead of "to", which has a uniform and standard meaning under Section 9 of the Act of 1897, such as "up to but not including 50" or "below the age of fifty", as used in other statutes. Thus, the prefix "to" is used before the last number when a clear legislative intention emerges. Ignoring it would unfairly exclude a class that the Legislature otherwise intended to include. If the arguments of the Respondents are accepted, it would require rewriting the statute and modifying Section 4(iii)(c) of the Act of 2021 to delete the word "to", which is the key to understand the legislative intent. Thus, under Section 4(iii)(c)(I) of the Act of 2021, the eligibility of intending woman extends throughout the 50th year, ceasing the day before the intending woman turns 51. There is no contrary mandate in the Act that warrants any other interpretation of age.

26. Even assuming that Section 9 of the Act of 1897 is not made applicable and Section 4(iii)(c)(I) of the Act of 2021 has to be interpreted on a stand-alone basis, applying the basic principles of statutory interpretation would still lead to the same result. The interpretation of a phrase in the legislation has to be understood in the context of that law

and the prejudice that follows from it. Therefore, it is necessary to briefly advert to the scheme of the Act of 2021.

27. Firstly, to adopt a plain and common parlance approach: when a range between two numbers is provided, common understanding generally includes both numbers. This means that if the number 50 is indicated as part of a range, then 51 is outside the range. There is no indication to the contrary in the Act of 2021 to depart from this straightforward interpretation. In the absence of any specific indication to the contrary under the Act of 2021, a common-sense and purposive approach can be adopted.

28. For adopting a purposive interpretation, the intention of the Act of 2021 has to be seen from its scheme. The Act of 2021 establishes the National and State Surrogacy Boards to oversee the implementation of its provisions. Chapter II mandates that surrogacy clinics have to be registered and comply with medical and legal standards. Chapter III lays down conditions for surrogacy. Section 3 prohibits unregulated surrogacy, including commercial surrogacy and unauthorized advertisements. Section 5 prevents any unauthorized person from performing surrogacy procedures. Section 6 mandates that the surrogate mother has to give informed consent. Section 7 prohibits abandoning a child born through surrogacy, while Section 8 secures the child's rights. Sections 9 and 10 regulate medical aspects, such as embryo implantation and the prohibition of forced abortion. Chapter IV makes the registration

of surrogacy clinics mandatory. Chapter V provides for the establishment of Surrogacy Board at the Central and State levels to supervise compliance. Chapter VI defines the duties of the appropriate authorities. Chapter VII lays down offences and penalties, including punishment for commercial surrogacy, exploitation, and failure to comply with the legal surrogacy conditions. Sections 38 to 41 prescribe specific penalties for violations. The Surrogacy (Regulation) Rules, 2022, framed under Section 50 of the Act of 2021, set out procedural requirements, including the eligibility criteria for intending parents. Form 1 under Rule 4 requires intending parents to provide their date of birth and age, ensuring a clear assessment of their eligibility.

29. The scheme of the Act of 2021 thus provides a legal framework for regulating surrogacy. It prohibits commercial surrogacy to prevent exploitation while permitting altruistic surrogacy. The Act allows married couples with a medical necessity to opt for surrogacy. It provides for the rights and consent of surrogate mothers, mandates the registration of surrogacy clinics, and establishes National and State Surrogacy Boards. The Act focuses on prohibiting unethical practices like sex selection, child abandonment, and forced surrogacy. The intention of the Act is thus to ensure ethical and legal safeguards. This is important when interpreting the age eligibility for an intending mother, particularly whether the upper limit of 50 years excludes women who have turned 50. Applying the principle of purposive interpretation, the provision on age eligibility should be understood in a way that ensures ethical surrogacy practices

rather than creating unnecessary restrictions. The Act does not seek to arbitrarily deny opportunities for intending couples but to regulate surrogacy within a structured legal framework. Therefore, there is no indication in the scheme of the Act to deny eligibility to intending woman up to her reaching 51 years.

30. Ultimately, the gravity of what is under consideration has to be kept in mind. Statutory interpretation is not an abstract exercise – it directly affects people's rights and lives. The interpretation of a phrase in any statute not only has to be understood within the specific context of that statute but also in light of its consequences. In this case, what is at stake is the permanent loss of the opportunity to become a mother. Motherhood is a deeply personal and fundamental aspect of life. Any interpretation that results in depriving someone of it permanently has to be approached with caution. If one interpretation leads to a complete and irreversible loss – in this case, the inability to ever bear a child through surrogacy – it demands a higher level of scrutiny. When this provision, read with Section 9 of the Act of 1897 and the scheme of the Act of 2021, provides an eligibility window between the age of 23 to 50 years, there is no reason to rely on the Majority Act to close the door on motherhood prematurely when the Legislature intends to allow it to remain open. Therefore, the impugned judgment and order are required to be set aside, and the writ petition needs to be allowed.

2025:KER:21383

31. In the light of this discussion, we hold that since, under Section 4(iii)(c)(I) of the Act of 2021, the eligibility of intending woman to avail of surrogacy services extends throughout the 50th year, ceasing on the day the intending woman turns 51, Petitioner No. 1 is eligible for a certificate under Section 4(iii)(c) of the Surrogacy (Regulation) Act, 2021, until 21 June 2025.

32. Accordingly, the Appeal is allowed. The impugned judgment dated 13 February 2025 in W.P.(C) No.403 of 2025 is set aside and the Writ Petition is allowed. The Respondents shall issue the eligibility certificate as required under Section 4(iii)(c) of the Act of 2021 to the Appellants/Petitioners, within one week from today.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

krj/-

//TRUE COPY//

P.A. TO C.J.