

ITEM NO.102 (PH)

COURT NO.7

SECTION IX/PIL

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8714/2010

UNION OF INDIA & ANR.

Appellant(s)

VERSUS

JAN BALAZ & ORS.

Respondent(s)

WITH

W.P.(C) No. 95/2015

(With appln.(s) for intervention and appln.(s) for stay,impleadment and appln.(s) for permission to file additional documents and Office Report)

Date : 02/12/2015 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s)

For UOI

In CA 8714/10 &
RR in WP 95/15

Mr. Ranjeet Kumar,SG
Mr. K.Radhakrishnan,Sr.Adv.
Mr. S. Wasim A.Qadri,Adv.
Ms. Binu Tamata, Adv.
Ms. Meenakshi Graver, Adv.
Mr. Ajay Sharma,Adv.
Ms. Swarupma Chaturvedi,Adv.
Mr. S.S. Rawat,Adv.
Mr. D.S. Mahra,Adv.
Ms. Meha Sahu,Adv.
Ms. Gargi Khanna,Adv.
Mr. Zaid Ali,Adv.
Ms. Sushma Suri,Adv
Mrs. Anil Katiyar,Adv.

In WP 95/15

Mr. Shekhar Naphade,Sr.Adv. (NP)
Mr. Ashish Wad,Adv.
Ms. Shubhangi Tuli,Adv.
Ms. Kanika Baweja,Adv.
Mr. Sangram Singh B.,Adv.
Ms. Paramita Majumdar,Adv.
Ms. Tamali Wad,Adv.

For Respondent(s)

For MCI

Mr.Gaurav Sharma,Adv.
Mr. Dhawal Mohan,Adv.
Mr. Prateek Bhatia,Adv.

Mr. Nikhil Goel, Adv.
Ms. Naveen Goel, Adv.
Mr. Marsook Bafaki, Adv.

Ms. Hemantika Wahi, Adv.

Ms. Kamini Jaiswal, Adv.

Mr. Gagan Gupta, Adv.

Mr. Jagjit Singh Chhabra, Adv.

Mr. Vishnu Sharma, Adv.
Ms. Radhika Thagar, Adv.
MR. Naman Nayak, Adv.
Ms. Anupama Sharma, Adv.
Mr. R.K. Thakur, Adv.

Mr. Permod Kohli, Sr. Adv.
Mr. Inderbir Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Issue notice on applications for impleadment.

By order dated 14.10.2015 passed by this Court the learned Solicitor General for India was granted time to obtain instructions with regard to a notification dated 2nd December, 2013 on the subject of policy for import of human embryo. Pursuant to the said order, an affidavit dated 27th October, 2015 was filed by the Secretary, Department of Health Research, Ministry of Health and Family Welfare, Government of India, indicating the broad stand of the Union in the matter and the specific steps that are proposed to be taken. Subsequently, an additional affidavit dated 10th

November, 2015 has been filed highlighting the specific steps taken in terms of the statement made in the earlier affidavit dated 27th October, 2015.

A reading of additional affidavit dated 10th November, 2015 would go to show that by a notification dated 26th October, 2015 import of human embryo has been prohibited except for research purposes. By another notification dated 3rd November, 2015 of the Ministry of Home Affairs issue of visa by Indian Missions abroad to foreign nationals intending to visit India for commissioning surrogacy has been stopped with immediate effect. There is yet another notification dated 4th November, 2015 issued by the Ministry of Health & Family Welfare, Department of Health Research laying down guidelines and instructions to be followed by Surrogacy Clinics/ART Clinics/IVF Clinics etc. which offer surrogacy services. The relevant part of the aforesaid instructions are as follows:

ii) that the Surrogacy Clinics/ART Clinics/IVF Clinics/any centre/Genetic Counselling Centres/other clinical establishments, by whatsoever name they may be called, offering surrogacy services/Assisted Reproduction Services will not import human embryo for offering surrogacy services or in connection thereto.

iii) that the Ministry of Home Affairs has now issued instructions vide their letter No. 25022/74/2011-F.I (Vol.III), dated 03.11.2015, addressed to all States/UTs/Indian Missions abroad etc., that Indian Missions/Posts/FRROs/FROs shall ensure the following with immediate effect;

a) No visa should be issued by the Indian Mission/posts to foreign nationals intending to visit India for commissioning surrogacy.

b) No permission should be granted by the Foreigners Regional Registration Officers (FRROs)/Foreigners Registration Officers (FROs) to Overseas Citizen of India (OCI) cardholders to commission surrogacy in India.

c) No exit permission should be granted by the FRROs/FROs to the child/children to be born through surrogacy to foreign nationals including OCI cardholders. However, for child/children born through surrogacy already commissioned on or before issue of this circular, exit permission will be decided by FRROs/FROs on case-to-case basis.

d) Visa, if any, granted by the

Indian Missions/Posts to foreign nationals and permission, if any, granted by the FRROs/FROs to OCI cardholders, for commissioning surrogacy in India, from the date of issue of this Circular and date of receipt of the Circular, may be cancelled and the applicants may be informed of the position immediately.

The above instructions contained in the Ministry of Home Affairs circular dated 3.11.2015 may please be brought to the notice of the Surrogacy Clinics/ART Clinics/IVF Clinics/Genetic Counselling Centres/Genetic Laboratories/ART Banks or such other clinical establishment offering surrogacy services/Assisted Reproduction Services in your respective State jurisdictions.

(iv) However, there may be cases where-prior to issue of this letter action might have been initiated/taken by surrogacy Clinics/ART Clinics/IVF Clinics/Genetic Counselling Centres/Genetic Laboratories/ART Banks or such other clinical establishment to commission surrogacy, including import of 'Human Embryo' and implantation thereof into surrogate mother or child/children born from it. Such cases will be allowed to complete the processes already started to avoid medical complications. However, all such cases will approach the State Health Authorities for permission. The State Health

Authorities will decide such cases on case to case basis.

2. Unethical practices in surrogacy, including illegal determination of sex by such clinical establishments, will continue to be dealt with as per existing MCI guidelines and existing provisions of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 in force.

3. In this connection, it is also stated that the "Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India" circulated by this Ministry to all the States/UTs will remain in force till enactment of the legislation. However, in case any of the provisions contained in those guidelines come into conflict with the instructions being issued herewith, the instructions contained in this letter shall prevail over the corresponding provisions in the said guidelines.

4. These instructions will come into force with immediate effect. However, the Notification issued by the Department Commerce and the Circular issued by the Ministry of Home Affairs, as mentioned above will take their effect from the dates as mentioned in their respective Notification/Circular.

5. All State Governments are requested that the contents of this letter may be given wide circulation among all stakeholders in their respective State/UT and suitably conveyed to all ART/Surrogacy Clinics/IVF Centres and other bodies and clinical establishments, by whatsoever name, in the State/UT, who are offering and conducting surrogacy services in the State/UT.

The above notifications issued by different ministries as noted above would indicate the steps taken by the Union in terms of the undertaking contained in its affidavit dated 27th October, 2015 and the directions of this Court in the order dated 14th November, 2015.

Insofar as the banning of commercial surrogacy is concerned the stand of the Government of India is that it is opposed to commercial surrogacy. The details in this regard would be forthcoming only after the Bill on Assisted Reproductive Technology (ART) which is presently at a consultative stage is enacted into a law.

The above being the position the matters are adjourned for two months to enable all the contesting parties to obtain necessary instructions and thereafter

to argue the cases on merits on the issues that survive for adjudication in this writ petition as well as in the connected civil appeal.

(MADHU BALA)
COURT MASTER

(ASHA SONI)
COURT MASTER