

**IN THE HIGH COURT AT CALCUTTA**  
**(Constitutional Writ Jurisdiction)**  
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**W.P.A. No. 12503 of 2026**

**Sahajit Sarkar**

**Vs.**

**State of West Bengal & Ors.**

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.

Mr. Sudipta Dasgupta

Ms. Sinjini Chakrabarti

Ms. Anushka Dasgupta

Mr. Baibhav Roy

....For the petitioners.

Mrs. Sudipa Banerjee

Ms. Manisha Paswan

....For the State.

Hearing Concluded On : 31.07.2026

Judgment Delivered On : 05.08.2026

Judgment Uploaded On : 05.08.2026

**Krishna Rao, J.:**

1. The petitioner has filed the present writ petition praying for a direction upon the respondent authorities for consideration of the application being the recipient for renal transplantation. The petitioner is aged about 34 years and was diagnosed with chronic kidney disease stage 5 with deteriorating renal function. The petitioner was undergoing treatment under the Director of Nephrology of Woodlands Multispecialty Hospital, Kolkata and was advised for renal transplantation. On 9<sup>th</sup> September, 2019, the petitioner underwent 1<sup>st</sup> successful Renal Transplantation at the said Hospital.
2. In the year 2022, the petitioner was again diagnosed with renal disease and was started on hemodialysis. The petitioner was undergoing treatment at Belle Vue Clinic, Kolkata wherein the concerned Consultant Senior Nephrologists advised for another renal transplantation.
3. Mr. Bikash Ranjan Bhattacharyya, Learned Senior Advocate representing the petitioner submits that none of the near relatives were medically fit to donate one of their kidney, one of the petitioner's friend, namely, Rana Pramanik, aged about 34 years out of his love and affection, voluntarily offered the petitioner for donating a kidney to the petitioner. The kidney of the donor matched with the petitioner and the petitioner accepted to receive the same. He submits that the donor was explained in details regarding the future consequences of his kidney

donation and even after knowing the consequences, the donor is ready and willing to donate his one of the kidney to the petitioner.

- 4.** The petitioner and the donor have jointly submitted applications along with all necessary documents for getting permission from the concerned authority for transplantation of organ between the petitioner and the donor. Mr. Bhattacharyya submits that the petitioner's legal guardian along with the donor and his legal guardian appeared before the Committee and the Committee verbally informed that the case of the petitioner is not recommended and orally rejected on the ground that there is no relation between the petitioner and the donor.
- 5.** Mr. Bhattacharyya submits that none of the relatives were medically fit to donate one of their kidney and the friend of the petitioner is ready to donate his kidney out of his love and affection and the wife as well as the donor have also given no objection for donation of kidney but the Committee without assigning any reason, not recommended for kidney transplantation.
- 6.** Mrs. Sudipa Banerjee, Learned Advocate representing the respondent authorities has submitted report along with a pen drive and compact disc of the recording of the statement of the donor, guardian of the donor and guardian of the petitioner, and submits that during their examination, the verification committee has not found any relationship between recipient and the donor and the statement made by the parties before the Verification Committee, there is a gross difference between

the address of the recipient provided by the legal guardian, the donor and his legal guardian. She submits that the donor also cannot remember proper route direction of the address of the recipient.

7. Mrs. Banerjee submits that the recipient and the donor failed to establish their relationship between them and thus, the authorities have not recommended the case of the petitioner for renal transplantation.
8. It is admitted that donor is not a near relative of the recipient. The donor and the recipient are unrelated to each other but it is the case of the petitioner that the donor is the friend of the petitioner and voluntarily agreed to donate one of his kidneys to the petitioner in spite of knowing the future consequences. Admittedly, there is no commercial transaction between the parties.
9. Section 2(f) defines Donor and 2(i) of the Transplantation of Human Organs and Tissues Act, 1994, defines near relative which reads as follows:

**“2(f)** *“donor means any person, not less than eighteen years of age, who voluntarily authorizes the removal of any of his [human organs or tissues or both] for therapeutic purposes under sub-section (1) or sub-section (2) of section 3;*

**2(i)** *[“near relative” means spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter;]”*

- 10.** Section 9 of the Transplantation of Human Organs and Tissues Act, 1994, provides restrictions on removal and transplantation of human organs or tissues or both. In the present case, Sub-Section (3) of Section 9 is relevant, which reads as follows:

*“9. (3) If any donor authorises the removal of any of his [human organs or tissues or both] before his death under sub-section (1) of section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reasons of affection or attachment towards the recipient or for any other special reasons, such [human organ or tissue or both] shall not be removed and transplanted without the prior approval of the Authorisation Committee.”*

- 11.** As per Act of 1994, there is no restriction for donation of kidney in favour of a person who is not a near relative but the only restriction is that transplantation can be done only after prior approval of the State Authorization Committee.

- 12.** Rule 7 defines “Authorization Committee”. In the present, case Sub-Rule (3) of Rule 7 is relevant, which reads as follows:

**“7. Authorisation Committee. –**

*(3) When the proposed donor and the recipient are not near relatives, the Authorisation Committee shall,-*

- (i) evaluate that there is no commercial transaction between the recipient and the donor and that no payment has been made to the donor or promised to be made to the donor or any other person;*

- (ii) *prepare an explanation of the link between them and the circumstances which led to the offer being made;*
- (iii) *examine the reasons why the donor wishes to donate;*
- (iv) *examine the documentary evidence of the link, e.g. proof that they have lived together, etc.;*
- (v) *examine old photographs showing the donor and the recipient together; (vi) evaluate that there is no middleman or tout involved;*
- (vi) *evaluate that financial status of the donor and the recipient by asking them to give appropriate evidence of their vocation and income for the previous three financial years and any gross disparity between the status of the two must be evaluated in the backdrop of the objective of preventing commercial dealing;*
- (vii) *ensure that the donor is not a drug addict;*
- (viii) *ensure that the near relative or if near relative is not available, any adult person related to donor by blood or marriage of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ or tissue, the authenticity of the link between the donor and the recipient, and the reasons for donation, and any strong views or disagreement or objection of such kin shall also be recorded and taken note of."*

**13.** The Verification Committee examined the donor, his guardian and the guardian of the petitioner. This Court perused the video recording during the examination of the donor, guardian of the donor and the

guardian of the recipient. The Verification Committee in their report opined that :

***“During interview the donor stated that the recipient is neighbor of his maternal uncle. Thus they came to know each other. And he often goes to his maternal uncle’s house. But there is a gross deference between the address of the recipient provided by the legal guardian of recipient and donor and his legal guardian also. Donor cannot remember proper route direction of the above said address.”***  
*Hence the case is not recommended from this end.”*

While considering the recording of the evidence of the donor, this Court finds that the donor has stated that the recipient resides at Nalagola, Malda and he came to know about the recipient that his maternal uncle’s house is in and around the house of the recipient. The guardian of the recipient also admitted that the maternal uncle of the donor is residing in and around their house and the donor is residing at Natunpally, Shyamnagar. The wife of the donor has also stated that she visited to see the recipient at Nalagola but she could not identify the name of the village and the police station.

- 14.** In the report, the Verification Committee has recorded that there is gross deference between the address of the recipient provided by the legal guardian of the recipient and donor, and his legal guardian, is not correct. The opinion that donor cannot remember proper route direction of the address, is also not correct as per the statement available in the video recording.

- 15.** In the case of **Sudha Mathesan & Anr. vs. Authorization Committee (Transplantation) rep. by its Chairman & Anr.** reported in **2024**

**SCC OnLine Mad 1633**, the Madras High Court held that:

*“17. Let us put ourselves in the shoes of the applicants. They can only assert that there is no commercial dealing. They cannot be called upon to prove the negative. Rule 17 provides for scrutiny of application. In case of doubt, explanation can be sought from the applicants and there can also be verification done through the officials of the Government. Too much of burden cannot be laid on the shoulders of the applicants. Unless there is definite material to establish that there are financial dealings involving the parties, permission ought not to be withheld or rejected. If the donor states that out of love and affection, he/she is making the donation, in the absence of any credible reason, the averment should not be doubted. The Government must come out with definite guidelines in this regard. Otherwise, the issue will be left to the arbitrary discretion of the Authorisation Committee. If the recipient is well placed and connected, the decision of the committee will swing in his favour. If the recipient is not all that influential, by passing a template order, permission can be rejected. One must take note of the fact that parliament never intended to rule out donation by non-near relatives. The parliamentary intent ought not to be frustrated by adopting a rigid approach. One need not take a cynical view that a non-near relative will not donate out of altruistic considerations.”*

- 16.** In case the donor is not a near relative the requirement is that he must establish that removal of the organ was being authorized for transplantation into the body of the recipient because of love and affection or attachment or for any special reasons to make donation of his organ. As the purpose of enactment of the statute itself shows, there cannot be any commercial element involved in the donation. The

object of the statute is crystal clear that it intends to prevent commercial dealings in human organs. The Authorization Committee is, therefore, required to satisfy that the real purpose of the donor authorizing removal of the organ is by reason of affection or attachment towards the recipient or for any other special reason. Such special reasons can by no stretch of imagination encompass commercial elements. Above being the intent, the inevitable conclusion is that the Authorization Committee of the State to which the donor and the donee belong have to take the exercise to remove the organ and whether any commercial element is involved or not. They would be in a better position to lift the veil of projected affection or attachment and the so called special reasons and focus on the true intent. The burden is on the applicants to establish the real intent by placing relevant materials for consideration of the Authorisation Committee. Whether there exists any affection or attachment or special reason is within the special knowledge of the applicants, and a heavy burden lies on them to establish it. Several relevant factors like relationship, if any (need not be near relationship for which different considerations have been provided for), period of acquaintance, degree of association, reciprocity of feelings, gratitude and similar human factors and bonds can throw light on the issue.

- 17.** It is seen from the records that all the relevant forms have been filed along with the certificate and the only ground that has been put against the petitioner is that the verification committee has come to the

conclusion that there is a gross deference between the address of the recipient provided by the legal guardian of the recipient and the donor and his legal guardian also. The donor cannot remember proper route directions of the said address. The decision taken by the Authorization Committee was purely on the basis of the report of the Verification Committee. The Authorization Committee does not satisfy the mandatory requirements under Rule 23 of the Rules. There is no independent application of the mind and the decision taken by the Authorization Committee suffers from error of law, apparent on the face of the record.

- 18.** In view of the above, the decision taken by the Verification Committee and the Authorization Committee, are set aside and quashed. The Authorization Committee is directed to take an independent decision by taking into consideration of the statement recorded by the Verification Committee through video recording and the affidavit submitted by the donor and his guardian before the Learned 1<sup>st</sup> Class Judicial Magistrate and other documents available on record within a period of one week from the date of receipt of this order and to communicate the same to the petitioner immediately.

- 19. WPA No. 12503 of 2026 is disposed of.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Krishna Rao, J.)**