

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 10816 of 2015 (B)

PETITIONERS :

- 1. SHAFNA, D/O. KUNHIMUHAMMED, AGED 25 YEARS,
SHAJAHAN MANZIL, KODANGAD, NEDIYIRUPPU,
KONDOTTY, MALAPPURAM DISTRICT.**
- 2. SUNIL KUMAR, S/O.SOMAN, AGED 38 YEARS,
PARAYUL HOUSE, CHOTTANIKKARA.P.O., MUVATTUPUZHA,
ERNAKULAM DISTRICT.**

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENT(S):

- 1. THE DISTRICT LEVEL AUTHORIZATION COMMITTEE
FOR TRANSPLANTATION OF HUMAN ORGANS THRISSUR,
REP. BY ITS CHAIRMAN, POST THRISSUR, PIN-680 001**
- 2. LOCAL APPROVAL COMMITTEE OF ORGAN TRANSPLANTATION,
MEDICAL TRUST HOSPITAL, ERNAKULAM, KOCHI-682 016,
REPRESENTED BY ITS CHAIRMAN.**
- 3. THE DEPUTY SUPERINTENDENT OF POLICE,
MUVVATTUPUZHA, POST MUVVATUPUZHA-683 037**

R1 & R3 BY SR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: THE TRUE COPY OF THE MEMBERSHIP RECEIPTS ISSUED TO THE PETITIONER BY THE DYFI STATE COMMITTEE DATED NIL
- EXHIBIT P2: THE TRUE COPY OF THE AUTHORIZATION LETTER ISSUED BY THE DISTRICT LEVEL AUTHORIZATION COMMITTEE DATED 03.12.2014
- EXHIBIT P3: THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS DATED 03.9.2015
- EXHIBIT P4: TRUE COPY OF THE RESIDENT CERTIFICATE OF THE 2ND PETITIONER DATED 20/04/2015
- EXHIBIT P5: TRUE COPY OF THE RESIDENT CERTIFICATE OF THE WIFE OF THE 2ND PETITIONER DATED 18/04/2015
- EXHIBIT P6: TRUE COPY OF THE RESIDENT CERTIFICATE OF THE 1ST PETITIONER DATED 20/04/2015
- EXHIBIT P7: TRUE COPY OF THE FAMILY CERTIFICATE OF THE 1ST PETITIONER DATED 18/02/2015
- EXHIBIT P8: TRUE COPY OF THE ELECTORAL IDENTITY CARD OF THE 2ND PETITIONER DATED 26/09/2008
- EXHIBIT P9: TRUE COPY OF THE ELECTORAL IDENTITY CARD OF THE WIFE OF THE 2ND PETITIONER DATED 04/09/2014
- EXHIBIT P10: TRUE COPY OF THE AFFIDAVIT OF THE 1ST PETITIONER DATED 29/04/2015
- EXHIBIT P11: TRUE COPY OF THE AFFIDAVIT OF THE 2ND PETITIONER DATED 29/04/2015
- EXHIBIT P12: TRUE COPY OF THE CONSENT OF THE 2ND PETITIONER DATED 29/04/2015
- EXHIBIT P13: TRUE COPY OF THE CONSENT OF THE WIFE OF THE 2ND PETITIONER DATED 29/04/2015
- EXHIBIT P14: TRUE COPY OF THE CONSENT OF THE 1ST PETITIONER DATED 29/04/2015
- EXHIBIT P15: TRUE COPY OF THE JOINT CONSENT OF THE PETITIONERS AND THE WIFE OF THE 2ND PETITIONER DATED 29/04/2015

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EXHIBIT P16: TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE PETITIONERS DATED 07/04/2015

EXHIBIT P17: TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE 2ND PETITIONER AND HIS WIFE DATED 07/04/2015

EXHIBIT P18: TRUE COPY OF THE FORM 1 © SUBMITTED BY THE PETITIONERS DATED 19/04/2015

EXHIBIT P19: TRUE COPY OF THE FORM 10 SUBMITTED BY PETITIONERS DATED 30/04/2015

EXHIBIT P20: TRUE COPY OF THE CONSENT LETTER OF THE 2ND PETITIONER DATED 30/04/2015

EXHIBIT P21: TRUE COPY OF THE LETTER ISSUED BY THE MEDICAL TRUST HOSPITAL DATED 02/03/2015

EXHIBIT P22: TRUE COPY OF THE ELECTORAL IDENTITY CARD OF THE 1ST PETITIONER DATED 13/01/2011

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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K. VINOD CHANDRAN, J.

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Dated this the 18th day of June, 2015

J U D G M E N T

The petitioners are jointly before this Court seeking consideration of an application made by the 1st petitioner to the District Level Authorisation Committee for an organ transplantation, which the 2nd petitioner had agreed to donate to the 1st petitioner. Admittedly the application was made under the Transplantation of Human Organs and Tissues Act, 1994 and Rules 1995. The petitioner is before this Court since the Authorisation Committee is said to be insisting for a certificate from the 3rd respondent. Admittedly the new Rules of 2014 have come into effect and the earlier Rule stands repealed. As per the earlier Rules by Rule 6f(d)(iv), it was incumbent upon the Authorisation Committee to evaluate whether the donor is a

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drug addict or a known person with criminal record.

2. In such circumstance, as to the criminal record, the Authorisation Committee could only rely on a certificate from the 3rd respondent. However as of now, the Rules of 2014 govern the matter. Therein, there is no requirement for ensuring that the donor has any criminal record. What is stipulated now is the mandate to ensure that the donor is not a drug addict. Such a certification cannot be made by the 3rd respondent, and can only be made by a medical practitioner. The Authorisation Committee would be entitled to seek for such a certificate from an authorised Medical Officer or from a Medical Board of the District as decided by the Authorisation Committee.

3. The learned Government Pleader in fact would submit that the provisions of the Act and Rules being stringent the Authorisation Committee has to ensure that the donor has not come forward to donate an organ for commercial

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considerations. Definitely the Authorisation Committee could examine whether the intentions are purely altruistic and not one led by financial considerations. The Authorisation Committee in such circumstance would either call the donor and examine him personally or even examine his family members. In the present case, the learned counsel submits that the wife of the donor has also sworn to an affidavit which reveals purely altruistic motives behind such donation.

4. In such circumstance, the petitioners are directed to file a fresh joint application under the Rules of 2014 before the Authorisation Committee and the Authorisation Committee shall also expedite the matter taking into consideration that the 1st petitioner is in need of the transplantation which has been certified by a medical practitioner. On an application being filed, the Authorisation Committee shall take such steps as is required as has been laid down herein above and finalise the matter at

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any rate within one month from the date of application, if possible within a shorter period of time, keeping in mind the expediency warranted in such cases.

The writ petition is disposed of.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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// true copy //

P.A to Judge.