

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 23868 of 2015 (G)

PETITIONER(S) :

**BELSON BABY, AGED 31 YEARS,
SON OF T.K.BABY, THATTIL HOUSE, PULLAZHI P.O.,
OLARIKKARA, THRISSUR, PIN-680 012.**

**BY ADVS.SRI.ABDUL JALEEL.A
SMT.M.A.SULFIA**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE HEALTH AND FAMILY WELFARE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. DISTRICT LEVEL AUTHORIZATION COMMITTEE FOR TRANSPLANTATION
OF HUMAN ORGANS REPRESENTED BY PRINCIPAL AND CHAIRMAN,
GOVERNMENT MEDICAL COLLEGE, THRISSUR- 680 001.**
- 3. THE MEDICAL TRUST HOSPITAL,
M.G.ROAD, ERNAKULAM, PIN-682 016,
REPRESENTED BY ITS MEDICAL DIRECTOR.**
- 4. PRAKASHAN, AGED 41 YEARS,
PUTHUPARAMBIL HOUSE, CHAKKULAM.P.O., KUMALI,
IDUKKI-9, IDUKKI DISTRICT.**

R1 & R2 BY GOVERNMENT PLEADER SRI.GIKKU JACOB

R3 BY ADVS. SRI.R.S.KALKURA

SRI.M.S.KALESH

SRI.HARISH GOPINATH

SMT.R.BINDU

SMT.P.ANJANA

SRI.P.M.UNNI NAMBOODIRI

R4 BY ADV. SRI.B.C.MENON

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE REPORT GIVEN BY THE NEPHROLOGIST OF 3RD RESPONDENT HOSPITAL DATED 09.08.2014.**
- P2: TRUE COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE DEPUTY SUPERINTENDENT OF POLICE DATED 26.11.2014.**
- P3: IDENTIFICATION CERTIFICATE OF THE PETITIONER AND 4TH RESPONDENT ATTESTED BY THE VILLAGE OFFICER.**
- P4: FORM 1(C) CONSENT GIVEN BY THE 4TH RESPONDENT.**
- P5: TRUE COPY OF THE CONSENT GIVEN BY THE WIFE OF THE 4TH RESPONDENT DATED 13.12.2014.**
- P6: TRUE COPY OF THE AUTHORIZATION GIVEN BY THE PETITIONER TO HIS REPRESENTATIVE.**
- P7: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 09.09.2014.**
- P8: TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER DATED 05.02.2015.**
- P9: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 23.03.2015.**
- P10: TRUE COPY OF THE ORDER OF 1ST RESPONDENT DATED 25.06.2015.**
- P11: TRUE COPY OF THE REPORT GIVEN BY THE NEPHROLOGIST AMALA INSTITUTE OF MEDICAL SCIENCES THRISSUR, DATED 28.07.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

W.P.(C)No.23868 of 2015

Dated this the 1st day of September, 2015.

J U D G M E N T

The petitioner, a renal patient, has approached this Court aggrieved by Exts.P9 and P10 orders issued under the Transplantation of Human Organs Act, 1994.

2. The 2nd respondent - District Level Authorisation Committee, by Ext.P9 order has rejected the application for transplantation. In appeal, the Government has also confirmed the order.

3. The reason for the rejection of transplantation is that the relationship between the petitioner and the donor could not be established through documentary evidence. It is specifically noted that the altruistic nature of the donor could not be established.

4. The altruism is essentially human compassion and emotion being shown to the fellow human beings. Necessarily, this cannot be demonstrated by any

documentary evidence.

5. The learned Government Pleader submits that the members of the District Level Authorisation Committee put certain questions to the donor and the answers were found as unsatisfactory. It is based on those answers, it was concluded that there is no link between the donor and the petitioner.

6. The learned counsel for the donor on the other hand submits that the members have mis-stated the statement of the donor and came to an erroneous conclusion.

7. The question is whether the parties could establish the altruistic nature to overrule any commercial aspects involved in the transplantation. The object of the Transplantation of Human Organs Act, 1994, is to regulate transplantation of human organs and also to prevent commercial dealings of human organs. In the impugned order, there is no reference to find out whether the attempt of the donor was a commercial dealing with the petitioner.

In the absence of any such finding, it has to be concluded that the donor is attempting to help the petitioner. They narrate the relationship based on the relation between employer and employee. In such circumstance, this Court is of the view that the impugned orders are liable to be set aside. Hence, ordered accordingly. The application filed by the petitioner shall be allowed and the petitioner shall be permitted to transplant the organ as requested in Ext.P4. Therefore, the District Level Authorizing Committee shall pass necessary orders permitting the petitioner to transplant organ as requested in Ext.P4, within 10 days of receipt of copy of this judgment.

Sd/-
A.MUHAMED MUSTAQUE,
Judge.

ami/

//True copy//

P.A.to Judge