

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 33667 of 2014 (G)

PETITIONER(S):

- 1. DHARMAPUTHRAN T, AGED 46 YEARS
S/O.CHOI, THACHANATTU HOUSE, KOTTE,
TIRUR P.O., MALAPPURAM DISTRICT.**
- 2. BENNY, AGED 46 YEARS,
S/O.CHAKCO, VADAKKUMPURATH HOUSE, KOLANI P.O.
THODUPUZHA VILLAGE, IDUKKI DISTRICT.**

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENT(S):

- 1. STATE OF KERALA
REP.BY THE SECRETARY TO HEALTH DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE PRINCIPAL SECRETARY,
DEPARTMENT OF HEALTH, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN 695001.**
- 3. THE DISTRICT LEVEL AUTHORIZATION COMMITTEE
FOR TRANSPLANTATION OF HUMAN ORGANS, THRISSUR
REP.BY ITS CHAIRMAN, POST THRISSUR, PIN 680001.**

BY SENIOR GOVERNMENT PLEADER JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE DEPUTY SUPERINTENDENT OF POLICE, THODUPUZHA DATED 17.07.2014.**
- EXHIBIT-P2: THE TRUE COPY OF THE CONSENT LETTER OF THE 2ND PETITIONER AND HIS WIFE DATED 22.08.2014.**
- EXHIBIT-P3: THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS DATED 03.09.2014.**
- EXHIBIT-P4: THE TRUE COPY OF THE CONSENT LETTER OF THE 2ND PETITIONER DATED 05.06.2014.**
- EXHIBIT-P5: THE TRUE COPY OF THE CONSENT LETTER OF THE WIFE OF THE 2ND PETITIONER DATED 05.06.2014.**
- EXHIBIT-P6: THE TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED 01.11.2014.**
- EXHIBIT-P7: THE TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 09.12.2014.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.33667 OF 2014
.....

Dated this the 8th January, 2015

J U D G M E N T

The challenge is against Ext.P6 order passed by the third respondent /District Level Authorization Committee, which stands affirmed by Ext.P7 order dated 09.12.2014 passed by the second respondent/Secretary to Government, Dept. of Health, Thiruvananthapuram.

2. The issue pertains to the permission sought for to have 'Kidney Transplantation'. The first petitioner is a chronic renal patient and it has been certified by the medical authorities that transplantation of kidney is essential. Efforts taken to identify a near relative with a matching kidney came to be unsuccessful. While so, the second petitioner with whom, the first petitioner was having acquaintance came forward because of love and affection, to donate his kidney. After satisfying the formalities in this regard, Ext.P3 application dated 03.09.2014 was preferred before the third respondent/District Level Authorization Committee, jointly by the petitioners, producing relevant documents,. The consent of the near relatives of the donor/second petitioner was also produced, as borne by Exts.P4

and P5. However, without any regard to the actual facts and figures, the application came to be rejected by the third respondent, as per Ext.P6 order dated 01.11.2014, raising some doubts as to the willingness expressed by the donor/second petitioner . Being aggrieved of the said order, the petitioners preferred an appeal before the Government . But interference was declined and the appeal came to be rejected as per Ext.P7 order dated 09.12.2014, which in turn is under challenge in this writ petition.

3. Heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

4. During the course of hearing, it is brought to the notice of this Court that the issue has been approached by the concerned respondents in a casual manner, without any regard to the struggle of the first petitioner/patient for his life. Absolutely no insinuating circumstance or incriminating instance has been pointed out either in Ext.P6 or Ext.P7, but for raising some doubts as to the genuineness of the **love or altruism** expressed from the part of the second petitioner. It is also pointed out that the matter was got enquired into by the Police

(Dy. SP, Thodupuzha), who has certified as per Ext.P1, that there is absolutely no commercial interest in the transaction. But this has been simply given a 'go-bye'.

5. A similar issue had come up for consideration before this Court earlier and as per the decision reported in ***Mohammed M.K. vs. State of Kerala and others (2014(1) KLT 728***), it was observed, with reference to Section 24(1) of Transplantation of Human Organs Act, 1994 and the relevant rules, that when materials are available on record to indicate that there is no commercial interest between the parties , the authorities concerned should not insist on further proof regarding the same.

6. Coming to the case in hand , it is seen that the matter was enquired into by a police officer of higher level(Dy.S.P, Thodupuzha), who has categorically asserted , as per Ext.P1, that there is no commercial interest. This being the position, the discrepancy, if at all any with regard to the statement/deposition collected by the third respondent, during the course of examination of the issue need not be given undue importance to turn down the relief sought for. This Court finds that the issue

has been approached in a mechanical manner, without any regard to the object of the Statute.

7. Considering the prime necessity in this regard and the materials produced, this Court is of the firm view that rejection of the application preferred by the petitioners on surmises and conjunctures is not liable to be sustained. Accordingly, Exts.P6 and P7 are set aside. The third respondent/District Level Authorization Committee is directed to pass necessary orders for facilitating the transplantation of kidney from the donor to the recipient to save the life of the patient concerned. Necessary steps shall be pursued in this regard forthwith, at any rate, within two weeks from the date of receipt of a copy of the judgment. It is for the petitioners to produce a copy of the judgment along with a copy of the writ petition before the third respondent/District Level Authorization Committee for further steps.

The writ petition is disposed of.

P.R.RAMACHANDRA MENON
JUDGE

W.P.(C)No.33667 OF 2014

5