

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1765 OF 2016

Sow. Bhagirathibai Babarao Hendre,
Age-55 years, Occu:Household,
R/o-Village Gojegaon, Post-Gorlegaon,
Tq-Hadgaon, Dist-Nanded.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs Dept.,
Mantralaya, Mumbai-32,
- 2) The Secretary and Appropriate
Authority and Director
of Health Services,
Maharashtra State,
Mumbai,
- 3) The Chairman
of the Authorization Committee
and Dean, Government Hospital
and Medical College (GHATI),
Aurangabad, Dist-Aurangabad,
- 4) MGM Medical College and Hospital,
Through its Authorized Person Dean/
Medical Superintendent,
MGM Campus, Town Center,
Seven Hills, Aurangabad.

...RESPONDENTS

...
Mr. R.B. Narwade Patil Advocate for Petitioner.
Mr. A.B. Girase, Government Pleader for
Respondent Nos.1, 2 and 3.
Mr. V.S. Kadam Advocate for Respondent No.4.
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**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

DATE : 23RD FEBRUARY, 2016

ORDER :

1. The Petitioner, who is suffering from some nephrological ailment, is seeking directions to Respondent No.4 - M.G.M. Medical College and Hospital to forward the proposal of the Petitioner to Respondent No.3 i.e. Authorization Committee forthwith. The Petitioner is also seeking directions to the Authorization Committee to take decision on the proposal expeditiously, so that the Petitioner can undergo kidney transplant operation. According to Petitioner, she has been advised kidney transplantation by a medical practitioner having necessary super specialization qualification. The Petitioner approached

Respondent No.4 in connection with the treatment and tendered request to Respondent No.4, which is also recognized human transplant center, to undertake kidney transplant operation at the center. Request was also made by the Petitioner to forward the proposal to the authorization committee for its consideration. Respondent No.4, however, considering the fact that the donor is not related with the donee as specified under the provisions of the Act, has refused to undertake kidney transplant operation. It is recorded in the communication issued to the Petitioner that the relations of the donor with the recipient are not established, hence the center is unable to perform the transplant operation. The Petitioner contends that it is the responsibility of Respondent No.4 to forward the proposal to Respondent No.3 for its consideration.

2. The Transplantation of Human Organs and Tissues Act, 1994 (Act of 1994) provides for

regulation of removal, storage and transplantation of human organs and tissues for therapeutic purposes and for the prevention of commercial dealings in human organs and tissues. Section 9(5) of the Act of 1994 provides that, on an application jointly made in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorization Committee, shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the Rules made thereunder, grant to the applicants approval for the removal and transplantation of the human organ.

3. It is not a matter of dispute that the proposed donor is not relative within the meaning of Section 2(i) of the Act of 1994 and the proposed transplant of human organ is not between the near relatives. The composition of State and District Level Authorization Committee is provided

under Rule 13 of the Transplantation of Human Organs and Tissues Rules, 2014 (Rules of 2014), whereas the procedure in case of transplant other than near relatives, is provided under Rule 19 of the Rules. It is provided that the approval shall have to be granted by the Authorization Committee of the Hospital or if Hospital based Authorization Committee is not constituted, by the District or State Level Authorization Committee.

4. Rule 11(4) of the Rules of 2014 provides that, the Authorization Committee should be hospital based if the number of transplants is twenty five or more in a year at the respective transplantation centers, and if the number of organ transplants in an institution or hospital are less than twenty five in a year, then the State or District Level Authorization Committee would grant approval.

5. In the instant matter, it has been

reported that the hospital, during the preceding year has performed less than twenty five transplant operations and as such the State or District Level Committee shall have to consider the application of the Petitioner.

6. Relying on the decision rendered by the Division Bench of this Court in **Writ Petition No.1485 of 2013 (Master Siddhant Vikram Pal and another vs. The Authorization Committee and another)** and other companion matters, decided on **21st June 2013, at Mumbai**, it is pointed out that in accordance with Clause (ii) of the directions contained in Para 17 of the Judgment, Authorization Committee is under an obligation to accept the application made in accordance with Sub-section (3) read with Sub-section (5) of Sec.9 of the said Act and the Authorization Committee cannot direct the applicants to apply through the concerned hospital. It is also directed under Clause (iv) of Paragraph 17 of the Judgment that,

if along with the application under Sub-section (3) read with Sub-section (5) of Section 9 of the said Act, a certificate of medical practitioner having requisite super specialization qualification in the concerned subject is submitted recording that the recipient is immediately required to undergo transplantation of human organ and if the Authorization Committee is satisfied about the genuineness of certificate, the Committee shall proceed to decide such application by giving utmost priority and preferably within a period of four weeks from the date of submitting the application.

7. In view of the directions issued by the Division Bench of this Court as above, it would be open for the Petitioner to tender application directly to the Authorization Committee constituted under Rule 13 of the Rules of 2014, and the said Committee has to deal with the application in accordance with law. If the

Petitioner tenders application within ONE WEEK from today, the Authorization Committee shall take appropriate decision in the matter within FOUR WEEKS from the date of receipt of the application. Respondent No.4 Center shall co-operate the Petitioner in complying with necessary formalities for tendering of an application to the Authorization Committee seeking necessary permission for undergoing transplant of human organ as specified in Rule 10 of the Rules of 2014.

8. The counsel appearing for Respondent No.4 Center, states on instruction, that as a matter of policy the Center does not deal with the transplantation of human organs if doner is unrelated and deals with the transplantation of human organs only between the relations specified in the Act of 1994. We do not wish to deal with the issue, at this stage, in the instant matter.

9. With the directions as above, the Writ
Petition stands disposed of.

. The parties to act upon authenticated
copy of this order.

[A.I.S. CHEEMA, J.]

asb/FEB16

[R.M. BORDE, J.]