

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6490 OF 2016

1. Gopal s/o Gulabrao Rathod
Age 29 Years, Occu: Service,
R/o Talegaon,
At present residing at
Swapna Nagari, Aurangabad
2. Smt. Kanta d/o Dashrat Chavan **... Petitioners**
Age 45 years, Occu: Agri. and
Household, R/o Arambhi
At present residing at Pushkar
Niwas, Garkheda
Parisar, Aurangabad

VERSUS

1. The State of Maharashtra
Through its Secretary,
Medical Education & Drug
Department, Mantralaya, Mumbai
400 032
2. The Additional Chief Secretary
Maharashtra State, Mantralaya,
Mumbai-32
3. The Dean/Chairman, **... Respondents**
Government Medical College and
Hospital, Aurangabad,
Chairman of Authorization
Committee constituted for the
purpose of grant of permission
to transplant Human Organs and
Tissues.

Mr. V. J. Dixit, Senior Advocate i/by Mr. Ankush N.
Nagargoje, Advocate for the petitioners
Mr. A. R. Kale, AGP for the Respondents 1 to 3-State.

**CORAM : R. M. BORDE &
 K. L. WADANE, JJ.**

DATE : 30th June, 2016

ORAL JUDGMENT (Per Borde, J.):

1. We have heard the learned counsel for the respective parties.

2. Rule. Rule made returnable forthwith.

3. By consent of the parties, the petition is taken up for final hearing.

4. Petitioner No.1, aged 29 years, is suffering from kidney problems and has been advised kidney transplantation. Petitioner No.2, who is close relative of petitioner No.1, has consented for donation of her kidney to petitioner No.1, however, she does not come within the purview of definition of 'near relative' as provided under the Transplantation of Human organs And Tissues Act, 1994. A joint application was made by the petitioners as required under the Regulation to the Authorization Committee, seeking approval for donation of kidney by petitioner No.2 to petitioner No.1. However, the Authorization Committee, by order dated 22.12.2015, was pleased to reject the application on the ground that relation between petitioner No.1 and petitioner No.2 cannot be confirmed

at the level of the Committee and on the basis of documents produced.

5. An appeal was presented to the Appellate Forum provided under Section 17 of the Act of 1994. However, the Appellate Forum rejected the appeal totally on different ground. The appellate forum has recorded in the order that donation of kidney by petitioner No.2 in favour of petitioner No.1 appears to be out of her obligation towards petitioner No.1 and his family than out of love and affection. The Appellate Forum recorded that the consent cannot be termed as voluntary. The reason recorded by the Appellate Forum does not appear to be in conformity with the facts giving rise to the appeal.

6. Petitioner No.2 is sister of mother of petitioner No.1 in whose favour she has agreed to donate human organ. Admittedly, petitioner No.2 resides with her brother and is not a burden on the family of petitioner No.1. Reasons set out in the Appellate order that donation of kidney is mere out of obligation towards Petitioner no.1 does not appear to be correct. Petitioner No.2 does not appear to have any obligation towards petitioner no.1, since she resides separately

with her brother at a different place. Apart from this, the Authorization Committee, while dealing with the matter, has not accorded opportunity of hearing to the petitioners as required under Section 9 of the Act of 1994 framed under the Act. Sub Section 6 of Section 9 of the Act, 1994 provides that if, after the enquiry and after giving an opportunity to the applicants of being heard, the Authorization Committee is satisfied that the applicants have not complied with the requirements of this Act and the Rules made thereunder, it shall, for the reasons to be recorded in writing, reject the application for approval.

7. In the instant matter, admittedly the petitioners have not been extended opportunity of hearing by the Authorization Committee. As such, the order passed by the Authorization Committee is bad on account of non observation of principles of natural justice. The Authorization Committee shall apply its mind to the case on the basis of material placed before it and after extending opportunity of hearing to the parties and render its decision by taking into account the provisions of Rule 7(3) of Rule 2014. Decision of the Authorization Committee shall be within the framework of the Rules and the application cannot be turned down

on any ground outside the scheme of the Rules. Sub Rule (3) of Rule 7 reads thus:

"7. Authorization Committee:

(1)...

(2)....

(3)when the proposed donor and the recipient are not near relatives, the Authorization 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;

(vii) evaluate that financial status of the donor and the recipient by asking them to give appropriate evidence of the 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;

(viii) ensure that the donor is nor a drug addict;

(ix) 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 view of disagreement or objection of such kin shall also be recorded and taken note of.

8. It is informed that the petitioner No.1 is under treatment in Kamal Nayan Bajaj Hospital, Aurangabad, and is in critical condition and needs urgent kidney transplantation operation. Considering the urgency of the matter, we direct the Authorization committee to hear the parties on Monday, 4th July, 2016 and render decision in consonance with the directions issued by this Court, as expeditiously as possible and preferably within three days from the date of appearance.

9. The impugned orders passed by the Authorization Committee and Appellate Forum are quashed and set aside. Rule is made absolute accordingly.

10. In the facts and circumstances of the case,

there shall be no order as to costs.

11. Authenticated copy is allowed. Parties to act upon authenticated copy of this order.

(K. L. WADANE, J.)

(R. M. BORDE, J.)

JPC