

244

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-7642-2017

Date of decision : 19.04.2017

Paramjeet Singh

... Petitioner(s)

Versus

Union Territory Chandigarh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Mehmi, Advocate
for the petitioner(s).

Mr. Suvir Sehgal, Senior Standing Counsel with
Mr. Jaivir Chandail, Advocate
for the U.T. Chandigarh.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 07.04.17 (Annexure P-6) and the one order dated 18.04.2017, which has been handed over during the course of the hearing by Mr. Survir Sehgal, Senior Standing Counsel representing the U.T. Chandigarh Administration, whereby no objection sought by the petitioner being a resident of Chandigarh to get the kidney transplant at Belle Vue Clinic, Kolkata, has been declined.

Mr. Deepak Mehmi, learned counsel appearing on behalf of the petitioner submits that the petitioner is the advanced stage of renal failure and therefore, had been able to find a donor, namely, Smt. Sanchita Mishra wife of Sh. Deb Kumar Mishra, resident of Village Athilagori, P.O. Contai, District Purba Medinipur (West Bengal) as the operation for renal

transplantation has to be conducted at Belle Vue Clinic, Kolkata. As per provisions of Rule 6(B) of the Transplantation of Human Organ Rules, 1995 (for short 'the 1995 Rules'), which has been framed by exercising the power of Section 24 (1) of the Transplantation of Human Organ Act, 1994 (for short 'the 1994 Act'), it is mandatory that if donor, recipient and place of transplantation are from different States, then the approval or no objection certificate from the respective domicile State Government should be necessary. It is, in this aspect of the matter, no objection certificate has been sought by the petitioner, who is the resident of Chandigarh, from the Chandigarh Administration (Health Department), but the Chandigarh Administration, vide impugned order dated 07.04.2017 (Annexure P-6), in a most sketchy and unreasonable manner, no objection certificate has been declined. Even the order dated 18.04.2017, handed over during the course of the hearing, as indicated above, has been tagged at the end of the paper book and the same also reveals that there has been an adjudication on merit, which was within the domain of the Committee of the concerned State i.e. West Bengal, under Rules 4A(4) and 6F(d) of the 1955 Rules, therefore, the Chandigarh Administration was only to adjudicate the no objection and not assume the role as enshrined under the aforementioned rules, thus, urges this Court for setting aside the impugned orders under challenge.

Per contra, Mr. Suvir Sehgal, Senior Standing Counsel assisted by Mr. Jaivir Chandail, learned counsel appearing on behalf of the U.T. Chandigarh, submits that the Committee constituted, in this regard, found to have no relation with the donor and the recipient/petitioner, much less, found to be against some financial considerations, which is not permissible in law, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Deepak Mehmi.

In order to appreciate the controversy, it would be apt to reproduce the Rules 4A(4), 6F(d) and 6(B) of the 1955 Rules, which reads as under:-

"Rules 4A(4) and 6F(d) of the 1955 Rules require the Authorization Committee to, in case of non-near relatives, evaluate that there is no commercial transaction between the recipient and the donor and that there is sufficient explanation of the link between them and the circumstances which led to the offer being made and the existence of sufficient reasons for donation and of the absence of middleman or tout and of their respective financial status etc;

Rule 6(B) : The State level committees shall be formed for the purpose of providing approval or no objection certificate to the respective donor and recipient to establish the legal and residential status as a domicile State. it is mandatory that if donor, recipient and place of transplantation are from different States, then the approval or no objection Certificate from the respective domicile State Government should be necessary. The institution where the transplant is to be undertaken in such case the approval of Authorization Committee is mandatory."

On joint reading of the aforementioned provisions, it leads to an irresistible conclusion that if a person, who is a resident of different State, for the purpose of transplantation has to seek no objection certificate, thus, the Chandigarh Administration was only to adjudicate the matter with regard to granting of no objection certificate as per Rule 6(B) of the 1955 Rules and not assume the role as enshrined under Rules 4A(4) and 6F(d) of

the 1955 Rules regarding link between the donor and recipient/petitioner as it would be within the domain of the Committee of the concerned State i.e. West Bengal, thus, the impugned orders dated 07.04.2017 and 18.04.2017 are most sketchy, but the reasoning assigned, in my view, would not be falling within the provisions of the Rule 6(B) of the 1955 Rules. For the sake of brevity, the contents of the impugned orders, under challenge, reads as under:-

"Order dated 07.04.2017

The Members of the Authorization Committee have scrutinized the case of Mr. Paramjeet Singh, (51 years Male) s/o Sh. Amrik R/o H.No.5757-B, Sector 38(West), Chandigarh, who is suffering from end stage renal failure and needs transplant of kidney. Mrs. Sanchita Mishra aged about 33 years w/o Deb Kumar Mishra Village Athilagori, P.O. Contai, P.S. Contai, District Purba Medinipur, has agreed willingly to donate her kidney to Mr. Paramjeet Singh. The Committee members found that the case of patient seems to be not genuine, hence not recommended by the Committee.

Order dated 18.04.2017

The recipient Mr. Paramjeet Singh, the donor Mrs. Sanchita Mishra and her husband named Sh. Deb Kumar Mishra were interviewed in detail. There is no relation between donor and recipient. During interview recipient openly stated that he will be helping the donor financially after their surgeries because of the hardship of donor. Statements of donor and recipient were contradictory. Donor Mrs. Sanchita Mishra who is a young lady aged about 33 years and having two small kids. She is not even distantly related to the recipient. Therefore, this case appears to be of monetary consideration rather than of compassionate consideration. No old photograph or document showing their previous friendship/association was provided by both the parties. Due to above reasons, the Committee

Members are not convinced that the case is genuine, hence not recommended and is rejected."

Keeping in view the aforementioned facts and circumstances of the case, the impugned orders, under challenge, are not sustainable in the eyes of law and the same are hereby set aside.

The Chandigarh Administration (Health Department) is directed to only undertake the task strictly as per the provisions of Rule 6(B) of the 1955 Rules for the purpose of granting no objection certificate without any further demur and delay as the petitioner has to undertake the operation for renal transplantation at Belle Vue Clinic, Kolkata.

Let this exercise be done within a period of one week from the date of the receipt of the certified copy of this order.

The present writ petition stands allowed, in the aforementioned terms.

19.04.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No