

\$~68

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment delivered on: 01.05.2017

+ W.P.(C) 2792/2017

SANJAY YOGI GOEL

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner :

Mr. Rajiv Bajaj, Advocate.

For the Respondents :

Ms. Sangita Rai with Mr. Pradeep Singh Tomar, Advocates for respondent No.1.

Mr. Anuj Aggarwal with Ms. Deboshree Mukherjee, Advocates for respondent No.2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

01.05.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner, by the present petition, had impugned the order dated 06.03.2017, passed by the Authorization Committee of Max Super Speciality Hospital, whereby, permission was declined to the petitioner for undergoing the kidney transplant.

2. The petitioner had applied for permission under the provisions of Transplantation of Human Organs and Tissues Act, 1994

(hereinafter referred to as ‘the Act’).

3. It is stated that the petitioner is undergoing dialysis three times a week and is in a very critical position.

4. An application was made for seeking permission under the Act for transplant. The proposed donor is the Mother-in-law of the son of the proposed recipient, the petitioner.

5. The Authorization Committee, by its order dated 06.03.2017, annexed as Annexure – P1, merely stated in the order “Rejected”. No reasons or rational was given in the impugned order dated 06.03.2017.

6. By order dated 31.03.2017, the petitioner was permitted by this court to file an appeal under Section 17 of the Act with the Appellate Authority. The Appellate Authority was directed to examine the appeal as expeditiously as possible.

7. The appeal was disposed of by the Appellate Committee by order dated 27.04.2017. The order dated 27.04.2017, recorded as under:-

“Order

Mr. Sanjay Yogi Goel, (here-in-after referred as recipient) 60 year old resident of Paschim Vihar, New Delhi is suffering from Kidney disease and has been advised to undergo Kidney Transplantation by Max Super Speciality Hospital, Shalimar Bagh, New Delhi. Smt. Suman Goel (prospective donor) Mother-in-law of recipient’s son, 48 years old, wants to donate one of her kidneys to the recipient.

The Authorisation Committee of organ transplantation of Max Super Speciality Hospital, Shalimar Bagh, New Delhi rejected the donor on the following grounds:

- (i) Recipient accepts that his son helps donor's family if they need.*
- (ii) Donor says that they took cash from recipient if they need.*
- (iii) Recipient's wife says that they got Form-20 by political influence.*

The Authorisation Committee denied permission stating that Permission is not granted, as external pressure/influence and financial transaction cannot be ruled out.

Hence this appeal.

Max Super Speciality Hospital, Shalimar Bagh, New Delhi provided documentary records and CD containing the video recording of the interview of appellants during their examination before the authorisation committee of Max Super Speciality Hospital, Shalimar Bagh, New Delhi in this regard.

Under the Chairmanship of Dr. B.D. Athani, Special DG, Dte.GHS, the Appellate Committee examined the appeal along with the documents provided by Max Super Speciality Hospital, Shalimar Bagh, New Delhi on 18.04.2017. Further, the Committee went through facts for and against rejection of the case. Personal hearing was given to Smt. Suman Goel (prospective donor), Smt. Veena (wife of the recipient) and Sh. Rupak Kumar Goel, Husband of the donor.

Observations of the Appellate Committee are as under:-

1. *There is significant socio-economic disparity between the donor family and the recipient family. As informed by the wife of recipient, the recipient's family has property at various places including abroad. The stated income of the recipient's family is around a crore in a year and that of donor's family is around 2 to 3 lakh in a year. The claimed relationship between the donor and recipient is that the donor is mother of daughter-in-law of the recipient. The hospital has not disputed the claimed relationship. However, the appellate committee is of considered view that Hospital Authorisation Committee may re-examine the case for reconfirmation of relationship, based on documentary and all possible authenticated evidences.*
2. *The donor and her husband stated that they have never taken cash from their daughter, only except once when the ticket for donor's travel to Australia was provided by the daughter's family, which they claim to have returned back to the recipient family subsequently. Even the video recording could not substantiate the observation of the authorization committee in this regard.*
3. *The claimed medical non-suitability of near related potential donors namely wife, son, daughter may be ascertained by the hospital, through obtaining authentic medical records, rather than merely relying on the affidavit/statements.*
4. *The Appellate Committee did not dwell upon the observation of authorisation committee of Max Hospital Shalimar Bagh, regarding putting*

political pressure for obtaining Form 20.

Keeping in view the above observations, the Appellate Committee recommended that the Authorisation Committee of Max Super Speciality Hospital, Shalimar Bagh, New Delhi may review the case.

The above recommendations of the Appellate Committee have been considered and accepted by the Appellate Authority. The Authorisation Committee of Max Super Speciality Hospital, Shalimar Bagh, New Delhi is accordingly advised to reconsider the matter in the light of the above facts.

The appeal of Mrs. Veena Goel is accordingly disposed of.'

8. A copy of order dated 27.04.2017 has been produced in Court. The same is taken on record.

9. It may be noted that the order of the Authorisation Committee did not give any reasons but only stated "Rejected". It is only from the order dated 27.04.2017 of the Appellate Authority, it came to light that the Authorization Committee had rejected the request on the ground that the recipient had accepted that his son would help the donor's family if they require any help. It is alleged that the donor also stated that she took cash from the recipient, if needed. Further, it is alleged that the recipient's wife got Form 20 by political influence.

10. The Appellate Authority, in the impugned order dated 27.04.2017, remitted the matter and directed the Authorization Committee to re-examine the case for reconfirmation of relationship

based on documentary and all possible authenticated evidences. With regard to taking of cash by the donor from the recipient, the Appellate Authority was of the view that the video recording could not substantiate the observation of the Authorization Committee. Further, the Appellate Authority was of the view that the medical non-suitability of near related potential donors may be ascertained by obtaining authenticated medical record rather than merely relying on an affidavit/statement. The Appellate Authority did not consider it appropriate to examine the ground of putting political pressure for obtaining Form 20 and disregarded the same.

11. When the order of 27.04.2017 was produced before the Court on 27.04.2017, keeping in view the contentions of the counsel for the petitioner that everyday's delay is affecting the health of the petitioner, this Court directed the Appellate Authority to decide the case of the petitioner instead of remitting the same and to pass an order within two days.

12. Today, when the matter is listed, an order dated 01.05.2017 of the Appellate Authority has been produced. The same is taken on record.

13. The Appellate Authority by its order dated 01.05.2017, has *inter alia*, held as under:-

“Observation of the Appellate Committee are as under:

i. As per the Transplantation of Human Organ Act

and Rules thereunder, the establishment of relationship between the donor and the donee in other than near relative donor cases is in the purview of the authorization committee. Relying upon the documents and genetic test reports as received from Max Hospital Shalimar Bagh, the relationship of donor being the mother of the daughter-in-law of the recipient exists, as also stated by the donor and recipient family members.

- ii. The Authorisation Committee of Max Hospital Shalimar Bagh has observed that the Donor says that they took cash from recipient if they need and the recipient accepts that this son helps donor's family, if they need. The Appellate Committee did not find any sufficient grounds to overrule the observations of the Authorization Committee.*
- iii. The economic disparity between donor and donee exists beyond doubt. The financial transaction as a reason of donation in this case cannot be ruled out.*
- iv. In view of the above, the Appellate committee upholds the decision of the Authorization Committee of Max Hospital Shalimar Bagh, New Delhi.*

The above recommendations of the Appellate Committee have been considered further by the Appellate Authority. The Appellate Authority has accepted the upholding of the decision of the Authorization Committee of Max Super Speciality Hospital, Shalimar Bagh, New Delhi.

The appeal of Mrs. Veena Goel is accordingly disposed of."

14. The Appellate Authority, in its order dated 01.05.2017, has

accepted the relationship between the proposed donor and the recipient and accepted that the donor is the Mother-in-law of the son of the recipient.

15. It is very surprising to note that in its earlier order dated 27.04.2017, the Appellate Authority had recorded the finding that the video recording could not substantiate observations of the Authorisation Committee in respect of the donor receiving any cash from the recipient's family. However, in the order dated 01.05.2017, the Appellate Authority has noted that the donor had stated that they took cash from the recipient, if they need and that the recipient accepts that his son helps his family, if they need. In context of this observation, the Appellate Authority has, held that there is no sufficient ground to overrule the arguments of the Authorization Committee.

16. The Appellate Authority has made observations completely contrary to its observation in order dated 27.04.2017, wherein, it had held that these allegations could not be substantiated. The Appellate Authority has completely overlooked the fact that the statement is being attributed to the son of the recipient, who is the Son-in-Law of the proposed donor.

17. It is normal in the Indian society for a Son-in-law to aid and assist his in-laws in cases they are in need. The mere fact that the son of the recipient has stated that he would help his in-laws would not make it a commercial transaction or a transaction of the nature as is

prohibited by the Act. It is normal for a Son-in-law to help his in-laws in case they are in need and for in-laws to accept help from Son-in-law.

18. Further, no reason has been given in the order dated 01.05.2017 by the Appellate Authority as to why it is now making observations contrary to its earlier observations recorded in order dated 27.04.2017 has not been accepted. There is no ground or reason for the Appellate Authority to observe that financial transaction as a reason of donation in this case, cannot be ruled out.

19. The Appellate Authority has completely shut its eyes to the relationship between the parties which is that of a close relation if not a near relation as defined under the Act. The Appellate Authority has completely ignored the aspect that Act does not lay down an absolute prohibition but it puts a responsibility on the authorities to ensure that the human organ is not made part of a commercial transaction. It is only in cases where there is a financial angle or financial motive attributed or attached to such a transaction that the Act prohibits such an action. In the present case the connection has been shown between the donor and the recipient. Even though they are not covered under the definition of Near Relation but they are certainly closely related.

20. The Authorisation Committee as also the Appellate Authority have completely disregarded the human qualities of love and affection, compassion and generosity.

21. Reference may also be had to the decision in the case of **Praveen Begum & Anr. vs. Appellate Authority** (2012) 189 DLT 427, wherein, in similar circumstances, a Coordinate Bench of this Court acknowledged that mere existence of disparity in the income of the donor and the recipient by itself, could not be a reason to reject the case by raising a suspicion.

22. In the present case also the petitioner has been able to show the connection between the parties and that the donor has offered to voluntarily donate a kidney out of love and affection.

23. In ***Praveen Begum*** (*supra*), the Court, after quashing the decision of the Authorization Committee as well as the Appellate Authority considered the further course of action. In view of the fact that the petitioner therein was requiring dialysis thrice a week and the condition was deteriorating, the Court directed the Authorization Committee to forthwith grant its approval to the case of the petitioner.

24. In the present case also it is the unrebutted submission of the petitioner that the petitioner requires dialysis thrice a week. The first impugned order was passed as far back as on 06.03.2017. The condition of the petitioner is deteriorating day by day and any further delay may cause irreparable loss.

25. In view of the above, the Authorization Committee is directed to forthwith grant its approval to the case of the petitioner in terms of the application made. The formal approval should be granted within a

period of two days, failing which, it shall be deemed that the said approval stands granted.

26. Upon the grant of the said formal approval/deemed formal approval, the petitioner shall be entitled to undergo the required medical procedures and operation for carrying out the transplantation, as aforesaid.

27. The petition stands disposed of in the above terms. Parties are left to bear their own costs.

28. *Dasti* under the signatures of the Court Master.

MAY 01, 2017
st

SANJEEV SACHDEVA, J

