

\$~2

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

+ **W.P.(C) 8648/2017**

DR. SAPNA SINGH & ANR

..... Petitioners

Through: Ms Sapna Malik, Mr Manjunatha
H.T. and Ms Swati Bishnoi,
Advocates.

versus

**APPELLATE AUTHORITY FOR HUMAN
ORGAN TRANSPLANT & ORS**

..... Respondents

Through: Mr Vikas Mahajan, CGSC with Ms
Saakshi Agrawal, Govt. Pleader and
Mr Shyam Sundar Rai, Advocates for
R-1.
Mr Sanjoy Ghose, ASC, GNCTD
with Ms Urvi Mohan and Mr Rishabh
Jetley, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

27.11.2017

CM No. 35520/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 8648/2017

3. The petitioners have filed the present petition, *inter alia*, impugning an order dated 31.05.2016 passed by the Appellate Authority under the Transplantation of Human Organs and Tissues Act, 1994 (hereafter 'the Act'). Petitioner No. 1 is a resident of Rohtak and is suffering from Chronic Kidney Disease. Petitioner No. 1 is in need of kidney transplantation and had accordingly approached Sir Ganga Ram Hospital, New Delhi for

conducting the said operation. Petitioner no.2 is stated to be a willing donor and has agreed to donate one of her kidneys to petitioner no.1. The Authorisation Committee considered the request and denied the same for the following reasons:

- “1. Love and Affection could not be established.
2. The statements of donor and her husband are at variance.”

4. Aggrieved by the aforesaid decision, petitioner no.1 preferred an appeal before the Appellate Authority under section 17 of the Act. By the impugned order, the Appellate Authority has upheld the decision of the Authorisation Committee as it found that the relation and the long term association between the donor and recipient - that is, petitioner no.1 and petitioner no.2 - could not be established or deduced from the statements of the donor, her husband and the brother of recipient who had appeared before the Appellate Authority. The Appellate Authority noted that the husband of the donor had retired as an employee of the ICICI Bank and was not drawing any pension. It was found that the relationship between the husband of petitioner no.2 and the brother of petitioner no.1 was in the nature of a business relationship for the past four years and prior to the same, it was just as an acquaintance.

5. The donor (petitioner no.2) who was interviewed had stated that she knew the recipient only since last one year after she had accompanied her husband to visit petitioner no.1 while she was admitted in the hospital. The said statement indicates that petitioner no.1 and petitioner no.2 are not relatives as claimed in this petition and petitioner no.2 became acquainted with petitioner no.1 while petitioner no.1 was admitted in hospital for treatment of her ailment.

6. The petitioners have filed the present petition claiming that they are related. It is averred in the petition that “*petitioner no.2 who is petitioner no.1’s Aunt (Mausi)*” has been regularly visiting petitioner no.1 and the relationship between the petitioners is as akin to a mother-daughter relationship. This statement is obviously incorrect as it is now stated across the bar that petitioner no.2 is the cousin of petitioner No.1’s mother.

7. There is no material on record to show the exact relationship between the petitioners. There is also no other material on record from where this Court can ascertain the closeness of the relationship between the petitioners: no photographs showing past association have been annexed; and there are no certificates or material to show as to how through (and whom) petitioner no.1 and petitioner no.2 are related. Clearly, no such material was placed before the Appellate Authority as well.

8. In the circumstances, this Court is not inclined to interfere with the impugned decision. However, this Court leaves it open for the petitioners to place such additional material (in the event any such material is available with the petitioners) before the Authorisation Committee and to seek recall/review of their decision. Needless to state that if such additional material is placed before the Authorisation Committee, the Authorisation Committee would take the decision having regard to the parameters as set out under Rule 7(3) of the Transplantation of Human Organs and Tissues Rules, 2014.

9. The petition is disposed of.

VIBHU BAKHRU, J

NOVEMBER 27, 2017/RK