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

+ **W.P.(C) 10265/2017**

KRISHAN GOPAL TIWARI AND ANR Petitioners

Through: Mr Bharat Singh, Mr Pramod Kumar,
Advocates.

versus

APPELLATE AUTHORITY AND ANR Respondents

Through: Ms Suparna Srivastava, Ms Alinda
Bhawal, Ms Sanjva Dua, Advocates
for Respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

21.12.2017

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VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, impugning an order dated 18.10.2017 (hereafter 'the impugned order') passed by the Appellate Authority under Section 17 of the Transplantation of Human Organs and Tissues Act, 1994 (hereafter 'the Act'). By the said impugned order, the petitioners' appeal against the order dated 29.08.2017 passed by the Authorisation Committee rejecting the petitioners' request for approval of Kidney Transplantation, was rejected.

2. Petitioner no. 1 was diagnosed as suffering from end renal disease due to diabetic nephropathy. According to the doctors, petitioner no.1 requires early kidney transplantation.

3. Petitioner no.1 states that although his family members were willing to donate one of their kidneys, they were not found medically fit and, therefore, are unable to donate their organ to petitioner no.1.

4. The petitioner no.1 further states that petitioner no.2 is a close friend of petitioner no.1 and has agreed to donate one of his kidneys. He further states that on a medical examination, petitioner no.2 has been found fit for donating one of his kidneys to petitioner no.1 and, accordingly, an application was made to the Authorisation Committee of Sir Ganga Ram Hospital for approval of the Kidney Transplantation in terms of the Act.

5. The Authorisation Committee of Sir Ganga Ram Hospital rejected the petitioners' request for the following reasons:-

- “1. Disparity and inconsistency in chronological description of association and the events leading to the stated love and affection between all three (Patient, Donor, Donor close relative) in today's interview. There was also gross difference in the statements given in the previous interview dated 23/06/2017.
2. The photographs submitted in today's interview do not establish old association Photographs don't relate to old social family events.
3. The willingness to donate is borne of the fact that the donor has brought about indirect monetary gain by way of helping him establish his right over a property.

Hence, not approved.”

6. Aggrieved by the same, the petitioners filed an appeal before the Appellate Authority. Since there was some delay in considering the said

appeal, the petitioners approached this Court by way of the writ petition being W.P.(C) 8795/2017 captioned “*Krishan Gopal Tiwari and Ors. v. Director General of Health Services and Ors.*” The said petition was disposed of by an order dated 09.10.2017 directing the Appellate Authority to consider and decide the petitioners’ appeal in accordance with law and having regard to the decision of this Court in ***Parveen Begum and Anr. v. Appellate Authority and Anr.: 189 (2012) DLT 427.***

7. Mr Bharat Singh, the learned counsel appearing for the petitioners contended that the impugned order passed by the Appellate Authority was wholly erroneous and was liable to be set aside. He submitted that the Appellate Authority had failed to consider the decision of this Court in ***Parveen Begum*** (*supra*) as directed in terms of the order dated 09.10.2017. He further submitted that it was not necessary that a donor must be related to a recipient and even an unrelated person could donate an organ out of love and affection. He stated that both the petitioners hail from Madhya Pradesh and have been close friends for the last 22 years. He stated that the father of petitioner no.1 was a school teacher and had also taught petitioner no.2 in the primary school - class 4th and 5th . He submitted that the families of the petitioners are very close and the wife of petitioner no.1 treats petitioner no.2 as her brother.

8. Undisputedly, it is not necessary that the donor and the recipient should be related to each other. In terms of Section 9(3) of the Act, even a person who is not a ‘near relative’ can donate his/her organs to the recipient by reason of *affection or attachment towards the recipient or for any other special reason.*

9. Thus, if the Authorisation Committee or the Appellate Authority were satisfied that petitioner no.2 had agreed to donate one of his kidneys on account of affection or attachment towards petitioner no.1, the approval for transplantation would necessarily have to be granted.

10. In terms of Sub-rule (3) of Rule 7 of the Transplantation of Human Organs and Tissues Rules, 2014 (hereafter ‘the Rules’) the matters specified therein are to be considered by the Authorisation Committee while evaluating whether to grant approval for transplantation of organs by a donor in cases where he/she does not qualify to be a ‘near relative’ of the recipient. Sub-rule (3) of Rule 7 of the said Rules is set out below:-

“7 Authorisation Committee.—

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(3) When the proposed donor and the recipient are not near relatives, the Authorisation 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 their 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 not 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 views or disagreement or objection of such kin shall also be recorded and taken note of.”

11. In order to decide whether to grant approval as sought for by the petitioners, the Authorisation Committee at Sir Ganga Ram Hospital had interviewed petitioner nos. 1 and 2. However, the Authorisation Committee was not persuaded to accept that petitioner no.2 had agreed to donate one of his kidneys out of affection or attachment to petitioner no.1. The Authorisation Committee had found that there were inconsistencies in the description of the association and events that would establish love and affection between the petitioners. The Authorisation Committee also observed that there was difference in the statements given by the petitioners in an earlier interview.

12. In terms of clause (v) of Sub-rule (3) of Rule 7 of the Rules, the

Authorisation Committee was required to examine old photographs showing the donor and the recipient together to establish a past association. The photographs furnished by the petitioners - which have also been filed in this Court - do not show an old association between the two petitioners. Most of the photographs appear to have been recently taken. There are also no photographs showing the presence of the petitioners in past social events such as wedding in the family etc.

13. In terms of clause (vii) of Sub-rule (3) of Rule 7 of the said Rules, the Authorisation Committee was also required to examine the financial status of the donor and the recipient by asking them to furnish appropriate evidence of their vocation and income for the past three financial years. This factor was specifically examined by the Appellate Authority. Petitioner no.2 did not bring any documents, such as bank accounts etc., to establish his income. On the contrary, petitioner no.2 stated that he was farming by hiring land on contract basis and his son was running a small *Kiryana* shop from which he was earning ₹300 to ₹400 daily. Petitioner no.2 did not produce any documents such as his bank accounts and he also stated that his son did not have any money in his account and he was doing transactions only in cash. Petitioner no.2 also did not produce his income tax returns to establish his income.

14. In the circumstances, the Appellate Authority has rejected the appeal filed by petitioners by making the following observations:-

“Observations of the Appellate Committee are as under:

- i. As per the statement of brother of recipient, Sh. Anil Tewari, the patient was detected as a case of kidney failure in September, 2016 and dialysis was started in October, 2016. The patient is undergoing dialysis from Bhopal since then. The donor claims that he knows the recipient for the last 20-22 years, when the recipient was posted as SHO in Ishagarh for 5 times for different periods. The recipient is now Town Inspector in Ashok Nagar, Madhya Pradesh. The donor stays about 40 kilometer away from the place of recipient. Donor also claims that he knew the father in-law of the recipient as he was his teacher and also had taught him in 4th or 5th class. Donor and recipient's brother claims that he has been participating in the functions of each other i.e. birthday, marriage etc.
- ii. There is a great difference between the social status of recipient and the donor as the recipient is a town inspector in the position of power and donor is almost illiterate (although claims 4th pass, no document available) and doing farming by hiring land on contract basis. The donor's son has his small "Kiryana" shop from which he earns Rs. 300 to 400 daily.
- iii. As per the statement of donor, recipient helped him in 2013 in getting a plot of his land vacated from encroachers after he filed a police complaint. At present he is building a house on this plot of land and has already spent Rs 4 to 5 lakh on this.
- iv. The donor did not bring any documents like bank accounts etc. but stated that he and his son have no money in their accounts. He is only doing cash transactions and does not have PAN card or files Income Tax Returns.
- v. Despite specific request to bring all the relevant records to prove their statements no documentary evidence was brought to prove old association between donor and

recipient on their families. Further the appellate committee deliberated on the grounds of rejection and agreed with the findings of the Authorization Committee in this case.”

15. Although, the learned counsel for the petitioners also referred to a document titled *Panchnama* in order to substantiate the income of petitioner no.2. A plain reading of the said document indicates that the same is based on an estimation of the official issuing the same and cannot be accepted as proof of petitioner no.2’s income. Although, petitioner no.2 also filed an additional affidavit claiming that he owns property of the value of approximately ₹1.2 crores, the same is also based on an estimated value of the properties claimed to be owned by petitioner no.2 and does not establish petitioner no.2’s income.

16. The Appellate Authority had also noticed that there was gross disparity between the social status of petitioner nos. 1 and 2. Petitioner no.1 is the Town Inspector and petitioner no.2 is stated to be almost illiterate and he claims to have studied up to 4th standard.

17. In view of the above, this Court is not unable to accept that there is any infirmity in the decision of the Appellate Authority. Plainly, the Appellate Authority has examined all the relevant factors as specified under Rule 7(3) of the said Rules and has been unable to accept that petitioner no.2 had agreed to donate one of his kidneys out of love and affection towards petitioner no.1.

18. In view of the above, this Court is not persuaded to accept that any interference in the order of the Appellate Authority is warranted. The petition

is, accordingly, dismissed.

VIBHU BAKHRU, J

DECEMBER 21, 2017
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