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

+ **W.P.(C) 10952/2017**

MRS. MUZNA KHAN

..... Petitioner

Through: **Mr Anand Mishra and Ms Gitanjali,**
Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: **Mr Sarfaraz Ahmad, Advocate.**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.12.2017

CM No. 44806/2017

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

W.P.(C) 10952/2017

3. The petitioner is a 22 year old woman and is suffering from Renal/Kidney disease. She has been advised to undergo renal/kidney transplantation by the Max Super Speciality Hospital, Saket, New Delhi as none of her kidneys are working and she has been put on dialysis.

4. The petitioner's real maternal uncle (the brother of petitioner's mother), who is aged about 42 years, has agreed to donate one of his kidneys to the petitioner. Accordingly, the petitioner had sought permission from the Authorisation Committee of Max Super Speciality Hospital, Saket, New Delhi. The said permission was rejected by an order dated 10.10.2017 on

two grounds : (i) that there were certain discrepancies in the statements of the donor ,the recipient and their relatives and (ii) that no proof of close association was established.

5. Aggrieved by the decision of the Authorisation Committee, the petitioner preferred an appeal before the Appellate Authority under Section 17 of the Transplantation of Human Organs and Tissues Act, 1994 (hereafter ‘the Act’). The petitioner’s appeal was also rejected by an order dated 22.11.2017 (impugned order), which is impugned by way of the present petition.

6. A plain reading of the impugned order passed by the Appellate Authority indicates that the petitioner’s appeal was rejected with the following observations:-

- “1. There is socioeconomic and income disparity between donor and recipient. The donor is dependent on recipient’s parents’ family for his livelihood as he is using the machine owned by recipient’s father.
2. A startling disparity in statements of donor and recipient was observed. The recipient stated that her mother last arrived in India only before her marriage in March 2017. The donor stated that his sister is staying in India for last 10 years.
3. No documents could be produced before appellate committee to prove sister brother relationship between donor and recipient’s mother by the appellants. The committee noted the findings of the HLA matching which hints at some possible genetic relationship between donor and recipient. However it is not conclusive.

4. The committee is in agreement with the grounds of rejection of donor as mentioned by Authorization committee in its order dated 10.10.2017.”

7. It is seen from the above that the Appellate Authority has proceeded on the basis that there was insufficient proof to establish that the petitioner and the donor were related.

8. The learned counsel for the petitioner has drawn the attention of this Court to a School Leaving Certificate of Razia Sultana, the mother of the petitioner. The said School Leaving Certificate indicates that the names of the parents of Smt. Razia Sultana are Smt Siddika Begum and Sh. Masnad Ali. The documents available on record also indicate that these are also the names of the parents of the donor. It does appear from the aforesaid document that the petitioner’s statement that her mother and the donor are siblings is correct.

9. It is also apparent from the impugned order that the committee had also found that the Human Leukocyte Antigen (HLA) of the petitioner (recipient) and the donor was matching and that also indicated a possible genetic relationship between the donor and the recipient.

10. The learned counsel appearing for the respondents submitted that the School Leaving Certificate of Smt Razia Sultana was not placed before Authorisation Committee or the Appellate Authority and they had no opportunity to examine the same.

11. In view of the above, the impugned order is set aside and the matter is remanded to the Appellate Authority to consider it afresh having regard to

the documents now produced by the petitioner. The petitioner would also be at liberty to produce further documents to establish that the petitioner's mother and the donor are real brother and sister within a period of two weeks from today. The Appellate Authority shall consider the same and pass an appropriate order within a period of two weeks thereafter.

12. The petition is disposed of with the aforesaid directions.

13. Order *dasti* under signature of Court Master.

DECEMBER 11, 2017
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VIBHU BAKHRU, J