

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

%22.06.2018

W.P.NO.20452 OF 2018

RATNAKAR PEDDADA AND ANTOHER

PETITIONERS

AND

STATE OF TELANGANA, REPRESENTED

BY ITS PRINCIPAL SECRETARY, HEALTH, MEDICAL

AND FAMILY WELFARE, HYDERABAD AND TWO OTHERS.

RESPONDENTS

Counsel for the petitioners : Sri M.Jagannatha Sarma

Counsel for the respondents -- Government Pleader for Medical and
Health.

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➤ Head Note.

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?Cases Referred:

1. AIR 2010 Ori, 99
2. AIR 2005 P & H 172
3. W.P. (C) No. 15822 of 2017 (C) dated 25.05.2017
4. AIR 2013 Ori. 133
5. 189(2012) DLT 427
6. (2005) SCC 122

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDYW.P.NO.20452 OF 2018O R D E R

This writ petition is filed for a writ of Certiorari or for any other appropriate writ, direction or order under Article 226 of the Constitution of India, calling for the records and to quash the impugned proceedings of the 2nd and 3rd respondents bearing letter No.3910/D1/2018 dated 14.05.2018, and the order bearing P.C.No.49765/MAK/2017 dated 12.02.2017 respectively and consequently direct the respondents 2 and 3 to immediately grant approval for the kidney transplant from petitioner No.2 to petitioner No.1 in an expedited and time bound manner.

The case of the petitioners, as per the averments made in the affidavit filed in support of the writ petition is that, the 1st petitioner is a graduate in pharmacy and currently self-employed and is unmarried, due to his health condition. He is diagnosed with Tuberous Sclerosis, a chronic kidney disease. As he suffered heavy internal bleeding (Peritoneal Haemorrhage) in his right kidney in the year 2007, he underwent a surgery to remove his right kidney. The function of his left kidney got affected in November, 2016 and since then, he has been undergoing dialysis thrice a week at Asian Institute of Nephrology and Urology, Hyderabad and the doctors, who have been treating him regularly for the past twenty months, have strongly recommended surgical extraction and removal of his left kidney and transplantation of a new kidney in its place. In the affidavit, petitioner No.1 stated in detail, the side effects because of prolonged dialysis since November, 2016.

It is further stated that the 1st petitioner is unable to carry on his profession, as he has to undergo dialysis thrice a week on every Monday, Wednesday and Friday with the consequent side effects of sheer exhaustion and fatigue and that the dialysis process since November, 2016, has taken a toll in all aspects, physically, mentally and financially.

The mother of the 1st petitioner died in the year 2012 and his grandfather died in the year 2017. During the life time of his mother, she employed the 2nd petitioner as driver-cum-family assistant, in the year 2007, and since then, he has been performing all the works entrusted to him and used to call the mother of the 1st petitioner as 'Amma' (mother). The 2nd petitioner also developed a close bond with his late grandfather during his visits to Hyderabad from Puttaparthi and used to help and accompany him while he was at Hyderabad. The 2nd petitioner was also taking the 1st petitioner to dialysis procedure since November, 2016 and he has been constantly with the 1st petitioner and in some instances, has even carried him across in the hospitals on a wheel chair, when he was weak after the procedure or due to drop in hemoglobin levels.

The father of the petitioner No.1 died in the year 1986 due to kidney ailment and the younger married sister of the 1st petitioner is also suffering from chronic kidney disease stage-III (CKD III), and, therefore, unable to donate her kidney. Because of his health issues, the petitioner No.1 remained unmarried and, therefore, he has no spouse or children who can donate a kidney to him. In these circumstances, he has no other recourse, but to obtain a kidney from a donor, who is not his near relative, but who is close to him and his family, for the last ten years.

In the above back ground, the 2nd petitioner, who is having long standing association of over ten years with the petitioner and his family members, has come forward purely on account of love and affection to donate his kidney to the petitioner and not on account of any monetary consideration.

Petitioner No.1 is taking treatment at Asian Institute of Nephrology and Urology (AINU), Erramanzil, Hyderabad by Dr. C.Mallikarjuna Rao, Urologist. On 11.11.2017, Dr. M.V.Rao, Nephrologist and Dr. Syed Mohd. Ghouse, Urologist, working in the said institute, interviewed the petitioner Nos.1 and 2 and the wife of the 2nd petitioner, for the purpose of sending a video of interview to the 3rd respondent – State Authorization Committee for Organ Transplant, Telangana State, represented by its Chairman, to grant permission for donation of kidney by the 2nd petitioner to him. In the said video, which of 13 minutes duration, doctors explained the nature of the surgery, which the petitioner No.1 has to go through and the nature of the surgery, which the 2nd petitioner has to go through and the various precautions, both of them have to take. The said video was submitted to the 3rd respondent.

In the affidavit it is further stated that the during the course of interview, petitioner No.1 stated that the 2nd petitioner has been working with their family for the past ten years, ever since the time of his mother and that he has been assisting in all normal works as mentioned earlier and that he had voluntarily come forward, out of sheer love and affection towards him after seeing his misery in having lost his right kidney by surgery due to heavy internal bleeding (Peritoneal Haemorrhage) and infection to the left kidney and his continuous dialysis since November, 2016. In the interview, 1st petitioner further stated that he has not pressurized the 2nd

petitioner, nor promised or paid any monetary consideration to him or to anybody. In the interview, the wife of the petitioner No.2 also repeated the above version. The 2nd petitioner also offered to show his bank account statement to confirm that there are no monetary transactions between himself and the 1st petitioner. In the affidavit, the petitioner No.1 made a tabular form, containing the questioning put by the doctors and the answers given by them.

The Asian Institute of Nephrology and Urology, Hyderabad sent the above version in the form of CD to the 3rd respondent for consideration of the application for kidney transplant. The petitioner No.1 made application on 25.11.2017 through the hospital to the 3rd respondent seeking approval to permit the 2nd petitioner to donate his kidney to him. The said application was submitted by the Institute along with video recording and other documents namely the affidavits of petitioners 1 and 2 and wife of the 2nd petitioner and the related documents.

The 3rd respondent, interviewed the petitioners 1 and 2 and the wife of petitioner No.2 on 29.11.2017 and in the said interview, they reiterated the version noted above. 3rd respondent conducted another interview on 11.12.2017, which the petitioner No.1 attended along with his maternal uncle. On being questioned, the maternal uncle of petitioner No.1 informed the panel that as he was not healthy, suffering from blood sugar problem and that the doctors advised him that any kidney donation would be risky for his life or the donee, he was not suitable to donate the kidney.

Pursuant to the above interviews, 3rd respondent issued the proceedings dated 12.12.2017 rejecting the application of the petitioner

No.1, and on appeal, the 2nd respondent confirmed the same, thereby the permission sought for by the petitioners for transplanting kidney of 2nd petitioner to 1st petitioner, was rejected. Aggrieved by the same, the present writ petition has been filed.

Learned counsel for the petitioners, while reiterating the above averments, would submit that the object of the Act is to not prohibit the transplantation of human organs, but only to regulate and to see that there is no element of commercialization. Referring to the ailment which the petitioner No.1 is suffering, learned counsel submits that due to long association of the petitioner No.2, with the family of the petitioner No.1, and out of sheer love and affection and considering the plight of petitioner No.1, whose kidneys are affected, and without there being any pressure exerted by the petitioner No.1, or his family members, and also without there being any monetary consideration, the petitioner No.2, who is not a relative of the petitioner No.1, has come forward to donate the kidney, which is permissible under the Act with the prior approval of the Authorization Committee under Section 9(3) of the Transplantation of Human Organs and Tissues Act, 1994 (for short 'the Act'). He states that Rule 7(3) of the Transplantation of Human Organs and Tissues Rules, 2014 (for short 'the Rules') stipulates the conditions, which the Authorization Committee has to consider while granting prior approval for transplantation of kidney under Section 9(3) of the Act. Under these rules, the Authorization Committee has to consider whether there is any commercial transaction between the recipient and the donor; that no payment has been made to the donor or any other person and; the circumstances which lead to the offer and the relevant documents. Petitioners satisfy these conditions and they have filed affidavits and the

video recording of their statement given to the doctor and they have also made affirmative statement before the authorization committee. But, without considering these material facts and circumstances and the evidence produced by the petitioners, the 3rd respondent rejected the approval on mere suspension stating that the Committee is not convinced regarding altruistic nature of donation. He stated that no reasons have been recorded considering the material produced by the petitioners and the same has been upheld by the 2nd respondent – appellate authority. Relying on the Division Bench judgment of the High Court of Orissa in *MANORANJAN ROUT vs. STATE OF ORISSA*¹, learned counsel contended that on the ground of mere suspension, necessary approval could not be denied. He stated that economic disparity between the petitioner No.2 and petitioner No.1, cannot be a ground for rejection and the facts and circumstances of the case, has to be considered in a holistic manner. In support of this contention, learned counsel relied on the judgments of the High Courts of Punjab and Haryana, and Kerala at Ernakulam, in *RAJINDERKUMAR VS. STATE OF PUNJAB*² and *M.C.ABDUL RAHAN v. STATE OF KERALA*³. Learned counsel further submits that in the present case, there is no commercial element and there is no exploitation of the 2nd petitioner, and the petitioners sought to prove the same by their affidavits and also giving statements before the respondents 2 and 3. But without considering the said material evidence and recording any reasons, the impugned order has been passed in a cryptic manner. In support of his contention that in the absence of commercial element, the competent authority cannot reject the application of petitioner No.1, learned counsel relied on the judgments in *MRS. INDU BEHERA vs. STATE OF ORISA AND*

¹ AIR 2010 Ori. 99

² AIR 2005 P & H 172

³ W.P.(C). NO.15822 OF 2017 (C) dated 25.05.2017

*OTHERS*⁴ and *PARVEEN BEGUM vs. APPELLATE AUTHORITY*⁵. With these submissions, learned counsel sought to set aside the impugned order and to grant permission for kidney transplantation.

On the other hand, learned Government Pleader for Medical and Health appearing for respondents submit that the 2nd petitioner is working with the family of the 1st respondent and there is huge economic disparity and the theory of love and affection pleaded for donation of kidney, is far from imagination, and in these circumstances, absence of monetary consideration, cannot be ruled out. Therefore, the primary authority rejected the claim of the petitioners and the same has been confirmed by appellate authority. Therefore, the impugned proceedings may not be interfered with.

In the present, petitioner No.2 is not the near relative of petitioner No.1 and it is stated that because of his long association with the family of petitioner No.1, since 2007, and out of love and affection and seeing the health condition and misery of the petitioner, he has come forward to donate kidney without there being any coercion or monetary consideration.

Before considering the contentions of the learned counsel, first it is necessary to note the object of the Act; and the relevant provisions under Section 9(3) of the Act and Rule 7(3) of the Rules, since the donor is not the relative of the recipient.

Paragraph No.3 of the Statement of Objects and Reasons of the Act, reads thus:

⁴ AIR 2013 Ori. 133

⁵ 189(2012) DLT 427

“Against this background, it is considered necessary to enact a comprehensive law for regulating the removal and transplantation of human organs and for preventing commercial dealings in organs by providing punishment for such dealings.”

9. Restrictions on removal and transplantation of human organs or tissues or both:

(3) If any donor authorizes the removal of any of his human organ or tissues or both before his death under sub-section (1) of Section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ or tissue or both shall not be removed and transplanted without the prior approval of the Authorisation Committee.

Rule (7) Authorisation Committee:

(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 the 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.

From a reading of statement of objects and reasons of the enactment and the provisions, it is clear that the object of the legislation is not to prohibit, but to regulate the removal and transplantation of human organs and to prevent commercial dealings in allowing transplantation of organs. Section 9 of the Act, provides certain restrictions and under sub section 3 of the said provision, where the donor is not a near relative of the recipient, such human organ or tissue or both, shall not be removed and transplanted without the prior approval of the Authorization

Committee, and Rule 7(3) of the Rules mandates the Authorization Committee to satisfy with regard to conditions enumerated therein before granting approval for removal of the human organ or tissue.

Sub rule (3) of Rule 7 contemplates that the Authorization Committee before approving the transplantation, shall evaluate that there is no commercial transaction between the recipient and the donor and that no payment is either made or promised to be made; prepare an explanation of the link between them and the circumstances leading to such donation of human organ; reasons for such donation of organ; examine the documentary evidence of their link with proof viz., photographs; to evaluate that there is no middleman or tout involved; evaluate the financial status of the donor to ensure that there is no commercial transaction and; to interview near relative, or if no near relative is available to interview one adult person related to the donor by blood or marriage of the proposed unrelated donor.

A Division Bench of the High Court of Delhi in *Parveen Begum* (5 *supra*), considering the provisions of the Act, held as under:

“49. From the above statutory provisions and the scheme of the Act, it becomes clear that the Act and the Rules do not seek to prohibit, but to only regulate the transplant of organs and tissues from cadavers and living human beings. What is prohibited is the commercial transaction in the giving and taking of organs and tissues. However, donations offered out of love and affection – even amongst those who are not near relatives, is permitted. The aforesaid scheme under the Act recognizes two of the greatest human virtues of love and sacrifice, and also the fact that such intense love and affection need not necessarily be felt only for one’s own blood or spouse, but could also extend to those not so closely related, or for those not related at all.

50. From the scheme of the Act and the Rules it appears that organ/tissue donation by a person before his death can be made not only for the therapeutic purposes of a recipient who is a near relative, i.e., son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter, but also for therapeutic purposes of persons/recipients who do not fall within the definition of the expression “near relative”. Section 9(1) of the Act, while generally providing that no human organ or tissue, or both, removed from the body of a donor before his death shall be transplanted into a recipient, unless the donor is a near relative of the recipient, saves from application of this general rule, cases which fall under sub-section (3) of Section 9. Therefore, a donor, who is not a near relative of the recipient may by reason of “affection, or attachment towards the recipient or for any other special

reasons" authorize the removal of his human organ or tissue or both for transplantation in a recipient for therapeutic reasons. The caveat is that in such circumstances prior approval, before removal and transplantation, would be required of the Authorization Committee.

51. It also needs to be emphasized that an approval of the Authorization Committee is necessary and required to be obtained only in such cases, where the donor and recipient are not near relatives, or in cases where the donor or the recipient, being near relatives, is a foreign national (see Section 9(1A)). The role of the Authorisation Committee comes into play primarily in cases where the donor and the recipient are not near relatives, and it is the function of the Authorization Committee to ascertain and evaluate, by applying the guidelines/yardsticks and tests provided in Rule 4A(4) and 6F(d) of the Rules, whether there is a commercial transaction between the recipient and the donor, and to ensure that no payment of money or monies worth has been made to the donor, or promised to be made to the donor or any other person on account of the fact that the donor has agreed to donate an organ or tissue to the recipient. The Authorization Committee is required to enquire whether the donor is offering his organ/tissue by reason of affection or attachment towards the recipient or for any other special reasons. The law also mandates that the approach of the Authorization Committee in such matters has to be pragmatic and its discretion has to be used judiciously, particularly in cases which require immediate transplantation."

The Apex Court in *KULDEEP SINGH v. STATE OF T.N.*⁶ considering the facts and circumstances where the donor not being near relative of recipient, held that approval has to be accorded by Authorization Committee under Section 9(3) of the Act and the burden is on the applicant to satisfy the said Committee that such donation of human organ, is not for commercial consideration, but for reasons of affection or attachment towards recipient or for any other special reasons.

In the light of the above statutory provisions and the law laid down in the above judgments, now it is necessary to look into the case of the petitioners. As per the averments made in the affidavit filed in support of the writ petition, the case of the petitioners is that the 1st petitioner is suffering from kidney ailment. His right kidney was removed in the year 2007 and during November, 2016, his left kidney was also affected and he is on dialysis since then, taking treatment at Asian Institute of Nephrology and Urology, Erramanzil, Hyderabad, where he was recommended surgical extraction and removal of his left kidney and transplantation of a

⁶ (2005)11 SCC 122

new kidney in its place. The 2nd petitioner, is not a close relative of the petitioner No.1 and it is stated that he has been working under the family of 1st petitioner since 2007 and has been assisting the petitioner No.1 and taking him to dialysis and is aware of the condition of the petitioner No.1, who is suffering from different ailments because of kidneys dysfunction. Out of love and affection, he has come forward to donate one of his kidneys to petitioner No.1, without any commercial element and coercion. The wife of the 2nd petitioner consented for this act.

The doctors at AINU, Dr. M.V.Rao, Nephrologist and Dr. Syed Mohd. Ghouse, Urologist, examined the petitioners 1 and 2 and the wife of the 2nd petitioner and the same was recorded in the form of C.Ds. for the purpose of sending to the competent authority. The petitioners 1 and 2 and the wife of the 2nd petitioner filed affidavits along with medical history, C.Ds. of the above interview before the Authorization Committee. The Authorization Committee also examined them, where the petitioner No.2 and his wife reiterated their case that 2nd petitioner was offering his kidney out of pure love and affection and on account of his long association with the family of the petitioner No.1 for more than ten years and that there is no involvement of pressure or monetary consideration. The 3rd respondent – Authorization Committee passed the following order dated 12.12.2017, rejecting the application of the petitioner No.1:

“The Committee is not convinced altruistic nature of donation.”

On appeal, the 2nd respondent, who is the appellate authority, passed the following order dated 14.05.2018:

“The donor Sri Kunkunooru Raju, s/o Sri K.Satyanarayana, R/o H.No.8-3-228/678/822, Karmikhanagar, Yousufguda, Hyderabad is found to be your car driver and it is difficult to believe that there is no financial consideration. The prospective donor also could not explain the reasons for his decision.

After hearing both sides on 10.05.2018, Government after careful examination hold that there are no grounds to interfere with the decision of the Authorization Committee. Accordingly Government hereby uphold the order of the Authorization Committee and the appeal is hereby rejected."

From a reading of the above orders of both the primary as well as appellate authority it is clear that the material evidence produced by the petitioners, has not even been referred to or considered and no cogent reasons have been recorded for refusing their request and cryptic orders have been passed. This amounts to violation of principles of natural justice.

It is to be seen that merely because the petitioner No.2 is working with the 1st petitioner or that there is economic disparity, in the absence of tangible material, it cannot be concluded that there would be financial consideration. The specific case of petitioner No.2 and his wife is that out of sheer love and affection and close association with the family of the 1st petitioner, petitioner No.2 has come forward to donate his kidney. To prove their case, they have filed affidavits and given statements before the doctors and also before the 3rd and the 2nd respondents. But the said material has not even been referred to, let alone consideration.

2nd petitioner is present in court and he is identified by his counsel and his identity has not been disputed by the learned Government Pleader for Medical and Health. To ascertain the truth or otherwise of the averments made in the affidavit, this court examined 2nd petitioner, who categorically stated that out of sheer love and affection and close association with the family of 1st petitioner for more than ten years and by seeing the miserable health condition of 1st petitioner, whose both the kidneys are damaged, he intends to donate the kidney without any coercion or for any monetary gain.

But in the impugned order, the 2nd respondent recorded that the prospective donor i.e., the 2nd petitioner could not explain the reasons for his decision. This finding of the 2nd respondent, without considering the material evidence and without recording any reasons, can be said to be on mere suspicion and based on conjunctures and surmises, which cannot be sustained.

In similar circumstances, a Division Bench of the High Court of Punjab and Haryana in Rajinder Kumar's case (2 supra) held that merely because there was economic disparity between the recipient and the proposed donor that would be no reason to draw any inference that the recipient was actually receiving the donated organ on money consideration. The relevant portion of the order is as under:

"10. A perusal of the orders Annexures P/12 and P/13 clearly shows that the only reason given by respondent Nos. 2 and 3 to refuse the necessary approval to the petitioner and the proposed donor is that "the money involvement could not be ruled out." The aforesaid conclusion has been drawn merely on account of the fact that there was a great economic disparity between the petitioner and the proposed donor. However, in our considered view, the aforesaid ground is totally an extraneous ground and merely because there was economic disparity between the petitioner and the proposed donor would be no reason to draw any inference that the petitioner was actually receiving the donated organ on money consideration. The human conduct and reactions cannot be measured in any mathematical terms. The instances are not unknown where people due to sheer love and affection or due to humanitarian consideration do act for the welfare of a needy person. All such actions of the good doers cannot be suspected and need not be viewed with any tainted glasses. We are also impressed by the enquiry held by the Senior Superintendent of Police, Jalandhar, which has been mentioned by the respondents in their own reply. It has been specifically reported by the Senior Superintendent of Police, Jalandhar that as per the police report there was no money transaction between donor and patient and the aforesaid kidney transplantation is likely to be done on humanitarian ground. In view of the aforesaid positive and specific report of the police, there was absolutely no material with the Authorization Committee or the Appellate Authority to reject the claim of petitioner. It is apparent that the Authorization Committee as well as the Appellate Authority have been influenced by the suspicious atmosphere which had been created on account of some irregularities in kidney transplantation in the past. However, the result of the aforesaid suspicious atmosphere cannot be allowed to become a dead wall for seriously ill patients, like the petitioner. Accordingly we find that as per the affidavits Annexures P/1, P/2 and P/3 and various medical reports and the enquiry conducted by the police itself, the offer of donation of kidney made by Jiwan Sharma to petitioner, Rajinder Kumar cannot be termed to be tainted or because of involvement of any money consideration.

11. As a result of the aforesaid discussion, we allow the present petition and quash orders Annexures P/12 and P/13. As a consequence thereof, we

direct respondent No.3, Chairman, Authorization Committee to grant necessary approval to the petitioner, forthwith, to receive the kidney proposed to be donated by Jeewan Sharma.”

In another judgment in M.C.Abdul Rahman (3 supra), a learned single judge of High Court of Kerala, held asunder:

“6. As noted above, one of the reasons stated by the Authorisation Committee in the instant case to decline the approval sought by the petitioner is that there is gross disparity between the financial status of the donor and recipient. True, financial status of the parties is certainly a factor to be gone into by the Authorisation Committee to ascertain whether the donation of the organ proposed is voluntary and also to ascertain whether there is any financial dealings in the transaction. But, that does not mean that transplantation cannot be permitted, if there is disparity in the financial status of the donor and recipient. Voluntary donation of an organ by a person is a self deprivation of the highest order and it is inhuman to hold that such sacrifices would be made by people only based on monetary considerations.

7. From the aforesaid materials, I am of the view that the case of the second petitioner that he had worked with the first petitioner in his aluminium fabrication workshop, cannot be said to be false as the first petitioner belongs to a place near to Kanhangad. If the said case set up by the petitioners is correct, the only remaining question is as to whether there exists a relationship between them sufficient for the second petitioner to donate one of his organs to the first petitioner. It is very difficult to make inferences about the depth of the relationships between persons from surrounding circumstances. Further, according to me, such an enquiry is not contemplated also for the purpose of the statute, for, the statute does not prohibit transplantation. As noted above, the scheme of the statute is that if circumstances indicate a possible relationship for one person to donate his organ to save the life of another, the approval sought has to be granted.”

The quintessence of the above judgments is that the Authorization Committee has to inquire whether there has been a commercial transaction between the donor and the recipient. If the result of the inquiry is in the negative, then evaluating the evidence on record, it has to grant approval for transplantation. The approach of the Committee shall be pragmatic and its discretion has to be used judiciously, and that mere suspicion or economic disparity cannot be a ground for rejection of approval.

In the present case, the primary, as well as appellate authorities have not considered the material evidence on record and also have not recorded any reasons for rejecting the approval for kidney

transplantation. The discretion vested in them has not been exercised in a judicious manner and the rejection has been on mere surmises and conjunctures, and hence the impugned orders passed in violation of principles of natural justice, are liable to be set aside.

For the foregoing reasons, the impugned proceedings of the 2nd respondent vide letter No.3910/D1/2018 dated 14.05.2018, confirming the order of rejection passed by the 3rd respondent bearing Rc.No.49765/MAK/2017 dated 12.02.2017, is set aside. Consequently both the orders dated 14.05.2018 and 12.2.2017, are set aside and the writ petition is allowed.

Learned counsel for the petitioners, based on medical record of the petitioner No.1 submits that the petitioner No.1 is on dialysis since November, 2016 and his condition is very disappointing and that any delay in the process of reconsideration by the 3rd respondent in granting approval as required under Section 9(3) of the Act, would further deteriorate the condition of the petitioner and therefore, he sought to direct the 3rd respondent to grant approval.

Learned single Judge of High Court of Delhi in Parveen Begum's case (5 supra) relying on the judgment of the Apex Court in *COMPTROLLER AND AUDITOR GENERAL OF INDIA GIAN PRAKASH, NEW DELHI & ANR v. K.S JAGANNATHAN AND ANR*⁷, held that in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or given directions which the Government or a public authority should have passed or exercised its discretion at a proper level. The relevant portion is thus:

⁷ (1986)2 SCC 679

“83. In the light of the aforesaid facts, circumstances, discussion and the law, in my view, the impugned decision of the Authorization Committee as well as the appellate authority are wholly unsustainable and, accordingly, they are quashed. The question is, at this stage, what should be the approach of the Court – whether the matter should be remanded back to the Authorisation Committee or the appellate authority for consideration, or whether the court would be justified in directing the Authorization Committee to grant its approval without any further examination of the matter by it.

84. The Supreme Court in Comptroller and Auditor General of India Gian Prakash, New Delhi (supra) held in para 20 that in an appropriate case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or given directions which the Government or a public authority should have passed or exercised its discretion at a proper level.

85. In the present case, the petitioner No.1 has been in need of a kidney replacement since June, 2011. The joint application for seeking the approval of the Authorisation Committee was submitted by the petitioners in August, 2011. Over this period of time, the condition of the petitioner No.1 has only deteriorated and she requires dialysis thrice a week. Even from the interviews of petitioner No.1 conducted on different dates, her deteriorating condition of her health is evident.

86. Considering these facts and circumstances, and the urgency of the matter, I am inclined to require the Authorization Committee to forthwith grant its approval to the case of the petitioners for donation of one kidney by petitioner No.2 to petitioner No.1 in terms of their application. The formal approval should be granted within two days, failing which it shall be deemed that the said formal approval stands granted.”

The facts of the present case disclose that the right kidney of the petitioner No.1 was removed in the year 2007 and thereafter, as his left kidney was also affected, he is on dialysis since November, 2016, and the doctors at Asian Institute of Nephrology and Urology, Hyderabad, strongly recommended for surgical extraction and removal of his left kidney and transplantation of a new kidney in its place. In the affidavit filed in support of the writ petition, petitioner No.1 has described the side effects of prolonged dialysis since November, 2016, and by this time, as per the submission of the learned counsel for the petitioners, his health condition has considerably deteriorated. He made application for kidney transplantation on 25.11.2017 through the hospital where he is taking treatment and thereafter, the impugned orders came to be passed.

Having regard to the above facts and circumstances, the 3rd respondent is directed to forthwith grant approval for the kidney transplant from petitioner No.2 to petitioner No.1.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:22—06—2018

Note:

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