

**IN THE HIGH COURT OF BOMBAY AT GOA*****PUBLIC INTEREST LITIGATION WP NO.16 OF 2018***

The Mango Foundation (TMF),  
Through its Member,  
Mrs. Severino Fernandes, Age 55,  
B/S-2 Campal Trade Center,  
Campal, Panaji Goa. ... Petitioner

Versus

1. State of Goa,  
Through its Chief Secretary  
Secretariat Building, Porvorim,  
Bardez Goa.
2. Goa Medical College and Hospital,  
Through its Dean,  
Bambolim Goa.
3. Health Secretary,  
Government of Goa,  
Secretariat Building,  
Porvorim,  
Bardez Goa.
4. Union of India,  
Through Secretary,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
Maulana Azad Road,  
New Delhi -110 011
5. Regional & State Organ & Tissue Transplant  
Organization (ROTTTO), Western Region  
Through its Director,  
KEM Hospital & GS Medial College,

Acharya Donde Road,  
Parel, Mumbai,  
Maharashtra 400012

6. National Organ & Tissue Transplant  
Organization (NOTTO),  
Through its Director  
4<sup>th</sup> Floor, National Institute of Pathology,  
NIOP Building,  
Safdarjung Hospital Campus,  
New Delhi – 110029, Notto .... Respondents

Mr. Wilbur Menezes, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar, Addl.  
Government Advocate for Respondent Nos.1 to 3.

Mr. Mahesh Amonkar, Central Government Standing Counsel for  
Respondent No.4.

***Coram : M.S. Sonak &  
Nutan D. Sardesai, JJ.***

***Reserved on : 31<sup>st</sup> July, 2019.  
Pronounced on : 7<sup>th</sup> August, 2019***

**Judgment ( Per M. S. Sonak, J )**

Heard the learned counsel for the parties.

2. Rule. Rule is made returnable forthwith at the request and  
with the consent of the learned counsel for the parties.

3. Learned counsel for the respective Respondents waive  
service.

4. This PIL litigation seeks enforcement of some of the significant provisions of “*The Transplantation of Human Organs and Tissues Act, 1994*” ( the said Act ) and “*The Transplantation of Human Organs and Tissues Rules, 2014*” ( the said Rules ).

5. The Petitioner, a registered not for profit organization committed to pursue socio-economic and socio-legal issues, has instituted this petition, seeking the following reliefs :

“(a) Direct Respondent Nos.3 and 4 to immediately notify Respondent No.2 a State Organ Transplantation Organization (SOTTO) with :

(i) a criteria based transparent waiting lists for organs and linking the same to the Regional & State Organ & Tissue Transplant Organization (ROTO), Western Region and National Organ & Tissue Transplant Organization (NOTTO);

(ii) designated organ and tissue retrieval teams in each District;

(iii) dedicated website linked to the websites of Respondent Nos.5 & 6 for organ procurement, sharing and transplantation and most importantly registering patients;

(b) Direct Respondent No.3 to procure with immediate effect the necessary cross-matching facility and other equipments necessary to facilitate organ and tissue transplantation and make the same available with Respondent No.2;

(c) Direct Respondent No.3 to strictly ensure that qualifications are strictly adhered to by registered entities/hospitals under the THOA Act;

(d) That this Hon'ble Court be pleased to grant an ex-

*parte/ad-interim relief in terms of clause (a),(b) above;*

*(e) Pass any other such order that the Hon'ble Court may deem fit and necessary in the interests of justice.”*

6. On 29<sup>th</sup> October, 2018, upon hearing the learned counsel for the parties, we made the following order :-

*“This PIL Writ Petition has raised an issue regarding organ transplantation in the State of Goa. The Petitioner has given various suggestions in the Petition, as well as during the course of the arguments regarding implementation of the Transplantation of Human Organs Act and the Rules framed thereunder. Reply affidavit has been filed on behalf of the State where the State has placed on record the steps taken.*

*2. Notice was issued to the Ministry of Health and Family Welfare, Union of Government. The learned Standing Counsel seeks time to file reply.*

*3. So as further time is saved and the issue remains focused, we will summarize the points regarding the responsibilities of both, the State Government and the Union Government. For this purpose, we will refer to the Transplantation of Human Organs and Tissues Rules, 2014. The issues that are crystallized on which the Respondents-Authorities are required to file reply are as follows :*

*(I) Establishment of a Competent Authority in the State of Goa;*

*(II) Establishment of an Authority for removal of human organs or tissues;*

*(III) Establishment of panel of experts for brain-stem death certification;*

*(IV) Registration of medical practitioner of hospitals having Intensive Care Unit facility;*

*(V) Methodology for removal of organs or tissues;*

- (VI) Establishment of Authorisation Committee as per Rule 7;*
- (VII) Methodology for Removal of the organs or tissues as per Rule 8;*
- (VIII) Composition of Authorisation Committees ;*
- (IX) Establishment of State or District Level Authorisation Committees;*
- (X) Establishment of hospital based Authorisation Committees;*
- (XI) Establishment of State or District Level Authorisation Committees;*
- (XII) Registration of hospital or tissue bank;*
- (XIII) Fulfillment of conditions of registration by the hospitals which are registered for organ transplantation as specified in Rule 26;*
- (XIV) Procedure for registration of retrieval centres;*
- (XV) Procedure for registration of tissue banks;*
- (XVI) Setting up of State networking organization;*
- (XVII) Setting up of website of the transplantation centres as per Rule 31(4)(a);*
- (XVIII) Preparation of wait list for request of organs of the deceased donors as per Rule 31(4)(d);*
- (XIX) Setting up of online system of networking as per Rule 31(4)(f);*
- (XX) Setting up of designated organ and tissue retrieval teams in the State as per Rule 31(7);*
- (XXI) Setting up of Information Education and Communication Activities for promotion of deceased organ and tissue donation.*

*4. We expect the Authorities to give their responses serially under the above heads as to the steps taken so far and the steps to be taken in future, with an indication of the time line, considering that the above points are nothing but reproduction of the statutory Rules.*

*5. For the purpose receiving responses as above, we defer the hearing to 4 December 2018.”*

7. Thereafter, the matter was taken up for consideration on 6<sup>th</sup> December, 2018. On this date, two aspects were mainly emphasized. The first related to setting up of State Organ and Tissue Transplant Organization (SOTTO) at the State level. The second related to providing certain infrastructure facilities like Human Leukocyte Antigen Matching Laboratory (HLA Lab) for cross matching tissues and organs.

8. Upon hearing the learned counsel for the parties, on 6<sup>th</sup> December, 2018, we made the following order :-

*“During the course of hearing today, two aspects have been emphasized; one relating to setting up of State Organ Transplant Authority at the State level and another in the respect of providing certain infrastructure facilities namely laboratory facility for dealing with the aspect of cross matching of tissues and organs. So far as setting up of a State Organ Transplant Authority is concerned, Rule 31 of the Transplantation of Human Organs and Tissues Rules, 2014 contemplates setting up of Regional and State level networking organisation. The State shall have to set up organ or tissue matching laboratories and tissue banks. There is also need to setup Regional and National networking organizations.*

*2. It has been informed that the State Government is taking steps for establishment of a State level networking organisation which is termed as State Organ Transplant Authority since it is primary requirement for streamlining the functions of transplantation of human organs and tissues. It is of prime important for the State to take steps for setting up of such an Authority. We direct the State as well as Central Government to take necessary steps to make*

*State Organ Transplant Authority functional expeditiously and preferably within a period of four months from today. It is informed that certain steps are being taken in coordination with Central Government such as transmitting memorandum of understanding as well as furnishing the details of bank account as well as provisions made for financial assistance. The Central Government is expected, considering the importance of the issue, to coordinate with the State Government and facilitate and support the establishment of State Organ Transplant Authority in the State of Goa expeditiously and within a time frame stipulated as above.*

*3. Second issue as regards setting up laboratory facility is concerned, it has been pointed out that one Dr. S. R. Kankonkar has been appointed as a consultant in Goa Medical College and Hospital and order in that regard has been issued on 23.11.2018. The Consultant is expected to make a recommendations as regards establishment of facility of cross matching of tissues as well as providing for necessary laboratory infrastructural facilities to the State Government. The State shall expeditiously establish the laboratory facility and take all necessary steps for making it functional within a period of six months from today.*

*4. It is also been informed by the learned Advocate General for the State that steps are being taken for providing super specialty hospital by upgrading the existing infrastructure at the GMC. The setup once made functional would facilitate heart, liver and lungs transplant.*

*5. The respondent/State shall take steps expeditiously for establishing super speciality facilities at GMC and make the concerned departments functional. The progress as regards the setting up of laboratory facility as well as super speciality facilities, enhancing existing infrastructure at GMC, as well as development as regards establishing the State Organ Transplant Authority in the State shall be informed to this court on 21.1.2019.”*

9. As we were not very satisfied with the progress on the issue of setting up of SOTTO and establishment of HLA Lab, by our order dated 21<sup>st</sup> February 2019, we directed the Secretary ( Health), State of Goa to make a statement as to the progress in both these matters.

10. On the next date of hearing i.e. on 25<sup>th</sup> March, 2019, certain issues were raised in relation to coordination with the Central Government, since, some funds were required to come from the Central Government for effective implementation of the provisions of the said Act and the said Rules, including in particular for providing infrastructure sufficient for SOTTO to be established and commenced operation.

11. Therefore, on 25<sup>th</sup> March, 2019, we made the following order requiring both the State as well as the Central Government to take expeditious steps :-

*“This Court by order dated 06.12.2018 had directed the Central Government as well as State Government to take necessary steps to make State Organ Transplant Authority functional expeditiously, within a period of four months, from the date of said order. The Central Government was directed to coordinate with the State Government and facilitate and support the establishment of State Organ Transplant Authority, in the State of Goa, expeditiously and within a time frame stated in the said order.*

*2. The State Government was directed to establish laboratory facility, expeditiously, and take all necessary steps for making it functional, within a period of six months, from the date of said order.*

3. *The learned Counsel for Respondent Nos.1 to 3 states that in reply to letter dated 06.11.2018 from the Central Government to the State Government requesting for certain details alongwith guidelines for financial support for infrastructure, manpower and other recurring expenditure, the State Government by letter dated 27.12.2018 replied and furnished various details. It is the case of State Government that the Central Government has however, not responded to the said letter dated 27.12.2018 and has not pointed out requisition of any further details for the compliance of order dated 06.12.2018, passed by this Court.*

4. *It is submitted by the learned Counsel for the State Government that in so far as the State Government is concerned, all requisite steps are already taken by the State Government for complying with the order dated 06.12.2018. It is for the Central Government now to issue notification in terms of Rule 31(2) of the Transplantation of Human Organs and Tissues Rules, 2014.*

5. *Perusal of the records indicate that the Central Government has not responded to the reply of the State Government to the requisition made by Central Government to letter dated 06.11.2018 for last more than three months. The Central Government is thus, directed to comply with the order dated 06.12.2018 and shall communicate to the State Government whether, any further steps are to be taken by the State Government or not so as to comply with the order of this Court dated 06.12.2018, within two weeks from today.*

6. *It is to be noted that no further extension of time will be granted. If the order passed by this Court dated 06.12.2018 is not complied by the Central Government or the State Government expeditiously, this Court will have to pass appropriate order, for compliance of order passed by this Court, against both the Governments.*

7. *Place the matter high on board on 09.04.2019.”*

12. Since, by 9<sup>th</sup> April, 2019, the directions given by us in our previous orders were not complied with, we granted extension of time on the clear understanding that there will be no occasion for seeking further extension to comply with our earlier directions.

13. The learned Standing Counsel for the Union of India stated that the Ministry of Health and Family Welfare has already released the necessary funds for setting up a SOTTO and now the matter rests with the State Government to actually establish the SOTTO. The learned Advocate General appearing for the State of Goa made a statement that the State has already received funds and time lines for establishment of SOTTO will be indicated on the next occasion. Accordingly, the matter was stood over to 24<sup>th</sup> June, 2019 by observing that the State Government must deliver on its assurance without fail, as otherwise, this Court will not be inclined to grant any further accommodation in the matter.

14. Despite the aforesaid, in view of the difficulties expressed, on 24<sup>th</sup> June, 2019, further time was granted to the State Government to indicate the time lines for establishment of SOTTO and to place on record the steps taken for establishment of SOTTO.

15. On 19<sup>th</sup> July, 2019, the learned Advocate General submitted that though a statement was made on 6<sup>th</sup> June, 2019 that the funds from

the Central Government have already been received by the State Government, in fact, the funds were not received possibly on account of some technical snag. Mr. Amonkar, learned Standing Counsel for the Central Government assured this Court that the matter will be sorted out by the next date as the sanction had already been accorded for release of funds to the State of Goa to establish the SOTTO. On this date, the affidavit of Dr. Shivanand M. Bandekar, Medical Superintendent holding the charge of Dean of Goa Medical College was also taken on record. The affidavit indicated the steps taken to set up the SOTTO. The statements in the said affidavit were accepted as undertakings given to this Court. On this date, the learned Advocate General assured this Court that appropriate waiting lists for transplant of organs by linking the same to the Regional, State and National Organization consistent with the provisions of the said Act and the said Rules are already being maintained.

16. Finally, this matter was heard finally on 31<sup>st</sup> July, 2019, on which date, we were assured by the learned Advocate General and the learned Standing Counsel for the Central Government that most of the issues raised in the present petition stand substantially redressed.

17. Mr. Wilbur Menezes, learned counsel for the Petitioner submitted that though the progress has been made in redressing the issues raised in this petition, it cannot be said that the issues raised stand

redressed. Mr. Menezes however, admitted that two main issues which arise in this petition relate to the establishment and notification of the SOTTO and establishment of HLA Lab. He further submitted that Respondent No.3 was not strictly enforcing the provisions of the said Act and the said Rules when it came to the registration of hospitals and entities to undertake operations as contemplated under the said Act and the said Rules. He submitted that this was a serious issue, since otherwise, illegal trade in human organs and tissues might flourish, leading to physical as well as economic exploitation of poor and unwary.

18. In so far as the issue of establishment of SOTTO is concerned, we were informed that the Central Government has already released one time measure as grant of approximately Rs.71 lakhs to the State Government. On the date of final hearing, we were informed that the technical snag has been sorted out and the State Government has actually received this amount from the Central Government towards the establishment of SOTTO.

19. In fact, in the affidavit dated 18<sup>th</sup> July, 2019 filed by Dr. Bandekar on behalf of Respondent Nos.1 and 2, it is stated that a memorandum of understanding (MOU) has been executed between the State Government and the Central Government in terms of which the Central Government has assured *inter alia* one time financial assistance for infrastructural requirements and financial assistance by way of

recurring expenditure for salary of the staff for a period of three years. As noted earlier, it is in pursuance of this MOU, the Central Government has already released an amount of Rs.71 lakhs or thereabouts to the State Government.

20. The affidavit further states that initially for the SOTTO office, two rooms were identified on the 5<sup>th</sup> floor of the Medicine Block of Goa Medical College. Thereafter, however, a different premises were identified on the first floor of Foyers Block having about four rooms, which premises were found to be ideal for the purposes of SOTTO. The affidavit proceeds to state that the Goa State Infrastructure Development Corporation (GSIDC) has been entrusted with the work of renovation of such premises, requisite furniture has already been procured and renovation works are at an advanced stage. The affidavit states that the SOTTO office will be made functional in this new premises by 31<sup>st</sup> August, 2019. We accept this statement made in the affidavit as undertaking to this Court and direct the State Government to make functional the SOTTO office premises latest by 31<sup>st</sup> August, 2019.

21. The affidavit also indicates that the web portal for SOTTO will be created on the GMC website and the same will be made functional and accessible again latest by 31<sup>st</sup> August, 2019. This was in fact one of the issues raised by the Petitioner in the petition.

Accordingly, we accept the statement made in the affidavit as an undertaking to this Court and direct the State Government to create and make functional the web portal for SOTTO latest by 31<sup>st</sup> August, 2019.

22. The affidavit also states that the State Government has already appointed Medical Superintendent, GMC as Nodal Officer for SOTTO. As regards the other staff, the affidavit states that an advertisement dated 30<sup>th</sup> May, 2019 was issued in the local dailies inviting the applications from the eligible persons for the posts of Joint Director ( Technical Incharge), Consultant (IEC, Publication and Media ), Consultant cum Transplant Coordinator, Programme Assistant cum Data Entry Operator and some drivers. The affidavit states that the walk in interview was held on 7<sup>th</sup> June, 2019 and selection process is complete. The affidavit assures this Court that the appointment orders will be issued to the selected persons no sooner the SOTTO office is made functional, which, we understand will be by 31<sup>st</sup> August, 2019. We accept all the statements made in paragraph 9 of the affidavit as undertakings to this Court and direct the Respondent/ State Government to comply with the same so that the SOTTO office is functional and discharges the duties which it is assigned to discharge in terms of the said Act and the said Rules.

23. We also direct the Medical Superintendent, GMC who is

affiant of the affidavit dated 18<sup>th</sup> July, 2019 to file an affidavit of compliance on the aspect of establishment of SOTTO and establishment of web portal, in this Court on or before 13<sup>th</sup> September, 2019 by serving an advance copy upon the learned counsel appearing for the Petitioner. Although, we are disposing of the present petition, we propose to place this petition for directions on 7<sup>th</sup> October, 2019, so as to be satisfied that the undertakings given to this Court are indeed complied with.

24. In so far as setting up of HLA Lab is concerned, the affidavit dated 18<sup>th</sup> July, 2019 states that the space for setting up such a laboratory has already been identified and the civil works for structural modification and renovation have already been entrusted to GSIDC vide letter dated 2<sup>nd</sup> January, 2019. The affidavit states that the civil works have been completed by GSIDC after completion of renovation work and key of the premises has already been handed over to the consultant. The affidavit states that some medical equipment is required to be procured and only after the same is procured, the HLA Lab will become functional.

25. The affidavit states that a Consultant has already been appointed, who is assisting the State Government in establishing the HLA Lab. The affidavit states that the Consultant has prepared a list of equipments, which have classified into two categories. First category

includes the equipments, costing below Rs.5 lakhs and second above Rs.5 lakhs.

26. The affidavit states that for equipments belonging to the first category, the tenders were issued on 21<sup>st</sup> January, 2019. The tender process is complete and the matter has been referred to the Government for expenditure sanction. The affidavit states that as soon as the sanction/approval is received, the orders will be placed for purchase of equipments belonging to the first category. The learned Advocate General for the State of Goa has assured this Court that necessary sanction/approval, in all probability, will be forthcoming expeditiously. We accept this statement. In any case, we direct the State Government to complete the procurement as expeditiously as possible and in any case within a period of six to eight weeks from today.

27. In so far as the second category of equipments costing for Rs.5 lakh are concerned, the affidavit states that though the tenders were invited vide notice dated 25<sup>th</sup> February, 2019, no bids were received. The affidavit states that fresh tenders have already been issued and process is yet to be completed. The affidavit states that once the tender process is completed, the purchase orders will be issued. The affidavit also states that it is only when all the equipments are procured the HLA Lab can be made functional within 15 days from the date of receipt of equipments.

28. According to us, the State Government will have to take emergent steps to procure the equipments of the second category as well otherwise, there will be no point in spending time and money to acquire and furnish the premises to set up a HLA Lab, and have no equipments to operate the same. While we appreciate the difficulties expressed by the learned Advocate General for the State of Goa, we would emphasise that the process of acquiring equipments will have to be expedited and all efforts will have to be made to procure such equipments within six to eight weeks so that HLA Lab is fully functional at least within a period of three months from today. Accordingly, we direct the State Government to make functional HLA Lab as expeditiously as possible and in any case within a period of three months from today. This is more so because there was no dispute whatsoever that the establishment and functioning of such HLA Lab is necessary for full and effective implementation of the provisions of the said Act and the said Rules.

29. In so far as the staff for HLA Lab is concerned, the affidavit dated 18<sup>th</sup> July, 2019 states that the State Government has already appointed Dr. S. R. Kankonkar, PhD, Ex HOD Tissue Typing Laboratory, Mumbai hospital and Dr. Ashwin Dalal, DM in Medical Genetics from SGPGI, Lucknow as Consultants to help the State Government to establish the HLA Lab. The affidavit states that the other staff members from the GMC have been appointed as Transplant Coordinators. In fact, these Coordinators were sent for a short term

training at KEM hospital Mumbai. The affidavit assures this Court that additional staff as and when required will be appointed once the HLA Lab become functional and precise staff requirements are assessed. Again, we accept this statement as undertaking to this Court and direct the State Government to act accordingly.

30. According to us, two main issues raised in this petition stand substantially redressed, now that we have accepted the statements made by and on behalf of the State Government as undertakings to this Court. No doubt, the issue of actual compliances remains, for which purpose we propose to place this matter for directions, periodically. On the issue of maintenance of waiting lists, we have already noted the statement made by and on behalf of the State Government that such waiting lists are already been maintained.

31. We note that after the SOTTO office premises are complete in all respects and necessary staff is appointed, the State Government has to apply to the Central Government for issuing necessary notification to make the SOTTO operational. The learned Advocate General has assured this Court that no sooner the SOTTO office is established and requisite staff is appointed which, we understand, will be latest by 31<sup>st</sup> August, 2019, the State Government will make necessary application to the Central Government seeking notification of SOTTO. We direct that such application shall be made as expeditiously as possible and in any

case on or before 15<sup>th</sup> September, 2019. Mr. M. Amonkar, learned Standing Counsel for the Central Government has assured this Court that no sooner such an application is received by the Central Government, the same will be processed and necessary notification will be issued as expeditiously as possible. We direct the Central Government to process such an application within a period of 15 days from the date of its receipt by the Central Government so that there is no unnecessary delay in making the SOTTO functional.

32. The learned Advocate General for the State of Goa has stated that once the SOTTO made operational, necessary organs and tissues retrieval teams shall be designated in the two Districts of Goa consistent with the provisions of Rule 31(7) of the said Rules. We accept this statement and direct the State Government to act accordingly.

33. The issue of dedicated website linked to the websites of Respondent Nos.5 and 6 for organ procurement, sharing and transplantation and registration of patients, we understand that stands suitably redressed by the statements made in the affidavit dated 18<sup>th</sup> July, 2019. We understand that the web portal for SOTTO will take care of all this requirements. We again note that in terms of the affidavit such web portal is made operational and accessible from 31<sup>st</sup> August, 2019.

34. According to us, the aforesaid directions sufficiently redress

the reliefs claimed for by the Petitioner in prayer clauses (a) and (b) of the petition. No doubt, as noted earlier, the issue of compliance remains and therefore we propose to place this matter for directions on 7<sup>th</sup> October, 2019, so as to ensure compliances.

35. As regards the prayer clause (c), which relates to the Petitioner's complaint that the registration of hospitals may not be made by having adequate regard to the conditions and qualifications prescribed under the said Act or the said Rules, the learned Advocate General has made a statement that the State will comply with the Rules 27 and 28 of the said Rules before any registrations are granted or continued. According to us, for the present, such a statement sufficiently redresses the relief in terms of prayer clause (c) of the petition. In future, if there are any concrete cases where the Petitioners are able to point out violations, they will obviously be at liberty to bring such violations to the notice of the State Government. We are quite sure that the State Government, realising the sensitive nature of the issue, will act expeditiously on such complaints. It cannot be gainsaid that there is necessity to strictly comply with the provisions of the said Act and the said Rules when it comes to issue of transplantation of human organs and tissues.

36. We accordingly dispose of this petition by making rule absolute in the aforesaid terms. However, we direct the registry to place

this matter under the caption of “*Directions*” on 7<sup>th</sup> October, 2019, as at least by that date we expect that substantial compliances will be made.

37. We record our appreciation that none of the parties in this PIL litigation, treated this petition as an adversarial litigation. It is because of cooperation of all the parties that some headway has been made in the implementation of certain significant provisions for Transplantation of Human Organs and Tissues Act, 1994 and Rules made thereunder. In particular, we appreciate the services rendered by the Petitioner in taking up this important issue and we also appreciate the reasonable approach and perseverance of their learned counsel Mr. W. Menezes, in this matter. Accordingly, we direct the State Government to pay to the Petitioner an amount of Rs.25,000/- towards the services rendered by them in taking up and pursuing this cause. This amount may be paid to the Petitioner within a period of six weeks from today.

38. Rule is accordingly made absolute in the aforesaid terms.

39. All concerned to act on the basis of the authenticated copy of this order.

**Nutan D. Sardesai, J**  
at\*

**M.S. Sonak, J**