

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1485 OF 2013

Master Siddhant Vikram Pal and another. ... Petitioners.

V/s.

The Authorization Committee and others. ... Respondents.

WITH

WRIT PETITION NO. 10 OF 2013

WITH

WRIT PETITION NO. 2719 OF 2013

WITH

WRIT PETITION NO. 3220 OF 2013

Mr.Uday P. Warunjikar with Mr.Sumit Kate for the petitioner in
WP Nos.1485/2013, 10/2013, and 3220/2013.

Mr.A.B.Vagyani, GP with Mr.Y.S.Khochare, AGP
for the respondent- State.

Mr.Parag Vyas for the Union of India.

CORAM : A.S.OKA AND M.S.SANKLECHA, JJ.

DATE : 22nd April 2019

P.C.:

These disposed of writ petitions are listed before the Court from time to time for reporting compliance with the directions issued by this Court. This group of writ petitions concern implementation of the provisions of the Transplantation of Human Organs Act, 1994 (for short "the said Act"). By order dated 21st June 2013, this Court issued various directions only with a view to ensure that the provisions of the said Act are properly implemented in the State. It is under this order, a machinery of Authorisation Committees was set up in the State. After the

said Act was amended by the Central Act No.XVI of 2011, the Central Government exercised the rule making power by framing the Transplantation of Human Organs and Tissues Rules, 2014 (for short "the said Rules of 2014"). For a considerably long time, the State Government did not bring into force the said Rules of 2014 in the State of Maharashtra. In fact, the legal effect of the said Rules of 2014 was that the earlier Rules framed by the Central Government in the year 1995 were superseded. Only on 18th December 2015, that the State Legislature adopted the Central Act No.XVI of 2011 and that is how the said Rules of 2014 became applicable to the State. This Court passed an order dated 10th February 2016 specifically observing that the directions issued earlier which were not inconsistent with the said Rules of 2014 will continue to operate.

2. There were several issues concerning setting up of Authorisation Committees especially the hospital based Authorisation Committees as provided in the said Rules of 2014. Certain difficulties were pointed out in implementation of the said Rules of 2014 in the context of requirement of setting up hospital based committees. Those difficulties were noted by this Court in the order dated 19th October 2018. Further directions were issued under the said order as regards the functioning of the hospital based Authorisation Committees. Paragraphs- 7 to 11 thereof contain the directions issued under the said order which read thus:

"7. The State Government will have to create if not already created, a centralized data of life organ transplants undertaken by various hospitals in the State and there must be a provision made for the real time updation of the data. On expiry of every

British Calendar year, the State Government will have to ascertain whether 25 transplants have actually taken place in a particular hospital during the British Calendar year. In case of hospitals for which a hospital level Authorization Committee is not established, if it is found that more than 25 transplants were actually done in that hospital in a particular year, the State Government will have to immediately take steps to constitute a hospital based Authorization Committee in terms of Rule 12 of the said Rules of 2014. Considering the language used in Rule 11, immediately after the end of each British Calendar year, the State Government will have to ascertain whether in the hospitals for which Authorization Committee has already been set up, the number of transplants undertaken are less than 25. In case of such hospitals, the State Government will have to ensure that approvals are not granted by the hospital based Authorization Committee as the said committee cannot function. The question is in what manner, the State Government can monitor the functioning of hospital based Authorization Committees, especially in the case of those hospitals where during a particular British Calendar year the transplants are reduced to a figure below 25. We find that as per Clause (d) of Rule 12, the Secretary, Health or his nominee and the Director of Health Services or his nominee are required to be the members of the hospital based Authorization Committees. Rule 15 lays down the quorum for the meetings of hospital based committees. It provides that even quorum of minimum four members shall not be treated as complete unless the members as provided in Clause (d) of Rule 12 are present. Thus, it is clear that unless the members appointed in terms of Clause (d) of Rule 12 are present in the meeting, the quorum cannot be treated as complete. Hence, the hospital based committees cannot transact any business in absence of the two State Government nominees.

8. The State Government will have to issue necessary directions to the members of the hospital based Committees who are the Government Officers nominated as per clause (d) of Rule 12 to ascertain before attending the Authorisation committee meetings whether during the immediately previous year, less than 25 transplants have been performed in the

hospital. In a case where they find that less than 25 transplants have been performed during the immediately proceeding year, the members nominated in Clause (d) of Rule 12 shall bring to the notice of the Chairperson that the Committee does not possess power to grant authorisation for undertaking the transplant.

9. We, therefore, direct the State Government to issue directions for creating a mechanism for maintaining a centralized authentic record of organ transplants in all hospitals/institutions and to update the same on real time basis. The State Government shall ascertain at the commencement of every new British Calendar year, the number of human organ transplants undertaken in each hospital in the State. Depending upon the data, the State Government will have to take immediately establish hospital based Committees at the beginning of immediately succeeding year in the hospitals in which more than 25 transplants have taken place for which hospital based committee has not been established. The State Government will have to issue necessary directions to the members appointed in Clause (d) of Rule 12 to ensure that the hospital based Authorisation Committee does not function if in the immediately preceding year, the number of transplants do not exceed 24.

10. We direct the State Government to take appropriate steps as aforesaid and to issue necessary executive instructions, so that there is a proper monitoring of the hospital based Authorisation committees in the State. It is necessary to ensure that if during immediately previous British Calendar year, if the number of transplants in a particular hospital is less than 25, the hospital based Authorisation committee does not take any decision of granting authorisation. We direct the State Government to take appropriate steps in this behalf and file an affidavit of compliance on or before 3rd December, 2018. Necessary circular/instructions shall be issued by the State Government to all hospital based authorisation committees.

11. It is also necessary for the State to take appropriate steps for ensuing that the citizens are made aware of the provisions

of the said Act and the said Rules of 2014 and the scheme of the provisions thereof. Wide publicity shall be given by appropriate manner in a very simple language. The State Government shall decide in what manner effective steps should be taken to implement the provisions of the Act and the said Rules of 2014 with a view to rule out possibility of any corrupt practices or illegalities concerning human organ transplants. Even on this aspect, the Government will take appropriate decisions and steps.

Thereafter, the Court considered from time to time the issues concerning hospital based Authorisation Committees. As directions were not complied with, further orders were passed from time to time. There are affidavits filed on record from time to time. The last of such affidavits is of 15th March 2019 which is a joint affidavit filed by the Principal Secretary of the Public Health Department and the Secretary of Medical Education and Drugs Department, Government of Maharashtra. Paragraph-3 of the said affidavit deals with the direction issued by this Court to verify if certain hospitals registered with National Organ and Tissue Transplant Organization (NOTTO) which are not registered with the State Appropriate Authority were actually conducting organ transplant/ organ retrieval surgeries. The affidavit reports that the four hospitals in respect of which query was made were found to be not dealing with such surgeries as stated in the affidavit placing reliance on various reports.

3. We must note here that there cannot be any inconsistency between the record maintained by the State Appropriate Authority and NOTTO.

4. The affidavit of two Secretaries filed on behalf of the State Government also deals with the issue of the role played by five Regional Authorisation Committees. It is further pointed out that on these Regional Authorisation Committees, the posts of Assistant Professor of Medicine have been created on *ad hoc* basis. It is pointed out that the said posts could not be filled in. Therefore, it is pointed out that four Assistant Professors and one Associate Professor of Medicine have been given additional charge. On the earlier date, it was pointed out by the learned Government Pleader that though walk-in interviews were conducted, the said posts could not be filled in. We must note that the said posts have been created on *ad hoc* basis and not on permanent basis. The learned counsel appearing for the petitioners was right in pointing out that may be considering the fact that the posts are contractual posts, there may not be the candidates available who are interested in occupying the said posts.

5. As the constitution of Regional Authorisation Committees could not be made, four Assistant Professors and one Associate Professor of Medicine have been given additional charge of the members of the Regional Authorisation Committees. In the said last affidavit, it has been mentioned that for five posts of Assistant Professors, walk-in interviews were conducted when not a single candidate reported.

6. The learned Government Pleader submitted that considering available workload which is very limited, it is difficult to create full-time posts of Assistant Lecturers in Regional Authorisation Committees.

7. The Regional Authorisation Committees at Mumbai and Pune appear to have lot of work in the calender year 2018. The Committee at Mumbai received 321 cases for approval of organ transplant out of which 318 were approved. As far as the Pune Committee is concerned, 347 cases were received and all were approved. Whether a particular post is to be created on permanent basis or *ad hoc* basis is a matter which is normally required to be decided by the State Government. As the Regional Authorisation Committees at Mumbai and Pune have sufficient work, the State may consider of creating one full-time post of Assistant Professor in Medicine and make him a member of the Regional Authorisation Committees of Mumbai and Pune.

8. There were directions issued earlier to take steps to ensure that the citizens become aware about the provisions of the said Act and the said Rules of 2014. Paragraph-11 of the order dated 19th October 2018 is already quoted above. One of the objects of the said Act is to ensure that there are no illegalities or malpractices with transplant of human organs and, therefore, it is a matter of necessity that the State Government undertakes task of educating the citizens about the provisions of the said Act and the said Rules of 2014. The State Government needs to give publicity about the existence of Regional Authorisation Committees and Hospital Level Authorisation Committees. It will be ideal if the State Government on the official website of the appropriate department makes available all the details about the provisions of the said Act and the said Rules of 2014 in Marathi language and also incorporate frequently asked questions (FAQ) on the website.

Unless there is awareness about the provisions of the said Act and the said Rules of 2014, proper implementation of the said Act and Rules will not be made.

9. We grant time of six weeks from today to the State Government to develop and commission a centralized data software. Except on the aforesaid aspects, at this stage, no further directions are required to be given apart from the directions which we issue as under:

- (i) As per directions issued from time to time, the State Government shall ensure that appropriate hospital based Authorisation Committees shall be constituted and the said committees shall remain functional. As indicated in the earlier orders, if a number of transplants done in a particular hospital is less than 25 in a calender year, the hospital based Authorisation Committee cannot exist for the said hospital and necessary steps will have to be taken for dissolving the hospital based committee.
- (ii) As far as constitution of Regional Authorization Committees are concerned, the State shall ensure that the same function effectively. The State will endeavour to crate at least one permanent post of Assistant/Associate Professor so that the said incumbent can be a member of the Regional Authorisation Committees for the Mumbai and Pune where there are large number applications being filed;
- (iii) The State shall publish an advertisement at periodical intervals for filling in the vacant posts;

- (iv) As directed in paragraph-11 of the order dated 19th October 2018, the State Government shall give an adequate publicity to the provisions of the said Act and the said Rules of 2014 in such a manner that a common man is able to understand the provisions of the said Act and Rules. Publicity can be given in a traditional form such as publishing article in newspapers, conducting programmes on FM Radio etc. It will be appropriate if adequate publicity is given on a dedicated website or a website of the concerned department. It will be also appropriate if FAQs are uploaded and displayed on the concerned website of the State Government.
- (v) These directions will be in addition to the directions which are already issued and which continue to operate till today. No further directions are required to be issued.
- (vi) As and when the petitioners or their advocate desire to obtain information about the compliance with the directions issued in these petitions including the directions issued in this order, an application can be made by them to the State Government and the concerned department of State Government shall furnish the necessary information to them.

(M.S.SANKLECHA, J.)

(A.S.OKA, J.)