

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P. No. 6591 of 2019

Senthil Kumar

... Petitioner

Vs.

The Chairman

Authorisation Committee

Under the Transplantation of Human Organs Act, 1994

Directorate of Medical Education

Kilpauk, Chennai - 600 010.

... Respondent

Prayer :: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to provide clearance to the Global Health City, Chennai for Kidney transplant operation so as to enable the petitioner to donate his Kidney to his mother Mrs.Vani.

For Petitioner : Mr.R.Sreedhar

For Respondent : Mr.S.R.Rajagopal,
Additional Advocate General
Assisted by S.Kadhirvelu
Special Government Pleader

O R D E R

This matter is moved by way of lunch motion owing to the urgency involved in this case.

2. Mr.Kadhirvelu, learned Special Government Pleader takes notice for the respondent, who is being represented through the learned Additional Advocate General, Mr.S.R.Rajagopal.

3. An unfortunate mother by reason of her health issues, is however very fortunate and lucky enough to have a son like the petitioner, who seeks for issuing Mandamus directing the respondent to provide clearance to the Global Health City, Chennai for Kidney Transplantation operation so as to enable him to donate one of his Kidneys to his mother, Mrs.Vani.

4.The petitioner's mother is aged 53 years and she is suffering from End Stage Renal Disease. She is taking treatment at Global Health City, Chennai. On examination, the Doctors opined that both her Kidneys are not functioning and she needs transplantation of Kidney from a suitable donor. The petitioner, being her son, immediately consented to donate one of his Kidney to his mother and the Doctors also confirmed that he is suitable and medically fit to donate one of his Kidneys to his mother. The Government of Puducherry, through its Tahsildar issued a Certificate dated 18.12.2018 certifying that the petitioner and the said Mrs.Vani are son and mother residing at No.12, First Street, Mariamman Nagar, Karamanikuppam, Puducherry - 4. Indira Gandhi Government General Hospital and Post Graduate Institute, Puducherry also issued a No Objection Certificate dated 07.01.2019 certifying that the said institution has no objection for the emergency treatment to be taken by the said Vani for further management at any Government Institution/Government Recognised Higher Institution as she is diagnosed as a case of "ESRD for transplant". Thus, the Global Health City Hospital, through their communication dated 20.02.2019 addressed the the Director of Health & Family Welfare Services, Government of Puducherry, requesting for issuance of No Objection Certificate for the purpose of Renal Transplantation, since it is prerequisite that both the donor and recipient are supposed to get No Objection Certificate from their native State Directorate of Medical Education. Accordingly, the Directorate of Health & Family Welfare Services, Government of Puducherry, through its communication dated 21.02.2019 issued No Objection Certificate certifying that the Union Territory of Puducherry do not have any objection to consider the Kidney Transplantation for the petitioner's mother, the donor being the petitioner. Thereafter, the petitioner made a request to the respondent on 05.03.2019 requesting clearance to transplant operation so as to enable him to donate his Kidney to his mother at the earliest to save her life. Since the said request was not considered so far, the petitioner has approached this court and filed the present writ petition seeking for Mandamus as stated supra. It is stated that the respondent is insisting the petitioner to produce consent letter from his dependent namely, wife, who is said to have deserted the petitioner and living separately.

5.When the matter was taken up today immediately after lunch time, this court requested the learned Additional Advocate General, Mr.S.R.Rajagopal, who was present in the Court for some other item, to take notice and do the needful immediately so as to enable the ailing mother to get the treatment of Kidney Transplantation surgery at the earliest possible time.

6.The learned Additional Advocate General very fairly and quickly accepted the notice on behalf of the respondent and sought few minutes time to get instructions from the authorities over phone, owing to the urgency involved in this matter. Accordingly, the matter was passed over for few minutes and thereafter, it was taken up for further hearing. The learned Additional Advocate General came out with an immediate solution by suggesting that the petitioner may be directed to file an affidavit before the respondent, indemnifying the respondent from further action, if any at the hands of his dependent, who is otherwise expected to give consent for such transplantation.

7.At this juncture, it is to be noted that the petitioner is stated to be living separately from his wife for the past 2 years and that she deserted him all along. This Court, at this stage, is not expressing any view on the matrimonial dispute between the petitioner and his wife. However, when the present scenario requires immediate solution for facilitating the Kidney Transplantation and when the son himself has come forward to donate one of his Kidneys to his mother, there cannot be any further delay in providing clearance to transplant operation so as to enable the petitioner to donate his Kidney to his mother. Perusal of the relevant provision under the Transplantation of Human Organs and Tissues Act, 1994, though does not stipulate such consent as a condition precedent, it appears that as a matter of procedure, the respondent seeks such consent. Needless to say that observation of procedural formalities at times cannot stand in the way of the Authorities to attend an emergent situation, that too, when it involves saving of a life and that time is running short. When the mother is ailing and the son is willing to donate, certainly procedural formalities can never stand between them in showing such great and divineful gesture, as love and affection between the child and mother can never be measured or quantified by any statutory prescription.

8.One who gave life to the petitioner is now struggling for her life. God is merciful and has spoken through her son "I will save your Life". Could there be any better reciprocation than this act of a son to mother? This Court comes across day in and day out number of litigations where kith and kin fight with each other for the sake of succeeding the properties, unmindful of love and affection expected to flow between them naturally out of such wonderful relationship. But in this case, the wonderful son has come forward to save the life of his mother by donating his one kidney. Except to wish and pray The Almighty to bless both of them to live for long, whatelse one could say?

9.Before parting with this case, this Court records its deep appreciation on the learned Additional Advocate General Mr.S.R.Rajagopal, who has immediately acted and got a solution

to the issue, undoubtedly not only by discharging his duty as the Officer of the Court but also as a wonderful human being.

10. Accordingly, this writ petition is disposed of as follows:-

- (a) the petitioner shall file an affidavit of undertaking / indemnity indicating that his wife has deserted him and that he is living separately. Such affidavit should also indemnify the respondent against any future litigation. The petitioner shall file such affidavit immediately today or by tomorrow.
- (b) On receipt of such affidavit, the respondent shall give clearance to Kidney Transplantation operation forthwith so as to enable the petitioner to donate his Kidney to his mother by name, Mrs. Vani.

No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sni/maya

To

1. The Chairman
Authorisation Committee
Under the Transplantation of Human Organs Act, 1994
Directorate of Medical Education
Kilpauk, Chennai - 600 010.

2. The Government Pleader, High Court, Madras.

W.P. No. 6591 of 2019

CSL/07.03.2019

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