



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) No.12331 of 2019

and

W.M.P. (MD) Nos.9225 and 9226 of 2019

Sulthan

... Petitioner

Vs

1.The Principal Secretary to Government of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat, Chennai.

2.The Chairman / Dean,
Authorization Committee for Renal Transplantation,
Government Rajaji Hospital, Madurai.

3.The Chairman,
Meenakshi Mission Hospital research Centre,
Melur Road, Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the 2nd respondent in Aa.Thi.Mu.No:8122/Podhu 6/19, dated 08.05.2019 and quash the same as illegal and arbitrary and in consequence there of direct the 2nd respondent to accord consent to perform kidney transplant surgery to the petitioner's daughter Aneesha at once.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader
for R1 & R2

ORDER

The writ petitioner, Mr.Sulthan is father of S.Aneesha, who is aged about 13 years. She is suffering from chronic renal failure. She is under dialysis. She is taking treatment at Meenakshi Mission Hospital, Madurai. The child is desperately in need of renal transplantation. A distant relative of the writ petitioner namely., Habeeba had come forward to donate her kidney. An application has been submitted to the second respondent/Authorization Committee. The Committee by the impugned communication, dated 08.05.2019 returned the application to the third respondent. Questioning the same, this writ petition has been filed.



2. Heard the learned counsel on either side.

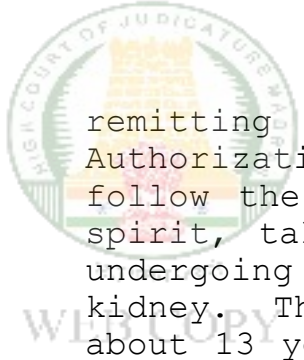
3. The learned Additional Government Pleader appearing for the first and second respondents would submit that it is only the State Level Authorization Committee that can give permission because the donor is not a "near relative" as defined in Section 2 (i) of the Transplantation of Human Organs and Tissues Act, 1994. "Near relative" has been defined as meaning spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter. Admittedly, the donor namely., Habeeba is only an aunt and she does not fall within the "near relative" category.

4. I carefully went through the materials enclosed in the typed set papers. Even though the child in question and the donor/Habeeba are not near relatives, they are related by blood. The revenue authorities including Tahisldar, Periyakulam Taluk had certified this fact and also drawn the genealogical tree indicating their connection. An enquiry was conducted by the Deputy Superintendent of Police, Periyakulam and he had certified on 13.03.2019 that Habeeba had offered to give her kidney by way of donation. Obviously, there cannot be any financial consideration in this case, because the writ petitioner/Sulthan appears to be rather poor.

5. These are matters that cannot brook any delay. This is because the fundamental right of the child guaranteed under Article 21 of the Constitution of India is involved. The learned counsel appearing for the writ petitioner drew the attention of this Court to the proceedings issued by the Government. Initially there was only one Authorization Committee comprising the Director of Medical Education, Chennai, Director of Medical and Rural Health Services, Chennai and Dean, Madras Medical College, Chennai as members. In order to avoid the difficulties faced by the patients undergoing transplantation in southern districts and western districts of Tamilnadu by travelling all the way to Chennai for approval, the Government has constituted two more additional Committees, one at Maduari and another one at Coimbatore. The Authorization Committee, Maduari comprises the Dean, Maduari Medical College, Joint Director of Medical Services, Maduari and DRO, Madurai, as its members. Therefore the second respondent is very much having the jurisdiction to decide the issue.

6. This Court is conscious of the fact that it is only the second respondent Committee that will have to take a call in the matter. Therefore, the communication impugned in the writ petition is quashed and the matter is remitted to the file of the second respondent Committee. But this Court has certainly indicate the manner in which the discretion of the second respondent is to be exercised.

7. The Madras High Court in the decision reported in (2008) 4 MLJ 1044 (*S. Samson V. Authorization Committee for implementation of Human Organ Transplantation, rep. by its Chairman, Chennai*) while



remitting to the Authorization Committee indicated that the Authorization Committee while re-examining the issue in detail must follow the provisions of the Act, not only in letter but also in spirit, taking cognizance of the fact that the patient is already undergoing dialysis and is need of immediate transplantation of kidney. The case on hand is similar. The child in question is aged about 13 years. The petitioner's counsel would point out that she is undergoing dialysis for more than five months. Unless transplantation is made immediately, the child may not survive. Considering the urgency in the matter, the second respondent is called upon to take a decision in the matter within a period of two weeks from the date of receipt of a copy of this order. The petitioner shall produce before the committee the donor also. The committee shall take note of the fact that the revenue authorities as well as the police authorities have categorically certified that the donor is a relative and that she had on her own volition offered to donate her kidney. As already observed by this Court that there is absolutely no scope for any financial consideration in this case, in view of the economic background of the writ petitioner.

8.The writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer/
Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS-II)

To:

1.The Principal Secretary to Government of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat, Chennai.

2.The Chairman / Dean,
Authorization Committee for Renal Transplantation,
Government Rajaji Hospital, Maduari.

3.The Chairman,
Meenakshi Mission Hospital research Centre,
Melur Road, Madurai.

+1 CC to M/s.SPL GP (SR-66672[F] dated 31/05/2019)

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate
(SR-66577[F] dated 30/05/2019)

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