

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.750 OF 2019

DATE : 23.01.2019

Between :

Gunda Eshwar, s/o. late Gunda Ramlingam,
Aged about 54 years, occu: Business,
R/o. H.No.91/B, Sagar Society, Road No.2,
Banjara Hills, Hyderabad and another.

... Petitioners

and

The State of Telangana, rep.by its Prl.Secretary,
Health, Medical & Family Welfare, Room No.359-A,
D-Block, 2nd Floor, Secretariat Buildings,
Hyderabad and others.

... Respondents

This court made the following :

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.750 OF 2019

ORDER :

First petitioner claims that he suffered renal failure and undertaking dialysis every alternative day. First petitioner was advised surgical extraction and transplantation of one new kidney by replacing any of the damaged kidneys. First petitioner contends that due to prolonged dialysis for the last three years side effects developed and is having other health problems. According to first petitioner, his wife is having medical problems and Doctors ruled out the donation of her kidney. He has 20 year child who is pursuing her education and cannot donate the kidney organ. Second petitioner, who is associated with the first petitioner, came forward to donate his kidney. As per medical advice, first petitioner applied to the competent authority to grant permission to accept the donation offered by the second petitioner. The request of first petitioner was rejected by the Authorization Committee for Organ Transplantation by proceedings dated NIL, September, 2018. Aggrieved thereby, appeal was preferred. The appellate authority vide his proceedings dated 08.01.2019 rejected the appeal affirming the decision of the Authorization Committee. Aggrieved thereby, this Writ Petition is filed.

2. Heard learned counsel for petitioners and learned Government Pleader for respondents.

3. On 13.01.2019 when the matter was taken up for consideration, on behalf of learned Additional Advocate General,

learned Special Government Pleader pointed out that there is inconsistency in the stand taken by the first petitioner with regard to the health condition of his wife. According to the learned Special Government Pleader, first petitioner was stating that his wife is suffering with Diabetic/Renal Calculus, whereas in the certificate issued by the Apollo Hospital, the above ailments were not mentioned. The Court noticed that certificate produced by the first petitioner to the effect that his wife is suffering from Diabetic/Renal Calculus is from a private hospital, without any date. Therefore, matter was adjourned to enable the first petitioner to place on record a clarificatory affidavit. Accordingly, clarificatory affidavit is filed enclosing treatment/medical reports.

4. The averments in the clarificatory affidavit along with the documents enclosed would disclose that Century Hospital examined the first petitioner and family members and furnished its Certificate dated 26.12.2018. The contents of the Certificate would disclose that wife of first petitioner is Diabetic/Renal Calculus. His daughter is aged 21 years and a student. The Radiology and Imageology Ultrasound Scan of whole Abdomen and Pelvis performed on wife of first petitioner is also enclosed in support of contention that wife is not suitable to donate her kidney. The Certificate also would disclose that the Doctors have interacted with the prospective donor and his wife about the nature of complications of removing kidney surgically and also the need to have regular checkup for life long.

5. From the reading of the order of appellate authority dated 08.01.2019, it is seen that the appellate authority opines that neither the hospital nor the appellant submitted any evidence or report towards wife and daughter of appellant being medically unfit for kidney donation. However, appellate authority also opines that both of them have filed affidavits stating that they are unwilling to donate the kidney. The appellate authority, therefore, holds that both wife and daughter are eligible to be kidney donors, but are unwilling. The appellate authority further observes that there is gross disparity between the prospective donor and the recipient's economic status and that no record is shown on the love and affection to donate the kidney. The appellate authority though observes that second petitioner is willing to donate his kidney, but holds that it is not voluntary donation and also not a genuine one and, therefore, rejects the appeal.

6. In W.P.No.20452 of 2018, learned single Judge of this Court considered elaborately on the issue of donation of kidney by a person who is not a family member. The application submitted for accepting of such donation was rejected by the Committee and affirmed by the appellate authority. Similar plea was raised in the said writ petition on economic disparity between the donor and the recipient and that love and affection pleaded for donation of kidney is just imagination and absence of monetary consideration could not be ruled out.

7. On due consideration of the provisions of the Transplantation of Human Organs and Tissues Act, 1994 and the Rules made thereunder and the decisions of various High Courts

and the Supreme Court, learned single Judge opined that rejecting the request of donor to donate his kidney merely on the ground that there is huge financial disparity between the donor and the recipient is not valid and issued consequential directions. It is appropriate to note the findings of the learned single Judge on this aspect:

“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.”

8. I am in respectful agreement with the said view of learned Judge. In the instant case also, except holding that there is a huge financial disparity between the first petitioner and the second petitioner as recipient and the donor respectively, no other material is placed on record to show that it is not a voluntary donation out of love and affection, but donation was for monetary consideration. The finding arrived at by the primary authority as well as appellate authority is not based on the material placed on record. As noted above, the wife of first petitioner was examined by the Century Hospital and found that wife is not suitable for donating her kidney. They have also ruled out the possibility of donation of kidney by his daughter as she was aged only 21 years and is pursuing her education. The Century Hospital also interacted with the donor and his wife and both have expressed their willingness to donate kidney voluntarily. The fact that first

petitioner is suffering from Renal Calculus and is on dialysis for the last three years, and the Doctors advised him to undergo for kidney transplantation. Therefore, first petitioner urgently requires the surgery to replace at least one of the effected kidneys to save his life. Except for the fact that second petitioner is employed with the first petitioner, no other material is placed on record to show that the decision of the second petitioner to donate his kidney was not voluntary, but was for financial consideration. Thus, rejection of request of first petitioner for kidney transplantation of donor by the primary authority and the confirmation by the appellate authority is not made in valid exercise of power and the same is set aside.

9. Having regard to the present health condition of first petitioner and that he needs to undergo surgery for extraction and removal of at least one kidney and transplantation in its place, the 3rd respondent is directed to forthwith grant approval for kidney transplantation from the second petitioner to the first petitioner. Writ Petition is accordingly allowed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 23.01.2019
Kkm

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.750 OF 2019

DATE : 23.01.2019

kkm

