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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3880/2019**

SHQRAN SALEH QASEM ALI AND ANR. Petitioners

Through: Mr Faran Ahmed with Mr Devendra
Verma, Advocates.

versus

**AUTHORIZATION COMMITTEE, MAX SUPER SPECIALITY
HOSPITAL AND ANR. Respondent**

Through: Mr Jivesh Kumar Tiwari, Sr. Panel
Counsel for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 15.04.2019

CM No.17593/2019

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition impugning an order dated 01.04.2019 passed by the Appellate Authority, under section 17 of the Transplantation of Human Organs and Tissues Act, 1994, rejecting the petitioners appeal against the order dated 22.02.2019 passed by the Authorization Committee.

3. The petitioners are nationals of Yemen and had arrived in India on a medical visa for liver transplantation. Petitioner no.1 (who is aged 48 years) is stated to be suffering from liver cirrhosis, and is in urgent need of a liver transplantation. Petitioner no.2 is aged about 20 years and it is stated to be

the petitioner no.1's mother's half brother's son.

4. The petitioner no.1's case for seeking donation from petitioner no.2 has been rejected by the Authorisation Committee on several grounds. First of all, it was found that the family tree was inconsistent with the documents produced by the petitioners, more importantly, the birth date and the ID card. Second, no association between petitioner no.1 and petitioner no.2 could not be established as no family photographs of the petitioners together were produced. Third, the Authorization Committee found it odd that even though petitioner no.2 was only 20 years old, he was not accompanied by any immediate relative for a major surgery, such as the one proposed. Fourth, there was no material to show the financial strength of petitioner no.2, which would persuade the Authorisation Committee to accept that the transactions were without any monetary element. Fifth, there were discrepancies in the statements made by the petitioners regarding them meeting together, since the last one year.

5. In terms of Section 9(5) of the Transplantation of Human Organs and Tissues Act, 1994, the removal and transplantation of human organs and tissues is prohibited without prior approval of the Authorisation Committee. In terms of Rule 7(3) of the Transplantation of Human Organs and Tissues Rules, 2014, the Authorisation Committee is required to evaluate whether there is any commercial transaction between the recipient and the donor. The Committee is also required to prepare a explanation of the link between the recipient and the donor, and the circumstances which has led the donor to agree for the donation of his organ. Sub Rule (3) of Rule 7 is set out below:-

“7. Authorisation Committee

XXXX

XXXX

XXXX

XXXX

(3) When the proposed donor and the recipient are not near relatives, the Authorisation Committee shall,-

(i) evaluate that there is no commercial transaction between the recipient and the donor and that no payment has been made to the donor or promised to be made to the donor or any other person;

(ii) prepare an explanation of the link between them and the circumstances which led to the offer being made;

(iii) examine the reasons why the donor wishes to donate;

(iv) examine the documentary evidence of the link, e.g. proof that they have lived together, etc.;

(v) examine old photographs showing the donor and the recipient together;

(vi) evaluate that there is no middleman or tout involved;

(vii) evaluate that financial status of the donor and the recipient by asking them to give appropriate evidence of their vocation and income for the previous three financial years and any gross disparity between the status of the two must be evaluated in the backdrop of the objective of preventing commercial dealing;

(viii) ensure that the donor is not a drug addict;

(ix) ensure that the near relative or if near relative is not available, any adult person related to donor by blood or marriage of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ or tissue, the authenticity of the link between the donor and the recipient, and the reasons for donation, and any strong views or disagreement or objection of such kin shall also be recorded and taken note of.”

6. In the present case, the Authorisation Committee has indicated cogent reasons for rejecting the petitioners request for permission for liver transplantation.
7. Further, the Appeal Committee has also considered the same and has found no infirmity with the order passed by the Authorization Committee.
8. In view of the above, this Court is also unable to accept that any interference with the said orders are called for.
9. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

APRIL 15, 2019

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