

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.13533 of 2020

and

W.M.P.Nos.16767 & 16768 of 2020

(Heard through VC)

1. P. Sankar
2. V.Sobana

... Petitioners

Vs.

1.The Authorisation Committee (Transplantation),
Rep. by its Chairman,
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai-600 010.

2.K.G. Hospital,
Rep. by its Chairman,
No. 5, Government Arts college Road,
Coimbatore - 641 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd Respondent to forward the Petitioners' Medical Records and necessary documents in the Prescribed form to the 1st Respondent and the 1st Respondent to scrutinise the same either through physical hearing or through virtual hearing and grant approval for kidney transplantation from the 2nd petitioner to 1st Petitioner and to do the transplantation by the 2nd respondent on the priority basis on the basis of the Petitioners' representation dated 07.08.2020.

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For Petitioner : Mr.M.Manivasagan

For Respondent-1: Mr.E.Manoharan
Special Government Pleader

For Respondent-2: Mr.Karthik Jegannathan

ORDER

The petitioner has sought for a writ of mandamus to the 2nd Respondent to forward the Petitioners' Medical Records and necessary documents in the Prescribed form to the 1st Respondent and the 1st Respondent to scrutinise the same, either through physical hearing or through virtual hearing and grant approval for kidney transplantation from the 2nd petitioner to 1st Petitioner and to do the transplantation by the 2nd respondent on priority on the basis of the Petitioners' representation dated 07.08.2020.

2. The first petitioner is suffering from end-stage renal failure. Due to his renal failure he has to undergo dialysis twice a week. The Doctor, who is treating him has strongly recommended surgical extraction and transplantation of a new kidney in its place. Since the relatives are not in a position to donate kidney for his transplantation, the second petitioner, who is his family friend, has voluntarily come forward to donate her kidney for transplantation. When the petitioners approached the second respondent, namely K.G.Hospital for kidney transplantation, the doctors have examined the petitioners and have taken various tests. On conclusion, the doctors have diagnosed that the second petitioner is fit to donate her kidney as her tissue is matching with the first petitioner's tissue, and that the kidney can be transplanted to him. However, the second respondent vide their letter dated 09.07.2020, rejected petitioners' request on the ground that petitioners are not blood relatives and as per their hospital policy, they are not accepting kidney donation of persons other than blood relatives except with the approval of the first respondent.

3. In this regard, the petitioners have sent their representation to the respondents on 07.08.2020 requesting the second respondent to forward the petitioners' Medical Records to the first respondent and requesting the first respondent to consider and grant approval for kidney donation and transplantation. Though the same were received by the respondents on 14.08.2020 & 13.08.2020, respectively, so far no orders have been passed. Hence, a mandamus is sought for.

4. Heard the learned counsel appearing on both sides and perused the materials available on record.

5. Considering the facts and circumstances of the case, the petitioners are permitted to approach the first respondent and make necessary application(s) and the second respondent is directed to consider the representations of the petitioners dated 07.08.2020, wherein, they have requested the second respondent to forward the Medical Records with the necessary

documents as required under the Transplantation of Human Organs and Tissues Act, 1994 pertaining to the case of the first petitioner.

6. The learned counsel appearing for the first respondent also states that it is only based on the reports that may be sent by the second respondent, the first respondent would consider and take action. This is in view of G.O. Ms. No.341 Health and Family Welfare Department dated 29.10.2003, passed to prevent commercial dealings in human organs and fix the responsibility on the approved and recommending hospitals.

7. The learned counsel appearing for the second respondent stated that, as certain verifications and formalities had to be followed there was a delay in sending the documents and that now the papers are ready, it would send the papers to the first respondent. Accordingly, the second respondent is directed to forward the same to the first respondent, both physically as well as through E-mail, so that it reaches before 19.10.2020, as it is stated by the learned counsel for the first respondent that the Authorisation Committee (Transplantation) is scheduled to have its meeting on 21.10.2020 and the case of the petitioners can be considered at the earliest.

8. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

To

1.The Chairman,
Authorisation Committee (Transplantation),
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai-600 010.

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2.The Chairman,
K.G. Hospital,
No. 5, Government Arts college Road,
Coimbatore - 641 018.

+1cc to Mr.M.Manivasagam, Advocate Sr.34521

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srg 20/10/2020



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