

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.4975 of 2021

and

WMP No.5553 of 2021

S.Ramamoorthi

..... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary,
Department of Health and Family Welfare,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. Authorisation committee (Transplantation),
Represented by its Chairman,
State Authorisation Committee,
Puducherry.

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

4. K.G. Hospital,
Represented by its Managing Director,
5, Government Arts College Road,
Opposite Court,
Gopalapuram,
Coimbatore - 641 018.

..... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to grant approval and permission for urgent kidney transplant surgery.

For Petitioner : Mr.L.P. Maurya
For Respondents : Mr.K.Parameswaran,
Government Advocate for R1
Mr.Devie Soccalingame,
Government Advocate for R2
Pondy.

ORDER

Heard Mr.T.P.Maurya, learned counsel for the petitioner. Mr.K.Parameswaran, learned Government Advocate accepts notice for the first respondent and Mr.Devie Soccalingamnee, learned Government Advocate accepts notice for the second respondent.

2. By consent of both the parties, this Writ Petition is taken up for final disposal.

3. This Writ Petition has been filed for a mandamus seeking for a direction to the respondents to grant approval and permission for urgent kidney transplantation surgery.

4. The petitioner seeks to undergo Kidney transplantation from the fourth respondent, which is a notified hospital. The donor for the said Kidney transplant is Mrs.M.Geetha, who is one of the distant relative of the petitioner but not a near relative as defined under Section 2 (i) of the Transplantation of Human Organs and Tissues Act, 1994. The supporting affidavit of the unrelated donor Mrs.M.Geetha has also been filed by the petitioner in this Writ Petition.

5. Under law, permission is required, whenever the donor is not a near relative, permission has to be obtained under Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014.

6. Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014 deals with cases where the donor is an unrelated donor. The Transplantation of [Human Organs and Tissues], Act, 1994 and its Rules have been enacted to prevent commercial exploitation of human organ donation.

7. It is the case of the petitioner that generally all notified hospitals are reluctant to forward the request made for organ donation from unrelated donors to the authorised committee as per Rule 19 of the aforementioned Rules. In such circumstances, the petitioner has given a representation on 25.01.2021 to the 4th respondent / hospital, to forward the medical records of the petitioner to the appropriate authority for approval of kidney transplantation and do the kidney transplantation operation at an early date from the donor, viz., Mrs.M.Geetha. Since the said request has not been considered, the petitioner has approached this Court under Article 226 of

the Constitution of India.

8. Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014 reads as follows:

"Procedure in case of transplant other than near relatives:-

Where the proposed transplant is between other than near relatives and all cases where the donor or recipient is foreign national (irrespective of them being near relative or otherwise), the approval will be granted by the Authorisation Committee of the hospital or if hospital based Authorisation Committee is not constituted, then by the District or State level Authorisation Committee."

9. As seen from the aforementioned Rule, either the Authorisation Committee of the hospital or if the hospital based Authorisation Committee is not constituted, the District or State Level Authorisation Committee can grant permission for Organ transplantation in the case of unrelated donors.

10. The petitioner is seeking for Kidney transplantation at the 4th respondent hospital, but however, the hospital is reluctant to forward the proposal for Organ transplantation through unrelated donors to the authorisation committee. In such circumstances, he has given a representation to the 4th respondent requesting them to prepare and forward medical records to the appropriate authority for approval of kidney transplantation for the petitioner through Mrs.M.Geetha, being an unrelated donor at the earliest. As seen from the affidavit filed in support of the writ petition, the petitioner is presently undergoing dialysis twice a week. Being a kidney transplantation, the petitioner's representation will have to be considered with utmost urgency.

11. Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014 also does not prohibit the notified hospitals to permit the petitioner to get Organ transplantation done through an unrelated donor. The only condition is that either the hospital Authorisation Committee or the District or State Level Committee constituted by the Government will have to grant permission for the same.

12. No prejudice will be caused to the respondents, if the petitioner's proposal seeking for Kidney transplantation through Mrs.M.Geetha, a distant relative / unrelated donor is forwarded by the 4th respondent hospital to the authorisation committee / 3rd respondent under the Transplantation of (Human Organs and Tissues), Act 1994 for the purpose of passing final orders on the petitioner's representation seeking for permission to get

Kidney transplantation done through an unrelated donor.

13. For the foregoing reasons, this Court directs the 4th respondent to forward the proposal of the petitioner to undergo kidney transplantation through Mrs.M.Geetha, a distant relative / unrelated donor to the 3rd respondent, within a period of two days from the date of receipt of a copy of this order and upon receipt of the said proposal from the 4th respondent hospital, the authorisation committee / 3rd respondent shall decide upon the proposal forwarded by the 4th respondent / hospital, within a period of two days thereafter, as per Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014.

14. With the aforesaid direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Secretary,
State of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Chairman,
Authorisation committee (Transplantation),
State Authorisation Committee,
Puducherry.

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

4. The Managing Director,
K.G. Hospital,
5, Government Arts College Road,
Opposite Court,
Gopalapuram,
Coimbatore - 641 018.

+1 cc to M/s. L.P.Maurya, Advocate Sr.No. 11651
+1 cc to M/s. L.P.Maurya ,Advocate Sr.No. 11797(26/02/2021)

W.P. No.4975 of 2021

JPII(CO)
RMP(25/02/2021)



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