

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.6742 of 2021 &
W.M.P.No.7300 of 2021

1.T.Divya
2.M.Kanagamuthu

...1st Petitioner
...2nd Petitioner

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

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing respondents 1 and 2 to consider the petitioners' representation dated 25.02.2021 and pass orders in accordance with law and grant approval for kidney transplantation from 2nd petitioner to 1st petitioner and to do the transplantation by the 2nd respondent on the priority basis within the time to be stipulated by this Court.

For petitioner... Mr.M.Manivasagam
For respondents... Mr.V.Shanmuga Sundar
Special Government Pleader for R1
Mr.Yoga Narasimhan for R2

ORDER

This Writ Petition has been filed for a mandamus seeking for a direction to the respondents 1 and 2 to consider the petitioners' representation dated 25.02.2021 and pass orders in accordance with law and grant approval for kidney transplantation from 2nd petitioner to 1st petitioner and to do

the transplantation by the 2nd respondent /hospital on priority basis.

2. Mr.V.Shanmuga Sundar, learned Special Government Pleader accepts notice on behalf of the first respondent and Mr.Yoga Narasimhan, learned counsel accepts notice on behalf of the second respondent. By consent of both the parties, this Writ Petition is taken up for final disposal.

3. Heard Mr.M.Manivasagam learned counsel for the petitioner, Mr.V.Shanmuga Sundar, learned Special Government Pleader for the first respondent and Mr.Yoga Narasimhan, learned counsel for the second respondent.

4. Mr.Yoga Narasimhan, learned counsel for the 2nd respondent on instructions would submit that the 2nd respondent has no objection for forwarding the proposal of the 1st petitioner to the 1st respondent for their approval.

5. The 1st petitioner seeks to undergo Kidney transplantation from the 2nd respondent / hospital. The donor for the said Kidney transplant is the 2nd petitioner, family friend of the 1st petitioner / an unrelated donor. The 2nd petitioner has sent a representation, dated 25.02.2021 to the 1st respondent, which has also been filed along with this Writ Petition.

6. Under Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014, permission is required from the authorised committee viz., the 1st respondent herein, whenever the donor is not a near relative.

7. 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.

8. It is the case of the petitioners 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 1st petitioner has given a representation to the 2nd respondent / hospital to forward the medical records of the 1st petitioner to the appropriate authority for approval of kidney transplantation and do the kidney transplantation operation at an early date from the donor, viz., 2nd petitioner. Since the representation has not been considered, the petitioners have approached this Court under Article 226 of the Constitution of India.

9. 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."

10. 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.

11. The 1st petitioner is seeking for Kidney transplantation at the 2nd respondent/ hospital, but however according to the petitioners, the 2nd respondent / hospital is reluctant to forward the proposals for Organ transplantation through unrelated donors to the authorisation committee. In such circumstances, the petitioners have given a representation to the 2nd respondent /hospital requesting them to prepare and forward medical records to the appropriate authority for approval of kidney transplantation for the 1st petitioner through the 2nd petitioner, being an unrelated donor at the earliest. As seen from the affidavit filed in support of the writ petition, the 1st petitioner is presently undergoing dialysis twice a week. Being a kidney transplantation, the petitioners' representation will have to be considered with utmost urgency.

12. 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.

13. No prejudice will be caused to the respondents, if the 1st petitioner's proposal seeking for Kidney transplantation through 2nd petitioner, an unrelated donor is forwarded by the 2nd respondent / hospital to the authorisation committee / 1st respondent under the Transplantation of [Human Organs and Tissues], Act, 1994 for the purpose of passing final orders on

the 1st petitioner's representation seeking for permission to get Kidney transplantation done through an unrelated donor.

14. For the foregoing reasons, this Court directs the 2nd respondent / hospital to forward the application / proposals of the 1st petitioner seeking for kidney transplantation through the 2nd petitioner, a family friend / an unrelated donor to the 1st respondent, within a period of one week from the date of receipt of a copy of this order. On receipt of the said application, the 1st respondent shall decide upon the said application / proposals and pass final orders, within a period of two weeks thereafter and communicate the same to the 2nd respondent / hospital.

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

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

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

+1 CC to Mr.M.Manivasagam, Advocate sr 16632.

+1 CC to Mr.G. Yoga Narasimhan, Advocate sr 16633.

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SP(18/03/2021)