

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.NO.10510 OF 2021

AND

W.M.P.NO.11099 OF 2021

1.S.Syed Ibrahim

2.R.Fathima

.. 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

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 17.04.2021 and pass orders in accordance with law and grant approval for kidney transplantation from the second petitioner to the first petitioner and to do the transplantation by the second respondent on the priority basis within the time to be stipulated by this Court.

For petitioner ... Mr.M.Manivasagam

For respondent-2 ... Mr.Yoga Narasimhan

ORDER

Heard Mr.M.Manivasagam learned counsel for the petitioner and Mr.Yoga Narasimhan, learned counsel 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 a direction to the respondents to consider petitioners' representation dated 17.04.2021 and pass orders in accordance with law and grant approval for kidney transplantation from the second petitioner to the first petitioner and to do the transplantation by the second respondent/hospital on priority basis within a time frame to be fixed by this Court.

4. The first petitioner is affected with end-level kidney failure and he is undergoing dialysis twice a week. The Doctor, who is treating the first petitioner, has strongly recommended surgical extraction and transplantation of kidney. Since the blood group of the first petitioner's relatives are not suitable for kidney transplantation, the second petitioner, viz., R.Fathima, who is a family friend of the first petitioner, an unrelated donor, has come forward to donate her kidney, out of love and affection. The second respondent rejected the request of the petitioners for kidney transplantation, vide their letter dated 18.12.2020. Hence, the second petitioner has sent a representation, dated 17.04.2021 to the respondents requesting them to grant permission/approval for donation of kidney by the second petitioner, viz., R.Fathima and to direct the Doctors of the second respondent-hospital to do the kidney transplantation operation at an early date. Since the representation has not been considered, the petitioners have approached this Court under Article 226 of the Constitution of India.

5. The learned counsel for the petitioner has brought to the notice of this Court that in similar circumstances, this Court had passed an order on 25.02.2021 in W.P.No.4172 of 2021, wherein it has been held as follows:

"6. Under Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014, permission is required from the authorised committee viz., the 1<sup>st</sup> 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 1<sup>st</sup> petitioner is seeking for Kidney transplantation at the 2nd respondent/hospital, but however according to the petitioners, the 2<sup>nd</sup> 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 2<sup>nd</sup> respondent / hospital."

6. In the case on hand, it is seen from the records that the first petitioner is undergoing dialysis twice a week and transplantation of kidney is necessary for his survival. In

view of the legal embargo relating to donation of kidney by persons, other than relatives, the first petitioner has made the present representation for consideration of his case for transplantation of kidney and in view of his medical condition, his representation needs to be considered with urgency.

7. Mr.Yoga Narasimhan, learned counsel for the second respondent, on instructions, submits that the second respondent has no objection for forwarding the proposal of the first petitioner to the first respondent for their approval.

8. Considering the above facts and the circumstances of the case and in view of the order of this court in W.P.No.4172 of 2021, dated 25.02.2021, on similar circumstances, this Court directs the second respondent/hospital to forward the application/proposals of the first petitioner seeking for kidney transplantation through the second petitioner, a family friend/an unrelated donor, to the first 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 first 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 second respondent / hospital.

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

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srn

To

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

+1cc to Mr.Yoga Narasimhan, Advocate, S.R.No.2558  
+1cc to Mr.M.Manivasagam, Advocate, S.R.No.25557

W.P. No.10510 of 2021  
and W.M.P.No.11099 of 2021

PL(CO)  
CS/01/07/2021