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W.P.(MD)No.21011 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

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THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P. (MD)No.21011 of 2021

and

W.M.P. (MD)No.17606 of 2021

B.George

... Petitioner

vs.

1.The Chairman,
The Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

2.The Medical Superintendent,
Apollo Speciality Hospital,
Chennai By-Pass Road,
Ariyamangalam, Old Paalpannai,
Trichy- 620 010.

3.J.Freddy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to quash the impugned order vide L.Dis.No.75668/H&D 02/4/2021, dated 15.11.2021 passed by the first respondent and further to direct the first respondent to grant approval for renal transplantation as required by the third respondent and the petitioner through our application, dated 04.10.2021 before the second respondent.

For Petitioner	: Mrs.Rekha Sivakumar
For R1	: Mr.D.Ghandiraj
	Special Government Pleader

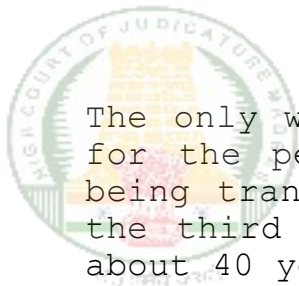
O R D E R

The Writ Petition was mentioned seeking urgency and permission was sought to move it as Lunch Motion. Taking into consideration the facts, permission was granted.

2.The Writ Petition has been filed in the nature of Certiorarified Mandamus, seeking interference with an order of the first respondent/the Chairman, the Directorate of Medical Education, Kilpauk, Chennai-600 010, dated 15.11.2021 in L.Dis.No.75668/H&D 02/4/2021.

3.The short fact, as pleaded in the affidavit filed in support of this Writ Petition, is that the petitioner herein, who is aged 40 years, is unfortunately suffering by end stage renal disease.

<https://hcservices.ecourts.gov.in/hcservices/>



The only way in which this particular disease could be treated is for the petitioner to have the benefit of an alternative kidney being transplanted. The petitioner has been quite fortunate that the third respondent, his own cousin, J.Freddy, who is also aged about 40 years, had come forward to donate one of his kidneys.

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4. Medical opinion had been obtained and they have given a positive report insofar as transplantation is concerned and on the fact that the such kidney of the third respondent would in no way hinder either the life span of the third respondent or would not affect in any manner the functioning of other organs of the petitioner herein. It had also been stated that the petitioner would benefit by such transplantation. All the necessary conditions have been complied with.

5. Finally, the matter had reached the desk of the first respondent. The first respondent had issued the impugned order, wherein, he had stated that such transplantation has been rejected, since the wife of the third respondent had not given a consent affidavit.

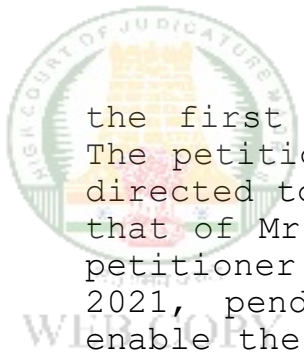
6. The learned Counsel for the petitioner, however, brought to the notice of this Court about I.D.O.P.No.21 of 2019, which is now pending on the file of the Family Court, Pudukottai. The said litigation is between the third respondent and his wife, seeking to frustrate the marital relationship between them. The learned Counsel for the petitioner further stated that in view of such strained relationship between the third respondent and his wife, it would highly impossible to expect that she would come forward and willingly give an affidavit, as is sought by the first respondent.

7. On the other hand, the definition of near relative had been pointed by the learned Counsel for the petitioner and one of the relatives is always the mother. The mother of the third respondent had given necessary affidavit stating that she had no objection for the third respondent to donate one of his kidneys.

8. I find sufficient reasons to interfere with the order of the first respondent and permit the first respondent proceed further by passing an order. I would therefore, set aside the the order of the first respondent and direct that affidavit of the mother of the first respondent would be sufficient for procedural requirement to enable the third respondent to donate one of his kidneys, if other factors are said to be normal by the medical experts.

9. It is also brought to my knowledge that quite apart from the mother, the sister of the third respondent had also given her consent affidavit.

10. These are more sufficient requirements to interfere with the order of the first respondent. The impugned order passed by



the first respondent, dated 15.11.2021, is therefore, set aside. The petitioner or any of the representatives of the petitioner, is directed to forward the application of the patient, Mr.B.George and that of Mr.J.Freddy, along with the affidavit of the mother of the petitioner and also a copy of the petition in I.D.O.P.No.21 of 2021, pending on the file of the Family Court, Pudukottai, to enable the third respondent to actually donate one of his kidneys to the petitioner herein. It is hoped that the first respondent would pass necessary orders at an early date. If required, the first respondent may also clarify the facts directly from the third respondent and his mother.

11.With the said observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

12.In view of the order now passed by this Court, notice to the second and respondents is dispensed with. The learned Counsel for the petitioner may forward a copy of this order to the second and third respondents.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

The Chairman,
The Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

+4 CC to M/s.C.SIVAKUMAR, Advocate (SR-35732 & SR-35563)

+1 CC to M/s.SPL GP (SR-35655[F] dated 24/11/2021)

Order made in
W.P. (MD) No.21011 of 2021
23.11.2021

RS (30.11.2021) 3P 7C