

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P(C) No.781 of 2022

Sukhen Ghosh

....

Petitioner(s)

Mr.K.K.Mishra, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr.S.P. Panda. AGA

Mr.K.Mohanty, Advocate

(For O.P.Mo.3)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
11.02.2022**

Order No.

3.

1. Heard Mr.Mishra, learned counsel for the petitioner, Mr.Panda, learned Additional Government and Mr.Mohanty, learned counsel appearing for the opposite party no.3, doner.

2. This writ petition involves the following prayer:

“The petitioner, therefore, prayed that this Hon’ble Court may graciously be pleased to issue Rule Nisi calling upon the opposite parties to show-cause as to why

(i) The order dated 29.12.2021 under Annexure-2 shall not be quashed;

(ii) The opposite parties specifically opposite party no.2 shall not be directed to forthwith release the requisite NOC for kidney transplantation of petitioner being donated by opposite party no.3;

And if the opposite parties fail to show-cause or show insufficient cause the said rule be made absolute;”

3. Factual background involved herein is that petitioner being a chronic patient in requirement of urgent kidney transplantation

finding no relative came forward to have the donation in kidney plantation in process. Under the provision of the Transplantation of Human Organs and Tissues Act, 1994, petitioner arranged a private donor and taking consent of such donor has approached the competent authority for arranging kidney transplantation. It appears, after the arrangement of a donor, an investigation was undertaken by the competent authority required to grant permission by way of NOC for such transplantation. Upon recommendation, the matter was taken up for consideration by the State Level Authorization Committee, who have come to opine that even though there is no difficulty in the transplantation but however the committee suspects there might be some commercial transplantation that exists in the proposed transplantation and accordingly declined to grant NOC resulting filing of this writ petition.

4. This matter was taken up for fresh admission on 18.01.2022 and adjourned to subsequent date directing the Government-opposite parties to take instruction, while also issuing notice to opposite party no.3, particularly the donor involved herein.

5. Advancing his submission, Mr.Mishra, learned counsel appearing for the patient-petitioner involved herein submitted that the requirements under the act and the provision submitted that once a donor is arranged and the donor comes up to help, only for permitting for such transplantation of organ, the authority has to proceed with transplantation however in adherence of provision at Rule 5 & Rule 7, particularly Rule 5 (3) of the Transplantation of Human Organs and tissues Rules, 2014. It is in the premises and for the donor having no objection absolutely, Mr. Mishra, learned counsel for the petitioner contended that there is in fact no difficulty in grant of NOC nor there is any difficulty in the transplantation on the part of the donor, opposite party no3.

6. Mr. Mohapatra, learned Additional Government Advocate however taking this Court to the observation of the competent authority, particularly, the State Level Authorization Committee on Transplantation of Human Organs and Tissues, Odisha attempted to support the observation on refusal on grant of NOC by the Committee involved. Opposite party no.3 represented by Mr.Mohanty, learned counsel makes a clear statement in Court that there is in fact no involvement of commercial transaction and there is no difficulty on the part of the opposite party no.3 in allowing transfer of organ i.e. kidney from her own body.

7. Considering the rival contentions of the parties this Court finds there is no difficulty in so far as offer of the donor in taking the particular organ from the donor and in planting the same in the patient at risk. This Court finds, the Committee indicated hereinabove, comes to record reasonable belief that there might be some commercial transplantation. Taking into account the whole disclosure in the declining order, this Court finds there is absolutely no material available in coming to such apprehension or belief for having any commercial transfer. This Court observes in absence of specific material, the Authority went on wrong in declining NOC even in spite of involvement of life risk of the patient who is suffering from failure of kidney and his life is already at risk. Considering the request at the Committee level and for the opinion of this Court that there has been casual decision involving such matter by the Committee, while observing the Committee hereafter remains careful while taking appropriate decision involving such matter. This Court accordingly interfering in the order of the committee dated 28.12.2021 finds place at page 10 of the brief, sets aside the same. Taking note of the submission of Mr.Mishra, learned counsel for the petitioner that the patient involved is in critical stage, this Court directs the committee to grant required NOC in favour of the patient

through this representative for transplantation of kidney within 24 hours from submission of certified copy of this order.

8. In the result, the writ petition succeeds. No order as to cost.

(Biswanath Rath)
Judge

Sks

