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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.2809 of 2022
& WMP No.2954 of 2022

1. L.Chandra
2. Mrs.Megala ... Petitioners

Vs

1. K.G.Hospital
rep. By its Chairman,
No.5, Govt. Arts College Road,
Coimbatore - 641 018.
2. The Authorisation Committee (Transplantation)
rep. By its Chairman,
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai - 600 010. ... 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 07.01.2022 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 1st respondent on priority basis within the time to be stipulated by this Court.

For Petitioner : Mr.Manivasagam
for M.Manivasagam Associates
For Respondents : Mrs.Elizabeth Seshadri - R1
Mr.C.Jayaprakash
Government Advocate - R2

ORDER

WMP No.2954 of 2022 filed seeking permission to file a single Writ Petition is ordered.



2. Mrs.Elizabeth Seshadri, learned Counsel accepts notice for R1 and Mr.C.Jayaprakash, learned Government Advocate accepts notice for R2 and both are armed with instructions to proceed with the matter finally. Hence, by consent expressed by both learned counsel, this Writ Petition is disposed finally even at the stage of admission.

3. The petitioners seek a direction to the respondents to consider representation dated 07.01.2022 for grant of approval for transplantation of Kidney of the 2nd petitioner to the 1st petitioner on priority basis, seeing as she is affected with end stage renal failure and is presently undergoing dialysis.

4. On instructions received, Mr.Jayaprakash would submit that the Committee is convening on 18.02.2022 and that the case of the petitioners is on its agenda.

5. Mrs.Elizabeth, learned counsel appearing for the hospital would confirm that the entire records of the patient and the donor and all other materials required for the Committee to take a decision have been conveyed to the Committee.

6. Rule 19 provides for procedure in case of transplant other than near relatives and reads as follows:

'19. 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.'

7. The ball thus lies before the Committee and an appropriate decision in accordance with law and all applicable Rules and Regulations will be taken by it at the meeting scheduled on 18.02.2022.

8. Learned counsel for the petitioner specifically prays that the donor and the recipient may be heard prior to the decision being taken in the matter. My attention is drawn to the provisions of Section 9 of the Transplantation of Human Organs and Tissues Act, 1994 (in short 'Act'), Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014 (in



short 'Rules') as well as Government Order in G.O.(Ms) No.175 Health and Family Welfare (z1) Department, dated 06.06.2008 in terms of which certain guidelines has been set out for proper conduct of proceedings in this regard.

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9. Section 9 imposes certain restrictions on the removal and transplantation of human organs or tissues or both. The overriding requirement for removal/transplantation of human organs/tissues/both is that the recipient and the donor shall be near relatives. In any other circumstances, proper approval of the Authorisation Committee is required to be taken.

10. In this regard, Section 9(5) provides for an application to be made jointly in a prescribed form by both the donor and the recipient proposing the removal and transplantation of the human organ/tissue/both and the Committee shall, after holding enquiry and satisfying itself that the application complies with all requirements under the Act and the Rules, grant such approval. In an event where the Committee resolves to grant approval, no hearing is provided for.

11. However, if after the enquiry, the Committee is of the view that the applicants are not entitled to the relief sought, then an opportunity is to be granted to the applicants and if the Committee decides to reject the application post the hearing, such rejection is to be by way of an order setting out the reasons for rejection.

12. The Committee shall proceed in the matter in line with the requirements of Section 9 of the Act, Rule 19 of the Rules, G.O.Ms.No.175 dated 06.06.2008 and all other applicable provisions. If the Committee, after hearing the petitioners, is satisfied that the petitioners are not entitled to the relief sought, let a speaking order be passed by the Committee in compliance with Section 9 of the Act within a period of one (1) week from the date of hearing.

13. This Writ Petition is disposed in the aforesaid terms. No costs.

Sd/-

Deputy Registrar(CS)

// True Copy//

Sub Assistant Registrar



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To

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

+1 cc to M/s.M.Manivasagam Associates, SR. No.10612

+1 cc to Government Pleader SR. No. 10740

W.P. No.2809 of 2022
& WMP No.2954 of 2022

RSV(CO)
TE (21/02/2022)