



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2022

CORAM

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.3704 of 2022

Minor Vishvaadharshan Allu

represented by his Mother and Natural Guradian

Aswini Allu

... Petitioner

vs.

1.The Secretary to Government,
Medical and Family Welfare Department,
Secretariate, Fort St.George, Chennai.

2.The Director of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.

3.The Authorization Committee for Implementation
of Human Organ Transplantation by its
Chairman, Chennai.

4.M/s.Velammal Multi Speciality Hospital,
Madurai.

5.Ashok Nathan Allu

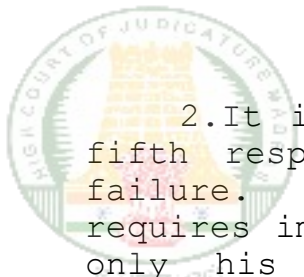
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents 1 to 3 herein to grant necessary approval for the Part Liver Transplantation to be performed for the donation of Part of Liver by Minor. Vishvaadarshan Allu / Writ Petitioner to the 5th respondent / petitioner's father by the 4th respondent/ Hospital, forthwith in the meeting scheduled on 25.02.2022.

For Petitioner	:Mr.Niranjana S.Kumar
For R1 to R3	:Mr.G.V.Vairam Santhosh
	Additional Government Pleader

O R D E R

This Writ Petition has been filed for a Mandamus seeking for a direction to the respondents 1 to 3 to grant necessary approval for the part liver transplantation to be performed for the donation of part of liver by Minor.Vishvaadarshan Allu/Writ Petitioner to the 5th respondent/ petitioner's father by the 4th respondent/ Hospital, forthwith in the meeting scheduled on 25.02.2022.



2.It is the case of the petitioner that he is the son of the fifth respondent, who is suffering from acute on chronic liver failure. According to the petitioner, the fifth respondent/father requires immediate part liver transplantation. It is his case that only his liver matches with the requirements of the fifth respondent. Despite various attempts made to get donors, who match with the requirements of the fifth respondent, no one came forward to give their liver for transplantation and none of the donors' liver also matched with the requirements for the fifth respondent's liver transplantation. Only in such circumstances, the petitioner has come forward to donate his part of liver for the fifth respondent's part liver transplantation, which is required on emergency basis.

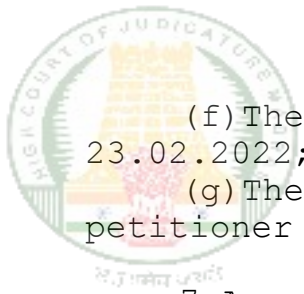
3.Under Section 9 of the Transplantation of Human Organs and Tissues Act, 1994, permission will have to be obtained from the Authorisation Committee, who is the third respondent herein, for any organ donation. However, since the petitioner is aged only 17 years and 10 months and is a minor, only in exceptional circumstances, organ donation can be done by him as per Section 9(1)(b) of the Act. The petitioner has already approached the Authorisation Committee, namely, the third respondent herein. But, it is the case of the petitioner that Authorisation Committee is hesitating to grant approval for organ donation, since the petitioner is a minor. Therefore, under those circumstances, this Writ Petition has been filed seeking the relief stated supra.

4.Heard Mr.Niranjan S.Kumar, learned Counsel for the petitioner and Mr.G.V.Vairam Santhosh, learned Additional Government Pleader, who takes notice on behalf of the respondents 1 to 3.

5.The learned Counsel for the petitioner drew the attention of this Court to the various medical records of the fifth respondent, which have been filed as documents along with the Writ Petition. In particular, he drew the attention of this Court to the medical summary of the fifth respondent and would submit that the part liver transplantation for the fifth respondent is needed on emergency basis. According to him, the fifth respondent is suffering from acute on chronic liver failure and he is presently admitted in ICU at Velammal Multi Speciality Hospital, Madurai and he requires immediate part liver transplantation to save his life.

6.The following documents have been filed along with the Writ Petition in support of the petitioner's case:

- (a)Date of birth certificate of the petitioner
- (b)Relationship certificate issued by the Tahsildar to prove that the petitioner is the son of the fifth respondent;
- (c)Medical summary of Mr.Ashok Nathan Allu, to prove his present medical condition;
- (d)The fitness certificate of the petitioner;
- (e)The undertaking of Mr.Ashok Nathan Allu, dated 23.02.2022;



(f)The undertaking of Minor Vishvaadharshan Allu, dated 23.02.2022;

(g)The undertaking of Mrs.Ashwini Allu, the mother of the petitioner and the wife of the fifth respondent, dated 23.02.2022;

7.As seen from the aforementioned documents, it is clear that the fifth respondent requires immediate part liver transplantation to save his life. The petitioner has also given an unconditional undertaking on 23.02.2022 giving his no objection for donating his part of the liver to his father for his part liver transplantation in order to save his life. The mother of the petitioner, Ashwini Allu has also given an unconditional undertaking giving her no objection for her son Vishvaadharshan Allu to donate his part of the liver to his father, the fifth respondent herein, for his part liver transplantation. The petitioner's medical fitness to donate his part of liver is also proved, as seen from the fitness certificate, dated 22.02.2022 issued by the fourth respondent herein.

8.Section 9(1)(b) of the Transplantation of Human Organs and Tissues Act, 1994, reads as follows:

"9.Restriction on removal and transplantation of [human organs or tissues or both]-.....

(1-B)No human organs or tissue or both shall be removed from the body of a minor before his death for the purpose of transplantation except in the manner as may be prescribed.

....."

9.As seen from the above Section, in exceptional circumstances, a minor can donate his organ to another person. Therefore, the Authorisation Committee/the third respondent will have to take a call as to whether the petitioner can donate his part of liver for the fifth respondent's part liver transplantation. Since the third respondent has not taken a call till date, the petitioner has filed this Writ Petition.

10.The medical records produced by the petitioner before this Court clearly establish the fact that the fifth respondent immediately on emergency basis requires part liver transplantation. This being the case, this Court, while exercising power under Article 226 of Constitution of India, cannot shut its eyes, when the records placed before this Court make it clear that the relief sought for by the petitioner has to be granted on emergency basis and also the life of a person is at stake.

11.In support of the petitioner's contention, the learned Counsel for the petitioner also drew the attention of this Court to a judgment of Delhi High Court in similar circumstances in **Anshita Bansal vs Secretary, Ministry of Health and Family Welfare and others, in W.P.(C)URGENT.6 of 2020**, dated 01.04.2020. As seen from



the said judgment, that was also a case involving donation of liver by a minor of aged 17 years and 10 months, as in the present case. In paragraphs 21 and 22 of the said judgment, the learned Single Judge of the Delhi High Court has observed that there is no complete prohibition in a minor donating an organ or tissue prior to attaining majority and the donation is permissible in exceptional circumstances and in accordance with rules.

12. In the case on hand also, the petitioner has produced medical records to show that the petitioner is medically fit for donating his part of the liver and it is also the case of the petitioner that except the petitioner, there were no other donors, who match the requirements of the fifth respondent for his part liver transplantation. Therefore, this Court is of the considered view that the Court cannot shut its eyes, when it is clearly established that the petitioner, who is none else than the son of the fifth respondent, who requires part liver transplantation, must be permitted to donate his part of liver to save the life of his own father. The donation of the part of liver by the petitioner to the fifth respondent will also not cause any potential health risk to the petitioner, as seen from the medical records.

13. It is also informed by the learned Counsel for the petitioner that the respondent Committee sits once in two months only. This being the case, he has also informed this Court that the sitting of the third respondent Committee is taking place today, ie., on 25.02.2022.

14. After giving due consideration to the aforementioned factors, necessarily this Court will have to allow this Writ Petition, as there is a medical emergency for the fifth respondent to get part of the liver transplantation from the petitioner, who is none else than his own son.

15. For the foregoing reasons, this Court directs the third respondent to grant necessary approval for the part liver transplantation to be performed for the donation of part liver by the Minor Vishvaadharshan Allu/the Writ Petitioner, to the fifth respondent/petitioner's father by the fourth respondent Hospital forthwith in the meeting scheduled to be held today, ie., on 25.02.2022 and pass appropriate orders accordingly to enable the fifth respondent to get part liver transplantation done forthwith.

16. With the above observation, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To
1.The Secretary to Government,
Medical and Family Welfare Department,
Secretariate, Fort St.George, Chennai.

2.The Director of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.

3.The Authorization Committee for Implementation
of Human Organ Transplantation by its
Chairman, Chennai.

+1 CC to M/s.NIRANJAN S KUMAR, Advocate (SR-8836[F] dated
25/02/2022)

W.P.(MD)No.3704 of 2022
25.02.2022

MGJ(25.02.2022) 5P 5C