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W.P.No. 2891 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 2891 of 2023

S. EzhilRajan

... Petitioner

versus

1. State of Tamil Nadu,
Represented by Secretary,
Department of Health and Family Welfare,
Secretariat,
Chennai – 600009.
2. Authorization Committee (Transplantation)
Represented by its Chariman,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai – 600010.
3. Fortis Malar Hospital,
Represented by its Managing Director,
Adayar,
Chennai – 600020.
4. S. Sathiyaprakash
5. Mrs. Geetha
W/o. Ezhil Rajan

(R5 suo motu impleaded vide order
dated 01.02.2023 made in
W.P.No. 2891/2023 by CVKJ)

... Respondents



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Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus directing the second respondent to consider the representation sent by the petitioner and the fourth respondent on 25.01.2023 and to grant approval and permission for Urgent Kidney transplant surgery.

For the Petitioner : Ms. S. Viji

For the Respondents : Mr. T. Seenivasan
for R1

ORDER

The writ petition has been filed in the nature of a mandamus seeking a direction to the second respondent/Authorization Committee (Transplantation), Directorate of Medical Education, Chennai to consider a representation given by the petitioner S. Ezhil Rajan and by the fourth respondent S. Sathiyaprakash on 25.01.2023 and grant approval and permission for urgent kidney transplant surgery.

2. The petitioner and the fourth respondent are brothers. The fourth respondent requires a kidney for his survival. The petitioner is prepared to donate one kidney. The issue first circulated around the objection or no objection to be granted by the wife of the petitioner herein.



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3. It was stated that he is estranged from his wife and she is living separately. This Court had made her a party by order dated 01.02.2023. Notice was directed. She had received the notice and a letter had been communicated to the learned counsel for the petitioner herein that she has no objection for the kidney to be donated by the petitioner for the benefit of the fourth respondent.

4. Learned counsel for the petitioner may file a copy of that letter along with the memo for reference in the Registry. The original letter along with the cover sent by the impleaded 5th respondent is filed in Court. It is retained in the Court bundle for the sake of record.

5. But however learned Special Government Pleader has obtained instructions and according to his instructions, the Authorization Committee (Transplantation) has not received any request from the treating hospital. The treating hospital is the third respondent/Fortis Malar Hospital. Therefore, it is clear that it is not the wife of the petitioner who stands in between the grant of donation of kidney by the petitioner but rather it is the third respondent. Notice has been directed to the third respondent but there is no



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representation. The third respondent is under obligation that whenever they take any patient in their fold, they must give proper treatment. In this case, proper treatment would also include, proper maintenance of proper records.

6. If the petitioner is willing to give his kidney for the benefit of the fourth respondent, and the third respondent is the hospital where such operation is to be conducted then they should inform this fact in the first place to the Authorization Committee (Transplantation).

7. A direction is given to the third respondent to give such a request to the second respondent/Authorization Committee (Transplantation). The said committee need not insist on the no objection certificate of the wife in view of the categorical assertion that she has no objection at all. A copy of the letter sent by the fifth respondent/wife may also be forwarded by the petitioner to the third respondent to be forwarded onward to the second respondent. Entire exercise should be completed at the earliest. If necessary request is received by the second respondent, they may process it in accordance with the rules and regulations and pass necessary orders. No further



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orders are required. I only wish that the operation is successful for both the petitioner and the fourth respondent, who would benefit from the operation. More importantly the Court wishes the fifth respondent who is not available, the very best in her life since she has voluntarily given her consent for the donation of the kidney of the petitioner herein.

8. The writ petition stands disposed of. No costs. Consequently, W.M.P.No. 2999 of 2023 is closed.

09.02.2023

Index: Yes/no
mrn

Note: Issue order copy on 09.02.2023



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Department of Health and Family Welfare,
Secretariat,
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2. The Chariman,
Authorization Committee (Transplantation)
Directorate of Medical Education,
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3. The Managing Director,
Fortis Malar Hospital,
Adayar,
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C.V.KARTHIKEYAN, J.
(mrn)

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09.02.2023