



WEB COPY

W.P.No.32523 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.32523 of 2023

R.Ponnuthai

.. Petitioner

VS

1.The Chairman

Office of the Chairman Organization Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.

2.M/s.Medway Hospitals

No.2/26, 1st Main Road,
United India Colony,
Kodambakkam, Chennai – 600 024.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the first respondent herein in relation to its mpugned order dated 09.10.2023 withholding the application for transplantation, quash the same with consequential direction directing the first respondent herein to re-consider the papers submitted for transplantation and to pass a fresh order according approval for undergoing renal transplantation.

For Petitioner : Mr.G.RM.Palaniappan

For Respondents : Mr.M.Rajendran, AGP



W.P.No.32523 of 2023

ORDER

WEB COPY

Read this order in continuation of and in conjunction with earlier orders dated 17.11.2023 and 27.11.2023 reading thus:-

"17.11.2023:-

The objection of the petitioner in this writ petition is that she is being forced to appear before the Authorisation Committee (in short 'Committee'), which is the competent authority under the Transplantation of Human Organs and Tissues Act, 1994 (in short 'Act') and allied Rules, 2014 (in short 'Rules') to determine her medical fitness.

2.The petitioner draws attention to Section 9 and Rules 18 and 23, to establish that the role of the Committee in cases of organ donation by near relatives is only to examine relationship between the donar and the donee and not beyond.

3.The petitioner is correct, on this account. Rule 18 stipulates the procedure solely to determine relationship between the parties. However, as far as Rule 23 is concerned, extracted below, Clauses (i) and (ii), require proper evaluation of the proposed donar, both in terms of her biological capacity and compatibility to donate as well as a physical and mental evaluation to determine whether she is in proper state of health.

'23.Decision of Authorisation Committee.-

(1) The Authorisation Committee (which is applicable only for living organ or tissue donor) should state in writing its reason for rejecting or approving the application of the proposed living donor in the prescribed Form 18 and all such approvals should be subject to the following conditions, namely:-

(i)the approved proposed donor would be subjected to all such medical tests as required at the relevant stages to determine his or her



WEB COPY



W.P.No.32523 of 2023

biological capacity and compatibility to donate the organ in question;

(ii) the physical and mental evaluation of the donor has been done to know whether he or she is in proper state of health and it has been certified by the registered medical practitioner in Form 4 that he or she is not mentally challenged and is fit to donate the organ or tissue:

.....'

4.A memo has been filed by Mr.Anandakumar, learned Government Advocate, upon instructions from Mrs.A.Rajalakshmi, A.O., Director of Medical Education, Chennai to state that the following tests are required, particularly seeing as the age of the proposed donor is 70 years.

5. Memo dated 17.11.2023 reads as follows:

'It is submitted that the above Writ Petition filed by the Writ Petitioner seeking relief for a Writ of Certiorarified Mandamus or any calling for the records on the file of the first respondent herein in relation to its impugned order dated 09.10.2023, withholding the application for transplantation quash the same with consequential direction directing the first respondent herein to reconsider the papers submitted for transplantation and to pass a fresh order according approval for undergoing renal transplantation and to pass such further or other order(s) as this Hon'ble Court.

The 1st Respondent Committee has advised the Writ Petitioner to appear before the team constituted at the Kilpauk Medical College Hospital on 15.11.2023 for the compatibility of the donor.

Challenging the same the above Writ Petition filed. The above Writ Petition came up for hearing today (i.e.17.11.2023). Hence, the Petitioner have to undergo the following tests for compatibility.

1.Echo (Echo Cardiogram)



W.P.No.32523 of 2023

- 2.ECG (Electro Cardiogram)
- 3.LFT (Liver Function Test)
- 4.RFT (Renal Function Test)

It is therefore prayed that this Hon'ble Court may record this memo and pass such further or other orders as this Hon'ble Court may deem fit to pass and thus render justice.'

6.Learned counsel for the petitioner states that the above tests have been done and are part of her medical records before the committee. That apart, Form 4 which is a certificate to be issued by the registered medical practitioner certifying medical fitness of the petitioner has also been obtained and furnished to the respondents.

7. While there is no compulsion that the donar/donee must undergo medical tests only at the facilities provided by the Committee, undoubtedly the Committee will, and must take all precautionary measures to ensure full compliance with Rule 23(1)(i) and (ii). For this purpose, it would suffice that the petitioner has carried out the requisite tests, to the Committee's satisfaction.

8.Let copies of the test reports for the above four tests along with a copy of Form 4 already submitted be handed over to the competent authority such that orders may be passed by that authority within one (1) week from today.

9.List on 27.11.2023 at the end of the admission list.

27.11.2023

Read this order in conjunction with and in continuation of order dated 17.11.2023.

2. The petitioner has now been asked to carry out few more tests to assess the functional status of her kidneys and status of lungs. The investigations now sought are as follows:

- i) Chest X-Ray PA view*
- ii) USG abdomen for kidney size.*



WEB COPY



W.P.No.32523 of 2023

- iii) 24 hour urine protein
- iv) Creatinine clearance
- v) DTPA renogram to assess split renal function.

3. The petitioner states that the aforesaid tests have also been done and the reports are ready. Let the petitioner appear on Friday, the 1st of December, 2023 before the Committee along with the reports of the aforesaid tests.

4. It is made clear that if any other primary tests are required to be performed, details of the same shall be supplied to the petitioner by end of day today. Needless to say that if based on the results of the aforesaid tests, the Committee believes that additional tests are required, it is always open to them to call for the same as well.

5. Orders shall be passed by the Committee on the petitioner's application prior to the next date of hearing. List on 04.12.2023 in the same position under the caption 'for production of orders'."

2. Today, Mr.Palaniappan, learned counsel, states that necessary tests have been carried out and approval is also granted by the Committee for conduct of kidney transplantation surgery.

3. With this, nothing survives in this writ petition and the same is closed. No costs.

06.12.2023

Index:Yes/No
Neutral Citation:Yes
ssm



WEB COPY



W.P.No.32523 of 2023

DR. ANITA SUMANTH,J.

ssm

To

The Chairman
Office of the Chairman Organization Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.

W.P.No.32523 of 2023

07.12.2023