



W.P.(MD).No.7226 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **26.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **C.V. KARTHIKEYAN**

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S.Jebadurai

... Petitioner

Vs.

- 1.The Director,
Directorate of Medical and Rural Health Services,
361, DMS Complex,
Anna Salai,
Chennai-600 006.
- 2.The Authorization Committee (Transplantations),
Represented by the Dean of Medical College,
Madurai-600 020.
- 3.Authorization Committee (Transplantations)
Represented by the Joint Director of Medical Service,
Thoothukudi,
Thoothukudi District.
- 4.The District Collector,
Thoothukudi,
Thoothukudi District.
- 5.The Revenue Division Officer,
Tiruchendur,
Thoothukudi District.



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6.The Lakeshore Hospital and Research Centre Limited,
Rep.by Managing Director,
XVI/612, Maradu,
Netoor (Post),
Kochi,
Kerala-682 040.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fifth respondent in proceedings in Na.Ka.No.A4/1246/2023 dated 20.02.2023 and quash the same and consequently direct the respondents 1 to 5 to issue Certificate in favour of the petitioner's son Merlin Rajadurai son of Jebadurai (recipient donor) and Jeyaseeli Rubi wife of Mohan Raj are close friends under Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014.

For Petitioner : Mr.R.Jegadeswaran

For Respondents : Mr.J.Ashok
Additional Government Pleader
for R1 to R5

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus, seeking records of the fifth respondent in proceedings in Na.Ka.No.A4/1246/2023 dated 20.02.2023, quash the same and direct



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the respondents 1 to 5 to issue Certificate in favour of the petitioner's son, namely, Merlin Rajadurai, (recipient) that the petitioner's son and one Jeyaseeli Rubi, wife of Mohan Raj, are close friends under Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014.

2. In the affidavit filed in support of the writ petition, it had been stated that the son of the petitioner has been undergoing dialysis thrice a week at the sixth respondent Hospital. They have been treating him for the past three years and they have stated that he requires now kidney. The petitioner had stated that M.Jeyaseeli Rubi, wife of Mohan Raj, residing at Kottampuli Village, Kumaragiri, Pudhukottai, Thoothukudi, had agreed to donate her kidney to his son. Hence, this Court had directed necessary enquiry to be conducted by the jurisdictional Inspector of Police and by the District Legal Services Authority. Both the enquiry reports have been received from the Chairman/learned Principal District Judge, District Legal Services Authority, Thoothukudi. The Chairman/learned Principal District Judge, District Legal Services Authority, had stated that the donor of kidney and the son of the petitioner are not relatives and they are not close friends. The Inspector



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of Police, in his report, had stated that the donor of kidney and the recipient are not blood relations and not relatives. Various other facts have also been stated.

3. It is seen that in the impugned order, the Revenue Division Officer had refused to issue any Certificate that both the donor of kidney and recipient are blood relatives or close relatives. The fact is that they do not know even each other. In view of this fact, it is only appropriate that the sixth respondent, who has taken a decision to conduct operation, takes a responsibility to ensure that the kidney is donated out of free will and consent.

4. Of course, the Authorisation Committee should also take necessary responsibility.

5. Rule 19 of the Transplantation of Human Organs and Tissues Rules, 2014 is as follows:

“where the proposed transplant is between other than near relatives and all cases where the donor or recipient is



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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.”

6. This Rule is applicable, because the donor of kidney and the recipient of the kidney are not related and not blood related. The said Rule also provides for an Authorisation Committee to be in place in every hospital. Rule 7 of the said Rules is as follows:

7. Authorisation Committee-(1) The medical practitioner who will be part of the organ transplantation team for carrying out transplantation operation shall not be a member of the Authorisation Committee constituted under the provisions of clauses (a) and (b) of sub-section (4) of section 9 of the Act.

(2) When the proposed donor or recipient or both are not Indian nationals or citizens whether near relatives or otherwise, the Authorisation Committee shall consider all such requests and the transplantation shall not be permitted if the recipient is a foreign national and donor is an Indian national unless they are near relatives

(3) When the proposed donor and the recipient are not



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near relatives, the Authorisation Committee shall-

(i) evaluate that there is no commercial transaction between the recipient and the donor and that no payment has been made to the donor or or promised to be made to the donor or any other person;

(ii) prepare an explanation of the link between them and the circumstances which led to the offer being made;

(iii) examine the reasons why the donor wishes to donate;

(iv) examine the documentary evidence of the link, e.g., proof that they have lived together, etc;

(v)examine old photographs showing the donor and the recipient together;

(vi) evaluate that there is no middleman or tout involved.

(vii) evaluate that financial status of the donor and the recipient by asking them to give appropriate evidence of their vocation and income for the previous three financial years and any gross disparity between the status of the two must be evaluated in the backdrop of the objective of preventing commercial dealings;



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(viii) ensure that the donor is not a drug addict:

(x) ensure that the near relative or if near relative is not available any adult person related to donor by blood or marriage of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ or tissue, the authenticity of the link between the donor and the recipient, and the reasons for donation, and any strong views or disagreement or objection of such kin shall also be recorded and taken note of.

(4) Cases of swap donation referred to under sub-section (3-A) of Section 9 of the Act shall be approved by the Authorisation Committee of hospital or district or State in which transplantation is proposed to be done and the donation of organs shall be permissible only from near relatives of the swap recipients.

(5) When the recipient is in a critical condition in need of life saving organ transplantation within a week, the donor or recipient may approach hospital in-charge to expedite evaluation by the Authorisation Committee.

7. It would be only appropriate that Rule 7(3)(i) of the said Rules is reiterated, viz., that there is no commercial transaction between the



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recipient and donor of the kidney and that no payment has been made to the donor. This is the responsibility which this Court thrusts on the Authorisation Committee of the sixth respondent to specifically examine.

8. If the sixth respondent does not have an Authorisation Committee, then the matter has to be referred under Rule 12 to the hospital based Authorisation Committee as provided. Rule 12 is, as follows:

12. Composition of hospital based Authorisation Committees- The hospital based Authorisation Committee shall, as notified by the State Government in case of State and by the Union Territory Administration in case of Union territory, consist of-

*(a) the Medical Director or Medical Superintendent or Head of the institution or hospital or a senior medical person officiating as Head
-Chairperson;*

*(b) two senior medical practitioners from the same hospital who are not part of the transplant team
-Member;*

(c) two persons (preferably one woman) of high Integrity, social standing and credibility, who have served in high ranking Government positions, such as in higher judiciary, senior cadre of police service or who have served as a reader or professor in University Grants Commission approved University



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or are self-employed professionals of repute such as lawyers, chartered accountants, doctors of Indian Medical Association reputed non-Government organization or renowned social worker

-Member;

(d) Secretary (Health) or nominee and Director Health Services or nominee from State Government or union territory Administration

-Member.

9. Rule 23 is the decision of Authorisation Committee, which reads as follows:

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 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



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she is not mentally challenged and is fit to donate the organ or tissue:

Provided that in case of doubt for mentally challenged status of the donor the registered medical practitioner or Authorisation Committee may get the donor examined by psychiatrist:

(iii) all prescribed forms have been and would be filled up by all relevant persons involved in the process of transplantation;

(iv) all interviews to be video recorded

(2) The Authorisation Committee shall expedite its decision making process and use its discretion judiciously and pragmatically in all such cases where, the patient requires transplantation on urgent basis

(3) Every authorised transplantation centre must have its own within and the Authorisation Committee is required to take final decision within twenty four hours of holding the meeting for grant of permission or rejection for transplant.

(4) The decision of the Authorisation Committee should be displayed on the notice board of the hospital or Institution immediately and should reflect on the website of the hospital or Institution within twenty four hours of taking the decision, while keeping the identity of the recipient and donor hidden.



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10. The entire exercise has to be now undertaken by the sixth respondent and the steps will have to be in accordance with the decision of the Authorisation Committee.

11. It must be stated that this Court had offered video-conferencing facility for a responsible officer of the sixth respondent to appear through video-conference to indicate the medical condition of the patient. Though it is claimed by the learned counsel appearing for the petitioner that there was an attempt made by the officials of the sixth respondent to join through video conferencing, the fact is they did not do so. But the fact remains that this Court wanted to interact with the officials and they did not appear during the hearing dates.

12. Let me not hold anything against the sixth respondent, but place a responsibility on the sixth respondent to act in accordance with the decision given by the Authorisation Committee.

13. Accordingly, this Writ Petition is disposed of. A direction is given to the sixth respondent to refer the entire issue to the Authorisation



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Committee as provided under the Rules within a period of 10 days from the date of receipt of a copy of this order. There shall be no order as to costs.

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Index: Yes/No
Internet: Yes/No
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Note: Issue Order Copy on **27.04.2023**

To

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