



WEB COPY

W.P.No.16446 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.06.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.16446 of 2024

Khader Shariff

... Petitioner

Vs

1.The Chairman

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

2.The Principal Secretary to Government

Health & Family Welfare Department
Government of Tamil Nadu
Fort St.George
Chennai 600 009.

3.M/s Medway Hospitals

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India

praying to issue a Writ of Certiorarified Mandamus calling for the records on



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the file of the first respondent herein in relation to its impugned order

K.Dis.No.49013/H&DII/4/2024 dated 24.05.2024 rejecting the application of the petitioner undergoing transplantation for renal failure, quash the same with consequential direction directing the first respondent herein to grant approval to the petitioner for his renal transplantation.

For Petitioner : Mr.G.RM.Palaniappan

For Respondents : Mr.K.Tippu Sultan (R1 and R2)
Government Advocate

ORDER

Mr.K.Tippu Sultan, learned Government Advocate accepts notice for R1 and R2 and is armed with instructions to enable a final disposal of this Writ Petition, even at the stage of admission. No notice is thought necessary to R3 at this juncture, as its interests are not prejudiced by virtue of this order.

2. The petitioner is aged 45 years and states that he is suffering from Renal failure and is undergoing dialysis for the last one year. He claims to have identified a donor and had made an application under Form 11 of the Transplantation of Human Organs and Tissues Act, 1994 (in short 'Act') on 27.03.2024. He was called for an interview on 10.05.2024 before the



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Chairman of the Organization Committee/R1, who is to approve the transplantation.

3. In the course of the enquiry, the details of which are set out at paragraphs 4 to 7 of the writ affidavit, the petitioner was asked to produce various details and documents, specifically in regard to the relationship between himself and the proposed donor. To be noted that the Act and the connected Rules, that is, Transplantation of Human Organs and Tissues Rules, 2014 (in short 'Rules') set out various parameters that are to be satisfied by the donor and donee as well as documents to be produced by them in support of the same.

4. Per the averments in the writ affidavit, all the documents sought for were furnished. However, the petitioner alleges malafides on the part of R1 in seeking a certificate of relationship from a Mosque based on the petitioner's claim that the two, i.e., donor and donee, used to offer prayers in the same Mosque.

5. R1 has rejected the application for transplantation vide impugned order dated 24.05.2024 on the ground that the documents filed are unreliable and that there were contradictory statements made.

6. It is true that Section 17 of the Act provides for an appeal remedy and in a matter such as this, where factual evidence is required to establish



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the relationship between the parties, a mandatory pre-requisite for transplantation, the appeal remedy will be more appropriate than the writ remedy.

7. However, as the impugned order is non-speaking, this Court will intervene solely, and for the limited purpose of directing the respondents to pass a speaking order. If the documents are unreliable, R1 must mention which the documents that are found to be unreliable are, and the specific reason why are found to be so unreliable. Likewise, the details of the statements that are contradictory to each other must also be set out. The order, as it stands now, is wholly non-speaking and bereft of reasoning.

8. For the aforesaid reasons and on this short point, impugned order dated 24.05.2024 stands quashed. The petitioner will appear before R1 on 28.06.2024 at 11.00 a.m. without awaiting any further notice in this regard. R1, after hearing the petitioner pass a speaking order expeditiously.

9. It is expressly stated that this Court has not spoken on the merits of the matter and full discretion is available to R1 to decide on the manner and conclusion. To clarify, the only reason for which the impugned order has been set aside is to ensure that the order passed sets out the reasons for rejection of the application.



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

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Index : Yes / No

Speaking Order

Neutral Citation : Yes

***Note: Registry is directed to issue a copy of this order
by today (25.06.2024)***

To

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Directorate of Medical Education
Kilpauk
Chennai 600 010

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