



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 11320/2023 & CM APPL. 44000/2023**

SIYA OMAR THROUGH HER MOTHER AND NATURAL
GUARDIAN PRIYANKA GUPTA & ANR. Petitioners

Through: Mr. Shantanu Singh, Mr. Ravi Sehgal,
Ms. Divya Narayanan and Mr. Anuj
Gupta, Advocates.

versus

UNION OF INDIA THROUGH ITS SECRETARY MINISTRY OF
HEALTH AND FAMILY WELFARE & ORS. Respondents

Through: Mr. Jaswinder Singh, Ms. Poonam
Rohilla, Advocates for R-1.
Mr. Siddharth Panda, Advocate for R-
2 and 4.
Ms. Mehak Nakra, ASC for GNCTD
with Mr. Abhishek Khari, Advocate
for R-3.
Dr. Harsh Pathak, Mrs. Shaveta
Mahajan and Mr. Mohit Choubey,
Advocates for R-5.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for a direction to the Respondents to grant Petitioner No.1 the necessary permission to donate a part of her liver to her ailing father, i.e., Petitioner No.2 herein.
2. The facts of the case reveal that Petitioner No.1 was born on 05.09.2006 and on the date of the filing of the instant writ petition,



Petitioner No.1 was aged 16 years 11 months. As of today, she would be 17 years 4 months and 24 days.

3. It is stated that father of Petitioner No.1, i.e., Petitioner No.2 herein, was admitted to Dr. Rela Institute and Medical Centre, Chennai and has been diagnosed with prolonged liver disease, viz. non-alcoholic steatohepatitis- cirrhosis (NASH), end stage liver disease, which requires urgent liver transplant.

4. It is stated that the family was looking for a donor for liver transplant and Petitioner No.1, i.e., the daughter of Petitioner No.2, has been found suitable for the said purpose. It is stated that Petitioner No.2 made a representation dated 28.06.2023 to Respondent No.4/Institute of Liver and Biliary Sciences, New Delhi seeking permission for liver transplantation of a part of liver of Petitioner No.1, i.e., his minor daughter. It is stated that no response was received from Respondent No.4.

5. Since no response was forthcoming from Respondent No.4, Petitioner No.2 thereafter put down his name on the Cadaveric Donor waiting list of the King George Medical University, Lucknow. It is stated that the Petitioners also filed a writ petition before the Allahabad High Court praying for the reliefs:-

"a) Issue a writ order or direction in the nature of Mandamus directing and commanding the opposite parties to grant the petitioner no 01, the necessary permission to donate a part of her liver to her ailing father i.e. petitioner no 02 in accordance with the Transplantation of the Human organs and Tissues Act, 1994 and the Transplantation of the Human organs and Tissues Rules, 2014.

b) Issue a writ order or direction in the nature of Mandamus, directing and commanding the opposite



parties to expeditiously process and dispose the petitioner no 02 application for Liver Transplantation as he is in urgent need of liver transplantation and any further delay will be detrimental to his health and could be life threatening (as contained in Annexure no P-8 to this writ petition).

c) Issue a writ, order or direction in the nature of Mandamus, directing and commanding the opposite parties to medically examine petitioner no 01 for the process of the Liver Transplantation to petitioner no 02 (her father).

d) That such other orders or directions are passed by this Hon'ble Court which may appear to be just and appropriate under the facts and circumstances of the case.

e) Allow the writ petition with cost in favour of the petitioner.”

6. The writ petition was withdrawn on the following terms:-

“A report from King George Medical University, Lucknow is produced before this Court and is taken on record.

Learned counsel for the petitioner on instructions submits that petitioner is desirous to get the liver transplant conducted at New Delhi, since this Court has no jurisdiction over the Government of N.C.T. at New Delhi, hence, petitioner prays for withdrawal of present petition with liberty to approach appropriate forum/Court at appropriate place.

Writ petition is consigned to record with liberty as prayed for.”

7. The Petitioner has thereafter approach this Court by filing the instant



writ petition.

8. The case was listed on 25.08.2023 and the Respondents were directed to consider the representation dated 26.08.2023 given by the Petitioners.
9. The matter came up for hearing on 14.09.2023 and an affidavit was handed over by learned Counsel for Respondent No.3. Paragraph 5 and 6 of the affidavit reads as under:-

“5. That it is submitted that as per Transplantation of Human Organ Act, 1994 under Chapter 1, Definition 2 (f) "donor" means any person not less than Eighteen years (18 years) of age, who voluntarily authorizes the removal of any of his human organs for therapeutic purposes under sub section (1) or sub-section (2) of section 3. In this case the potential donor Ms. Siya Omar (17 years), d/o Ashish Kumar Gupta is a minor with less than 18 years of age.

*6. It is also pertinent to mention that the case of recipient Sh. Ashish Kumar Gupta was discussed in detail by the Committee (Hospital Based Authorised Committee, ILBS Hospital) since the recipient needed liver transplant for his Chronic liver disease condition (CLD-NASH with Portal Advocate Hypertension with Ascites). However, after extensive deliberations, the Committee is of considered opinion that **in the instant case there were no exceptional medical grounds** wherein this case could be considered for urgent liver Transplantation with a minor donor **under Rule 5(3)(g) of the Transplantation of Human Organs and Tissues Rules 2014**, QUOTE "living organ or tissue donation by minors shall not be permitted except on exceptional medical grounds to be recorded in detail with full justification and with prior approval of the Appropriate Authority and the State Government concerned" UNQUOTE to be read in conjunction with Transplantation of Human Organ Act, 1994 under Chapter 1, Definition 2(f).”*



10. A perusal of the said affidavit shows that since there were no exceptional medical circumstances, wherein the case could be considered for urgent liver transplantation with a minor, approval cannot be granted under the Transplantation of Human Organs Act, 1994.

11. On 14.09.2023, Respondent No.3 was directed to file an affidavit stating the instances of exceptional circumstances under which organs transplantation can be permitted under Rule 5(3)(g) of the Transplantation of Human Organs and Tissues Rules, 2014, read with Section 9(1)(b) of the Transplantation of Human Organs Act, 1994. An affidavit was filed on behalf of Respondent No.3 on 06.10.2023. Paragraph 4 of the said affidavit reads as under:-

"4. It is submitted that as per The Human Organ Transplant Act and Rules, there are no specific instances/exceptional grounds mentioned. Each and every case has to be seen/ deliberated individually depending on the condition of the recipient/ donor, risk involved to the life of the donor, availability of other donor, swap donation (inter change of organ between two set of receipts and donors)."

(emphasis supplied)

12. Paragraph 4 of the said affidavit, which is the only relevant para in the affidavit states that there are no specific instances or exceptional grounds mentioned and each case has to be seen and deliberated individually depending on the condition of the recipient/donor and the risk involved to the life of the donor, availability of other donor, swap donation and does not state any specific circumstance under which a recipient/donor where a minor donor could be permitted to donate.

13. The said affidavit also only states that the Petitioner's father can



explore the option of getting another donor or a swap donor (interchange of organ between two receipts and donors) ABO incompatible or a deceased donor organ transplantation. The affidavit, is, therefore, definitely not in compliance with the Order dated 14.09.2023.

14. Be that as it may, notice was issued on the writ petition on 17.10.2023 and this Court directed the All India Institute of Medical Sciences (AIIMS) to constitute a Medical Board to examine the medical condition of Petitioner No.1 herein and ascertain whether the donor being a minor can be permitted to donate a part of her liver to her father and the effects it will have on her health. A Medical Board was constituted by AIIMS. The following report has been given:-

"Subsequent to the medical evaluation of petitioner No.1 during medical board meetings as well as follow-up OPD consultations followed by investigations, the final meeting of the medical board was held on Monday, 4th December, 2023 at 04:00 P.M. in Seminar Room, M.S. Office, ground floor, AIIMS, New Delhi. All the members of the board were present. Petitioner No. 1 was phase-wise evaluated by the members, and the following facts were observed:

a. The screening of petitioner No. 1 showed that she is healthy and can donate part of her liver to her father within the criteria prescribed. This is based on the fact that a person of her age do undergo partial hepatic resection, similar to a donation procedure with acceptable risk. However, it has been observed that, the father of petitioner No.1 should undergo liver transplant in a high volume / specialized centre, where all detailed workup of petitioner No. 1 may be done keeping in view of her safety.

b. Risk to the donor: The donor carries the standard risk associated with live liver donation.



c. Effect of liver donation on the health of donor: Conventionally, barring the standard complications and sequelae of live-related donation, petitioner No. 1 should live a normal / near normal quality of life. "
(emphasis supplied)

15. A perusal of the above report shows that the Petitioner No.1 is healthy and she can donate a part of her liver to her father within the criteria prescribed. It also stated that a person of her age do undergo partial hepatic resection similar to a donation procedure with acceptable risk. The report also states that there will be no subsequent problems in her quality of life barring standard complications which can even occur for a normal donor.

16. The Petitioner No.1, at the moment, is aged 17 years 4 months and 21 days. The Petitioner's father urgently requires a part of her liver for liver transplantation and there is no absolute bar to the same. Rule 5(3)(g) of the Transplantation of Human Organs and Tissues Rules, 2014, reads as under:-

"5(3)(g) living organ or tissue donation by minors shall not be permitted except on exceptional medical grounds to be recorded in detail with full justification and with prior approval of the Appropriate Authority and the State Government concerned. "

17. A perusal of the aforesaid Rule indicates that in exceptional medical grounds which are to be recorded in detail with full justification and with prior approval of the appropriate authority a minor can be permitted to donate live tissues and organs. What are the exceptional medical grounds have not been laid down and this can lead to arbitrariness in the matter of grant of permission for such donations. Guidelines have to be laid down indicating the nature of exceptional medical grounds which can be adopted



throughout the country by the appropriate authority and the State Governments. Respondent No.1 is directed to frame the guidelines under Rule 5(3)(g) of the Transplantation of Human Organs and Tissues Rules, 2014 for the guidance of the appropriate authority and the State Governments while considering an application regarding permitting tissue donations by minors. The guidelines be framed within a period of two months from today.

18. In view of the fact that the Respondent No.3 has not given a satisfactory reply in the affidavit and had not stated the exceptional circumstances, a part of liver could be donated by a minor and that the affidavit filed by Respondent No.3 also only indicates that each case application should be decided on the facts of each case.

19. In view of the Report given by the Medical Board, AIIMS that Petitioner No.1 is physically fit to donate a portion of her liver to her father and quality of her life will not diminish and considering the fact that her father requires an urgent liver transplant as he is in the end stage liver disease, non-alcoholic steatohepatitis- cirrhosis (NASH), this Court is inclined to permit Petitioner No.1 to donate a part of her liver to her father.

20. It is made clear that this Court is passing this order because the father of Petitioner No.1 is in the end stage liver disease. The Petitioner No.1 is 17 years 4 months and 21 days and the Medical Board, AIIMS has categorically stated that Petitioner No.1 is in a physical condition to donate a part of her liver and that her future will not be jeopardized and risk involved in the case is the risk that is involved ordinarily to any donor.

21. This Court deems it fit to exercise its discretion under Article 226 of the Constitution of India in the present case and allow the Petitioner to



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donate a part of her liver to her father. As stated in the report of AIIMS, the Petitioner No.1 is directed to undergo the procedure in a specialized centre like AIIMS or Respondent No.3 where all detailed workup of Petitioner No.1 be done keeping in view of her safety.

22. The writ petition is allowed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 30, 2024

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