

26-09-2025
Item No.11
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

WPA No.21104 of 2025
Shahanaj Begam
-vs-
State of West Bengal & Ors.

Mr. Firdous Samim
Ms. Gopa Biswas
Mr. Hasanuz Zaman Molla
Ms. Ankita Ghosh
Mr. Rajarshree Saha ...for the petitioner

Mr. Amal Kumar Sen, AAG
Mr. Sudipto Panda
Mr. Biman Halder ...for the State

Ms. Riya Das ...for proforma respondent no.7

Mr. Anishek Guha
Ms. Shilpa Das ...for respondent no.8

1. The petitioner is the wife of a patient who is suffering from Bilateral Chronic Renal Parenchymal disorder and requires immediate transplantation of kidney.
2. One of the petitioners' acquaintances out of natural love and affection, compassion and good will, without any coercion, inducement or financial consideration has voluntarily agreed to donate one of his kidneys to the patient. Declaration of consent by way of affidavit by the donor has been annexed to the writ petition.
3. The prayer of the petitioner for allowing the transplantation has not been approved by the Authorization Committee. The petitioner is aggrieved by the same.

4. The order of the Authorization Committee is an appealable one. The appellate authority, however, is yet to be constituted. In the absence of the appellate authority, the petitioner has approached the writ Court under Article 226 of the Constitution for relief.
5. According to the provisions of the Transplantation of Human Organs and Tissues Act, 1994, there are certain restrictions on removal and transplantation of human organs or tissues or both. The transplantation can be done with the approval of the State Authorization Committee.
6. On a perusal of the report dated September 18, 2025 of the Director of Medical Education, West Bengal & Chairman of the Authorization Committee, it appears that approval has been refused relying upon the opinion of the Verification Committee.
7. The report of the Verification Committee records that the donor and the recipient came into contact through business, but none could produce any supporting document in favour of their claim. The link between the donor and the donee could not be verified properly.
8. The Chairman of the Authorization Committee sought for a confidential report from the Chief Medical Officer of Health, Barasat, North 24 Parganas duly verified by the Verification Committee regarding the credentials and antecedents of the donor, donee and the legal guardian of the donor.
9. The findings of the Sub-divisional Officer, Barasat (Sadar), North 24 Parganas countersigned by the Additional Chief Medical Officer of Health,

Barasat, North 24 Parganas is annexed with the report of the Chairman of the State Authorization Committee. The findings have been recorded in accordance with Clause 7(iii) of the Notification published by the Ministry of Health and Family Welfare in the Gazette of India Extraordinary on 27th March, 2014.

10. It has been noted that the donor desires to voluntarily donate his organ on humanitarian ground. No commercial transaction between the donor and the donee could be ascertained, neither any pecuniary promise made to the donor nor any other person for the organ donation could be ascertained. It has been found that the donor is not a drug addict. There is no documentary evidence linking the relationship between the donor and the donee apart from the humanitarian ground that has been relied upon. However, the involvement of middlemen/tout could not be ruled out.
11. Fact remains that the two persons, who will be actively involved in the process of transplantation, i.e. the donor and the donee, both have submitted declaration on affidavit disclosing their intention and consent to donate and receive.
12. The 1994 Act does not lay down a complete bar in such type of transplantation where there is no blood relationship between the parties; however, the approval of the Authorization Committee is required to be obtained.
13. In the instant case, it appears that there is no specific finding with regard to the financial transaction between the parties.

14. As the authorities have failed to confirm any financial transaction between the parties and as both the parties have filed respective declarations on affidavit, accordingly, the instant writ petition is disposed of with the observation that the patient, who is the husband of the petitioner, be permitted to proceed with the process of kidney transplantation from the donor, provided there is no other legal impediment to proceed with the same.
15. If however, further legal complication arises to proceed with such transplantation, then the authority shall consider the prayer of the petitioner for organ transplantation from any donor approved by the Authorization Committee.
16. It is made clear that the Court is not an expert body to decide on such issue and the instant case will not lay down any precedent. The prayer of the petitioner is considered on urgent basis as it has been reported that the health condition of the donee is deteriorating rapidly. The fundamental right of a citizen to lead a normal and healthy life weighed in the mind of the Court at the time of passing the order.
17. Steps shall be taken to conclude the rest of the procedures in accordance with law.
18. All parties are to act on the server copy of this order duly downloaded from the official website of this Court.
19. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

