



W.P.(MD)No.30183 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **07.01.2025**

CORAM:

THE HONOURABLE **MRS.JUSTICE L.VICTORIA GOWRI**

W.P.(MD)No.30183 of 2024

and

W.M.P.(MD)No.25402 of 2024

1.M.Maya Boopathi
2.C.Sudarmani Nathan

... Petitioners

Vs.

1. The Authorisation Committee (Transplantation),
Represented by its Chairman,
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai 600 010.

2. Kauvery Hospital Tirunelveli,
Represented by its Managing Director,
110E, 20/1, North Bypass Road,
Vannarpettai,
Tirunelveli 627 003.

3. E. Ramalakshmi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to grant approval for Kidney transplantation from the 2nd petitioner to the 1st petitioner without insisting NOC from the 3rd respondent, by considering the petitioner's representation dated 09.12.2024 and perform the kidney transplantation to the 1st petitioner on the priority basis within the time frame fixed by this Court.



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For Petitioner : Mr.B.Prasanna Vinoth
For Respondents : Mr.T.Amjad Khan (R1 & R2)
Government Advocate

ORDER

This writ petition is filed seeking for a direction to consider the petitioner's representation dated 09.12.2024 seeking for grant of approval for kidney transplantation from the 2nd petitioner to the 1st petitioner without insisting no objection certificate from the 3rd respondent.

2. Private notice to the third respondent effected, proof filed on 02.01.2025 and the name of 3rd respondent is printed in cause list. By consent of other parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The first petitioner is the cousin of the second petitioner, who is suffering from end level kidney failure, who is undergoing dialysis twice a week. The Doctor, who is treating the first petitioner has recommended surgical extraction and transplantation of the kidney for the first petitioner to survive. The first petitioner is 40 years old and he has two children. The



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second petitioner has voluntarily come forward to donate one of his kidneys to the first petitioner, following which, the physician concerned confirmed that the second petitioner's blood would be matched with the blood group that of the first petitioner. Subsequently, the petitioners approached the second respondent to perform the kidney transplantation. Since the second petitioner is not a near relative as defined under Section 2(i) of the Transplantation of Human Organs and Tissues Act, 1994, the second petitioner has submitted a supporting affidavit to that effect before the second respondent and the petitioners have submitted all the relevant documents as required by the second respondent. However, the second respondent, without forwarding the same to the first respondent, required the petitioners to get no objection certificate from the estranged wife of the second petitioner.

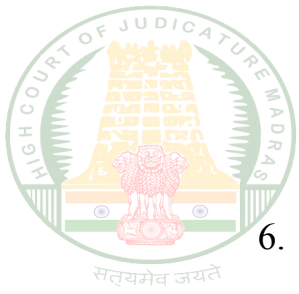
4. The third respondent is the second petitioner's estranged wife and they have separated for more than five years and a divorce petition in OP No.803 of 2024 is pending before the Subordinate Judge, Ambasamudram. Since the first petitioner is urgently in need of renal transplantation, the second petitioner is unable to get no objection certificate from his wife. Further, both the parents of the second petitioner also died on 24.10.2008 and 04.05.2021. The second petitioner, through his estranged wife, has two children, ie., a boy and a girl. In



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the absence of no objection certificate from the third respondent, the second respondent is reluctant to forward the petitioner's request for organ donation to the first respondent. Hence, the petitioners made a representation on 09.12.2024 to the second respondent to forward the application submitted by them to the first respondent for getting authorisation for renal transplantation. Since the same is not considered, this writ petition came to be filed.

5. The learned counsel appearing for the petitioners submitted that all the formalities required for effecting renal transplantation and all the documents required by the second respondent except no objection certificate of the third respondent have already been submitted by the petitioners duly before the second respondent. Even thereafter, in the absence of the third respondent's no objection certificate, the second respondent, despite the critical health condition of the first petitioner, is hesitant in forwarding the petitioner's application to the first respondent so as to facilitate authorisation for renal transplantation by the first respondent. Any further delay in the said exercise would result in losing the first petitioner and hence, he pressed for allowing the writ petition citing the nature of the urgency involved in this writ petition.



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6. The learned Government Advocate appearing for the official respondents submitted that no objection from the third respondent is a mandatory requirement for issuance of authorisation of renal transplantation.

7. Heard the learned counsel on both sides and carefully perused the entire materials available on record.

8. Considering the strange circumstance, which has emanated in the life of the second petitioner, in which he is encountering with a family dispute and that already a petition for divorce is pending between the second petitioner and his estranged wife, ie., the third respondent herein, before the Subordinate Judge, Ambasamudram, I am of the considered view that the second petitioner cannot succeed in receiving the no objection certificate from the third respondent, since they are not in talking terms any more.

9. This Court has dealt with the similar case in *WP(MD)No.7196 of 2021* dated *15.04.2021* reported in *2021 (4) CTC 680* and has directed the hospital concerned to recommend the renal transplantation to the authorisation committee (Transplantation), Represented by its Chairman and Director of Medical Education, Kilpauk, Chennai 600 010, subject to the conditions other



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than no objection certificate, being fulfilled by the applicant therein and the

relevant portion of the same is extracted hereunder:-

“10. In the considered view of this Court, the third respondent Hospital has also taken into consideration, the precarious situation of the fifth respondent and has recommended for renal transplantation at the earliest. The petitioner, who is the sister of the fifth respondent, is willing to donate one of her kidney to the fifth respondent. If the same is in line with the prevailing Act and Rules, it will be more appropriate to give a direction to the Medical Institution, which is authorized to carry out such transplantations. This Court ascertained and found that the sixth respondent is a reputed Institution, which carries out regular renal transplantation operations.

11. In view of the above, there shall be a direction to the petitioner and the fifth respondent to submit a joint application to the newly impleaded sixth respondent Hospital along with all the necessary particulars immediately. The sixth respondent on receipt of the same, shall take an immediate decision with regard to conduct of renal transplantation. The sixth respondent need not insist for a no objection from the husband of the petitioner due to the strained relationship. If all the other parameters are fulfilled, the sixth respondent shall proceed further to conduct the renal transplantation operation. Since it involves precious life, the sixth respondent shall take an immediate action in this regard”

10. In yet another case in **WP.(MD)No.13918 of 2024** dated **30.05.2024**

reported in **2024 SCCOnline Mad 1633**, wherein a non-relative donor came



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forward to donate his kidney for renal transplantation, this Court has also

discussed about the aspect of commercial dealing in such renal transplantation

and has observed as follows:-

“17. Let us put ourselves in the shoes of the applicants. They can only assert that there is no commercial dealing. They cannot be called upon to prove the negative. Rule 17 provides for scrutiny of application. In case of doubt, explanation can be sought from the applicants and there can also be verification done through the officials of the Government. Too much of burden cannot be laid on the shoulders of the applicants. Unless there is definite material to establish that there are financial dealings involving the parties, permission ought not to be withheld or rejected. If the donor states that out of love and affection, he/she is making the donation, in the absence of any credible reason, the averment should not be doubted. The Government must come out with definite guidelines in this regard. Otherwise, the issue will be left to the arbitrary discretion of the Authorisation Committee. If the recipient is well placed and connected, the decision of the committee will swing in his favour. If the recipient is not all that influential, by passing a template order, permission can be rejected. One must take note of the fact that parliament never intended to rule out donation by non-near relatives. The parliamentary intent ought not to be frustrated. by adopting a rigid approach. One need not take a cynical view that a non-near relative will not donate out of altruistic considerations.”



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11. As far as the instant case is concerned, the second petitioner is none other than the son of the maternal uncle of the first petitioner and the same has duly been certified by the Tahsildar, Ambasamudram. The jurisdictional police, ie., the Inspector of Police, Palayamkottai Police Station, Tirunelveli, has also ascertained that the second petitioner is the son of the maternal uncle of the first petitioner and no adverse criminal antecedents could be traced as against both the petitioners and hence, the case of the first petitioner is a fit case to be recommended for renal transplantation.

12. In view of the above and considering the health condition of the first petitioner, this Court is of the considered view that in cases of renal transplantation / organ failure, the authorised hospitals should be sensible and should not delay the application for renal transplantation on procedural lapses. More particularly, as far as no objection certificate in the present case is concerned, considering the fact that the third respondent and the second petitioner are also estranged and a divorce petition in OP No.803 of 2024 is also pending before the Subordinate Judge, Ambasamudram, I hereby direct the second respondent to process the petitioner's application without insisting no objection certificate and recommend the case of the petitioners before the first



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respondent, if the same is otherwise eligible, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent is directed to dispose of the same granting proper authorisation within a period of one week thereafter.

13. With the above direction, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

07.01.2025

(2/2)

NCC : Yes / No
Index : Yes / No
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Note: Issue order copy on 07.01.2025.

TO:-

1. The Authorisation Committee (Transplantation),
Represented by its Chairman,
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai 600 010.
2. Kauvery Hospital Tirunelveli,
Represented by its Managing Director,
110E, 20/1, North Bypass Road,
Vannarpettai,
Tirunelveli 627 003.



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L.VICTORIA GOWRI, J.

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Order made in
W.P.(MD)No.30183 of 2024
(2/2)

Dated
07.01.2025