

**CWP-35359-2024****1**

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

274**CWP-35359-2024****Date of Decision : March 06, 2025****VIJAY BAHADUR AND ANOTHER****-PETITIONERS****V/S****STATE OF PUNJAB AND OTHERS****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Jatin Kaushik, Advocate
for the petitioners.

Mr. Teevar Sharma, A.A.G, Punjab.

Mr. Avinit Avasthi, Advocate
for the respondent No.3-PGIMER.

KULDEEP TIWARI, J. (ORAL)

1. The petitioner No.1, a tricenarian man suffering from chronic kidney disease(s) and undergoing dialysis twice a week, has, through instituting the instant writ petition cast under Articles 226/227 of the Constitution of India, prayed for setting aside the order dated 30.08.2024 (Annexure P-10) inasmuch as therethrough the respondent No.2 has denied to accord approval for kidney transplant surgery.

2. Succinctly stated, post the petitioner No.1 becoming advised by his medical specialist to undergo kidney transplant surgery, the petitioner No.2 (father of petitioner No.1) agreed to donate him his kidney. Accordingly, the petitioners approached the medical specialist for kidney transplant surgery, whereupon, Pre-Op investigations of both of them (donor and recipient) were conducted. However, upon conducting HLA TYPING



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test, report whereof is enclosed as Annexure P-1, it was found by the medical specialist that the HLA TYPING of the petitioners did not match. Consequently, vide letter dated 18.06.2024 (Annexure P-2), the medical specialist sought permission/No Objection Certificate from the respondent No.2 for conducting kidney transplant of the petitioners, however, the said permission/No Objection Certificate was declined on account of the hereinafter extracted reasons:-

1.	<i>The Internal Committee of the hospital has already rejected this case as the DNA analysis doesn't prove the relationship.</i>
2.	<i>HLA typing report submitted by the hospital and represented on page no. 12 suggests that patient Vijay Bahadur is 1/12 match at allele level with the donor Mr. Shyam Shankar HLA Class I (A, B& C loci) & Class II (DPB1, DQB2 & DRB1 Loci). The same report suggests that donor is improper match with the recipient.</i>
3.	<i>In light of point No.2, there is no need of DNA fingerprinting/paternity test with respect to kidney transplant.</i>
4.	<i>In reference to above the appeal stands dismissed.</i>

3. Consequent upon issuance of notice of motion, a short reply, on affidavit of Dr. Rupinder Bakshi, Joint Director, Medical Education and Research, Punjab, was furnished by the learned State counsel. In this short reply, apart from the hereinabove extracted objections, an additional objection was also taken that, even if the kidney transplant is done, the chances of rejection are very high and this will put the lives of the petitioners at stake as HLA mismatch increases the frequency of rejection episode along with increased chances of infection and even malignancy.

4. In his beseeching the relief yearned by the petitioners, the

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learned counsel representing them placed reliance upon the judgment rendered by the Orissa High Court in “**Arup Kumar Das V/s State of Orissa**”, **2011 AIR (Orissa) 21**, to submit that, in living renal transplantation, there is no doubt that HLA matching does effect long-term graft survival, though the impact of HLA matching on long-term graft survival is decreasing with the availability of newer and stronger immunosuppressive medicines.

5. The learned counsel for the petitioners further submitted that, although the medical examination conducted upon the petitioners by pvt. medical specialist clearly spelled out the compatibility of the petitioners for kidney transplant, yet the petitioners are ready and willing to undergo fresh HLA TYPING test in P.G.I.M.E.R. Chandigarh, in case requisite directions are issued to the latter in this regard.

6. Responding to the hereinabove made submissions of the petitioners’ counsel, the learned State counsel submitted that, they have no objection in case the respondent No.3-PGIMER independently examines the issue appertaining to feasibility of petitioners’ kidney transplant surgery. He further submitted that, in case the report comes in favour of the petitioners, they would have no objection for granting permission/No Objection Certificate for kidney transplant surgery of the petitioners.

7. Taking into account the peculiar facts and circumstances of the case at hand, as also the submissions advanced by the learned counsels for the parties, this Court, vide order dated 24.01.2025, directed the respondent No.3-PGIMER to examine the compatibility and feasibility of the petitioners’ kidney transplant surgery and to submit its report.



8. In deference to the hereinabove extracted directions, the respondent No.3-PGIMER constituted a medical board, which conducted various medical procedures upon the petitioners (patient and donor) and finally reached at the conclusion that, **the kidney transplant is medically feasible**. Moreover, it has also been opined by the board of doctors that, 1/12 HLA is not a barrier to transplantation as current immunosuppressive therapy allows transplantation to proceed even when there is no HLA match. The survival with transplant irrespective of HLA match is better than survival on dialysis. Furthermore, on evaluation of the petitioners (patient and donor), both have been found psychologically fit and mentally capable of taking decision regarding the transplant surgery.

9. The relevant portion of the report prepared by the medical board constituted by the respondent No.3-PGIMER is reproduced hereunder:-

“In pursuance of the orders received from Hon’ble Punjab and Haryana High Court, Chandigarh in CWP-35359-2024 case titled as Vijay Bahadur and Another vs. State of Punjab and Others, a Medical Board of the following doctors was constituted vide letter no. EV (9) PGI-MS/MA-63/2025 dated 28.02.2025.

- 1. Prof. Ritu Aggarwal, Department of Immunopathology- Chairperson*
- 2. Prof. Deepesh B. Kanwar, Department of Renal Transplant Surgery – Member*
- 3. Dr. Samita Divyaveer, Department of Nephrology- Member*
- 4. Dr. Swapnajeet Sahoo, Department of Psychiatry – Member*
- 5. Dr. Saru Sethi, Department of Hospital Administration- Convener*

In this regard, the patient and the donor (father) were called on 03.03.2025. As per the assessment done by the medical



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board and reviewing the workup done till now including CDC crossmatch done on 28.02.2025, the medical board is of the opinion that the transplant is medically feasible. The 1/12 HLA match is not a barrier to transplantation as current immunosuppressive therapy allows transplantation to proceed even when there is no HLA match. Although a good HLA match such as a 5/6 or a 6/6 match results in a longer survival of the transplant kidney, transplant recipients tend to have satisfactorily long-lasting kidneys even when there is no HLA match. The survival with transplant irrespective of HLA match is better than survival on dialysis. Further testing of HLA is not required since HLA is stable for life for everyone. Two separate tests at two independent laboratories are in concordance with regard to the HLA typing of both persons - the patient and his donor, and also with the fact that there is only a 1/12 match between the two. On further evaluation of the patient and the donor, both are psychologically fit and mentally capable of taking decision regarding the transplant surgery and are well aware of the potential risks associated with the procedure.”

10. In summa, the instant writ petition is **allowed** and the impugned order dated 30.08.2024 (Annexure P-10) is set aside. Moreover, the respondent No.2 is directed to forthwith, in view of the report (supra), accord the requisite approval to the petitioners for undergoing kidney transplant surgery.

March 06, 2025
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No