IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 20086 of 2026

Ranjeet Kumar Ghosh

Vs.

State of West Bengal & Ors.

Mr. Pingal Bhattacharyya

Mr. Rajdeep Sinha

....For the petitioner.

Mr. Siddartha Goswami

Mr. Argha Chatterjee

....For the State.

Hearing Concluded On : 17.09.2026

Judgment Delivered On : 05.10.2026

Judgment Uploaded On : 05.10.2026

Krishna Rao, J.:

1. The Petitioner has filed the instant writ petition seeking permission to allow the Respondent No. 9 to donate one of her kidneys to the Petitioner on humanitarian ground.

2. The Petitioner was treated at the various hospitals. After several medical tests, it was diagnosed that the Petitioner has been suffering from chronic kidney disease. The doctor of Narayana Health, Mukundapur, Kolkata, Proforma Respondent No. 10 advised the Petitioner to undergo Renal Transplantation.

3. Mr. Pingal Bhattacharyya, Learned Advocate, appearing for the Petitioner, submits that the renal condition of the Petitioner has been deteriorating day by day. His family members, therefore, started searching for a person who could voluntarily donate a kidney to him, and ultimately the Proforma Respondent No. 9 came forward, willingly and voluntarily, to donate one of her kidneys to the Petitioner.

4. Mr. Bhattacharyya submits that, despite all efforts, the kidney of none of the family members of the Petitioner was found to be a suitable match for him. He further submits that the Proforma Respondent No. 9, who is the wife of the Petitioner's driver, belongs to Blood Group 'B' Positive, which has been found compatible with that of the Petitioner, and accordingly, she has voluntarily agreed to donate one of her kidneys to the Petitioner.

5. Mr. Bhattacharyya submits that, as per the advice of the doctors, the Petitioner and the Proforma Respondent No. 9 underwent various medical tests and investigations, and on the basis of the reports thereof, the Proforma Respondent No. 10 issued a certificate dated 28th January, 2026, duly signed by Dr. Suresh Kumar Bajoria, Consultant Urologist and Transplant Surgeon.

6. Mr. Bhattacharyya submits that, upon the kidney being found to match, the Proforma Respondent No. 9 and the Petitioner jointly submitted an application dated 19th January, 2026, before the competent authority for approval of transplantation from a living donor, along with a medical fitness certificate dated 19th January, 2026, duly signed by Dr. Deepak Shankar Ray of the Proforma Respondent No. 10 hospital.

7. Mr. Bhattacharyya submits that, after submission of the prescribed application, both the Petitioner and the Proforma Respondent No. 9 were directed to submit a further joint application, along with affidavits, before the Respondent No. 3. He further submits that, upon completion of the formalities, the Director and Cluster Head of the Proforma Respondent No. 10 hospital, by a letter dated 2nd February, 2026, requested the Respondent No. 3 to accord approval for the kidney transplantation as a definite life-saving measure, and also forwarded all the documents pertaining to the Petitioner as well as the Proforma Respondent No. 9.

8. Mr. Bhattacharyya submits that, upon receipt of the entire file, the Respondent No. 3 forwarded the same to the Respondent No. 8 for causing an enquiry for verification. Upon receipt thereof, the Respondent No. 8 caused an enquiry to be conducted through the Deputy Commissioner of Police, Special Branch, Barrackpore Police Commissionerate, North 24 Parganas, and submitted a report dated 23rd February, 2026, wherein it is found that there is no unofficial dealing in cash or kind between the donor and the recipient and there is no middleman or fact exists between the donor and the recipient.

9. Mr. Bhattacharyya submits that inspite of receipt of all reports and examination of the donor and legal guardian of the recipient and there is no adverse report for any commercial transaction, the respondent authorities have not taken any decision for transplant kidney of the petitioner.

10. Dr. Siddhartha Goswami, Learned Advocate, representing the respondent authorities has submitted report along with the video recording of the statement of the donor, husband of donor, and wife of recipient. He submits that to ascertain the genuinity of the donor and recipient, the District Level Verification Committee has examined the donor, husband of donor and wife of recipient and recorded their statements.

11. Dr. Goswami submits that after examination of the above named persons, the District Level Committee has submitted verification report

to the State Level Authorization committee. In the report of the District Level Verification Committee, it is observed that there is mismatch between the statement of the donor and document provided by the donor regarding year of driving licence, the date of issuance of driving licence is 27th February, 2024. No document is submitted to prove that the husband of the donor providing service to the recipient from the centre. The document provided by the donor is not of Saheb Colony as stated by the donor in her interview. The District Level Verification Committee has not recommended the case of the petitioner.

12. Mr. Goswami submits that on receipt of the report of the District Level Verification Committee, the State Level Authorization Committee taken legal opinion from the Legal Cell of the department and sent it for re-verification. On receipt of the re-verification report, the Board members have verified the report of the District Level Verification Committee and examined the donor and the legal guardian of the donor. After examining the donor, husband of the donor and wife of the Recipient, the Board come to the conclusion that the driving licence provided by the legal guardian of the donor shows that the driving licence was issued on 27th February, 2024 but as per the statement of the donor that her husband is driving car from 2021, which means that the husband of the donor was driving car without licence from 2021 to 2024. It is further recorded by the Board that the husband of the donor said that he is driving car of a driving centre from 2021 but failed to submit any document in support of his statement.

13. Mr. Goswami submits that after considering the report of the State Level Verification Committee, legal opinion and after examination of the donor, husband of the donor and wife of the recipient, the Board is of the view that the donor, husband of the donor and wife of the recipient failed to satisfy with regard to their relation and accordingly, refused to allow for kidney transplant of the petitioner.

14. The reasons for refusing the request of the petitioner for kidney transplant by the Board are that the donor and the recipient failed to prove their relationship. As per the case of the petitioner is that the husband of the donor is driver by profession and is driving car of the centre and use to provide service to the donor as donor used to travel by the car which the husband of donor is driving.

15. The rejection of the request of the petitioner by the Board is in two fold:

> *"**(a)** The driving license which the husband of donor is having issued only on 27th February, 2024 though as per the case of the donor that her husband is driving car since 2021 and :*
>
> ***(b)** The donor failed to produce any documentary evidence to show that the husband of the donor is driving the car of the centre since 2021."*

16. The State Level Verification Committee and the Board have examined the donor, husband of donor and the wife of recipient. The statements of the said persons were recorded through video recording. This Court perused the statement of the three persons recoded by the District Level Verification Committee and the Board.

17. As per the statement of the donor, she has stated that:

> ***"Q.*** *Since which year has he (husband of the donor) been driving?*
>
> ***Ans.*** *He has been driving since 2021–22, sir. He has been driving for many years. Earlier he didn't have a license. After getting the license, he has been driving since 2021–22.*
>
> ***Q.*** *How do you know the recipient?*
>
> ***Ans.*** *I have known him for 4 years. 4 years ago, when aunt (wife of the recipient) and her family used to come here to offer puja at Boro Maa's temple, their car broke down, so they booked a car through the centre. My husband went to drop them, and that is when we got acquainted with them.*
>
> ***Q.*** *Why did you suddenly agree to donate a kidney? What is the reason?*
>
> ***Ans.*** *Kaku [recipient] — I mean, I had been to their house several times. When my husband took him for dialysis at Apollo, there was talk at home that his [kaku's] health was very poor. His elder son doesn't live at home. Both the elder and younger sons are in Delhi for their studies and can't manage this; his wife can't manage alone either. After the dialysis, his health got even worse — after seeing that with my own eyes, I myself took this decision.*
>
> ***Q.*** *You're the one giving it? Why are you giving it?*
>
> ***Ans.*** *Yes. Because I love Kaku [uncle] very much, that's why. When my husband used to drive the centre's car to Ranjeet Kaku's house — and used to take him to R.N. Tagore hospital to see the doctor — that's how we got acquainted, from there. He's been driving for him for about 4–5 years.*
>
> ***Q.*** *I'm not able to understand that either?*
>
> ***Ans.*** *Contact was made with the car centre, and he [recipient] was hired by him [My husband] permanently."*

18. The husband of the donor stated as follows:

*"**Q.** Mainly, where do you drive?*

***Ans.** I drive cars through centre bookings. Then, with them [family members of the recipient], I get the contact from Sarathi Car Centre.*

***Q.** When did that acquaintance happen?*

***Ans.** That too has been roughly 3.5–4 years by now, sir, or close to that.*

***Q.** Before that, were you driving cars through a driver centre?*

***Ans.** Yes.*

***Q.** For how many years have you been driving cars?*

***Ans.** A long time. Even when I didn't have a license, I drove cars. I got the license 3 years ago.*

***Q.** Before that, the car you used to drive here — when that gets entered on record at the car centre, some kind of registered document does get made, doesn't it?*

***Ans.** Yes, at that time they (car centre) told me that I would have to pay them back 50 rupees each for the ID card. Then I saw that a fixed regular centre duty at one place doesn't happen like that; at that time they (car centre) used to give 550 rupees each. Then I thought, if I could do it at one place on a salary system…*

***Q.** While searching for work, you drove their car one day, is that it?*

***Ans.** Yes.*

***Q.** Did they start liking you then?*

***Ans.** Yes, then I used to say, "If you need me, tell me, I will drive." When I used to drive, they had an old Chevrolet car; now there is a …… (not audible clearly) car.*

***Q.** Look, one thing is clear: it could not have been expected that you would make contact with them there at their place, in any manner through your driver centre. Understand one thing: around Newtown Rajarhat, driver centres have by now sprung up in almost every neighbourhood, and*

individual driver have their names registered with several such centres. Second, leaving the centres there, how did they come to be in contact with your Saheb Colony centre? This is preciously what we are unable to understand.

Ans. *Now, sir, as for the Sarathi one there, their duties, sir, happen in many places. For example, I have brought cars from ..... (not audible clearly) too, and again there is duty on Bethua Road too; from there too I have travelled by train and brought a car.*

Q. *As far as I know, a centre maintained a register in which they mark that on a particular day, this person's duty was done. If you have any such paper, you will produce that. I have given you 7 days' time.*

Ans. *In that case, sir, I will go and talk about that."*

19. Wife of the recipient stated as follows:

*"**Q.** How did the acquaintance come about?*

Ans. *Everyone first became acquainted through her (donor) husband.*

Q. *Since when have you known her (donor) husband?*

Ans. *It would be 4-5 years.*

Q. *When did he (husband of the donor) first drive your (recipient) car?*

Ans. *2021.*

Q. *How did you (wife of the recipient) come to know her (donor)?*

Ans. *We had once visited to our Boroma temple. Our car broke down, so we hired a car - he (husband of the donor) was the driver of that car.*

Q. *So in 2021, he (husband of the donor) drove for the first time, and that same day his conduct seemed good - is that right?*

Ans. *Yes. After that, as usual, when we called again to say "ride our car," he said yes.*

> ***Q.*** *Why did she (donor) agree to give her kidney?*
>
> ***Ans.*** *He (husband of the donor) came to our house many times; through all that driving, a family-like relationship developed. He has seen my husband's (recipient) condition and cares for him a great deal - that's why.*
>
> ***Q.*** *You have said many times he (husband of the donor) drove the car - can't you produce anything at all?*
>
> ***Ans.*** *He would come, drive, take his payment, and leave."*

20. Section 9 of the Transplantation of Human Organs and Tissues Act, 1994 (hereinafter referred to as "Act of 1994"), provides restrictions on removal and transplantation of human organs or tissues or both. In the present case, Sub-Section (3) of Section 9 of the Act of 1994 is relevant, which reads as follows:

> *"**9. (3)** If any donor authorises the removal of any of his [human organs or tissues or both] before his death under sub-section (1) of Section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reasons of affection or attachment towards the recipient or for any other special reasons, such [human organ or tissue or both] shall not be removed and transplanted without the prior approval of the Authorisation Committee."*

21. As per the Act of 1994, there is no restriction for donation of kidney in favour of a person who is not a near relative but the only restriction is that transplantation can be done only after prior approval of the State Authorization Committee.

22. Rule 7 of the Transplantation of Human Organs and Tissues Rules, 2014 (hereinafter referred to as "Rules, 2014") defines "Authorization Committee". In the present case, Sub Rule (3) of Rule 7 of Rules, 2014, is relevant, which reads as follows:

> *"**7. Authorisation Committee. –***
>
> ***(3)** When the proposed donor and the recipient are not near relatives, the Authorisation Committee shall,-*
>
> *(i) evaluate that there is no commercial transaction between the recipient and the donor and that no payment has been made to the donor or promised to be made to the donor or any other person;*
>
> *(ii) prepare an Explanation of the link between them and the circumstances which led to the offer being made;*
>
> *(iii) examine the reasons why the donor wishes to donate;*
>
> *(iv) examine the documentary evidence of the link, e.g. proof that they have lived together, etc.;*
>
> *(v) examine old photographs showing the donor and the recipient together; (vi) evaluate that there is no middleman or tout involved;*
>
> *(vi) evaluate that financial status of the donor and the recipient by asking them to give appropriate evidence of their vocation and income for the previous three financial years and any gross disparity between the status of the two must be evaluated in the backdrop of the objective of preventing commercial dealing;*
>
> *(vii) ensure that the donor is not a drug addict;*

(viii) ensure that the near relative or if near relative is not available, any adult person related to donor by blood or marriage of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ or tissue, the authenticity of the link between the donor and the recipient, and the reasons for donation, and any strong views or disagreement or objection of such kin shall also be recorded and taken note of."

23. In the case of ***Kuldeep Singh & Anr. Vs. State of T.N. & Ors.*** reported in ***(2005) 11 SCC 122***, the Hon'ble Supreme Court held that:

*"**12.** Where the donor is not "near relative" as defined under the Act the situation is covered by sub-section (3) of Section 9. As Form 1 in terms of Rule 3 itself shows, the same has to be filed in both the cases where the donor is a near relative and where he is not, so far as the recipient is concerned. In case the donor is not a near relative the requirement is that he must establish that removal of the organ was being authorised for transplantation into the body of the recipient because of affection or attachment or for any special reasons to make donation of his organ. As the purpose of enactment of the statute itself shows, there cannot be any commercial element involved in the donation. The object of the statute is crystal clear that it intends to prevent commercial dealings in human organs. The Authorisation Committee is, therefore, required to satisfy that the real purpose of the donor authorising removal of the organ is by reason of affection or attachment towards the recipient or for any other special reason. Such special reasons can by no stretch of imagination encompass commercial elements. Above being the intent, the inevitable conclusion is that the Authorisation Committee of the State to which the donor and the donee belong have to take the exercise to find out whether approval is to be accorded. Such Committee shall be in a better position to ascertain the true intent and the purpose for the authorisation to remove the organ and whether any commercial element is involved or*

> *not. They would be in a better position to lift the veil of projected affection or attachment and the so-called special reasons and focus on the true intent. The burden is on the applicants to establish the real intent by placing relevant materials for consideration of the Authorisation Committee. Whether there exists any affection or attachment or special reason is within the special knowledge of the applicants, and a heavy burden lies on them to establish it. Several relevant factors like relationship if any (need not be near relationship for which different considerations have been provided for), period of acquaintance, degree of association, reciprocity of feelings, gratitude and similar human factors and bonds can throw light on the issue. It is always open to the Authorisation Committee considering the application to seek information/materials from the Authorisation Committees of other States/State Governments, as the case may be for effective decision in the matter. In case any State is not covered by the operation of the Act or the Rules, the operative executive instructions/government orders will hold the field. As the object is to find out the true intent behind the donor's willingness to donate the organ, it would not be in line with the legislative intent to require the Authorisation Committee of the State where the recipient is undergoing medical treatment to decide the issue whether approval is to be accorded. Form 1 in terms requires the applicants to indicate the residential details. This indication is required to prima facie determine as to which is the appropriate Authorisation Committee. In the instant case, therefore, it was the Authorisation Committee of the State of Punjab which is required to examine the claim of the petitioners."*

24. The State Level Authorization Committee and the District Level Authorizations Committee have not recommended the case of the petitioner with the reasons that the husband of donor has not produced documents that he was working as driver in centre and has obtained licence only in the year 2024. The donor and the recipient are not near

relatives, thus the Authorization Committee has to act in terms of Sub-Rule 3 of Rule 7 of Rules, 2014. As per report, there is no financial dealing in cash or kind between the proposed donor and the recipient. It is also admitted fact that there is no middleman or tout is involved. The Committee has also admitted that yearly income of the donor is 1,48,000/-. The donor in her statement categorically stated that she know the recipient for last four (4) years when the recipient and his wife used to come to offer puja at Boro Maa temple, their car broke down and they booked car through centre and her husband went to drop them since then they got acquainted with each other. The donor has also stated that she love Kaku (uncle) very much that is why she is willing to donate her kidney to the recipient. The donor has also stated that her husband has been driving vehicle since 2021 to 2022. Earlier, her husband did not have the licence but now her husband got licence in the year 2024. The husband of the donor has also stated that he drives car through centre booking. Even when he did not have licence he used to drive car and now he got licence. He also stated that for the last three and half years/ four years, he acquainted or close to the recipient.

25. In case the donor is not a near relative, the requirement is that he must establish that removal of organ was being authorized for transplantation into the body of the recipient because of attachment or for any special reason to make donation of his organ. The purpose of enactment of the statute itself shows that there cannot be any

commercial element involved in the donation. The object of the statue is crystal clear that it intends to prevent commercial dealing in human organs.

26. In the present case, before taking decision by the Authorization Committee, the District Level Authorization Committee and the State Authorized Committee have examined the donor, husband of the donor and wife of the recipient. The Committee also called for report from the police authorities to ascertain whether there is any commercial transaction or middleman/ touts is involved. The report of the police authority certified that there is no commercial transaction or middlemen/ touts is involved. Form the statements of the donor, husband of the donor and the recipient, it reveals that they know each other for the last three/four years and the husband of the donor is driver and use to drive the car to take the recipient to hospital and the donor very much like recipient as her uncle.

27. Rule 17 of Rules, 2014, 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 dealing involving the parties, permission ought not to be withheld or rejected. If the donor states that out of her love and affection, he/she is making the donation, in the absence of any credible reason, the averment should not be doubted.

28. This Court finds that the reasons which the Authorization committee has refused to recommend the case of the petitioner for kidney transplantation is not in accordance with the statute inspite of the fact that there is no commercial transaction is involved and the donor is willing to donate organ out of love and affection and are knowing each other for the last three/ four years.

29. Considering the above, the decision taken by the Authorization Committee is set aside and quashed. The State Level Authorization Committee is directed to reconsider the request of the petitioner and to take appropriate decision within a period of two weeks from the date of receipt of this order.

30. **WPA No. 20086 of 2026** is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)