

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

FRIDAY, THE 28TH DAY OF APRIL 2023 / 8TH VAISAKHA, 1945

WP(C) NO. 14270 OF 2023

PETITIONER/S:

- 1 RAMACHANDRAN P
AGED 53 YEARS
S/O PARAMESWARAN PILLAI, V.V. PALACE,
GRAJ 53A, SREEKARYAM P.O, GANDHIPURAM,
THIRUVANANTHAPURAM, PIN - 695010
- 2 ANU MANOJ
AGED 35 YEARS
W/O MANOJ JACOB, KULATHINKAL HOUSE,
PALLOM P.O., NATTAKA, KOTTAYAM, PIN - 686013
BY ADVS.
ADOLPHIN MAMACHAN
CHRISTABEL D AVRAVU

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO HEALTH DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 THE PRINCIPAL SECRETARY
DEPARTMENT OF HEALTH, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3 THE DISTRICT LEVEL AUTHORIZATION COMMITTEE FOR
TRANSPLANTATION OF HUMAN ORGAN, ERNAKULAM
REPRESENTED BY ITS CHAIRMAN, GOVERNMENT MEDICAL COLLEGE,
H.M.T. COLONY, PIN - 683503

R BY GP SRI.JIMMY GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners have approached this Court challenging Exts.P8 and P11 orders issued by respondents 3 and 2 respectively. The 1st petitioner has kidney disease and needs kidney transplantation. There are no relatives to donate kidney and the 2nd petitioner has offered to donate her kidney. The application submitted for permission for kidney transplantation was rejected by the 3rd respondent and this Court by Ext.P7 judgment directed the 3rd respondent to reconsider the application. Ext.P8 is the order thus issued by the 3rd respondent. The reasons stated in Ext.P8 for rejecting the application are that the donor and her husband belong to different communities and are not legally married and the recipient and donor are from different districts. The petitioners filed Ext.P9 appeal against Ext.P8 order which was rejected by the 2nd respondent by Ext. P11. The relevant portions of Ext.P11

are as under:

“6. As per the Transplantation of Human Organs and Tissues Rules, 2014, it is the duty of the District Level Authorization Committee to look into all aspects so as to prove whether there is altruism when the proposed donor and the recipient are not near relatives. The District Level Authorization Committee has examined the case as per the protocol defined in the Transplantation of Human Organs and Tissues Rules, 2014, and rejected the application due to the non-establishment of a relationship between the donor and recipient and suspicion of money transaction.

7. In the above circumstances, in view of the report submitted by the Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam, the appeal petition submitted by Shri.Ramachandran P lacks merit and hence is rejected”.

2. From Ext.P8 order I find that the questions put to the recipient’s representative and the donor were not relevant or material for the evaluation as contemplated by Rule 7 (3) of the Transplantation of Human Organs rules, 2014 and there was no proper evaluation and examination as contemplated under the Rules to prove whether there is

altruism. The appellate authority also did not consider these aspects and rejected the appeal mechanically. Exts.P8 and P11 orders are set aside.

3. The learned counsel for the petitioners submits that the first petitioner is seriously ill and requires transplantation immediately. There will be a direction to the 3rd respondent to re-consider the application submitted for kidney transplantation of the 1st petitioner in accordance with law and pass orders expeditiously, at any rate within a period of ten days from the date of receipt of a copy of this judgment.

Writ petition is disposed of.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

SB

APPENDIX

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE CERTIFICATE DATED 27.10.2022 ISSUED BY THE AUTHORIZED MEDICAL OFFICER OF CHSS, TRIVANDRUM
- Exhibit P2 TRUE COPY OF THE FORM 3 APPLICATION DATED 03.11.2022 FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT SEEKING TRANSPLANTATION FROM LIVING DONOR
- Exhibit P3 TRUE COPY OF THE FORM 11 APPLICATION DATED 03.11.2022 FILED BY THE PETITIONERS SEEKING APPROVAL FOR UNRELATED RENAL TRANSPLANTATION BEFORE THE 3RD RESPONDENT
- Exhibit P4 TRUE COPY OF THE CONSENT OF THE DONOR/2ND PETITIONER
- Exhibit P5 TRUE COPY OF THE CONSENT OF THE HUSBAND OF THE DONOR
- Exhibit P6 TRUE COPY OF THE ORDER DATED 25.01.2023 ISSUED BY THE 3RD RESPONDENT REJECTING THE APPLICATION OF THE PETITIONER
- Exhibit P7 TRUE COPY OF JUDGMENT DATED 08.02.2023 OF THIS HON'BLE COURT IN W.P.(C) NO.4064/2023
- Exhibit P8 TRUE COPY OF THE ORDER DATED 25.02.2023 ISSUED BY THE 3RD RESPONDENT
- Exhibit P9 TRUE COPY OF APPEAL MEMORANDUM DATED 27.02.2023 SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT
- Exhibit P10 TRUE COPY OF JUDGMENT DATED 03.03.2023 OF THIS HON'BLE COURT IN W.P.(C) NO.7357/2023
- Exhibit P11 TRUE COPY OF THE ORDER DATED 26.03.2023 ISSUED BY THE 2ND RESPONDENT
- Exhibit P12 TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY KIMS HOSPITAL DATED 30.3.2023