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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.05.2024

Pronounced on : 31.05.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.No.13642 of 2024

and

W.M.P.Nos.14806 and 14807 of 2024

J.Rajkumar

... Petitioner

vs.

1.The Authorisation Committee (Transplantation),
Rep. by Chairman,
Coimbatore Medical College & Research,
Kilpauk, Chennai – 600 010.

2.The State of Tamil Nadu,
Rep by its Principal Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai – 600 009.

3.The Tahsildar,
Thiruvotriyur Taluk,
Thiruvotriyur,
Chennai – 600 019.

4.M/s.Muthu Hospital,
No.105, Pulianthope High Road,
Chennai – 600 010.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India
praying to issue a Writ of Cerioraified Mandamus, calling for the records of



the 1st respondent dated 10.05.2024 issued in Letter No.K.Dis.No.40970/H&DH/4 of 2024 in rejecting the petitioner's application for transplantation of Human Organ and quash the same and consequently direct the 1st respondent to approve the petitioner's application/grant/approval/NOC to the petitioner for his kidney transplantation.

For Petitioner : Mr.G.V.Sridharan

For Respondents : Mrs.M.Sneha,
Special Counsel for R1.
Mr.K.Tippu Sulthan,
Govt. Advocate for R2.
Mrs.R.L.Karthika,
Govt. Advocate for R3.

ORDER

The petitioner is working as an Electrical Assistant in Indian Railways. He is aged about 30 years. He is suffering from chronic kidney disease. He is under dialysis. He has been advised by his nephrologist to undergo kidney transplant at the earliest. The petitioner's wife came forward to donate her organ. But it did not materialise on account of medical incompatibility. Offers made by other relatives also met the same fate. Seeing the petitioner's condition, Mrs.Radhika, W/o.Kuppan offered to donate her organ and she was found to be compatible. As she was not



related, prior approval from the Authorisation Committee was required.

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2. Accordingly, application in Form – 11 was submitted by the prospective donor and the petitioner. Their case is that the offer by Mrs. Radhika is out of love and affection and there is no commercial element in the transaction. However, the application was rejected. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. Per contra, the learned Government Advocate for the department submitted that the impugned order does not deserve to be interfered with. In the alternative, he submitted that the petitioner can very well file an appeal as provided under Section 17 of the Transplantation of Human Organs and Tissues Act, 1994.

5. I carefully considered the rival contentions and went through the materials on record. Vide order dated 30.05.2024 in W.P.Nos.13918 of



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2024 etc batch, I had laid down the parameters for considering Form 11 application when the applicants are not “near relatives”. The order dated 09.10.2023 made in W.P.No.27106 of 2023 (Dr.J.Kaja vs. The Authorisation Committee (Transplantation), Rep. by its Chairmnan, Kilpauk, Chennai – 600 010) passed by Mr.Justice N.Seshasayee was not brought to my notice. His Lordship has explained succinctly the ratio and rationale underlying the decision of the Hon'ble Supreme Court reported in (2005) 11 SCC 122 (Kuldeep Singh v. State of Tamil Nadu). There are many takeaways from the said judgment. The first is that transplants from non-near relative donors are contemplated under Section 9(3) of the Transplantation of Human Organs and Tissues Act, 1994 and Rules 14 and 19 of the Transplantation of Human Organs and Tissues Rules, 2014 prescribe the procedures and consequently, refusal by hospitals in the State of Tamil Nadu to perform transplants concerning unrelated donors would be plainly illegal. G.O.(Ms)No.175, dated 06.06.2008 which touches upon the procedure of considering the applications has been extracted in toto. The Hon'ble Judge expressed his belief that physicians and hospitals would gain in confidence in dealing with the issue and that what is required is legal education on the subject and expected the Government to take a lead in the matter. Without being aware of the aforesaid order, I had also



rendered judgment on the same lines. I had held that the applicants cannot be expected to prove the negative; the statement that the prospective donor has come forward out of altruistic motive should not be doubted in the absence of definite materials evidencing commercial dealing. I had further held that when there is no material to show passing of consideration, approval should be granted.

6.The Authorisation Committee sat on 10.05.2024 and the deliberations pertained to liver transplantation as well as renal transplantation. The table contains six columns under the following headings, serial number, name of the hospital, name of the patient, name of the donor, whether approved / rejected and if rejected, reason. It can be seen that for granting approval, reasons are not assigned. All the five applications submitted by Dr.Rela Institute and Medical Central, Chrompet, Chennai have been approved. Likewise, the applications submitted by Kauvery Hospitals and CMC, Vellore, Kovai Medical Centre & Hospital etc have been approved. Of course, applications received from the Government hospitals have also been approved. It is quite possible that the patients admitted in Government hospitals have been referred by leading professionals and are otherwise well do to and that they have chosen to get



the surgery done at the government hospitals but at the hands of the surgeons of their choice. It is possible that such decision was taken for fast tracking processing of their applications. I am happy that approvals were given in large number of cases. The hospital where the petitioner wanted to undergo transplantation does not appear to be a big name. Two applications were submitted in the name of the said hospital. In one case, approval has been withheld and in the petitioner's case, it has been rejected. If an enterprising investigative journalist (let me add tongue-in-cheek or an youtuber) undertakes a thorough probe of all the approvals granted sofar, I am certain that lot of skeletons will tumble out of the cupboards of the committees.

7. That is why, I call for a uniform liberal approach. When suffering is common to all, the status of the hospital and the patient should be immaterial. Let me visualize this way. “A” is a leading corporate hospital. “B” is an ordinary hospital. Both are located in the same area. “A” hospital charges Rs.10 Lakhs for a given surgery. “B” hospital charges Rs.4 Lakhs for the same procedure. If the same surgeon will carry out the surgery, a patient who cannot afford the services of the corporate hospital, would get admitted in “B” hospital. This will irk the management of “A” hospital. If



approval is required from the department for a given procedure, “A” hospital will see to it that while its applications are fast tracked and given green signal, the applications of “B” hospital are not fast tracked and if possible rejected. This is the way of capitalism. This is the way business men behave. Competition is always cut-throat. All is fair not only in love and war but also in business. And medicare is a huge business. The choice of the letters “A” and “B” was incidental. “A” can be substituted by “K” or “M” or “R” or anything!

8. In the case on hand, Form 11 application submitted by the petitioner and the prospective donor was rejected by assigning the following reason “photo evidence and statement are grossly contradictory”. In the decision reported in 2008 MLJ (4) 1044 (S.Samson Vs. Authorisation Committee for Implementation of Human Organ Transplantation), it was held that opportunity of personal hearing must be given. There is a reason for this. If an adverse order is passed, an element of disqualification is attached to the donor. The rights of the patient are at stake. That is why, it is necessary to comply with the principles of natural justice. If any doubt crosses the minds of the members of the committee, the applicants must be put on notice and given an opportunity to explain. In this case, the reason



assigned is cryptic. It does not shed any light. The petitioner was not given any opportunity to explain the so-call contradiction noticed by the committee. There has been a gross violation of principles of natural justice.

9.I have held vide order dated 30.05.2024 in W.P.Nos.13918 of 2024 etc batch that the statement made by the prospective donor that he / she is coming forward to donate the organ out of altruism cannot be questioned unless there is definite material to show passing of consideration. In this case, the minutes do not indicate the existence of commercial dealings between the parties.

10.The order impugned in this writ petition rejecting the petitioner's application is set aside and the matter is remitted to the file of the first respondent. The first respondent will re-consider the issue in the light of the principles laid down vide order dated 30.05.2024 made in W.P.Nos.13918 of 2024 etc batch. An appropriate order shall be passed within a period of three weeks from the date of receipt of a copy of this order.

11.This writ petition is allowed accordingly. No costs. Consequently,



connected miscellaneous petitions are closed.

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31.05.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To:

- 1.The Chairman,
The Authorisation Committee (Transplantation),
Coimbatore Medical College & Research,
Kilpauk, Chennai – 600 010.
- 2.The Principal Secretary
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai – 600 009.
- 3.The Tahsildar,
Thiruvotriyur Taluk,
Thiruvotriyur,
Chennai – 600 019.



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G.R.SWAMINATHAN, J.

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