



GOVERNMENT OF KERALA



Abstract

Health and Family Welfare Department-Organ transplantation - Judgment dated, 21.11.2022 of the Hon'ble High Court in WP(C) No. 36696/2022 filed by Shri. Reji P Varghese and another - Complied with - Orders issued.

HEALTH & FAMILY WELFARE (B) DEPARTMENT

G.O.(Rt)No.2922/2022/H&FWD Dated,Thiruvananthapuram, 09-12-2022

Read:- 1. Appeal petition dated 07.11.2022 submitted by Shri. Reji P Varghese and Smt. Aneesha Harshad
2. Judgment dated 21.11.2022 of the Hon'ble High Court in WP(C) No. 36696/2022 filed by Shri. Reji P Varghese and another.
3. Letter No. CA/178/2022/GMCE dated 01.12.2022 of the Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam.

ORDER

The District Level Authorization Committee, Government Medical College, Ernakulam had rejected the application for renal transplantation between Shri. Reji P Varghese (recipient) and Smt. Aneesha Harshad (donor). Aggrieved by the rejection, the petitioners have filed an appeal petition read as 1st paper above, before Government and simultaneously filed WP(C) No. 36696/2022 before the Hon'ble High Court.

2. In the judgment dated, 21.11.2022 in WP(C) No. 36696/2022 read as 2nd paper above, the Hon'ble High Court has directed the second respondent i.e. Principal Secretary, Health Department to consider the appeal and take a reasoned decision thereon, as expeditiously as possible, at any rate within ten days of receipt of a copy of this judgment. To effectuate proper consideration of the appeal, the petitioner shall produce a copy of the writ petition along with certified copy of the judgment.

3. The Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam, as per the letter read as 3rd paper above has submitted report on the appeal petition submitted by the petitioners. The report reveals the following facts:-

- i. The case of the Appellants was considered by the Committee on 29.10.2022. The 1st Appellant (Recipient) was represented by his wife Smt. Smitha. P. Varghese and the 2nd Appellant (Donor) was accompanied by her husband Shri. Arshad and Cousin sister Smt. Shahana.
- ii. On interaction with the 1st Appellant's wife and the donor Smt. Aneesha,

the members of the Committee felt that, the statements given by both of them are totally contradictory and inconsistent. Though it was claimed by the parties that the donor has been working as a housemaid at the house of the recipient for around 5 years, on pointed questions from the members of the Committee, the donor could not even state about the profession of the 1st Appellant, proper location of their house or about the household duties which she claims to be doing at the house of the 1st appellant. she could not even state the correct number of rooms at the house of the 1st Appellant, which proved that she is not working at the house of the 1st Appellant.

- iii. The answers provided by the parties were contradictory in all aspects and the relationships claimed by the parties could not be established. No altruism on the part of the donor could be established and in such circumstances, in absence of any proven relationships, money transaction is suspected and case was felt to be not genuine at all.
- iv. On perusing the documents submitted by the Donor, it is seen that no valid Marriage Certificate either from the religious institution or from the local authority is produced. The husband of the donor and cousin sister stated that they are not aware of the whereabouts of the recipient. The husband seems to be unaware of the place where the wife is working. Moreover the interaction with the relatives also could not establish the relationship between the donor and the recipient.
- v. As per Rule 22 of the Transplantation of Human Organs and Tissues Rules, 2014 (relevant portion attached below) *"in case where the donor is woman, greater precautions ought to be taken and her identity and independent consent should be confirmed by a person other than the recipient."*
- vi. In view of the above aspects, the Committee unanimously felt that the Affidavits submitted stating that the donor is making the donation out of attachment or affection towards the recipient is not correct as they appeared to be total strangers and therefore suspecting commercial dealings, the Application was rejected.

4. Government have examined the matter in detail. In the appeal petition, no new arguments are seen raised by the applicants. It is stated that the order issued by the Committee is not a speaking order and that the committee has not found that there is money transaction between the parties. The District Level Authorization Committee has given a detailed reasoning as to why they have rejected the application for unrelated donor transplant and submitted the video recording as well. The Transplantation of Human Organs Act does not allow donations from unrelated live donors unless it is proven that it is for an altruistic purpose. Altruism has not been established here.

5. When the recipient has the means to procure organs for a cost and the

donor is established to be from an economically disadvantaged background which is the case here, then altruism can hardly be considered the reason for organ donation. The recipient is from Ernakulam and the donor from Thrissur. Apparently, the donor had worked as a maid in the household of the recipient which is not proven. There is no relationship between the donor and the recipient and hence no reason for altruism from the donor. The fact that she is from an economically disadvantaged family is enough indication of commercial interests in this organ donation exercise.

6. In the above circumstances, the appeal petition submitted by the petitioners read as 1st paper above, does not deserve merit and is hence rejected. The judgment dated 21.11.2022 of the Hon'ble High Court in WP(C) No. 36696/2022 read as 2nd paper above is complied with accordingly.

(By order of the Governor)
TINKU BISWAL
PRINCIPAL SECRETARY

The Advocate General, Kerala, Ernakulam.

The Director of Medical Education, Thiruvananthapuram.

The Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam.

Sri. Reji.P.Varghese, East Marady, Maradi(p.o), Ernakulam 686673

Smt. Aneesha Harshad, Edavilangu (p.o), Thrissure-680671

The Executive Director, Kerala State Organ & Tissue Transplant Organization, Old House Surgeons Block, Near Super Speciality Block, Government Medical College, Thiruvananthapuram

The Principal Accountant General (A&E/Audit), Kerala, Thiruvananthapuram
Information & Public Relations Department (Web & New Media)

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