GOVERNMENT OF KERALA

Abstract

Health & Family welfare Department - Judgment dated 17.07.2024 of the Hon'ble High Court in WP(C) No. 25301/2024 filed by Shri.R.Unnikrishnan and another - Complied with - Orders issued.

HEALTH & FAMILY WELFARE (B) DEPARTMENT

G.O.(Rt)No.1979/2024/H&FWD Dated,Thiruvananthapuram, 17-08-2024

Read:- 1. Appeal petition dated 20.05.2024 from Shri.R.Unnikrishnan and Smt. Nisha Gopi.

2. Letter No. CA/20/2024/GMCE dated 25.05.2024 from the Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam.

3. G.O (Rt)No.1446/2024/H&FWD dated 14.06.2024.

4. Judgment dated 17.07.2024 of the Hon'ble High Court in WP (C) No. 25301/2024 filed by Shri. Unnikrishnan R and another.

5. Letter No. D1(a)-61139/2024/K dated 31.07.2024 from the District Police Chief, Kottayam.

ORDER

The application submitted by Shri.R.Unnikrishnan (recipient) seeking permission for kidney transplantation with Smt.Nisha Gopi (donor) was rejected by the District Level Authorization Committee, Government Medical College, Ernakulam considering the fact that altruism could not be established, relationship between the parties are totally unconvincing and there is suspicion of money transaction. Aggrieved by this, Shri.R.Unnikrishnan and Smt. Nisha Gopi submitted appeal petition read as 1st paper above before Government.

2. The applicant, in the appeal stated that, the "daughter" who was the 2nd witness during the interview before the District Level Authorization Committee, is the daughter of the donor born in her

living-together relation which was 22 years back. Later, one Suresh married her and accepted her daughter and now they all are living as a family peacefully. The donor produced the marriage certificate before the authority, which evidenced that the donor got married to Suresh on 03.08.2023. As the daughter who came for the interview was 21 years old, the Committee got totally confused and enquired further about her father. All the past history was detailed to the committee. However, the authority has totally misconstrued the true facts and hastily came to a conclusion that there is a possibility of commercial transaction and finally rejected the transplantation. Further, the donor and the recipient are known to each other since years back as both were natives of Kottayam District and donor was working in recipient's house at Vaikom, Kottayam. The recipient recently shifted to Thrissur and he started to reside at his wife house at Madathumpady, Mala, Thrissur. The donor also accompanied them to Thrissur and is still working there. The petitioners have produced their nativity certificates before the authority. But the authorities failed to peruse the documents properly and failed to substantiate the link between the donor and recipient.

3. The Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam as per the letter read as 2nd paper above, had reported that both the recipient and donor are from Thrissur. The authorized representatives of the recipient and the donor appeared before the Committee. They claimed that the donor was working in the recipient's house and is still continuing the work. It was the husband who came as a near relative and the daughter came as the second near relative. On enquiry, there were discrepancies in the statements of father and daughter. Though father claimed that she was their daughter, there were no documents to prove the link between father and daughter. The marriage certificate of the donor and her husband was merely a certificate which was recently obtained. It was alleged that they did not have a formal marriage. Though father claimed that the daughter was his own biological daughter, the school certificates of the daughter have a different name which indicated as belonging to a Christian religion. The discrepancies in the oral statements regarding the relationship and the link led to the conclusion that there were extraneous considerations for the consent to be a donor. This does not exclude the possibility of a commercial transaction. No clear documents were produced to infer the absence of commercial

transaction. Further, as per the THO Act, special precautions have to be taken in case if the donor is a woman. No documents have been produced to show and substantiate the link between the donor and the recipient. The photographs produced do not reveal their old connection.

4. 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 had examined the case as per the protocol defined in the Transplantation of Human Organs and Tissues Rules, 2014 and rejected the application due to discrepancies in the oral statements of the near relatives of the donor, non-establishment of relationship between the donor and recipient and non submission of documents to prove the absence of commercial transaction. There is economical disparity between the donor and the recipient. There is no documentary evidence of the link that they have lived together. There suspects possibility of commercial transaction. Since altruism between the donor and the recipient is not proved in this case, Government have rejected the appeal petition vide G.O (Rt) No. 1446/2024/H&FWD dated 14.06.2024.

5. The appellants have filed WP (C) No. 25301/2024, challenging G.O (Rt) No. 1446/2024/H&FWD dated 14.06.2024 and the Hon'ble High Court, vide judgment dated 17.07.2024, has disposed the Writ Petition as follows:-

"*Exhibit P2 is quashed and the appellate authority is directed to reconsider the petitioner's appeal after calling for a certificate of altruism from the police. Considering the medical condition of the 1st petitioner, the appellate authority is directed to take earnest efforts/to dispose of the appeal within two weeks of receipt of a copy of this judgment.*

6. The District Police Chief, Kottayam, as per the letter read as 5th paper above, has reported that on inquiring about Smt. Nisha Gopi aged 45, D/o Gopi, Plakulathil (H) Pallikachira PO, it is learnt that she has moved from this address around six years back and has been living on rent in various places outside Kottayam district. At present, she is

living on rent with her husband Suresh in the house of one Sreedharakurup, Lakshmi Bhavanam near Erangav Devi Temple, Tiruvalla, Kavumbhagam in Pathanamthitta District. Her husband is a contractor and her daughter is studying Radiology in Bangalore. On enquiry, Smt. Nisha Gopi said that six years ago, she had seen an advertisement in the newspaper and was working as a home nurse in Shri. Balakrishnan Nair's home in Thrissur district. Shri. Unnikrishnan, who is the son-in-law of Shri. Balakrishnan Nair is suffering from kidney disease and is under treatment in Lakeshore Hospital, Ernakulam. He is a businessman and his wife and daughter are living in Bengaluru. In the report it is stated that it is not known whether Smt. Nisha Gopi, who claims to be working as a home nurse in Unnikrishnan's house, decided to donate one of her kidneys either for financial or other consideration.

7. In the appeal petition, it is stated that the donor and the recipient are known to each other since years back as both were natives of Kottayam District and donor was working in recipient's house at Vaikom, Kottayam. The recipient recently shifted to Thrissur and he started to reside at his wife house at Madathumpady, Mala, Thrissur. The donor also accompanied them to Thrissur and is still working there. But in the police verification report, it is reported that on enquiry, Smt. Nisha Gopi said that six years ago, she had seen an advertisement in the newspaper and was working as a home nurse in Shri. Balakrishnan Nair's house in Thrissur district. Both these statements are contradictory.

8. The Police Verification Report doesn't state that the proposed donation is proved altruistic beyond doubt. Moreover, there is no conclusive proof of the relationship between the donor and recipient which lead to the decision to donate one of her kidneys to the recipient.

9. In the above circumstances, the Appeal Petition is rejected and the Judgment dated 17.07.2024 of the Hon'ble High Court in WP (C) No. 25301/2024 is complied with accordingly.

(By order of the Governor)
Dr. Rajan Namdev Khobragade I A S
ADDITIONAL CHIEF SECRETARY

The Advocate General, Ernakulam (with C/L)

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

Shri. R.Unnikrishnan, Vadassery, Geethanjali, Madthumpady, Thrissur - 680733

Smt.Nisha Gopi, Plakulathil House, Paippad, Pallikkachira P.O, Kottayam - 686537

Information and Public Relations Department (Web & New Media).

Stock File

Forwarded /By order

Signed by Royi J
Date: 28-06-2024 13:51:20

Section Officer