

**GOVERNMENT OF KERALA****Abstract**

Health & Family welfare Department - Judgment dated 30.08.2024 of the Hon'ble High Court in WP(C)No. 30584/2024 filed by Shri. K J George and another - Complied with - Orders issued.

HEALTH & FAMILY WELFARE (B) DEPARTMENT

G.O.(P)No.90/2024/H&FWD
2024

Dated,Thiruvananthapuram, 20-09-

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- Read 1 The Appeal Petition dated 19.08.2024 filed by Shri. K J George and Smt. Jincy J
- 2 The Judgment dated 30.08.2024 of the Hon'ble High Court in WP(C)No.30584/2024 filed by Shri. K J George and another
- 3 Letter number CA-20/2024/GMCE dated 11.09.2024 from the Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam

ORDER

The application submitted by Shri. K J George (recipient) seeking permission for kidney transplantation with Smt. Jincy J (donor) was rejected by the District Level Authorization Committee, Government Medical College, Ernakulam due to non production of documents to substantiate the link between them to show altruism for excluding the existence of a commercial transaction and also considering the fact that the donor is a woman. Aggrieved over the same, they filed appeal petition read as 1st paper above before Government and also filed WP(C)No. 30584/2024 before the Hon'ble High Court. As per the judgment read as 2nd paper above, the Court disposed the Writ Petition by directing the 2nd respondent i.e. Principal Secretary, Health & Family Welfare Department to consider Ext. P11 appeal within two weeks of receipt of a copy of this judgment.

2. In the appeal submitted by the appellants, it is stated that no cogent and sustainable reasons are stated to reject the request of the appellants. The authorization committee considered the matter in a light manner. Even though the appellants produced several documents to prove the altruism

between them including the altruism certificate issued by the District Police Chief, after conducting a detailed enquiry through the local police, without considering the same, the rejection order is passed. There is no sufficient reason to reject the application. There is no evidence for monetary transaction between the parties. Therefore, the reasons stated in the order is not sufficient to reject the request of appellants to undergo unrelated renal transplantation.

3. The Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam, vide letter read as 3rd paper above has reported that the recipient is a Senior citizen aged 74 years plus. The donor is a young woman aged 29 years. She has three children, the youngest being 3 years. According to the recipient's representative she was a housemaid staying in their house. With three young children, this seems difficult to believe. The link between them was not established. The husband was working as a mason in Thiruvananthapuram. There was glaring financial difference between the parties. Considering the big age difference between the donor and the recipient and the extremely young age of the children, a commercial link could not be excluded. No evidence was put forth to substantiate the statement that there was strong connection for donation. Hence application was rejected as conditions under Section 7 THOA Rules not followed as well as the fact that special precautions needed to be taken under Section 22 of THOA Rules, when the donor is a woman.

4. The Rule 7 (3) of Transplantation of Human Organs and Tissues Rules, 2014 is as follows:-

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;
- vii. 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;
- viii. ensure that the donor is not a drug addict;
- ix. 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.

5. As per Rule 22 of the Transplantation of Human Organs and Tissues Rules, 2014,

"In cases where the donor is a woman, greater precautions ought to be taken, and her identity and independent consent should be confirmed by a person other than the recipient."

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 non production of documents to substantiate the link between the donor and recipient for excluding the existence of a commercial transaction.

7. In the above circumstances, the appeal petition submitted by Shri.K J George and Smt.Jincy J lacks merit and hence rejected. The judgment dated 30.08.2024 in WP (C) No. 30584/2024 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.

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Information & Public Relations Department (Web & New Media)

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Section Officer