



GOVERNMENT OF KERALA



Abstract

Organ transplantation - Judgment dated 02.03.2023 of the Hon'ble High Court in WP(C) No.7143/2023 filed by Shri. Sudheer E.H and another - Complied with - Orders issued.

HEALTH & FAMILY WELFARE (B) DEPARTMENT

G.O.(Rt)No.772/2023/H&FWD Dated,Thiruvananthapuram, 31-03-2023

Read: 1. Appeal petition dated 27.02.2023 submitted by Sri. Sudheer E.H and another.

2. Judgment dated 02.03.2023 of the Hon'ble High Court in WP(C) No.7143/2023 filed by Sri. Sudheer E.H and another.

3. Letter No.CA/410/2023/GMCE dated 23.03.2023 from the Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam.

ORDER

The application submitted by Sri. Sudheer E.H for permission for his kidney transplantation with Smt.Vijitha.K (donor) was rejected by the District Level Authorization Committee, Government Medical College, Ernakulam stating that the relationship between the donor and the recipient cannot be established and there is suspicion of money transaction. Aggrieved by this, Sri. Sudheer E.H filed WP (C) No.7143/2023 before the Hon'ble High Court.

2. The Hon'ble High Court, as per the judgment read as 2nd paper above, has directed the second respondent i.e. Principal Secretary, Health & Family Welfare Department to finalize Ext. P15 appeal petition at the earliest, and at any rate, within two weeks from the date of receipt of a copy of this judgment

3. The Principal & Chairman, District Level Authorization Committee, Government Medical College, Ernakulam, as per the letter read as 3rd

paper above, has reported as follows:-

- i. The District Level Authorization Committee had rejected the application submitted by Sri.Sudheer E.H and Smt.Vijitha for renal transplantation on 18.01.2023.
- ii. Challenging the rejection, the parties approached the Hon'ble High Court by filing W.P (C) No. 3730 of 2023 and the same has been disposed as per judgment dated 08.02.2023 directing the District Level Authorization Committee to re-consider the case of the parties within two weeks from the date of receipt of the copy of the judgment.
- iii. The Judgment was placed before the committee held on 25.2.2023 and the Committee reconsidered the case of the parties. The Video recordings of the meeting held on 18.01.2023 were re-watched and the documents submitted were perused again.
- iv. Though the claim of the parties was that the husband of the donor is a classmate and friend of the recipient, on interaction with the donor, she stated that she knew about the recipient's need for kidney from the social media. Then she said that her husband and recipient were classmates in tuition class in Kochi.
- v. The donor Smt. Vijitha stated that she is a native of Thrissur and she had eloped with Sri. Sudheer E.H while she was a minor. The donor is aged 37 yrs. She says she has been married for the past 20 years and the marriage took place at Andhra.
- vi. On perusing the documents submitted by the donor, it is seen that there is no valid Marriage Certificate either from the religious institution or from the local authority. The husband of the donor, though claimed to be doing laundry business, said he sustained losses in film production.
- vii. The son of the donor also does not know about the recipient.
- viii. 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."
- ix. The interaction with the relatives also couldn't establish the relationship between the donor and the recipient and therefore 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.

- x. On reconsideration of the whole issue, the Committee feels that since there is no authenticity between the link of the parties, financial transaction is highly suspected and decides to reject the Application.

4. Government have examined the matter in detail. The Rule 7 (3) of Transplantation of Human Organs and Tissues Rules, 2014 is as follows:-

(3) 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 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-establishment of relationship between the donor and recipient and suspicion of money transaction.

6. 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 Sri. Sudheer E.H lacks merit and hence rejected.

7. The judgment dated 02.03.2023 of the Hon'ble High Court in WP(C) No.7143/2023 is complied with accordingly.

(By order of the Governor)
TINKU BISWAL
PRINCIPAL SECRETARY

The Advocate General, Ernakulam (with C/L)
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