

W.P.(C).No.34174/24



2024:KER:79042

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 23RD DAY OF OCTOBER 2024 / 1ST KARTHIKA, 1946

WP(C) NO. 34174 OF 2024

PETITIONER:

ASHA LAWRENCE
AGED 54 YEARS
D/O M.M.LAWRENCE FLAT NO.41, NARMADA APARTMENTS,
DR.B.D.MARG, NEW DELHI, PIN - 110001

BY ADVS.
R.KRISHNA RAJ
R.PRATHEESH (ARANMULA)
E.S.SONI
SREERAJA V.
LAXMI PRIYAA N.P.

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF HEALTH, GOVERNMENT SECRETARIAT
THIRUVANATHAPURAM, PIN - 695001



- 2 D.I.G AND COMMISSIONER OF POLICE
POLICE COMMISSIONERATE, ERNAKULAM, PIN - 682017
- 3 STATION HOUSE OFFICER
ERNAKUALAM KAZABA POLICE STATION KACHERIPPADI
ERNAKUALAM, PIN - 682026
- 4 GOVERNMENT MEDICAL COLLGE, KALAMASSERY
REPRESENTED BY ITS PRINCIPAL H.M.T.COLONY, NORTH
KALAMASSERY, PIN - 683503
- 5 M.L.SAJEEVAN
S/O.M.M.LAWRENCE, RESIDING AT BETHEL, ST.SEBSTIAN
ROAD ELAMKULAM, PIN - 682020
- 6 SUJATHA BOBAN
D/O M. M. LAWRENCE HEBRON, VAKKATTU ROAD NEAR
HOLIDAY INN HOTEL, CHAKKARAPARAMBU, ERNAKULAM,
PIN - 682032
- 7 VICAR
ST.FRANCIS XAVIERS CHURCH, KATHRIKADAVU, KALOOR,
ERNAKULAM, PIN - 682017
- 8 COMMUNIST PARTY OF INDIA (MARXIST)
REPRESENTED BY ITS DISTRICT SECRETARY, LENIN
CENTER, BANERJEE ROAD, KALOOR, ERNAKULAM, PIN -
682017
- 9 PRATHAP SOMANATH
PRINCIPAL, GOVERNMENT MEDICAL COLLGE, KALAMASSERY
H.M.T.COLONY, NORTH KALAMASSERY ERNAKULAM, PIN -
683503
- 10 DR.GANESH MOHAN
MEDICAL SUPERINTENDENT GOVERNMENT MEDICAL COLLGE,
KALAMASSERY H.M.T.COLONY, NORTH KALAMASSERY
ERNAKULAM, PIN - 683503



BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
D.G.VIPIN
Benzir P. M.
AKHILA SHUKKOOR VELIYAVEETIL (K/1129/2013)
DANIEL A.J. (K/000772/2020)
MANISHA V.V (K/1250/2023)
ANNA ROSE NAMBADAN (K/1574/2023)
V.V.SIDHARTHAN (SR.) (S-455)
SHRI.N.MANOJ KUMAR, STATE ATTORNEY()

OTHER PRESENT:

SRI. N. MANOJKUMAR STATE ATTORNEY FOR R1 TO R4.
SRI. V.V. SIDHARTHAN INSTRUCTED BY ADV. D.G.
VIPIN FOR R5. SRI. P.M. BENZIR FOR R6.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 18.10.2024, THE COURT ON 23.10.2024 DELIVERED
THE FOLLOWING:



'CR'

V.G.ARUN, J

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W.P.(C).No.34174 of 2024

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Dated this the 23rd day of October, 2024

JUDGMENT

While death draws the curtain on the drama of life, it sometimes unfolds another drama among the living. This writ petition portrays a fight among the children of the deceased as to how the body is to be dealt with. The essential facts are as under:-

M.M.Lawrence, a respected communist leader, breathed his last on 21.09.2024. According to his son, the 5th respondent herein, his father wanted the body to be donated for anatomical purposes. This desire, expressed by the deceased, was reported to the authorised officer under the Kerala Anatomy Act, 1957 (hereinafter referred to as 'the Act' for short) by respondents 5 and 6, the 6th respondent being one among the two daughters of the deceased. Thereupon, arrangements were made to take the



body to the Government Medical College. At that point of time, the other daughter, the petitioner herein, objected. According to the petitioner, even though her father was a Communist, he was not averse to Christianity, the religion to which he was born. He continued to be a member of the St. Francis Xaviers Church, Kathrikadavu, of which the 7th respondent is the Vicar and all functions in the family, be it baptism, marriage or burial, was conducted following the religious customs. Hence, petitioner wanted the body of her father to be buried in the church cemetery, in accordance with Christian rites and rituals. In order to prevent the body being handed over to the Medical College, the petitioner rushed to this Court by filing W.P.(C).No.33350 of 2024. That writ petition was disposed of by Ext.P3 judgment, directing the 4th respondent to consider the objection raised by the petitioner before taking a decision on the consent alleged to have been given by the deceased. In compliance of the direction, the 4th respondent heard the parties and passed Ext.P6 order, instructing the remains of late



M.M.Lawrence, donated for educational purposes, to be embalmed and preserved till the body is taken for teaching purpose. Aggrieved, the petitioner has approached this Court again seeking the following reliefs:-

- "a. issue a writ of mandamus or such other writ or order or direction directing the 4th respondent to handover the body of deceased father of the petitioner Sri. M.M.Lawrence to the petitioner so as to enable her to bury the body at the 7th respondent's church following Christian faith rites and rituals.
- b. Issue a writ of certiorari or such other writ or order or direction quashing Exhibit.P-7 order passed by the 4th respondent
- c. Issue a writ of mandamus or such other writ or order or direction directing the 1st respondent to conduct an enquiry against the 9th and 10th respondent for acting against the provisions of the Act during the hearing sabotaging the statutory hearing directed to be conducted by this Hon'ble Court vide Exhibit.P-3 judgment by verifying the visuals of the CCTV cameras installed at the chamber of the 9th respondent his office and also the verandha and also inspecting the phone calls received by the 9th and 10th respondent before, during and after the hearing held on 25.9.2024 to find out the influence of any external forces, including that of the 8th respondent and take appropriate departmental as well as criminal action against the 9th and 10th respondent."



2. Heard Adv.R.Krishna Raj for the petitioner, Senior Advocate V.V. Sidharthan, instructed by Adv.D.G.Vipin, for the 5th respondent, Adv.P.M.Benzir for the 6th respondent and Adv.N.Manoj Kumar, the State Attorney, for the Government and its officials.

3. The learned counsel for the petitioner assails Ext.P6 order mainly on two grounds; i) the 'expression of request' by the deceased under Section 4A of the Act should be made to the authorised officer and ii) the procedure followed by the 4th respondent, while deciding the petitioner's objection, is patently illegal and vitiated by reason of the officer's bias and favouritism.

4. In furtherance of the first contention, it is submitted that the word 'request' means 'the action of asking for something formally and politely'. Therefore, Section 4A(1) requires the person intending to donate his body to make a request in that regard to the authorised officer. Such a request cannot be made to the witnesses, who are persons without any authority to take a decision on the request. In elaboration of the second



contention it is argued that, in spite of this Court directing the 4th respondent to take a decision on the petitioner's objection, a Committee was constituted by the 4th respondent and Ext.P6 decision is of that Committee. Thus, the hearing was conducted in violation of this Court's direction and hence an order issued pursuant to such hearing cannot be sustained. It is alleged that the parties were heard separately and copies of the statements given by the two witnesses, to whom the deceased had expressed his desire of handing over the body for anatomical purposes, was not made available to the petitioner. It is also alleged that the 4th respondent acted in a biased manner during the hearing and when his action was questioned, went to the extent of lodging a false complaint against the petitioner's counsel. Learned counsel also asserted that a perusal of the video recording of the hearing will prove that it was a farcical exercise.

5. Learned counsel for the 6th respondent submitted that his client had given consent for taking the body of her father for



anatomical purposes at a time when she was stressed and emotionally shattered. In that state of mind, the 6th respondent was not able to comprehend the matters written in the documents which she was asked to sign. It is submitted that in October 2021, the deceased had expressed his desire to be buried in the church cemetery. Even though the 6th respondent recorded that conversation in her mobile phone, that phone is no longer in her possession. It is finally submitted that the 6th respondent also wants her father's body to be buried, following the Christian rites and rituals.

6. The Senior Counsel appearing for the 5th respondent submitted that the deceased had time and again told his client about his desire to donate his body for anatomical and educational purposes. The desire was made known, to many others, including Sri.Rajan and Sri.Abe Abraham, who are relatives of the deceased. It is submitted by the Senior Counsel that late M.M.Lawrence having expressed his desire to two witnesses, the requirement of Section 4A(1) stands satisfied and



the 4th respondent had correctly rejected the objection raised by the petitioner.

7. Refuting the allegation that the 4th respondent had acted in an arbitrary manner, the learned State Attorney argued that sufficient opportunity was given to the petitioner and, in Ext.P6 order, her objection is dealt with in detail. As regards constitution of a Committee by the 4th respondent, it is submitted that, since the direction by this Court was to the 4th respondent, viz, the Medical College represented by its Principal, it was decided to constitute a Committee consisting of teachers and staff of the Medical College. With reference to Sections 4A(1) and 4A(2), it is contended that the objection of near relatives become relevant only if the party in possession decides to handover the body for anatomical purposes, without the deceased expressing such a request, either orally or in writing. Finally it is submitted that, at least in death, a personality like late M.M.Lawrence, who had toiled for the upliftment of the downtrodden throughout his life, should be allowed to transcend



religion and continue his public service by donating his body.

8. In order to consider whether the 'expression of request' under Section 4A(1) is to be made to the authorised officer, it is essential to carefully scrutinize and understand the provision, the relevant portion of which is extracted below;

"4A. Taking possession of dead bodies with the prior consent of deceased persons.-

(1) If any person, either in writing at any time or orally in the presence of two or more persons during his last illness, has expressed an unequivocal request that his body be used for the purpose of conducting anatomical examination and dissection after his death the party lawfully in possession of his body after his death, may, unless, the said party has reason to believe that the request was subsequently withdrawn, report the fact to the authorised officer and permit the said office to take possession of the body and hand it over to the authority in charge of a teaching medical institution if it is required by that authority.

(2) Without prejudice to sub-section (1), the party lawfully in possession of the body of a deceased person may permit the authorised officer to take over possession of the body for the purposes aforesaid unless that party has reason to believe-

- (a) that the deceased had expressed an objection to his body being so dealt with after his death, and had not withdrawn it; or
- (b) that the surviving spouse or any near relative of the deceased objects to the body of the deceased being so dealt with."



9. The requirements of Section 4A(1), as discernible from the provision, are as follows;

- (i) The deceased person should have, during his last illness, expressed an unequivocal request that his body be used for the purpose of conducting anatomical examination and dissection after his death.
- (ii) Such request should have been expressed either in writing, or orally in the presence of two witnesses.
- (iii) The party lawfully in possession of the body after the death of the person who had expressed the request, may report that fact to the authorised officer, unless the party in possession has reason to believe that the request was subsequently withdrawn.
- (iv) After reporting to the authorised officer, the party in possession shall permit the office of the authorised officer to take possession of the body.
- (v) Based on the permission granted, the authorised officer shall take possession and handover the body to the authority in charge of a teaching medical institution.

10. In the case at hand, the fact that the 5th respondent was in possession of the body of late M.M.Lawrence is not disputed by the petitioner or the 6th respondent. The deceased had expressed his request to handover his body during his last illness to two witnesses. Being convinced that their father had not



withdrawn the request expressed in the presence of witnesses, respondents 5 and 6 had reported that fact to the authorised officer. The petitioner's objection against handing over of the body is on the premise that her father was not averse to Christianity and continued to be a member of the 7th respondent's church. Such objection cannot be countenanced, when the deceased had, during his last illness expressed his request in the manner stipulated in Section 4A(1). In this context, it is also pertinent to note that the objection of near relatives becomes relevant only when the authorised officer is permitted to take possession of the body, without the deceased expressing such a request. This position is clear from a comparison of the terminology used in Sections 4A(1) and 4A(2). The statement of the 6th respondent that, in October, 2021, her father had expressed his desire to be buried in the Church, even if accepted, is of no avail since, for the purpose of Section 4A(1), only the expression of request made by the deceased during his/her last illness can be taken into consideration.



11. The contention that the words, 'express an unequivocal request' used in Section 4A(1) indicates that the request should be made to the authorised officer, is liable to be rejected, since such restricted interpretation, by picking one word, is contrary to the literal meaning of the provision, when read as a whole. It will also be profitable to note that, wherever the legislature has intended the request to be made to an authority, it is so stated in the provision itself. For instance, Section 3 of the Transplantation of Human Organs and Tissues Act, 1994 (hereinafter referred to as 'the Transplantation Act') mandates the authorisation from the deceased donor in the specified manner, for removal of an organ or tissue from the body. The specification for removal is contained in Rule 5 of the Transplantation of Human Organs and Tissues Rules, 2014 (hereinafter referred to as "the Rules"). The contextually relevant portion of Section 3 of the Transplantation Act and corresponding Rule 5 are extracted hereunder;



"3. Authority for removal of 1 [human organs or tissues or both].

—(1) Any donor may, in such manner and subject to such conditions as may be prescribed, authorise the removal, before his death, of any 2 [human organ or tissue or both] of his body for therapeutic purposes.

XXX XXXX XXX

(2) If any donor had, in writing and in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorised at any time before his death, the removal of any human organ of his body, after his death, for therapeutic purposes, the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authority aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal, for therapeutic purposes, of that 2 [human organ or tissue or both] from the dead body of the donor.

Rule 5. Duties of the registered medical practitioner.- (1) The registered medical practitioner of the hospital having Intensive Care Unit facility, in consultation with transplant coordinator, if available, shall ascertain, after certification of brain stem death of the person in Intensive Care Unit, from his or her adult near relative or, if near relative is not available, then, any other person related by blood or marriage, and in case of unclaimed body, from the person in lawful possession of the body the following, namely:-

(a) whether the person had, in the presence of two or more witnesses (at least one of who is a near relative of such person), unequivocally authorised before his or her death as specified in Form 7 or in



documents like driving license, etc., wherein the provision for donation may be incorporated after notification of these rules, the removal of his or her organ(s) or tissue(s) including eye, after his or her death, for therapeutic purposes and there is no reason to believe that the person had subsequently revoked the aforesaid authorisation;"

12.The remaining challenge is about the manner in which the hearing was conducted by the 4th respondent. Here, it is contended that this Court having directed the 4th respondent to consider the objection and pass orders, he could not have constituted a Committee for the purpose. True, this Court had earlier directed the 4th respondent to take a decision on the objection raised by the petitioner. Being so, the 4th respondent himself could have heard the petitioner and taken the decision. Be that as it may, the mere fact that the 4th respondent had constituted a Committee to assist him is of no consequence, since Ext.P6 order is passed by the 4th respondent. The next aspect to be noted is that the direction by this Court only required the 4th respondent to assimilate facts for the purpose of deciding the petitioner's objection. In that process, the 4th



respondent cannot be expected to function as a quasi-judicial authority and conduct hearing as in an adversarial litigation. Therefore, the mere fact that copies of the statements of witnesses were not furnished to the petitioner, is also not sufficient to interfere with Ext.P6, particularly when the decision is found to be correct.

13. Learned counsel for the petitioner strenuously contended that the haphazard manner in which the hearing was conducted and the falsity of the allegations raised against the petitioner's counsel, which has even resulted in a crime being registered, will be evident on viewing the video recording of the hearing process. The writ court is not expected to embark on a fact finding mission for deciding the veracity of the allegations. It is for the Police to ensure the correctness of the allegations, which has resulted in registration of the crime and in that investigation, the video recording may also form a piece of evidence.

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For the reasons aforementioned, the writ petition is dismissed.

Sd/-

V.G.ARUN, JUDGE

sj



APPENDIX OF WP(C) 34174/2024

PETITIONER EXHIBITS

- | | |
|--------------|---|
| Exhibit P- 1 | TRUE COPY OF THE COMPLAINT FILED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT
DATED 22.09.2024 |
| Exhibit P-2 | TRUE COPY OF THE COMPLAINT FILED BY THE
PETITIONER BEFORE THE 4TH RESPONDENT
DATED 22.09.2024 |
| Exhibit P-3 | TRUE COPY OF THE JUDGEMENT OF THIS
HON'BLE COURT IN W.P. (C) .NO.33350/2024
DATED 23.09.2024 |
| Exhibit P- 4 | TRUE COPY OF NOTICE ISSUED BY THE 4TH
RESPONDENT DATED 24.09.2024 |
| Exhibit P-5 | TRUE COPY OF THE WRITTEN SUBMISSIONS
SUBMITTED BY THE PETITIONER DATED
25.09.2024 |
| Exhibit P -6 | TRUE COPY OF THE ORDER OF THE COMMITTEE
CONSTITUTED BY THE 4TH RESPONDENT DATED
25.09.2024 |
| Exhibit P-7 | TRUE COPY OF THE RECEIPT ISSUED BY THE
COMMITTEE CONSTITUTED BY THE 4TH
RESPONDENT DATED 25.09.2024 |
| Exhibit P-8 | TRUE COPY OF THE NEW AFFIDAVIT SUBMITTED
BY THE 5TH RESPONDENT BEFORE THE
COMMITTEE CONSTITUTED BY THE 4TH
RESPONDENT DATED 25.09.2024 |



- Exhibit P-9 TRUE COPY OF THE FIR IN CR.NO. 904/2024
OF KALAMASSERY POLICE STATION DATED
25.09.2024
- Exhibit P-10 TRUE COPY OF THE FACE BOOK POST OF THE
10TH RESPONDENT DATED NIL
- Exhibit P-11 TRUE COPY OF THE NEW AFFIDAVIT SUBMITTED
BY THE 5TH RESPONDENT BEFORE THE
COMMITTEE CONSTITUTED BY THE 4TH
RESPONDENT DATED 24.09.2024

RESPONDENT EXHIBITS

- Exhibit R4(a) True copy of the written submission
given by Sri. Abe Abraham dated
25.09.2024.
- Exhibit R4(b) True copy of the written submission
given by Sri. P.S.Rajan dated
25.09.2024.

PETITIONER EXHIBITS

- Exhibit P 12 True copy of the complaint filed by the
petitioner before the police dated
04.10.2024
- Exhibit P 13 Receipt issued to petitioner dated
04.10.2024
- Exhibit P 14 . A copy of the video showing the
prayers made in the residence of the 5th
respondent dated Nil
- Exhibit P 15 The video showing this conversation
dated Nil

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Exhibit P 16

**The video showing this conversation
dated Nil**

Exhibit P17

**THE MINUTES OF THE HEARING CONDUCTED BY
THE 4TH RESPONDENT ON 25.09.2024 AS
DIRECTED BY THIS HONOURABLE COURT**