2025:KER:5687

"C.R."

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR**

**&**

**THE HONOURABLE MR. JUSTICE S.MANU**

**FRIDAY, THE 24TH DAY OF JANUARY 2025 / 4TH MAGHA, 1946**

**WA NO. 135 OF 2025**

**[AGAINST THE JUDGMENT DATED 19-12-2024 IN WP(C) NO.43263/2024 OF HIGH COURT OF KERALA.]**

**APPELLANTS/PETITIONERS:**

1 ISMAIL KUNJU M., AGED 48 YEARS,
N.N. MANZIL, KUREEPUZHA, KAVANADU P.O,
KOLLAM, PIN – 691003.

2 PRIYA P. S., AGED 51 YEARS,
KARINATA (H), ALA KODUNGALLOOR,
KOTHAPARAMBU P.O., THRISSUR, PIN – 680668.

BY ADVS. SRI. SHAJI THANKAPPAN,
SRI. AJAY GOPAL,
SRI. AMAL BABY,
SRI. P.N.SUMODU,
SRI. SUBIN K. SUDHEER.

**RESPONDENTS/RESPONDENTS:**

1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN – 695001.

2 THE DISTRICT LEVEL AUTHORIZATION COMMITTEE FOR
RENAL TRANSPLANTATION, REPRESENTED BY ITS CHAIRMAN,
THE PRINCIPAL, GOVERNMENT MEDICAL COLLEGE,
KALAMASSERRY P.O., ERNAKULAM,
KERALA, PIN – 683104.

**3 ORGAN TRANSPLANTATION LOCAL LEVEL COMMITTEE, REPRESENTED BY ITS CHAIRMAN, MEDICAL DIRECTOR, VPS LAKESHORE HOSPITAL, MARADU, NETTOOR P.O., ERNAKULAM, KERALA., PIN – 682016**

**4 DEPUTY SUPERINTENDENT OF POLICE, OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE, 65GW+MF9, KODUNGALLUR, THRISSUR, KERALA., PIN – 680669.**

**BY SENIOR GOVERNMENT PLEADER SRI. V. TEKCHAND**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

2025:KER:5687

"C.R."

# JUDGMENT

Dated this the 24th day of January 2025.

**Nitin Jamdar, C. J.**

Appellant No.1 is a renal patient undergoing dialysis for six years. The Doctors treating Appellant No.1 advised him to undergo immediate renal transplantation as his health condition is deteriorating rapidly. A medical certificate has been issued to Appellant No.1 by one of the hospitals approved for kidney transplantation in the State of Kerala. Organ transplantation surgery is crucial for Appellant No.1 due to his kidney failure, which has reached end-stage renal disease. Appellant No.2 has volunteered to donate one of her kidneys to Appellant No. 1 for transplantation.

2. The regulation of removal, storage and transplantation of human organs and tissues for therapeutic purposes is governed under the Transplantation of Human Organs and Tissues Act, 1994 (Act of 1994). In exercise of the powers conferred by Section 24 of the Act of 1994 and in supersession of the Transplantation of Human Organs Rules, 1995, the Transplantation of Human Organs and Tissues Rules, 2014 (Rules of 2014) have been framed. Rules prescribe an application to be made in cases of living donor transplantation, which has to be examined by an Authorisation Committee to take decision for rejecting or approving the application. After the decision of the Authorisation Committee, an appeal is provided under the Rules of 2014.

3. Appellant No.1 filed application with notarised affidavits, and the consent of Appellant No.2, for kidney transplantation. According to the Appellants, Appellant No.2, who was working in the household of Appellant No.1, is concerned about the deteriorating health of Appellant No.1 and she is ready and willing to donate one of her kidneys to him. The Organ Transplantation Local Level Committee of Respondent No.3 Hospital referred the matter for approval to Respondent No.2 – the District Level Authorisation Committee for Renal Transplantation. The Authorisation Committee rejected the transplantation by Exhibit-P6 order dated 26 July 2024. The Appellants filed an appeal before Respondent No.1 – Secretary, Health and Family Welfare Department against Exhibit-P6 order, which was also rejected by Exhibit-P8 order dated 24 November 2024. Thereafter, the Appellants filed W.P.(C) No.43263 of 2024.

4. The learned Single Judge referred to the statement filed by Respondent No.4 – Deputy Superintendent of Police, wherein it was stated that the organ donation was for financial interest. After referring to the case law, the learned Single Judge held that there was no illegality in Exhibit-P8 order dated 24 November 2024 warranting interference under Article 226 of the Constitution of India. The learned Single Judge dismissed the writ petition by judgment dated 19 December 2024. Being aggrieved, the Petitioners are before this Court by way of this appeal under Section 5 of the Kerala High Court Act, 1958.

5. We have heard Mr. Shaji Thankappan, learned counsel for the Appellants, and Mr. V. Tekchand, learned Senior Government Pleader.

6. The learned counsel for the Appellants submitted that the order dated 26 July 2024 (Exhibit-P6) passed by the Authorisation Committee is bereft of any reasons, and it only refers to the Report submitted by the Deputy Superintendent of Police, which was not given to the Appellants. The learned counsel further submitted that he had raised this grievance before the Appellate Authority and the learned Single Judge, and these orders, too, without giving any reasons, have dismissed the application of the Appellants.

7. We find merit in the contentions of the Appellants. The order passed by the Authorisation Committee is a printed format order issued under Rules 16 and 23 of the Rules of 2014, where the details of the recipient and donor are filled in by hand, and the only handwritten endorsement is as under:

> *"….that Dy. Supdt. of Police has certified that the willingness for donating the organ is for financial benefit as per Certificate No. 47/GL/KSD/LI dated ……."*

This is the only reference for rejecting the application. The Appellants were not given a copy of this Report.

8. The Act of 1994 regulates the removal, storage, and transplantation of human organs and tissues for therapeutic purposes, the prevention of commercial dealings in human organs and issues, and matters connected therewith or incidental thereto. Chapter II of the Act

establishes an authority for the removal of human organs or tissues or both. Section 9 places restrictions on the removal and transplantation of human organs or tissues or both. Section 9 reads as under:

> *"9. Restrictions on removal and transplantation of human organs or tissues or both.- (1) Save as otherwise provided in sub-section (3), no human organ or tissue or both removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient.*
>
> *(1-A) Where the donor or the recipient being near relative is a foreign national, prior approval of the Authorisation Committee shall be required before removing or transplanting human organ or tissue or both:*
>
> *Provided that the Authorisation Committee shall not approve such removal or transplantation if the recipient is a foreign national and the donor is an Indian national unless they are near relatives.*
>
> *(1-B) No human organs or tissues or both shall be removed from the body of a minor before his death for the purpose of transplantation except in the manner as may be prescribed.*
>
> *(1-C) No human organs or tissues or both shall be removed from the body of a mentally challenge person before his death for the purpose of transplantation.--*
>
> *Explanation.--For the purpose of this sub-section,--*
>
> *(i) the expression "mentally challenged person" includes a person with mental illness or mental retardation, as the case may be;*

*(ii) the expression "mental illness" includes dementia, schizophrenia and such other mental condition that makes a person intellectually disables;*

*(iii) the expression "mental retardation" shall have the same meaning as assigned to it in clause (r) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (1 of 1996).]*

*(2) Where any donor authorises the removal of any of his human organs or tissues or both after his death under sub-section (2) of section 3 or any person competent or empowered to give authority for the removal of any human organ or tissue or both from the body of any deceased person authorises such removal, the human organ or tissue or both may be removed and transplanted into the body of any recipient who may be in need of such 1[human organ or tissue or both.*

*(3) If any donor authorises the removal of any of his human organs or tissues or both before his death under sub-section (1) of section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ or tissue or both shall not be removed and transplanted without the prior approval of the Authorisation Committee.*

*(3-A) Notwithstanding anything contained in sub-section (3), where--*

*(a) any donor has agreed to make a donation of his human organ or tissue or both before his death to a recipient, who is his near relative, but such donor is not compatible biologically as a donor for the recipient; and*

*(b) the second donor has agreed to make a donation of his human organ or tissue or both before his death to such recipient, who is his near relative, but such donor is not compatible biologically as a donor for such recipient; then*

*(c) the first donor who is compatible biologically as a donor for the second recipient and the second donor is compatible biologically as a donor of a human organ or tissue or both for the first recipient and both donors and both recipients in the aforesaid group of donor and recipient have entered into a single agreement to donate and receive such human organ or tissue or both according to such biological compatibility in the group,*

*the removal and transplantation of the human organ or tissue or both, as per the agreement referred to above, shall not be done without prior approval of the Authorisation Committee.*

*(4) (a) The composition of the Authorisation Committee shall be such as may be prescribed by the Central Government from time to time.*

*(b) The State Government and the Union territories shall constitute, by notification, one or more Authorisation Committee consisting of such members as may be nominated by the State Government and the Union territories on such terms and conditions as may be specified in the notification for the purposes of this section.*

*(5) On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorisation Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the rules made thereunder, grant to the*

*applicants approval for the removal and transplantation of the human organ.*

*(6) If, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorisation Committee is satisfied that the applicants have not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for approval."*

(emphasis supplied)

Section 9(3) states that if any living donor authorises the removal of any of his human organs or tissues for transplantation into the body of a recipient, not being near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ or tissue or both shall not be removed and transplanted without the prior approval of the Authorisation Committee constituted under Section 9(4) of the Act of 1994. This Committee, as per Section 9(5), on an application jointly made by the donor and the recipient, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the Rules, can grant to the applicants approval for the removal and transplantation of the human organ. As per Section 9(6), if, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorisation Committee is satisfied that the applicants have not complied with the requirements of the Act of 1994 and the Rules of 2014, it shall, for reasons to be recorded in writing, reject the application for approval.

9. Section 24 of the Act of 1994 empowers the Central Government to make rules under which Rules of 2014 have been framed. Rule 5 of the said Rules specifies the duties of the registered medical practitioner that he has to take various steps to satisfy himself under Rule 5(3) in respect of a donor, and that, in case of a donor who is other than a near relative and who has signed Form 3 and submitted an application in Form 11 jointly, with the recipient, the permission of the Authorisation Committee for donation has to be obtained.

10. Under Rule 7(3) of the Rules of 2014, when the proposed donor and the recipient are not near relatives, the Authorisation Committee has to carry out various evaluations and enquiries. Rule 7 reads as under:

> *"7. Authorisation Committee.- (1) The medical practitioner who will be part of the organ transplantation team for carrying out the transplantation operation shall not be a member of the Authorisation Committee constituted under the provisions of clauses (a) and (b) of sub-section (4) of section 9 of the Act.*
>
> *(2) When the proposed donor, recipient, or both are not Indian nationals or citizens, whether near relatives or otherwise, the Authorisation Committee shall consider all such requests. Transplantation shall not be permitted if the recipient is a foreign national and the donor is an Indian national unless they are near relatives.*
>
> *(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.*

*(4) Cases of swap donation referred to under subsection (3-A) of section 9 of the Act shall be approved by Authorisation Committee of hospital or district or State in which transplantation is proposed to be done and the donation of organs shall be permissible only from near relatives of the swap recipients.*

*(5) When the recipient is in a critical condition in need of life saving organ transplantation within a week, the donor or recipient may approach hospital in-charge to expedite evaluation by the Authorisation Committee."*

(emphasis supplied)

The outcome of this enquiry of the Authorisation Committee in cases where the proposed donor and recipient are not near relatives, has to be reflected in the order to be passed in writing. The Authorisation Committee, as per Rule 23 of the Rules of 2014, while taking a decision, has to state in writing the reason for rejecting or approving the application of the proposed living donor. Rule 23 reads as under:

*"23. Decision of Authorisation Committee.— (1) The Authorisation Committee (which is applicable only for living organ or tissue donor) should state in writing its reason for rejecting or approving the application of the proposed living donor in the prescribed Form 18 and all such approvals should be subject to the following conditions, namely:-*

*(i) the approved proposed donor would be subjected to all such medical tests as required at the relevant stages to determine his or her biological capacity and compatibility to donate the organ in question;*

*(ii) the physical and mental evaluation of the donor has been done to know whether he or she is in proper*

*state of health and it has been certified by the registered medical practitioner in Form 4 that he or she is not mentally challenged and is fit to donate the organ or tissue:*

*Provided that in case of doubt for mentally challenged status of the donor the registered medical practitioner or Authorisation Committee may get the donor examined by psychiatrist;*

*(iii) all prescribed forms have been and would be filled up by all relevant persons involved in the process of transplantation;*

*(iv) all interviews to be video recorded.*

*(2) The Authorisation Committee shall expedite its decision making process and use its discretion judiciously and pragmatically in all such cases where, the patient requires transplantation on urgent basis.*

*(3) Every authorised transplantation centre must have its own website and the Authorisation Committee is required to take final decision within twenty four hours of holding the meeting for grant of permission or rejection for transplant.*

*(4) The decision of the Authorisation Committee should be displayed on the notice board of the hospital or Institution immediately and should reflect on the website of the hospital or Institution within twenty four hours of taking the decision, while keeping the identity of the recipient and donor hidden."*

(emphasis supplied)

11. Thus, the scheme of the Act of 1994 and the Rules of 2014 obligates the Authorisation Committee to provide the applicants an opportunity to be heard, and if the application is to be rejected, it has to

give the reasons in writing. The discretion has to be used pragmatically and all interviews are to be videographed. Therefore, the statutory scheme contemplates and ensures transparency and objectivity in the decision making process of the Committee. The reasons are to be given in reference to the parameters under Rule 7(3) of the Rules of 2014 as to why the application filed for organ transplantation between the proposed living donor and the recipient, who are not near relatives, is being rejected.

12. Apart from the statutory mandate, as a matter of fairness and transparency in the decision-making, if the Authorisation Committee comes to the conclusion that the application for organ transplantation is not to be approved, then the applicant is entitled to know the reasons, especially since the decision has serious consequences on the applicant. When a person's request for kidney transplantation is rejected, it directly affects his/her right to life and health. In the case of *Kranti Associates (P) Ltd. and Another v. Masood Ahmed Khan and Others*[1], the Hon'ble Supreme Court, after taking a review of the law on the subject of duty to give reasons, summarised certain principles. The Hon'ble Supreme Court held that recording of reasons operates as a restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. Reasons re-assure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations. The Hon'ble Supreme Court observed that reasons have

1 (2010) 9 SCC 496

become now indispensable component of a decision-making process even by administrative bodies, affecting the right of the citizens. Reasons in the orders facilitate the process of judicial review by superior courts. Insistence on reasons in the order is a requirement for both accountability and transparency. If reasons are not given in the decision-making process, then it may not be possible to determine whether the authority has applied its mind to the issue. The Hon'ble Supreme Court also held that reasons in support of decisions must be cogent and clear and pretense of reasons or "rubber-stamp reasons" is not to be equated with a mere valid decision-making process. This law, expounded by the Hon'ble Supreme Court, applies more stringently when an application for an organ transplantation made by a patient at a critical stage is rejected by the Committee on the ground that the donation is not altruistic.

13. In the present case, the order of the Authorisation Committee dated 26 July 2024 (Exhibit-P6) gives no reasons whatsoever. It states that there is a Report of the Deputy Superintendent of Police with no further elaboration. The Appellants were not informed about the contents of the Report, nor was a copy of the Report provided to them. The rejection of the application by Exhibit-P6 order is in a routine and pedantic manner. Prevention of commercialisation indeed is one of the objects of the Act of 1994. But, each application has to be carefully considered on its own merits based on the parameters specified under the Rules. It cannot be based on a generalised perception of the existence of

large-scale commercial transactions. Since the order of the Authorisation Committee gives no reasons, it is also not clear whether the Committee has applied its mind to all the aspects.

14. Though Exhibit-P6 order passed by the Authorisation Committee was confirmed in appeal by the Appellate Authority by Exhibit-P8 order dated 24 November 2024, the dicta of the Hon'ble Supreme Court in the case of *Institute of Chartered Accountants of India* v. *L.K. Ratna and Others*[2], will have to be kept in mind, wherein it was held that there is a need to ensure that there is no breach of fundamental procedure in the original proceeding and to avoid treating an appeal as an overall substitute for the original proceeding. It is also necessary to inculcate a sense of discipline in the Authorisation Committees to deal with the application for organ transplantation with seriousness.

15. Further, the order of the Authorised Committee also suffers from breach of the principles of natural justice for non-supply of the Report on which the order was passed. At least this basic norm should have been followed by the Committee. We place our disapproval on record for the manner in which the Authorisation Committee has processed the application of the Appellants. Thus, the decision of the Authorisation Committee being in violation of the mandate under the Act and the Rules, and in breach of the principles of natural justice, will have to be quashed and set aside. Consequently, the order passed in Appeal and the Judgment in the Writ Petition will also have to be quashed and set aside.

2 (1986) 4 SCC 537

16. Accordingly, the Appeal is allowed. The judgment dated 19 December 2024 in W.P.(C) No.43263 of 2024; Exhibit-P6 order dated 26 July 2024 passed by Respondent No.2 Authorisation Committee; and Exhibit-P8 order dated 24 November 2024 passed by Respondent No.1, are quashed and set aside. The joint application filed by the Appellants stands restored before the Authorisation Committee, which will take necessary decisions and pass a reasoned order on its own merits, in the light of what is stated above, within two weeks from today.

17. We make it clear that the orders are set aside in the above circumstances and the issues on merits are kept open.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

krj/-

//TRUE COPY//

P.A. TO C.J.

**APPENDIX**

**APPELLANTS' EXHIBITS:-**

**EXHIBIT-P9** **A TRUE PHOTOCOPY OF THE CERTIFICATE ISSUED BY DR. ABI ABRAHAM M., DIRECTOR – NEPHROLOGY & CHIEF OF RENAL TRANSPLANT SERVICES, LAKESHORE HOSPITAL.**

**RESPONDENTS' EXHIBITS:- 'NIL'**