

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 29TH DAY OF SEPTEMBER 2021 / 7TH ASWINA,

1943

WP(C) NO. 18763 OF 2021

PETITIONERS:

- 1 REEJA P.AGED 44 YEARS
W/O.HARIDASAN, DEVIKRIPA, CHALARIKUNNATH HOUSE,
KAITHAKUNDA, CHERUKAVU, AYIKKARAPPADY P.O.,
KONDOTTY TALUK, MALAPPURAM DISTRICT.
- 2 SARASWATHY K., AGED 44 YEARS
W/O.RAJESH PILLAI.R, THOTTUMEDU HOUSE, KARIPPODE
P.O., PERUVAMBA, PUTHUNAGARAM VILLAGE, CHITTUR
TALUK, PALAKKAD DISTRICT.

BY ADV C.M.MOHAMMED IQUABAL

RESPONDENTS:

THE DISTRICT LEVEL AUTHORIZATION COMMITTEE
FOR TRANSPLANTATION OF HUMAN ORGANS, THRISSUR,
THRISSUR GOVERNMENT MEDICAL COLLEGE, THRISSUR,
MEDICAL COLLEGE P.O., PIN-680596, REPRESENTED BY
ITS CHAIRMAN.

OTHER PRESENT:

SMT.RASHMI.K.M, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.09.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

W.P.(C) No.18763 of 2021 -U

Dated this the 29th day of September, 2021

JUDGMENT

The above writ petition is filed with following prayers:

“a). Call for the records leading upto Ext.P14 order and quash the same by issuance of a writ of certiorari or any other appropriate writ, order or direction.

b) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent to issue approval for unrelated kidney transplantation to the petitioners as per Ext.P11 and P12 applications.

c) Pass any other appropriate writ, order or direction which this Hon'ble Court may deem fit to issue and the petitioner may pray from time to time.”

2. The 1st petitioner is a kidney patient. She is undergoing treatment for kidney problem at the West Fort Hi-

Tech Hospital, Thrissur. It is medically found that both the kidneys of the 1st petitioner have spoiled and it needs urgent transplantation. She is undergoing dialysis thrice in a week. Ext.P1 is the certificate issued by the hospital concerned. It is submitted that the kidneys of the close relatives of the 1st petitioner is not suitable for transplantation. The father of the 1st petitioner is aged 80 years and mother is aged 75 years and they are suffering from old age ailments. The elder brother of the 1st petitioner is from different blood group and younger brother is a diabetic patient. Her husband is aged 54 years and is also a diabetic patient. Children aged 18 and 15 years are at tender age. It is the case of the petitioner that she has no other close relatives. Therefore, the 1st petitioner could not transplant the kidney from the close relatives. It is submitted by the learned counsel for the petitioner that the younger son of the 1st petitioner is suffering from Spastic Cerebral Palsy.

Ext.P2 is the certificate issued by the District Medical Board, District Hospital, Manjeri showing that the child is suffering from Cerebral Palsy. It is the case of the 1st petitioner that she has to look after this child also with the meager income of her husband from his tea shop. Since the 1st petitioner is also detected with kidney disease, the pathetic story of the 1st petitioner and her family was reported in Mathrubhumi and an online news of Mathrubhumi dated 10.09.2021 is produced as Ext.P3. It is submitted that since the kidney of the close relatives of the 1st petitioner is not suitable for transplantation, the 2nd petitioner, considering the pathetic situation of the 1st petitioner and her family, has informed her willingness to donate her kidney to the 1st petitioner. The husband of the 2nd petitioner was working with the husband of the 1st petitioner in his hotel for several years. Since the hotel was closed due to Covid 19 pandemic, now the husband of the

2nd petitioner is working in his Village. It is the case of the petitioners that the families of the petitioners are very close and they know each other. According to the 2nd petitioner, it is a voluntary act from her side to donate the kidney to the 1st petitioner.

3. Ext.P4 is the certificate issued by the Deputy Superintendent of Police, Chittur. Ext.P5 is the certificate issued by the President of Cherukavu Grama Panchayat. Ext.P6 is the certificate issued by the Member of Legislative Assembly, Nenmara. Ext.P7 is the affidavit of the 2nd respondent. Ext.P8 is the identification certificate of the donor and her father. Ext.P9 is the identification certificate of the donor and her mother. Similarly, Ext.P10 is the identification certificate of the donor and her husband. Exts.P11 and P12 are the applications submitted by the petitioners for organ transplantation. Ext.P13 is the communication issued by the

hospital concerned to the respondents. Ext.P14 is the order passed by the respondent. The respondent rejected the application submitted by the petitioner. Aggrieved by the same, this writ petition is filed.

4. Heard the learned counsel for the petitioners and the learned Government Pleader for the respondent.

5. The learned counsel for the petitioner submitted that the 1st petitioner is in a pathetic situation now and she is undergoing dialysis thrice in a week. Her younger son is a Cerebral Palsy affected child and she is the only person to look after him. Her both kidneys are now spoiled. In such situation, the 2nd petitioner voluntarily decided to help her. The finding in Ext.P14 is absolutely incorrect. It is submitted that the 1st and 2nd petitioners are from an economically weaker section, which is clear from Ext.P3 news item published in Mathrubhumi. Therefore, the respondent erred in finding that

since the donor is from a poor family, the application cannot be considered. The learned counsel submitted that the 2nd petitioner is also from a poor family and when she appeared for interrogation before a team of expert doctors, there was some confusion while submitting the details. The learned counsel submitted that the 2nd petitioner will be able to submit the facts before the committee and there is no contradiction as stated in Ext.P14.

6. The learned Government Pleader submitted that the respondent, after going through the records and after interrogating the petitioners, came to the conclusion that the approval cannot be granted in this case. Therefore, this Court may not interfere with the same.

7. I perused Ext.P14 order. It would be better to extract the relevant portion in Ext.P14:

“Permission is not granted for the following

reasons.

Altruism regarding the transplantation is not proved before the committee.

Document signed by the village officer pudunagaram is found to be false from interrogation with his husband and wife enrolled in the document. Donor is coming from a poor family and staying at Kannanalloor colony, at Kollam District where it was learned there were several unrelated previous kidney donors. Police verification from Kollam is lacking.

Rule 7 Sub Rule (3)(1) to (VI) is not complied with the transplantation of Human Organs and Tissues Act 1994 and the transplantation of Human Organs and Tissues Rules 2014.

Hence the committee unanimously rejected the case.”

8. One of the ground mentioned in Ext.P14 is that the document signed by the Village Officer, Pudunagaram is found to be false after the interrogation with the husband and wife

enrolled in the document. According to the petitioners, the husband of the donor is from Kollam, but they are settled at Palakkad. While making the submission, there was some confusion and that is why the respondent concluded that the document signed by the Village Officer is found to be false. I don't know, how the respondent can conclude that the document signed by the Village Officer is false. Respondent has no authority to declare that a certificate issued by a Village Officer is false, while considering an application for transplantation. The learned counsel submitted that the 2nd petitioner will be able to explain the same before the committee, if an opportunity is given. While interrogating the parties, the respondent should take a mild stand. The intention of the respondent should be only to find out whether there is commercial transaction. Parties may be coming from remote village area. A friendly atmosphere is to be created by the

respondent while interrogating.

9. The second ground mentioned in Ext.P14 is that the donor is coming from a poor family and staying at Kannanalloor Colony at Kollam district. I failed to understand this reasoning of the respondent. Simply because a donor is coming from a poor family, there is no hindrance for donating the organs. If that is the case, the 1st petitioner is also from a poor family. For this purpose, this Court can take judicial notice of Ext.P3 report of Mathrubhumi which is one of the leading Malayalam daily newspaper in Kerala. We have to appreciate such news items from print and visual media, so that the people with big hearts can come forward to help needy people. I read Ext.P3 news item. From this, it is clear that the donor and recipient are from poor family. There is no rule that, poor people can't donate organs. Being poor is not a sin. The people with big hearts are there in plenty in our

country and they can save them. That is how we can reduce the difference between haves and have-nots.

10. It is further stated in Ext.P14 that, there were several unrelated kidney donors in the area where the donor resides. That also cannot be accepted without any evidence. I think it is a matter to be reconsidered by the respondent in the facts and circumstances of the case. The points to be decided by the respondent is whether there is any commercial transaction.

11. In such circumstances, according to me, Ext.P14 can be set aside and the matter can be reconsidered by the respondent.

Therefore, the writ petition is allowed in the following lines:

1. Ext.P14 is set aside.
2. The respondent is directed to reconsider the

application of the petitioners and pass appropriate orders, in accordance with law, at any rate within a period of one week from the date of receipt of a copy of this judgment.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

das

APPENDIX OF WP(C) 18763/2021

PETITIONERS EXHIBITS

Exhibit P1	THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE WEST FORT HI-TECH HOSPITAL, THRISSUR DATED 09.09.2021.
Exhibit P2	THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE DISTRICT MEDICAL BOARD, DISTRICT HOSPITAL, MANJERI, MALAPPURAM DATED 25.11.2019.
Exhibit P3	THE TRUE COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHUMI DAILY DATED 04.11.2020.
Exhibit P4	THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE DEPUTY SUPERINTENDENT OF POLICE, CHITTUR DATED 26.04.2021.
Exhibit P5	THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF CHERUKAVU GRAMA PANCHAYATH DATED 28.01.2021.
Exhibit P6	THE TRUE COPY OF THE CERTIFICATE ISSUED BY MR.K.BABU, NENMARA MLA DATED 08.01.2021.
Exhibit P7	THE TRUE COPY OF THE AFFIDAVIT OF THE 2ND PETITIONER DATED 11.02.2021.
Exhibit P8	THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE 2ND PETITIONER AND HER FATHER DATED 07.07.2020.
Exhibit P9	THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE 2ND PETITIONER AND HER MOTHER DATED 07.07.2020.

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Exhibit P10	THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE 2ND PETITIONER AND HER HUSBAND DATED 06.10.2020.
Exhibit P11	THE TRUE COPY OF FORM 11 APPLICATION SUBMITTED BY THE PETITIONERS DATED 22.04.2021.
Exhibit P12	THE TRUE COPY OF FORM 3 APPLICATION SUBMITTED BY THE PETITIONERS DATED 11.02.2021.
Exhibit P13	THE TRUE COPY OF THE COMMUNICATION ISSUED BY WEST FORT HI-TECH HOSPITAL DATED 26.04.2021.
Exhibit P14	THE TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT DATED 08.09.2021.

RESPONDENT'S EXTS : NIL

/TRUE COPY/

P.A.TO JUDGE

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