

IN THE HIGH COURT OF KERALA AT ERNAKULAM**PRESENT****THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN****WEDNESDAY, THE 23RD DAY OF AUGUST 2023 / 1ST BHADRA, 1945****WP(C) NO. 27178 OF 2023****PETITIONER/S:**

- 1 BIJU MATHEWAGED 57 YEARSS/O MATHEW, NIRAYANNOOR HOUSE, GLASS FACTORY ROAD, KALAMASSERY, ERNAKULAM,, PIN - 683104
 - 2 SURESH K.GAGED 49 YEARSS/O GANESHAN, KOOLIYEDATH HOUSE, ERIYAD P.O., AZHIKODE, THRISSUR, PIN - 680666
- BY ADV N.A.SHAFAEEK

RESPONDENT/S:

- 1 DEPUTY SUPERINTENDENT OF POLICEKODUNGALLUR, THRISSUR, PIN - 680669
 - 2 THE DISTRICT LEVEL AUTHORIZATION COMMITTEE FOR TRANSPLANTATION OF HUMAN ORGANS,ERNAKULAM, ERNAKULAM MEDICAL COLLEGE HOSPITAL, KALAMASSERY, , REP. BY ITS CHAIRMAN., PIN - 683104
 - 3 THE ZONAL AUTHORIZATION COMMITTEE FOR TRANSPLANTATION OF HUMAN ORGANS LAKESHORE HOSPITAL & RESEARCH CENTRE, MARADU, NETTOOR P.O., ERNAKULAM,, PIN - 682040
 - 4 VPS LAKESHORE HOSPITAL (GLOBAL LIFECARE) LAKESHORE HOSPITAL & RESEARCH CENTRE, MARADU, NETTOOR P.O., ERNAKULAM, . REP. BY ITS CHIEF MEDICAL OFFICER., PIN - 682040
 - 5 THE CHAIRMAN, KERALA LEGAL SERVICE AUTHORITY, NEAR HIGH COURT BUILDING, ERNAKULAM,, PIN - 682031
- BY ADVS.
ROSHEN D. ALEXANDER D
TINA ALEX THOMAS (K/000532/2004)
HARIMOHAN (K/000327/2018)
KOCHURANI JAMES (K/003502/2022)

OTHER PRESENT:

SRI. B.S.SYAMANTAK, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

W.P.(C).No.27178 of 2023

Dated this the 23rd day of August, 2023

JUDGMENT

If the thinking of human beings is not to live forever, but to help another live a little longer, the god and our fellow citizens will bless us. That should be the slogan for encouraging human organ donation. The 1st petitioner is suffering from advanced chronic kidney disease. He is undergoing treatment at VPS Lakeshore Hospital, Nettoor, Maradu. The doctors advised urgent renal transplantation of the 1st petitioner, otherwise his life could not be saved. The 2nd petitioner, who is a family friend and a well-wisher of the 1st petitioner, has come forward to donate his kidney to save the life of the 1st petitioner out of his free will, affection and attachment towards the 1st petitioner and his family, is the submission.

2. The Hospital authorities demanded a police verification certificate from the 1st respondent, even after the

submission of application. Therefore, the petitioners approached this Court and this Court as per Ext.P2 judgment directed the 2nd respondent to consider the application without insisting on police verification report. But, now the 2nd respondent rejected the application by Ext.P4 order. Ext.P4 order is passed relying mainly upon the police verification report. The wife of the 1st petitioner submitted an application before the 5th respondent, Kerala Legal Service Authority, by highlighting the grievance that the 1st respondent has not conducted any enquiry and submitted a negative report. Ext.P6 is the application.

3. On receipt of Ext.P6 application, the 5th respondent conducted an enquiry and prepared a report. According to the petitioners, the same is in favour of the petitioners. Therefore, the petitioners challenge Ext.P4 order passed by the 2nd respondent.

4. Heard the learned counsel appearing for the petitioners, the learned Government Pleader and the learned counsel appearing for respondents 4 and 5.

5. Normally this Court will not entertain this writ

petition because the petitioners have got a remedy against Ext.P4 by filing an appeal. But, the counsel for the petitioners submitted that the condition of the 1st petitioner is very serious and if an appeal is filed, the same will delay the process and the life of the 1st petitioner is now in danger. It is true that there is an alternative remedy against Ext.P4 to the petitioners. But when life and death situation is in front of the 1st petitioner, this Court cannot shut its eyes and direct the petitioners to invoke the appellate remedy. Therefore, this Court decided to consider the grievance of the petitioners against Ext.P4. Ext.P4 is the order passed by the 2nd respondent. The reason for rejecting the order is stated separately in Ext.P4. It will be better to extract the same:

“The case of Biju Mathew (Recipient) and Suresh K.G (Donor) was considered by the District Authorization Committee on 22.07.2023 on the basis of the Judgment of the Hon’ble High Court of Kerala in WP(C) 16925/2023 dated 29.05.2023.

On interaction, the Committee felt the necessity for obtaining the Police verification. report of the donor and the same was sought for from the Department Superintendent of Police Kodugalloor.

The Office received Police Verification Certificate No.232/GL/KSD/2023 dated 27.07.2023

Which reads as follows:-

On verification it is revealed that Sri. Suresh age 49 S/o Ganeshan Kooliyedath House, Eriyad, Azhikode has not been involved in any criminal cases in Kodungallur sub division Police Stations. As per the enquiry report, which is submitted by Station House Officer Kodungallur, the donor Suresh has no specific relationship/friendship to the patient Biju Mathew. Considering the where abouts of the donor the enquiry officer is having the opinion that the organ transplantation is only based on financial interest. Hence the members of the Committee unanimously decide to reject the application.”

6. This Court directed the 5th respondent to produce the report prepared based on Ext.P6 representation of the wife of the 1st petitioner. The counsel for the 5th respondent made available the report of the District Legal Services Authority (DLSA). It will be better to extract the contents of the report submitted by the Secretary, DLSA, Ernakulam:

“Report submitted by Renjith Krishnan N.. Secretary, District Legal Service Authority, Ernakulam:-

In obedience to the reference cited above I

conducted an enquiry in the above matter. As part of the enquiry the statements of Sri.Suresh S/o Ganesan the donor (hereinafter called as donor), Sri.Binu Mathew who is the brother of the patient to whom transplantation of renal is required and Smt.Sumam Biju Mathew W/o Biju Mathew who is the patient. Sri.Suresh has given a statement to the effect that he is a carpenter and had been working in the firm of Binu Mathew named BM Associates in Kalamassery. He worked there for almost 5 years. Now also he used to work in the firm of Sri Binu Mathew as and when called. Due to that relationship he decided to donate one of his renal to his brother. The decision to donate renal was taken voluntarily after consulting with his family members and there is no money transaction involved behind his decision. Sri.Binu Mathew the brother of the patient also gave statement to the effect that the donor had been working in his firm named BM Associates for 5 years and even now he used to call the donor in case of urgency. The donor decided to donate one renal to his brother on account of that acquaintance and love towards his family and there is no element of money involved behind the decision of the donor. Smt.Sumam Biju Mathew gave statement to the effect that her husband has been undergoing dialysis for renal disease and renal transplantation is essential for saving his life. The proposed donor Suresh was an employee in the firm run by Sri.Binu Mathew who is the brother of her husband and in that way Suresh has very close family relationship with her family. Due to that relationship Suresh has voluntarily come forward to donate one of his renal and there is no money transaction behind the same.

As per Section 9(2) of Transplantation of Human Organs Act, 1994 where any donor authorizes the removal of any of his human organs 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 from the body of any deceased person authorizes such removal, the human organ may be removed and transplanted into the body of any recipient who may be in need of such human organ. So the main aspect that has to be considered is regarding the genuineness of the donor. As per the statements of the donor, the brother and wife of the patient it is seen that the donor is a close family friend of the donee's family and the said fact lead to the offer being made by the donor. Ongoing through their statements, there are no contradictions in their statements. They have given consistent statements with regard to the relationship between the donor and the donee. Although no documents were produced to show the employer and employee relationship between the donor and the brother of the donee, prima facie there is nothing to doubt the correctness of the claim of the parties that they are close family friends. The donor has also filed an affidavit declaring the relationship with the donee as spoken to by him in the statement given to me. For the aforesaid reasons I am of the opinion that the donor has voluntarily agreed to donate his renal without any external influence and there is no money transaction involved relating to that."

7. A perusal of Ext.P4 order would show that the

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2nd respondent relied mainly on the police verification certificate bearing No.232/GL/KSD/2023 dated 27.07.2023. This Court directed the Government Pleader to produce the police verification report. The Deputy Superintendent of Police, Kodungallur submitted a report to the 2nd respondent, which is extracted hereunder:

“From

Salish N S
Deputy Sudt of Police
Kodungallur Sub division

To

The Chairman
District Level Organ transplantation authorization
Committee
Govt. Medical college Ernakulam

Sir,

Sub: Police verification report in respect of
Sri.Suresh.K.G submission- regarding
Ref: CA/410/2023/GMCE dtd 25.07.23

Kind attention is being invited to the reference cited above.

Letter received from your good office seeking police verification of Sri. Suresh K.G., S/o Ganeshan, Kooliyedath House, Eriyad, Azhekode village for donating organ to Sri.

Biju Mathew age 57 s/o Mathew, Nirayannoor House, Glass Factory road, Kalamassery.

On verification, it is revealed that Sri. Suresh age 49 S/o Ganeshan, Kooliyedath House, Eriyad, Azhikode has not been involved in any criminal cases in Kodungallur sub division police stations. As per the enquiry report which is submitted by station house officer Kodungallur, the donor Suresh has no specific relationship/friendship to the patient Biju Mathew. Considering the where abouts of the donor the enquiry officer is having the opinion that the organ transplantation is only based on financial interest."

8. In the report of the Deputy Superintendent of Police, Kodungallur, a report submitted by the Inspector Station House Officer, Kodungallur Police Station is also relied. The Government Pleader made available that report also. It will be better to extract that report also:

"പ്രേഷകൻ

ഇൻസ്പെക്ടർ എസ് എച്ച് ഓ
കൊടുങ്ങല്ലൂർ പോലീസ് സ്റ്റേഷൻ
തൃശ്ശൂർ റൂറൽ

സ്വീകർത്താവ്

ഡെപ്യൂട്ടി പോലീസ് സൂപ്രണ്ട്
കൊടുങ്ങല്ലൂർ

സർ,

വിഷയം: ശ്രീ സുരേഷ് S/o ഗണേശൻ കുളിയേടത്ത് വീട് എറിയാട് KVHS ദേശം എറിയാട് വില്ലേജ് എന്നയാൾ നല്ലിയ അപേക്ഷയിന്മേൽ റിപ്പോർട്ട് സമർപ്പണം.

സൂചന-No.158/GL/KSD/2023

മേൽ സൂചന പ്രകാരം ശ്രീ സുരേഷ് S/o ഗണേശൻ കുളിയേടത്ത് വീട് എറിയാട് KVHS ദേശം എറിയാട് വില്ലേജ് എന്നയാൾ നല്ലിയ അപേക്ഷ കൊടുത്തപ്പോൾ പോലീസ് ലഭിച്ചിട്ടുള്ളതും ആയത് No.41/GL/M2/2023 ആയി രേഖപ്പെടുത്തിയിട്ടുള്ളതാണ്.

മേൽ കാര്യത്തിൽ അന്വേഷണം നടത്തിയിട്ടുള്ളതും അപേക്ഷകൻ ശ്രീ സുരേഷ് S/o ഗണേശൻ കുളിയേടത്ത് വീട് എറിയാട് KVHS ദേശം എറിയാട് വില്ലേജ് എന്നവരെ കണ്ട് മൊഴി രേഖപ്പെടുത്തിയതിൽ തനിക്ക് എറണാകുളം ഷിപ്പിയാഡിൽ രണ്ടു വർഷ കാലമായി താൽക്കാലിക ജോലിയാണെന്നും കളമശ്ശേരിയിലുള്ള ബിജു മാത്യു എന്നവർക്ക് വൃക്ക ദാനം ചെയ്യുന്നതിനുള്ള അപേക്ഷ കൊടുത്തിട്ടുള്ളതാണെന്നും ബിജുവിനെ രണ്ടു വർഷ കാലമായി അറിയാമെന്നും അവരുടെ ഫർണിച്ചർ ഷോപ്പിൽ കുറച്ച് ദിവസം ജോലി ചെയ്തിരുന്നുവെന്നും ബിജു മാത്യു എറണാകുളം ലേക്ക് ഷോർ ഹോസ്പിറ്റലിൽ ചികിത്സയിലാണെന്നും കിഡ്നി ദാനം ചെയ്യുന്നതിനുള്ള ടെസ്റ്റുകളൊക്കെ എറണാകുളം ലേക്ക് ഷോർ ഹോസ്പിറ്റലിൽ കഴിഞ്ഞുവെന്നും താൻ കിഡ്നി ദാനം ചെയ്യുന്നതിൽ ഭാര്യക്കും മകൾക്കും അച്ഛനും അമ്മയ്ക്കും യാതൊരു എതിർപ്പും ഇല്ലെന്നും തന്റെ പേരിൽ ക്രിമിനൽ കേസുകളൊന്നുമില്ലെന്നും കിഡ്നി ദാനം ചെയ്യുന്നതിൽ ബിജു മാത്യു നിന്ന് പണമായോ മറ്റോ പാരിതോഷികങ്ങളോ വാങ്ങുന്നില്ലെന്നും വൃക്ക ദാനം ചെയ്യാലുള്ള ദോഷ ഫലങ്ങളെ കുറിച്ച് അറിയാമെന്നും മറ്റും മൊഴി പറഞ്ഞിട്ടുള്ളതാണ്.

ഈ കാര്യത്തിൽ അപേക്ഷകന്റെ ഭാര്യ സുജി, മകൾ രേഷ്മ എന്നിവരോടും മറ്റും ചോദിച്ചതിൽ അപേക്ഷകൻ സുരേഷിന്റെ മൊഴിക്കനുസൃതമായി മറ്റും മൊഴി പറഞ്ഞിട്ടുള്ളതാണ്

മേൽ സൂചന പ്രകാരമുള്ള ഉത്തരവനുസരിച്ച് ഞാൻ ഈ അപേക്ഷയിൽ വിശദമായി സ്ഥലത്തും പരിസരത്തും അന്വേഷണം നടത്തിയിട്ടുള്ളതാണ്. ആയതിൽ അടുത്ത സമയങ്ങളിൽ ഈ പ്രദേശത്തു വൃക്ക കരൾ ദാനം ചെയ്ത് മൂന്നു കേസുകളിലായി

വിവാദം ഉണ്ടാകുകയും ആയത് ഇപ്പോൾ ക്രൈം ബ്രാഞ്ചിന്റെ അന്വേഷണ പരിധിയിൽ ആയതിനാലും ഞാൻ നടത്തിയിട്ടുള്ള അന്വേഷണത്തിൽ ഇതിലെ വ്യക്ത ഭാഗം ചെയ്യാമെന്ന് പറഞ്ഞിട്ടുള്ള സുരേഷ് എന്നവർക്ക് വ്യക്ത സ്വീകരിക്കുന്ന ബിജു മാത്യു എന്നവരുമായി പറയത്തക്ക തരത്തിലുള്ള യാതൊരു ബന്ധവും ഇല്ലെന്നും കൂടാതെ സുരേഷ് എന്നവർ ഉപയോഗിച്ച് വരുന്ന 8848838657 എന്ന നമ്പറിന്റെ ജില്ലാ സൈബർ സെല്ലിൽ നിന്നും അയച്ചു കിട്ടിയ കാൾ ഡിറ്റെയിൽസ് പരിശോധിച്ചതിൽ മറ്റും മനസ്സിലാക്കാവുന്നതാണ്. അൽപ വരുമാനക്കാരായ സുരേഷിനും കുടുംബത്തിനും ധാരാളം കടബാധ്യതയുണ്ടെന്നും ആയത് വീട്ടുന്നതിന്റെ ഭാഗമായാണ് ഈ ഇടപാടെന്നും ന്യായമായി സംശയിക്കാവുന്ന നിലയിലാണ് ആയതിനാൽ സദുദ്ദേശപരമായ തരത്തിലുള്ള ഒരു ഇടപാടല്ല നടന്നിട്ടുള്ളതെന്നു കൊണ്ടും ഈ തരത്തിൽ രണ്ടു മൂന്ന് സംഭവങ്ങൾ സ്ഥലത്തു മുൻപേ റിപ്പോർട്ട് ചെയ്ത് ആയത് അന്വേഷണ ഏജൻസിയുടെ അന്വേഷണ പരിധിയായതു കൊണ്ടും ഈ വ്യക്തികൾ തമ്മിലുള്ള വ്യക്ത ഭാഗം നടത്തുന്നത് ശരിയായ നടപടിയല്ലെന്ന കാര്യം അങ്ങയുടെ അറിവിലേക്ക് ബോധിപ്പിച്ചു കൊള്ളുന്നു.

അനന്തര നടപടികൾക്കായി അസ്സൽ അപേക്ഷയും അപേക്ഷകൻ സുരേഷ്, സുരേഷിന്റെ ഭാര്യ സുജി മകൾ രേഷ്മ എന്നിവരുടെ മൊഴികൾ ഇതോടൊപ്പം സമർപ്പിച്ച് കൊള്ളുന്നു"
 സവിനയം

ഇൻസ്പെക്ടർ എസ് എച്ച് ഓ
 കൊടുങ്ങല്ലൂർ പോലീസ് സ്റ്റേഷൻ
 തൃശൂർ റൂറൽ"

9. A perusal of the report prepared by the 5th respondent would show that as per the statement of the donor, brother and wife of the patient the donor is a close family friend of the donee’s family and the said fact lead to the offer being made by the donor. It is also stated by the

Secretary, DLSA, Ernakulam that on going through their statements, there are no contradictions in their statements and they have given consistent statements with regard to the relationship between the donor and the donee. Although no documents were produced to show the employer-employee relationship between the donor and the brother of the donee, the report of the Secretary, DLSA, states that prima facie there is nothing to doubt the correctness of the claim of the parties that they are close family friends. The donor has also filed an affidavit declaring the relationship with the donee as spoken to by him in the statement given before the Secretary, DLSA. Hence the Secretary, DLSA, came to the conclusion that the donor has voluntarily agreed to donate his renal without any external influence and there is no monetary transaction relating to it. In the light of the above report of the Secretary, DLSA, I am of the considered opinion that the police verification report of the Deputy Superintendent, Kodungallur and the report of the Inspector SHO, Kodungallur need not be considered by the 2nd respondent. In the report of the Inspector SHO, Kodungallur Police Station, it is stated

that in the call details forwarded from the District Cyber Cell, it can be seen that there is no close relationship between the petitioners and there is serious doubt about commercial transaction in this case. The SHO, Kodungallur submitted such a report without only based on the call details. Nothing is clear from the report of the Inspector, SHO, Kodungallur and on the other hand, the report of the 5th respondent is clear to the effect that there is no external influence and there is no money transaction involved relating to that. Therefore, I am of the considered opinion that the report submitted by the Deputy Superintendent, Kodungallur and the report of the SHO, Kodungallur are to be rejected and the 2nd respondent has to pass orders based on the report of the 5th respondent.

10. Before parting with the case, it is necessary to make certain observations. While considering an application submitted by the parties for permission for transplantation, the Authorization Committee's duty is divine. The Authorization Committee must hold an enquiry independently. The committee should satisfy itself that the applicants have complied with all the requirements of the Transplantation of

Human Organs and Tissues Act, 1994 and Rules made thereunder. If that subjective satisfaction is arrived, the Authorization Committee has to grant approval for the removal and transplantation of the human organs. The Government issued certain guidelines for altruistic and exchange donation based on the directions of this Court as G.O.(Ms.) No.26/2018/H&FWD dated 15.02.2018. As far as an unrelated organ donor is concerned, approval from the Authorisation Committee is mandatory. The concern of commercialization of organ donation can be reduced by removing the direct link between the person who offers to donate and the recipient. Further, Rule 17 of the Transplantation of Human Organs and Tissues Rules, 2014 deals with scrutiny of applications by Authorisation Committee. Rule 17 is extracted below:

“17. Scrutiny of applications by Authorisation Committee.—

(1) Secretariat of the Authorisation Committee shall circulate copies of all applications received from the proposed donors and recipients to all members of the Committee along with all annexures, which may have been filed along with the applications.

(2) At the time of the meeting, the Authorisation Committee should take note of all relevant contents and documents in the course of its decision making process and in the event any document or information is found to be inadequate or doubtful, explanation should be sought from the applicant and if it is considered necessary that any fact or information requires to be verified in order to confirm its veracity or correctness, the same be ascertained through the concerned officer(s) of the State Government or Union territory Administration.”(underline supplied)

Police verification is conducted only to rule out that, there is no commercialization of the organ donation and transplantation. When Police submits verification reports, mere mechanical orders shall not be passed by the authorisation committee. A man is in the death bed. He is hoping that he will get a life from another person. The Authorization Committee and Police shall always try to help the man in the death bed rather than to find out some technicalities and unsupported suspicions to conclude that there is commercial transaction or money transaction. Hence, I am of the considered opinion that this is a fit case in which

Ext.P4 is to be set aside and the 2nd respondent has to pass consequential order in the light of the directions issued by this Court.

Therefore, this writ petition is allowed in the following manner:

1. Ext.P4 is set aside.
2. The 2nd respondent is directed to reconsider the matter and pass consequential orders granting authorization for renal transplantation, based on the application submitted by the petitioners, as expeditiously as possible, at any rate, within ten days from the date of receipt of a copy of this judgment.

APPENDIX OF WP (C) 27178/2023

PETITIONER EXHIBITS

Exhibit P1	THE TRUE COPY OF THE WRIT PETITION NO.16925/2023
Exhibit P2	THE TRUE COPY OF THE JUDGMENT DATED 29.05.2023 IN WRIT PETITION (CIVIL) NO.16925/2023
Exhibit-P3	THE TRUE COPY OF THE AFFIDAVIT SUBMITTED BY THE 2ND PETITIONER
Exhibit-P4	THE TRUE COPY OF THE REJECTION ORDER DATED 22.07.2023 PASSED BY THE 2ND RESPONDENT
Exhibit-P5	THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT
Exhibit-P6	A TRUE COPY OF THE APPLICATION SUBMITTED BY THE WIFE OF THE 1ST PETITIONER DATED 08.08.2023 BEFORE THE 5TH RESPONDENT