

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 27th OF JUNE, 2024

WRIT PETITION No. 16491 of 2024

(Shivnarayan Batham

Vs

Vishesh Jupiter Hospital and Others)

Appearance :

(SHRI NILESH MANORE - ADVOCATE FOR THE PETITIONER)

(SHRI ANENDRA SINGH PARIHAR - GOVERNMENT ADVOCATE FOR THE STATE)

ORDER

The present petition has been filed seeking the following reliefs:

“(i) That, this Hon’ble Court may kindly be pleased to issue a writ in the nature of mandamus to direct the Respondent No.1 to proceed with the transplantation of liver subject to satisfaction of medical fitness of petitioner for said transplantation.

(ii) Issue other relief which this Hon’ble Court may deems fit in favour of the petitioner in the facts and circumstances of the case.”

2. It is the case of the petitioner that he is suffering from end stage chronic liver disease and his liver is severely affected and if treatment of transplant of tissue of liver is not done then there is danger to his life. The medical experts have suggested for transplant of tissue of liver which is very necessary for saving the life of petitioner. His daughter namely Preeti Batham is ready to give tissue of liver to the petitioner who is her father,

but her age is less than 18 years so the doctor is refusing to take her organ. Hence, this petition.

3. Vide order dated 24.06.2024, a coordinate Bench of this Court has passed the following orders :

“In compliance of order dated 20.6.2024, the Medical Board examined the donor and as per the opinion of the Medical Board, the donor is medically fit to donate tissues of liver (part of liver). As the donor is minor and as per Rule 5(3)(g) of Transplantation of Human Organs and Tissues, Rules 2014, prior approval of the State Government is required and therefore, the committee has referred the matter to the Commissioner, Health with a recommendation for grant of permission.

Composition of State Level Authorisation Committee is prescribed in Rule 13 and the format for issuance of consent is prescribed in Rule 16 of Rules, 2014. Despite the urgency expressed by the doctor and the counsel for petitioner, till now the State Government has not taken any decision in the matter.

It is most unfortunate that the State Government is not taking the matter seriously. The daughter of the petitioner wants to donate the tissues of her liver to save life of the petitioner, but due to non-consideration of her request and in absence of any approval by the State Level Authorisation Committee, the tissues cannot be transplanted in the body of the petitioner.

This court by order dated 20.6.2024 had granted time to government advocate for the purpose of consideration by the State Government and communicate the decision expeditiously. But till today Government Advocate is not in a position to apprise this Court in respect of the decision taken by the State Level Authorisation Committee.

Considering the health condition of the petitioner, the State Level Authorisation Committee should decide the issue at the earliest, preferably within two days from today.

Government Advocate is directed to communicate this order to Commissioner Health.

In case of failure to take any decision by the State Level Authorisation Committee, Commissioner Health shall remain personally present before this court on the next date of hearing to explain as to why the order passed by this court has not been complied with. It is made clear that this Court has not expressed any opinion on the merits of the case in respect of decision to be taken by the State Level Authorization Committee.

It is needless to mention that if the State Level Authorisation Committee communicates the decision, Commissioner, Health will not be required to remain personally present before this court on the next date of hearing.

List the matter on 27.6.2024 at 10.30 a.m.”

4. Accordingly, the matter is listed today at top of the list and is taken up for consideration.

5. The present writ petition is preferred by a petitioner whose liver is severely affected and requires immediate transplantation of tissue of liver. Her daughter Ku. Preeti Batham wants to donate tissue of liver (part of liver) and she was medically examined. A Medical Board was constituted and as per the opinion of the Board, the donor i.e. Ku. Preeti Batham is medically fit to donate tissues of liver (part of liver). The report of the Board dated 21.06.2024 is in the following terms :

“Board has done thorough study of all the documents and medical reports of Donor (Preeti) and she is medically fit to donate part of liver for her father after complete documentation, legal formalities and due consent of her parents and first degree relative. Outcome of the surgery is unpredictable like any other liver transplantation surgery.”

6. A letter written by Commissioner, Medical Education, M.P. dated 25.06.2022 addressed to Dean, Medical College, Indore filed by way of I.A. No.8139 of 2024 is relevant and reproduced thus :

क्रमांक 27/संचिश/विविध/सोटो/2024 भोपाल दिनांक 25/06/2024

प्रति

अधिष्ठाता,
चिकित्सा महाविद्यालय,
इंदौर, मध्यप्रदेश।

विषय:- लीवर प्रत्यारोपण करने हेतु राज्य शासन द्वारा अनुमति देने बाबत-
लीवर ग्रहिता शिवनारायण बाथम।

संदर्भ:- अधिष्ठाता, चिकित्सा महाविद्यालय, इंदौर का पत्र क्रमांक 859/ओ.एस
टी./2024 इंदौर, दिनांक 19/06/2024

संदर्भित पत्र के अनुक्रम में श्री शिवनारायण बाथम के लीवर प्रत्यारोपण किये जाने हेतु राजपत्र दिनांक 27 मार्च 2014 के बिंदु क्रमांक 05(3)(G)" (अवयस्क द्वारा जीवित रहते अंग या उत्तक दान की अनुज्ञा पूर्ण न्यायोचित्य सहित ब्यौरे लेखबद्ध किये जाने वाले अपवादित चिकित्सा आधारों और समूचित प्राधिकारी और संबंधित राज्य सरकार के पूर्व अनुमोदन के सिवाय नहीं दी जाएगी)" के अनुसार मध्यप्रदेश शासन, लोक स्वास्थ्य एवं परिवार कल्याण चिकित्सा शिक्षा विभाग द्वारा सहमति प्रदान की गई है।

अतः प्रकरण में उचित कार्यवाही कर शासन/संचालनालय को तत्काल अवगत कराने का कष्ट करें।

तरुण कुमार पिथोडे
आयुक्त चिकित्सा शिक्षा
मध्यप्रदेश

7. Further, letter dated 25.06.2024 written by Dean, Mahatma Gandhi Memorial Medical College, Indore to Vishesh Jupiter Hospital and copy to Directorate, Medical Education reads as follows -

उपरोक्त विषय एवं संदर्भ में प्रमाणित किया जाता है कि दाता और प्रापक, जिसके ब्यौरे और फोटा उनके पहचान और सत्यापन दस्तावेजों के साथ नीचे दिये गये हैं, द्वारा दिनांक 19.06.2024 को प्रस्तुत मानव अंग प्रत्यारोपण अधिनियम 1994 (1994 को 42) के अधीन जीवित दाता कु. प्रति बाथम पिता श्री शिवनारायण बाथम जो प्रापक श्री शिवनारायण बाथम पिता श्री मदनलाल बाथम के निकट नातेदार (पिता-पुत्री) है से लीवर प्रत्यारोपण के लिए प्रारूप 11 में आवेदन के अनुसार मामले पर तारीख 19.06.2024 को आयोजित बैठक में सक्षम प्राधिकारी द्वारा दाता के वैयक्तिक साक्षात्कार के पश्चात विचार किया गया।

प्रापक के ब्यौरे

नाम:- श्री शिवनारायण बाथम

आयु:- 42 वर्ष

लिंग :- पुरुष

पिता का नाम:- श्री मदनलाल बाथम

दाता के ब्यौरे

नाम:- कु. प्रति बाथम

आयु:- 17 वर्ष 10 माह

लिंग:- महिला

पिता का नाम:- श्री शिवनारायण बाथम

पता:— वार्ड क्र. 04 अम्बेडकर मोहल्ला
बेटमा जिला इंदौर

पता:— वार्ड क्र. 04 अम्बेडकर मोहल्ला
बेटमा जिला इंदौर

लीवर दाता एवं प्रापक से साक्षात्कार एवं आवेदन के परिक्षणोपरांत समिति के सदस्यों की सर्वोत्तम जानकारी के अनुसार, उनके निकट नातेदार (पिता—पुत्री) होने के कारण दाता को लीवर का कुछ हिस्सा दान करने की अनुज्ञा प्रदान की जाती है और प्रापक श्री शिवनारायण बाथम तथा दाता कु प्रिति बाथम के बीच कोई वित्तीय संव्यवहार नहीं है और दाता कु प्रिति बाथम पर कोई दबाव या जबरदस्ती नहीं है।

8. In similar circumstances, a co-ordinate Bench of the High Court of Delhi in the case of Siya Omar vs Union of India reported in 2024 SCC OnLine Del 646 has granted permission to daughter to donate tissue of liver to her father. The Court has observed as under :

16. The Petitioner No.1, at the moment, is aged 17 years 4 months and 21 days. The Petitioner's father urgently requires a part of her liver for liver transplantation and there is no absolute bar to the same. Rule 5(3)(g) of the Transplantation of Human Organs and Tissues Rules, 2014, reads as under:—

“5(3)(g) living organ or tissue donation by minors shall not be permitted except on exceptional medical grounds to be recorded in detail with full justification and with prior approval of the Appropriate Authority and the State Government concerned.”

17. A perusal of the aforesaid Rule indicates that in exceptional medical grounds which are to be recorded in detail with full justification and with prior approval of the appropriate authority a minor can be permitted to donate live tissues and organs. What are the exceptional medical grounds have not been laid down and this can lead to arbitrariness in the matter of grant of permission for such donations. Guidelines have to be laid down indicating the nature of exceptional medical grounds which can be adopted throughout the country by the appropriate authority and the State Governments. Respondent No. 1 is directed to frame the guidelines under Rule 5(3)(g) of the Transplantation of Human Organs and Tissues Rules, 2014 for the guidance of the appropriate authority and the State

Governments while considering an application regarding permitting tissue donations by minors. The guidelines be framed within a period of two months from today.

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19. In view of the Report given by the Medical Board, AIIMS that Petitioner No. 1 is physically fit to donate a portion of her liver to her father and quality of her life will not diminish and considering the fact that her father requires an urgent liver transplant as he is in the end stage liver disease, non-alcoholic steatohepatitis-cirrhosis (NASH), this Court is inclined to permit Petitioner No. 1 to donate a part of her liver to her father.

20. It is made clear that this Court is passing this order because the father of Petitioner No. 1 is in the end stage liver disease. The Petitioner No. 1 is 17 years 4 months and 21 days and the Medical Board, AIIMS has categorically stated that Petitioner No. 1 is in a physical condition to donate a part of her liver and that her future will not be jeopardized and risk involved in the case is the risk that is involved ordinarily to any donor.

21. This Court deems it fit to exercise its discretion under Article 226 of the Constitution of India in the present case and allow the Petitioner to donate a part of her liver to her father. As stated in the report of AIIMS, the Petitioner No. 1 is directed to undergo the procedure in a specialized centre like AIIMS or Respondent No. 3 where all detailed workup of Petitioner No. 1 be done keeping in view of her safety.

9. In the present case, the donor is medically fit to donate tissue of liver (part of liver) as examined and opined by Medical Board and the State Government as well as Medical Board has given permission to donate tissue of liver (part of liver) by the daughter to her father i.e. the petitioner which is reflected from the aforesaid correspondences.

10. Under these circumstances and considering the relevant provisions of the Transplantation of the Human Organs and Tissues Act, 1994 read

with the Transplantation of the Human Organs and Tissues Rules, 2014, the respondents are directed to permit Ku. Preeti Batham to donate tissue of liver (part of liver) to her father i.e. Shivnarayan Batham.

11. Accordingly, this Court permits transplantation of tissue of liver subject to the following conditions :

(i) The procedure of transplantation of tissue of liver will be carried out in a specialized centre and in presence of expert team of at least 3 doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the entire procedure done and other related factors.

(ii) Every care and caution will be taken by the doctors during the entire procedure. All medical attention and other essential medical facilities will be made available at the time of such procedure.

(iii) The post-operative care, upto the extent required, will be extended to the donor.

(iv) The procedure to be carried out expeditiously taking all precautions and measures as required in the matter.

12. With these observations, the petition is **disposed off** finally. No order as to costs.

(VISHAL MISHRA)
V. JUDGE

VV/Praveen