**IN THE HIGH COURT OF JUDICATURE AT MADRAS****Reserved on : 25.05.2024****Pronounced on : 30.05.2024**

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CORAM:**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P.Nos.13918, 13922, 13967 and 13969 of 2024****W.P.(MD)No.13918 of 2024:-**

1.Sudha Mathesan

2.Balamani Sabapathi

... Petitioners

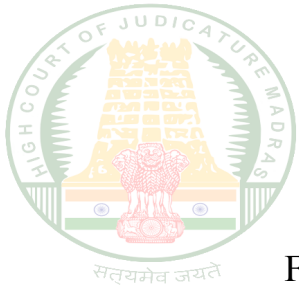
vs.

1.The Authorisation Committee (Transplantation),
Rep. by its Chairman,
Coimbatore Medical College of Hospital,
Trichy Road, Coimbatore.

2.K.G.Hospital,
Rep. by its Chairman,
No.5, Govt. Arts College Road,
Coimbatore – 641 018.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing respondents 1 and 2 to consider the petitioners' representation dated 22.04.2024 and pass orders in accordance with law and grant approval for Kidney transplantation from 2nd petitioner to 1st petitioner and to do the transplantation by the 2nd respondent on priority basis within the time to be stipulated by this Court.



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For Petitioners : Mr.M.Manivasagam,
For M/s.Manivasagam Associates.

For Respondents : Mr.K.Tippu Sulthan,
Govt. Advocate for R1.
Ms.Elizabeth Seshadri,
For M/s.Iyer & Thomas for R2.

W.P.No.13922 of 2024:-

1.T.R.Mahaseethalakshmi

2.Sathishkumar Venkatachalam ... Petitioners

vs.

1.The Authorisation Committee (Transplantation),
Rep. by its Chairman,
Coimbatore Medical College of Hospital,
Trichy Road, Coimbatore.

2.K.G.Hospital,
Rep. by its Chairman,
No.5, Govt. Arts College Road,
Coimbatore – 641 018. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing respondents 1 and 2 to consider the petitioners' representation dated 29.04.2024 and pass orders in accordance with law and grant approval for Kidney transplantation from 2nd petitioner to 1st petitioner and to do the transplantation by the 2nd respondent on priority basis within the time to be stipulated by this Court.



WEB COPY For Petitioners : Mr.M.Manivasagam,
For M/s.Manivasagam Associates.

For Respondents : Mr.K.Tippu Sulthan,
Govt. Advocate for R1.
Ms.Elizabeth Seshadri,
For M/s.Iyer & Thomas for R2.

W.P.No.13967 of 2024:-

1.Jude Jenifer Rose Antony Ernest

2.Syed Ahamed Kabeer ... Petitioners

vs.

1.The Authorisation Committee (Transplantation),
Rep. by its Chairman,
Coimbatore Medical College of Hospital,
Trichy Road, Coimbatore.

2.K.G.Hospital,
Rep. by its Chairman,
No.5, Govt. Arts College Road,
Coimbatore – 641 018. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing respondents 1 and 2 to send the medical records and relevant documents to the 1st respondent in the prescribed format for the approval in light of the petitioners' representation dated 28.04.2024 and pass orders in accordance with law and grant approval for Kidney transplantation from 2nd petitioner to 1st petitioner and



to do the transplantation by the 2nd respondent on priority basis within the time to be stipulated by this Court.

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For Petitioners : Mr.M.Manivasagam,
For M/s.Manivasagam Associates.

For Respondents : Mr.K.Tippu Sulthan,
Govt. Advocate for R1.
Ms.Elizabeth Seshadri,
For M/s.Iyer & Thomas for R2.

W.P.No.13969 of 2024:-

1.K.Kanakaraj

2.Gopal Arumugam ... Petitioners

vs.

1.The Authorisation Committee (Transplantation),
Rep. by its Chairman,
Coimbatore Medical College of Hospital,
Trichy Road, Coimbatore.

2.K.G.Hospital,
Rep. by its Chairman,
No.5, Govt. Arts College Road,
Coimbatore – 641 018. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing respondents 1 and 2 to consider the petitioners' representation dated 29.04.2024 and pass orders in accordance with law and grant approval for Kidney transplantation from 2nd petitioner to 1st petitioner and to do the transplantation by the



2nd respondent on priority basis within the time to be stipulated by this Court.

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For Petitioners : Mr.M.Manivasagam,
For M/s.Manivasagam Associates.

For Respondents : Mr.K.Tippu Sulthan,
Govt. Advocate for R1.
Ms.Elizabeth Seshadri,
For M/s.Iyer & Thomas for R2.

COMMON ORDER

All these writ petitions are disposed of by a common order since the issues raised therein are identical.

2.The first petitioners in these writ petitions were admitted for renal failure in the second respondent hospital. They are undergoing regular dialysis. Kidney transplantation is the only solution. The second petitioners have come forward to donate their kidneys in favour of the corresponding first petitioners. But the donors who have given consent for transplantation are not “near relatives.” Hence, prior approval from the Authorisation Committee (first respondent) is statutorily required in each case. The hospital is hesitant to forward the papers to the Authorisation



Committee for taking appropriate decision. In these circumstances, the present writ petitions came to be filed.

3.The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petitions and called upon this Court to grant relief as prayed for. My attention was drawn to the order dated 17.04.2024 made in W.P.No.9306 of 2024. A learned Judge of this Court had directed the hospital concerned to forward the papers / medical summary along with application submitted by the patient to the Authorisation Committee immediately. There was also direction for taking decision within a time frame.

4.When I was inclined to dispose of the present writ petitions on the same lines, the learned counsel for the hospital requested me to take note of the prevailing reality and pass a detailed order. I, thereupon, requested her to circulate a note for my better understanding. The learned counsel was kind enough to comply with my request.

5.The learned Government Advocate for the first respondent submitted that on receipt of the application from the second respondent, the



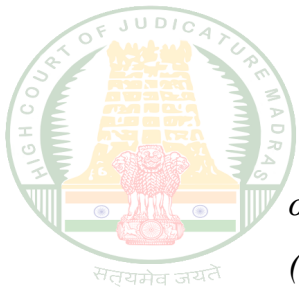
Authorisation Committee will take a call in the matter as per law.

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6.I carefully considered the contentions advanced by the learned counsel. The Central Act 42 of 1994 was originally called as “The Transplantation of Human Organs Act, 1994”. It came into force in various States on different dates. The statute underwent substantial amendments vide Act 16 of 2011. The Act now is called as “The Transplantation of Human Organs and Tissues Act, 1994”.

7.The need to pass such a legislation was felt because there was no comprehensive legislation to regulate the removal of organs from living as well as deceased persons and transplantation of such organs. The preamble notes that the Act is also intended to prevent commercial dealings in human organs and tissues. The Act has 25 sections and it is divided into seven chapters. The statutory rules were framed in the year 2014. Since the cases on hand involve donation by persons who are not near relatives, let me examine only those provisions that have a direct bearing on the issue. Section 2 (f), (i) and (m) and Section 9(3) of the Transplantation of Human Organs and Tissues Act, 1994 are as follows:-

(f) “donor” means any person, not less than eighteen years of age, who voluntarily authorises the removal of any of his human



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organs for therapeutic purposes under sub-section (1) or sub-section (2) of section 3;

(i) “near relative” means spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter;

(m) “recipient” means a person into whom any 3 [human organ or tissue or both] is, or is proposed to be, transplanted;”

“9. Restrictions on removal and transplantation of [human organs or tissues 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.”

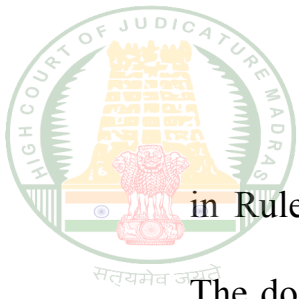
8.Kidney transplantation is done mostly from living donors. Though the Act does not ban donation of kidney in favour of a person who is not a near relative and the only restriction is that transplantation can be done only after prior approval by the State Authorisation Committee, yet the transplant surgeons are hesitant to carry out kidney transplants between unrelated



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persons. The learned counsel for the second respondent states that the doctors are in a state of fear as they are not in a position to handle the backlash if something goes wrong. That is why, the hospitals or the doctors do not forward the applications to the Authorisation Committee on their own. This has led to filing of many cases before this Court only for the purpose of securing direction for forwarding the applications for approval by the Authorisation Committee. I endorse the suggestion made by the learned counsel for the second respondent that in future, there is no need to file writ petitions only for this relief. This is because the Act does not contemplate such a course of action. Application in Form – 11 for approval is to be jointly signed and submitted by the prospective donor and prospective recipient directly before the Authorisation Committee. The applications can be submitted in person or through registered post or through online mode. It is for the State Government to issue guidelines regarding the mode of submission. Till such guidelines are issued, it is open to the parties to choose. The application must be submitted along with the completed Forms. I exonerate the hospitals from undertaking the task of forwarding the applications.

9.The duties of the registered medical practitioner have been set out



in Rule 5 of Transplantation of Human Organs and Tissues Rules, 2014.

The doctor has to sign Form – 4 which certifies the medical fitness of the living donor. The Form employs the expression “informed consent”. What does this mean? Rule 5(3) mandates that the registered medical practitioner shall, before removing any human organ or tissue from a living donor, satisfy himself on the following aspects:

(i) the donor has been explained of all possible side effects, hazards and complications.

(ii) The donor has given his authorisation in the relevant Form.

(iii) The physical and mental evaluation of the donor has been done; he or she is in proper state of health; he or she is not mentally challenged and is fit to donate the organ or tissue.

The expression “informed consent” occurring in Form – 4 only means that the doctor has warned the donor about the consequences flowing out of his act of donation and is satisfied regarding the aforesaid aspects. It cannot extend to anything beyond. It would be in the interest of the doctor concerned to videograph the entire session wherein the counselling takes place. The doctor is not supposed to encourage the donor to donate his / her



organ. When the donor approaches the doctor and informs the doctor that he / she is willing to donate his / her organ, the doctor has to apprise the donor about the consequences. After the issuance of Form – 4, it is for the donor and the recipient to move the Authorisation Committee.

10. {Rule 5(3) opens thus:

“The registered medical practitioner *shall*, before removing any human organ or tissue from a living donor, *shall* satisfy himself -”

Rule 5(3) employs “shall” twice. Human beings are endowed with two kidneys though one would suffice. Rule 5(3) also would do well with one “shall”. It is for the grammarians to comment on this.}

11. The Authorisation Committees shall not insist that the application must be received from the hospital. There is a term called “through proper channel”. The hospital cannot be treated as the proper channel for the purpose of submission of the application.

12. Section 19 of the Act makes commercial dealings in human organs as punishable offence. The moot question that arises for consideration is the manner of enquiry into the applications when the prospective donor is not a



near relative. Rule 7(3) set outs the procedure of enquiry. Rules 7(3) and

19 of the Transplantation of Human Organs and Tissues Rules, 2014 are as

follows:-

“Rule 7 Authorisation Committee.—

(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

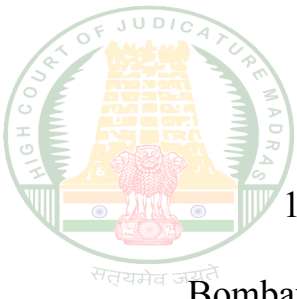


reasons for donation, and any strong views or disagreement or objection of such kin shall also be recorded and taken note of.”

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“Rule 19. Procedure in case of transplant other than near relatives.— *Where the proposed transplant is between other than near relatives and all cases where the donor or recipient is foreign national (irrespective of them being near relative or otherwise), the approval will be granted by the Authorisation Committee of the hospital or if hospital based Authorisation Committee is not constituted, then by the District or State level Authorisation Committee.”*

13. From the language of Form – 18 certificate issued by the Authorisation Committee, one can conclude that permission will be granted, if the donation is out of love and affection and there is no financial transaction between recipient and donor and there is no pressure on / coercion of the donor. The members of the Authorisation Committee are human beings. What goes into their thought process? One factor that is taken into account is the material indicating the length of association between the donor and the recipient. This may not always be a sound approach. There is something called “love at first sight”. Love and affection are intangible sentiments. On the other hand, time is a measurable. Something that cannot be measured cannot be determined by a measurable value.

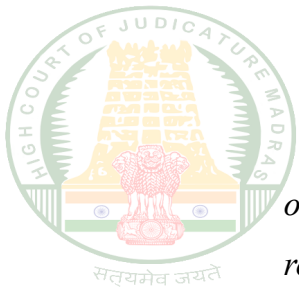


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14. I am conscious of the decision of the Hon'ble Division Bench of Bombay High Court reported in **2012 SCC Online Bom 64 (Sonia Ajit Vayklip Vs. Hospital Committee, Lilavati Hospital)**. It was held that where the donor and the recipient are shown to be near relatives and the case does not fall under any of the three exceptions set out in Section 9(4) of the Act, the Authorisation Committee has no power to make further enquiry about the motive of donation because in such cases there would be no commercial element. After so holding, the learned Judges went on to observe that where the donor is not a near relative, the burden is on the applicants to establish the real intent by placing relevant materials for consideration of the Authorisation Committee and heavy burden lies on them to establish.

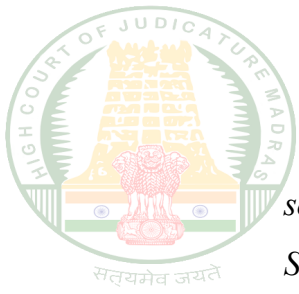
15. The Hon'ble Division Bench took note of the decision of the Hon'ble Supreme Court of India reported in **(2005) 11 SCC 122 (Kuldeep Singh Vs. State of Tamil Nadu)**. Paragraph No.12 reads as follows:-

“12. Where the donor is not "near relative" as defined under the Act, the situation is covered by Sub-Section (3) of Section 9. As the Form I in terms of Rule 3 itself shows the same has to be filed in both the cases where the donor is a near relative and where he is not, so far as the recipient is concerned. In case the donor is not a near relative the requirement is that he must establish that removal of the



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organ was being authorized for transplantation into the body of the recipient because of affection or attachment or for any special reasons to make donation of his organ. As the purpose of enactment of the Statute itself shows, there cannot be any commercial element involved in the donation. The object of the Statute is crystal clear that it intends to prevent commercial dealings in human organs. The Authorisation Committee is, therefore, required to satisfy that the real purpose of the donor authorizing removal of the organ is by reason of affection or attachment towards the recipient or for any other special reason. Such special reasons can by no stretch of imagination encompass commercial elements. Above being the intent, the inevitable conclusion is that the Authorisation Committees of the State to which the donor and the donee belong have to take the exercise to find out whether approval is to be accorded. Such Committee shall be in a better position to ascertain the true intent and the purpose for the authorisation to remove the organ and whether any commercial element is involved or not. They would be in a better position to lift the veil of projected affection or attachment and the so called special reasons and focus on the true intent. The burden is on the applicants to establish the real intent by placing relevant materials for consideration of the Authorisation Committee. Whether there exists any affection or attachment or special reason is within the special knowledge of the applicants, and a heavy burden lies on them to establish it. Several relevant factors like relationship if any (need not be near relationship for which different considerations have been provided for), period of acquaintance, degree of association, reciprocity of feelings, gratitude and similar human factors and bonds can throw light on the issue. It is always open to the Authorisation Committee considering the application to



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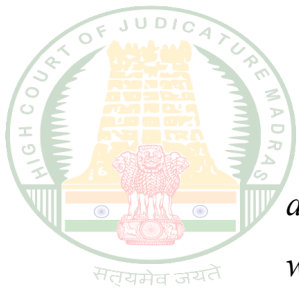
seek information/materials from Authorisation Committees of other States/State Governments as the case may be for effective decision in the matter. In case any State is not covered by the operation of the Act or the Rules, the operative executive instructions/Government orders will hold the field. As the object is to find out the true intent behind the donor's willingness to donate the organ, it would not be in line with the legislative intent to require the Authorisation Committee of the State where the recipient is undergoing medical treatment to decide the issue whether approval is to be accorded. Form I in terms requires the applicants to indicate the residential details. This indication is required to prima facie determine as to which is the appropriate Authorisation Committee. In the instant case, therefore, it was the Authorisation Committee of the State of Punjab which is required to examine the claim of the petitioners.”

Section 9(3) of the Act envisages donation by reason of affection or attachment towards the recipient or for any other special reasons. In the decision of the Hon'ble Bombay High Court as well as the Hon'ble Supreme Court, the expression “special reasons” was considered and interpreted. The burden would be on the applicant to establish the existence of special reasons. But where the applicants do not plead or project special reasons, the position will be different.

16.In Vijaykumar Hariram Sahu V. State of Maharashtra 2012 SCC

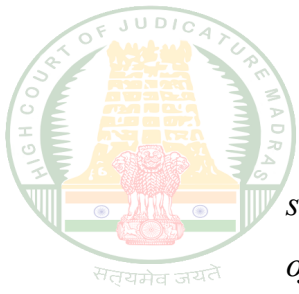
Online Bom 1430, it was held as follows:-

“11. Where the donor and the donee are not near relatives,



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as in the present case, the Act mandates an application of mind to whether the proposed transplantation of a human organ or a tissue is motivated by a reason of affection or attachment of the donor to the recipient or by any other special reason. Affection or attachment is hence one, but not the only reason recognized by the Statute. Parliament did contemplate a donation of an organ or tissue for any other special reason. Those reasons have not been catalogued but have to be genuine and weighty. The object and purpose of the Act is to prohibit commercial dealings in the transplantation of human organs and tissues. Parliament was cognizant of the fact that unless the process was regulated, human beings in our society which suffers from poverty, illiteracy and ignorance, could be subjected to exploitation for the purposes of transplantation. Where the proposed transplantation is not between near relatives, the Authorization Committee is specifically under a mandate under Rule 6F(d) to evaluate and ascertain that there is no commercial transaction between the donor and the recipient. The Authorization Committee has, therefore, to consider the explanation which is furnished of the link between the donor and the donee, of the circumstances which led to the offer being made, documentary evidence of the link, reasons why the donor wishes to donate and can even look at old photographs to show the link between the donor and the donee. The Authorization Committee has to ascertain that no middleman or tout is involved. The financial status of the donor and the recipient has to be probed and in the case of a gross disparity, that has to be taken note of having regard to the object of preventing commercial dealings. Where there is a gross disparity in the financial status of the donor and donee, the legislature was cognizant of the need to ensure that this had not been used to

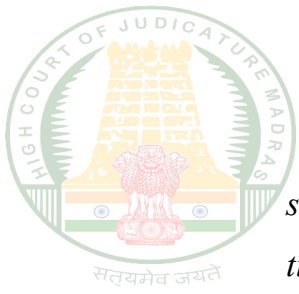


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suborn 10 of 14 WP(L).2328.2012 the will of the donor. The views of the next of kin of the proposed unrelated donor are required to be ascertained in order to ensure that such persons are aware about the intention of the donor to donate an organ. Their views are also significant for assessing the authenticity of the link between the donor and the recipient and the reasons for the donation. Any strong views, disagreement or objection of such kin is to be recorded and taken note of. At this point it is necessary to clarify that the Rules do not confer an overriding veto on the next to kin of the donor. *The Act* balances the autonomy of the individual as a decision maker with the societal interest in protecting the concerns of the family.

Both the Act and the Rules, seek to bring about a healthy balance between the need for transplantation of human organs and tissues in order to save lives on the one hand and the public interest in ensuring that this does not become a facade for exploitation or for trafficking in human organs and tissues. The views of the next of kin are entitled to deference but this is not to suggest that the Authorization Committee, once a disagreement is expressed, would have no power to take an independent decision based on the best interest of the donor and the donee. Ultimately, the Authorization Committee has to take a judicious decision after considering all the facts and circumstances.

12. *The State and District level Authorization Committees consist, among other persons, of experts from the medical field and members of civil society. Having regard to their broad based experience of medicine, society and life, the Authorization committees have to discharge their duties bearing in mind the*



social purpose implicit in the transplantation of human organs and tissues, while at the same time ensuring that this does not take place
WEB COPY *by abusing the bodily integrity of human beings.”*

17. Let us put ourselves in the shoes of the applicants. They can only assert that there is no commercial dealing. They cannot be called upon to prove the negative. Rule 17 provides for scrutiny of application. In case of doubt, explanation can be sought from the applicants and there can also be verification done through the officials of the Government. Too much of burden cannot be laid on the shoulders of the applicants. Unless there is definite material to establish that there are financial dealings involving the parties, permission ought not to be withheld or rejected. If the donor states that out of love and affection, he / she is making the donation, in the absence of any credible reason, the averment should not be doubted. The Government must come out with definite guidelines in this regard. Otherwise, the issue will be left to the arbitrary discretion of the Authorisation Committee. If the recipient is well placed and connected, the decision of the committee will swing in his favour. If the recipient is not all that influential, by passing a template order, permission can be rejected. One must take note of the fact that parliament never intended to rule out donation by non-near relatives. The parliamentary intent ought not to be



frustrated by adopting a rigid approach. One need not take a cynical view that a non-near relative will not donate out of altruistic considerations.

18. All religions proclaim that love and charity are the highest virtues. Hundreds and thousands have given up their lives for larger and impersonal causes. It is not necessary that selfish consideration should underlie all human endeavour. Certain statements can be taken at their face value. That is why, I hold that the statement by a donor that he / she is making the donation out of love and affection for the recipient must be taken at its face value. Of course, this averment shall be rejected if there is definite material evidencing passing of consideration. Subject to there being no evidence that money or money's worth has changed hands, permission should be granted.

19. Altruism is very much present in human beings. Human beings in times of danger and calamity are known to save others even at the costs of their own lives. The Hon'ble Kerala High Court vide order dated 20.10.2010 in *W.P.(C)No.31925 of 2010 (K.K.Noushad Vs. The District Level Authorisation Committee)* remarked that when before the Writ Court,



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the donor and his family members are also present, there is no reason to suspect the altruism in the offer made by the donor for saving the life of the recipient.

20. In *Mano Ranjan Rout*, the Hon'ble Orissa High Court held that necessary approval cannot be denied on the ground of mere suspicion and the mere existence of disparity in income of the donor and the recipient by itself could not have been a reason to deny approval by raising suspicion that there would necessarily be a commercial transaction between the parties.

21. The Hon'ble High Court of Kerala declared in *Soubiya v. District Level Authorisation Committee for Transplantation of Human Organs, Ernakulam [2023 (6) KHC 293]* that a presumption that a person in financial requirement would only act for monetary gain is an affront to the dignity of an individual and is against the constitutional imperatives. This decision was followed in *Deepa P M Vs. State of Kerala (W.P.(C).No.38624 of 2023 dated 19.12.2023)*.

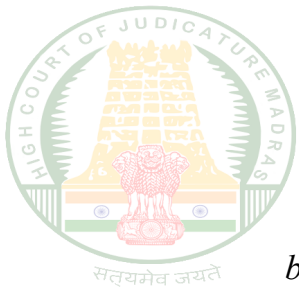
22. The Madras High Court in *S.Samson Vs. Authorisation Committee 2008 SCC Online Mad 317* held that the Authorisation



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Committee must give a cogent and convincing reasoning for concluding that there exists financial bonding between the recipient and the donor. The reasons must be valid and acceptable. An opportunity of hearing should be given to the parties concerned. The matter has to be looked into with the avowed object of helping the needy whose life is in danger. The authorities concerned while exercising the power under the Act must look into the issue in a manner so as to save the life of a person and the matter should not be looked into from a technical point of view. It was further declared that since organ donation is aimed to give immediate relief to the needy person whose life is in peril, time is the essence in a matter of this nature. The Authorisation Committees should not sit over the applications. They must decide speedily.

23.I am cognizant of the fact that there is exploitation of the poor and the disadvantaged. I intend to address this issue. I start with a proposition that it is the duty of the recipient to take care of the post operative requirements of the donor. The Act only states that donation should not be actuated by commercial considerations. There is no bar in the Act for the recipient to cater to the post operative needs of the donor. Section 2(k) of the Act defines “payment” as follows:-



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“(k) “payment” means payment in money or money’s worth but does not include any payment for defraying or reimbursing—

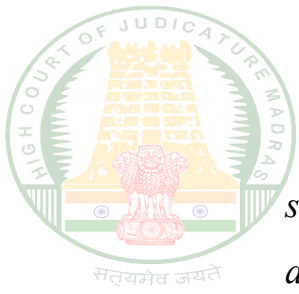
(i) the cost of removing, transporting or preserving the [human organ or tissue or both] to be supplied; or

(ii) any expenses or loss of earnings incurred by a person so far as reasonably and directly attributable to his supplying any human organ from his body; ”

24. When the State of Kerala issued G.O.(MS) No.26/2018/H&FWD dated 15.2.2018 providing for compensation for altruistic donors, the Hon'ble Division Bench of the Kerala High Court in W.P.(C)No.8434 of 2018 dated 23.08.2018 upheld the same on the ground that the provision for compensation cannot be construed as commercial dealings in human organs. They merely cover the health expenses of the altruistic donor.

25. I also take inspiration from the statutory scheme set out in Surrogacy (Regulation) Rules, 2022. Rule 5 is as follows:-

5. Insurance coverage.- (1) *The intending woman or couple shall purchase a general health insurance coverage in favour of surrogate mother for a period of thirty six months from an insurance company or an agent recognized by the Insurance Regulatory and Development Authority established under the provisions of the Insurance Regulatory and Development Authority Act, (41 of 1999) for an amount which is*



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sufficient enough to cover all expenses for all complications arising out of pregnancy and also covering post- partum delivery complications.

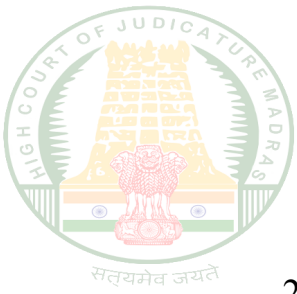
(2) The intending couple/woman shall sign an affidavit to be sworn before a Metropolitan Magistrate or a Judicial Magistrate of the first-class giving guarantee as per clause (q) of sub section (1) of section 2 of the Surrogacy (Regulation) Act, (47 of 2021).”

26.Rule 12 of Assisted Reproductive Technology (Regulation) Rules

2022 is as follows:-

“12.Insurance coverage/Guarantee for oocyte donor - (i) The Intending couple or woman will purchase a general health insurance coverage in favor of oocyte donor for a period of 12 months from an insurance company or an agent recognized by the Insurance Regulatory and established under the provisions of the Insurance Regulatory and Development Authority Act, 1999 for an amount which is sufficient enough to cover all expenses for all complications arising due to oocyte retrieval.

(ii) The Intending couple/woman shall sign an affidavit to be sworn before Metropolitan Magistrate or a Judicial of First Class or an Executive Magistrate or a Notary Public giving guarantee as per the Section 22(4)(ii) of the Assisted Productive Technology (Regulation) Act, 2021.”



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27. The function of the Authorisation Committee is not to stop with scrutinizing the application and granting approval. They have an obligation to ensure that the needs of the donor are met. A person donating kidney would require to be nutritiously fed. Health complications can arise in future. Section 2(k) of the Act which defines payment excludes defraying of certain expenditures from its purview. The recipient is obliged to defray and it is the duty of the Authorisation Committee to see to it that this obligation is discharged. Apart from taking medical insurance coverage in favour of the donor, a lump sum deposit shall be directed to be made to the credit of the Authorisation Committee. The committee shall issue directions for crediting a fixed sum every month in the bank account of the donor for a period of three years. This arrangement will ensure direct transfer of benefit to the donors. Thus, the physical and medical needs of the donor will be met for a certain period. The individual details can be worked out on a case to case basis by the Authorisation Committee. No straight jacket formula can be laid down. Making of such provision by the Authorisation Committee will not any way run counter to the statutory scheme of the Act.

28. I, therefore, permit the petitioners to submit applications in Form –



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11 directly before the first respondent. The Secretariat of the first respondent shall scrutinize the applications. Those applications that are in shall be placed before the committee for consideration. Final order shall be passed on merits and in accordance with law by applying the norms laid down in this judgment. This exercise shall be completed within a period of four weeks from the date of submission of the applications.

29. These writ petitions are disposed of accordingly. No costs.

30.05.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To:

The Chairman,
The Authorisation Committee (Transplantation),
Coimbatore Medical College of Hospital,
Trichy Road, Coimbatore.



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VERDICTUM.IN



G.R.SWAMINATHAN, J.

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W.P.Nos.13918, 13922, 13967 and 13969 of 2024

30.05.2024
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